

HOUSE No. 3843

The Commonwealth of Massachusetts

PRESENTED BY:

Jack Patrick Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to dignity at work.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/16/2021</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>2/22/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/23/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/26/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/26/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>3/1/2021</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>3/1/2021</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>3/3/2021</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/6/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>3/29/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>3/30/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>4/5/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>4/5/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>4/25/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>6/1/2021</i>

HOUSE No. 3843

By Mr. Lewis of Framingham, a petition (accompanied by bill, House, No. 3843) of Jack Patrick Lewis and others relative to workplace bullying, mobbing and harassment. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to dignity at work.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 151B the following
2 chapter:-

3 Chapter 151B ½. Fair Work Commission

4 Section 1. As used in this chapter the following terms shall, unless the context clearly
5 requires otherwise, have the following meanings:

6 “Commission”, the fair work commission established in section 9.

7 “Constructive discharge”, an adverse employment action in which: (i) the employee
8 reasonably believed they were subjected to an abusive work environment; (ii) the employee
9 resigned because of said environment; and (iii) the employer knew or should have known of said
10 environment prior to the resignation and failed to stop it.

11 “Employee” or “worker”, an individual who engages in work for another, whether such
12 work is paid or unpaid or whether such other directly employs the employee. Employees shall
13 include individuals who perform work in any capacity, including apprentices, trainees, unpaid
14 interns, volunteers, farm workers, union stewards and other representatives or independent
15 contractors.

16 “Employer”, any organization or individual employing an individual to engage in any
17 work on their behalf or on behalf of their subsidiaries, customers or clients, whether such work is
18 paid or unpaid. Employers shall include non-profit agencies employing volunteers and
19 organizations hiring workers through a temporary agency or other such organization to perform
20 work on their behalf. Employers that exert control over the means, methods, payroll or personnel
21 practices of their suppliers shall be considered joint employers with the supplier for the purpose
22 of this chapter. Where more than 1 organization or individual meets the definition of employer
23 for the purpose of a claim by a targeted employee, the organizations shall have joint and several
24 liability as co-employers.

25 “Just cause”, a standard of reasonableness used to evaluate a person’s actions in a given
26 set of circumstances. If a person acts with just cause, their actions shall be based on reasonable
27 grounds and committed in good faith.

28 “Management action”, a course of action that is taken by an employer or its supervisors
29 or its agents to direct and control the way work is done.

30 “Moral, psychological or general harassment”, unwelcome, objectionable conduct that is
31 severe or pervasive enough to create an intimidating, hostile or abusive environment.

32 “Organizational practices”, actions taken and policies and practices implemented in the
33 workplace to direct the work and production of an organization.

34 “Retaliation”, a materially adverse action that may deter a reasonable person from
35 engaging in protected activity such as submitting a complaint or reporting abuse. A materially
36 adverse action shall include any form of unfavorable treatment that rises above trivial harms,
37 petty slights or minor annoyances. Materially adverse action shall need not be job-related or
38 occur in the workplace to constitute unlawful retaliation.

39 “Right to dignity”, the fundamental right to receive respect for a person’s dignity as a
40 human being and the right to enjoy the conditions necessary for human dignity to flourish. Right
41 to dignity implies the right not to be treated in a degrading or humiliating manner.

42 “Supervisor”, an individual who has control over any of the means, methods, wages,
43 benefits, terms or conditions of another, either through formal or implied authority. A supervisor
44 shall not be limited to only those with the power to hire, fire, demote, promote, transfer or
45 discipline and shall include those with the power to set schedules, make task assignments,
46 mediate complaints, distribute rewards and punishments or assert other intangible forms of
47 authority.

48 “Workplace bullying”, the unwanted abuse of any source of power that has the effect of
49 or intent to intimidate, control or otherwise strip a target of the target’s right to esteem, growth,
50 dignity, voice or other human right in the workplace. Workplace bullying may take the form of
51 moral, psychological, or general harassment, incivility, abusive supervision, violence, mobbing,
52 aggressions and other types of objectionable behaviors. Workplace bullying may take the form of
53 interpersonal interactions or organizational practices or management actions. Workplace bullying

54 may occur face-to-face or via cyberbullying. Workplace bullying may come from any level of
55 the organization, including but not limited to supervisors, coworkers, clients, customers and
56 other third parties. The source of power shall not be considered as limited to formal
57 organizational power or authority.

58 Section 2. Every worker shall have the right to a work environment that affords them the
59 dignity to which all human beings are entitled, free from all forms of bullying, mobbing and
60 harassment.

61 Section 3. (a)(1) It shall be unlawful for any person to engage in workplace bullying or
62 moral, psychological or general harassment of a coworker or other employee in the work
63 environment. Bullying and moral, psychological or general harassment shall be prohibited
64 without regard to its subject matter or motivating animus.

65 There shall be no requirement that the bullying behavior be extreme, outrageous or
66 repetitive to be unlawful for the purposes of this chapter.

67 Workplace bullying and general, psychological and moral harassment may encompass a
68 broad spectrum of conduct, including, but not limited to: (i) persistent or egregious use of
69 abusive, insulting or offensive language; (ii) unwarranted physical contact or threatening
70 gestures; (iii) interference with a person's personal property or work equipment; (iv) the use of
71 humiliation, personal criticism, ridicule and demeaning comments; (v) overbearing or
72 intimidating levels of supervision; (vi) withholding information, supervision, training or
73 resources to prevent someone from doing their job; (vii) changing work arrangements, such as
74 rosters, offices, assignments, leave and schedules to deliberately inconvenience someone; (viii)
75 isolating or marginalizing a person from normal work activities; (ix) inconsistently following or

76 enforcing rules to the detriment of an employee; (x) unjustifiably excluding colleagues from
77 meetings or communications; (xi) intruding on a person's privacy by pestering, spying or
78 stalking; (xii) any abusive or unjust use of employment or workplace policies, including
79 performance reviews, assignments of work, excessive monitoring of work or unreasonable
80 assignment of or removal of work tasks; (xiii) spreading misinformation or malicious rumors;
81 (xiv) subjecting individuals to excessive supervision and unwarranted monitoring; (xv)
82 inappropriate use of disciplinary procedures, including using performance reviews to
83 misrepresent an employee's work history; (xvi) arbitrarily withholding information that is vital
84 for effective work performance; (xvii) unjustifiably removing whole areas of work responsibility
85 from a person; (xviii) setting impossible targets and objectives or changing targets without
86 telling the person; (xix) deliberate isolation by ignoring or excluding a person; (xx) setting tasks
87 that are unreasonably below or beyond a person's skill level; (xxi) denying access to information,
88 supervision, consultation or resources to the detriment of the worker; (xxii) conducting an unfair
89 workplace investigation; or (xxiii) any disciplinary action taken not based on just cause.

90 (2) A single incident of bullying or harassment is sufficient to create a triable issue
91 regarding the existence of a hostile work environment if the bullying or harassing conduct
92 creates an intimidating, hostile or offensive working environment. The question of whether an
93 environment is objectively hostile or abusive is a question of fact that must be answered by
94 reference to all circumstances.

95 (3) The alleged offender's intent shall not be a required element to support a claim of
96 workplace bullying or moral, general or psychological harassment. The decision of whether
97 bullying or any form of harassment has occurred shall not to be determined by the intent of the
98 alleged offender but by the nature of the behavior itself.

99 (4) The analysis of whether bullying or harassment has occurred shall be conducted from
100 the view of a reasonable person under the totality of the circumstances.

101 (5) Bullying and harassment shall be unlawful when it rises to the level that: (i) creates
102 any harm to dignity and other human rights in the workplace; (ii) causes any level of emotional,
103 psychological, social or physical harm; (iii) otherwise creates an intimidating, hostile or abusive
104 working environment; or (iv) otherwise unreasonably interferes with the working environment of
105 the target of said bullying or harassment.

106 (6) A management action shall not be considered bullying if it is carried out with just
107 cause and is conducted in a reasonable manner.

108 (b) It shall be unlawful for any person to aid, abet, incite, compel or coerce the doing of
109 an act forbidden under this chapter or to attempt to do so.

110 (c) It shall be an unlawful employment practice to coerce, intimidate, threaten, interfere
111 with or otherwise retaliate against any person in the exercise of any right pursuant to this chapter,
112 including but not limited to: (i) filing a claim internally with an employer or externally through
113 any agency or court on the behalf of oneself or another; (ii) encouraging a person to file such a
114 claim; (iii) objecting to behavior a person perceives to be in violation of this chapter; (iv)
115 participating in a claim as an advocate, witness or complainant; (v) defending oneself from
116 against a claim made pursuant to this chapter; or (vi) engaging in any other reasonable
117 participation in a claim made pursuant to this chapter. Any action that may have a chilling effect
118 on current or future complainants or any other participation in a complaint as a witness shall be
119 considered unlawful retaliation pursuant to this chapter.

120 (d) It shall be an unlawful employment practice to require any complainant acting
121 pursuant to this chapter to enter into a non-disclosure agreement.

122 (e) It shall be an unlawful employment practice to require any complainant to enter into
123 any pre-interest binding arbitration agreement addressing any potential unlawful practices
124 described in this chapter.

125 Section 4. (a) Employers shall have a general duty to provide a workplace free from
126 bullying and moral, psychological and general harassment and a workplace that protects each
127 employee's personal integrity, dignity and human rights.

128 (b) Employers shall post notice of employees' rights pursuant to this chapter and
129 distribute the employer's anti-bullying policy, including an explanation of reporting measures,
130 investigation process and remedial processes. While posting of said notice shall not abdicate an
131 employer from legal liability for workplace bullying, failure to post said notice shall be a per se
132 violation of this chapter, may lead to fines and penalties against the employer, and shall make all
133 affirmative defenses against a claim of workplace bullying or general or moral harassment
134 unavailable to the employer.

135 (c) Employers shall have a general duty to prevent, detect, remedy and eliminate
136 workplace bullying and general harassment from their workplaces. At a minimum, employers
137 shall put in place a system to monitor, prevent and manage workplace bullying and assure that
138 workers are adequately informed and trained on workplace bullying prevention and management.
139 The presence of said system shall not in itself create an affirmative defense, but the absence of
140 said system shall be a per se violation of this chapter, may lead to fines and penalties against the

141 employer, and shall make all affirmative defenses against a claim of workplace bullying or
142 general or moral harassment unavailable to said employer.

143 (d) Employers shall take all necessary steps to assure that there shall be no retaliation
144 against any complainant who has filed a complaint pursuant to this chapter in good faith.

145 (e) Employers shall take all necessary steps to assure that there shall be no retaliation
146 against any individual for participating in a complaint as a witness, taking action as a bystander
147 to prevent or eliminate bullying of a target or opposing any behavior prohibited by this chapter.

148 Section 5. (a) An employer shall be liable for any damages, including economic,
149 compensatory and punitive damages, to any employee who has been the target of any of the
150 prohibited behaviors described in this chapter in the scope of their employment, unless the
151 employer can demonstrate they have met all elements of an affirmative defense pursuant to
152 section 7. An employee is entitled to recover actual damages or \$5000, whichever is greater, for
153 each violation of this chapter.

154 (b) An employer shall be strictly liable for all damages, including economic,
155 compensatory and punitive damages, resulting from any prohibited behaviors described in this
156 chapter carried out by a supervisor employed by said employer.

157 (c) Any employer who fails to file notice of employees' rights pursuant to this section in
158 such a manner that all employees have reasonable access to said notice shall be subject to fines
159 and penalties as deemed appropriate by the fair work commission established in section 9.

160 (d) Any employer who fails to implement and notify employees of a workplace bullying
161 prevention policy that includes reasonable reporting, investigatory, remedial and anti-retaliation

162 provisions shall be deemed in violation of this chapter and shall be subject to fines and penalties
163 deemed appropriate by the fair work commission established in section 9. Further, said employer
164 shall not have available the affirmative defenses established in section 7.

165 (e) In civil actions brought under this section, the court shall award to the prevailing
166 party reasonable attorney's fees and costs, including expert witness fees, but a prevailing
167 defendant shall not be awarded fees and costs unless the court finds the action was frivolous,
168 unreasonable or groundless when brought or the plaintiff continued to litigate after it clearly
169 became so.

170 Section 6. Any individual who engages in workplace bullying, moral, psychological or
171 general harassment, retaliation or any other prohibited behavior described in this chapter shall be
172 jointly and severally liable along with their employer for any and all damages including
173 economic, compensatory and punitive damages.

174 Section 7. (a) An employer may establish an affirmative defense to limit damages for
175 prohibited behaviors described in this chapter if such behaviors are committed by non-
176 supervisory employees.

177 (b) To establish an affirmative defense pursuant to subsection (a), an employer shall show
178 that the employer took all necessary steps to prevent, detect and remedy behaviors prohibited by
179 this chapter, including, at a minimum posting notice of employees' rights pursuant to this chapter
180 and establishing an anti-bullying, anti-general harassment policy that includes, at a minimum: (i)
181 a broad reporting procedure; (ii) formal and informal reporting methods; (iii) affirmative steps to
182 detect bullying and harassment in the workplace, including periodic workplace audits and
183 climate surveys of the employer workplace; (iv) an effective investigatory policy that assures

184 neutral well-trained investigators, a neutral fact-finding investigation of each claim of bullying or
185 harassment, a prompt investigation that begins within 24 hours of the filing of a claim or
186 employer knowledge of a potential violation described in this chapter and completion of such
187 investigation within a reasonable period time, not to exceed 5 days, unless a clear justification
188 for such extended time exists; (v) an effective remedial process that assures immediate cessation
189 of any bullying and harassing behavior, assures that the bullying or harassing behavior shall not
190 recommence and deters future bullying or harassing behaviors throughout the organization; and
191 (vi) an effective anti-retaliation provision that assures no retaliation occurs against any
192 complainant, target or other participant in any claim of workplace bullying or harassment.

193 (c) To establish a claim of bullying or harassment based on an organizational practice or
194 management action, the complainant shall establish that such action meets the basic elements of
195 workplace bullying.

196 An employer may establish an affirmative defense against a claim of bullying or
197 harassment based on an organizational practice or management action if the employer can
198 establish by a preponderance of the evidence that such practice or action: (1) was carried out
199 with just cause or (2) that such action was taken out of economic necessity. To show just cause
200 for the purposes of this subsection, the employer shall establish by a preponderance of the
201 evidence that the: (i) action was based on a reasonable work rule; (ii) employee was notified of
202 the rule and the potential penalty for violation of the rule; (iii) employer conducted a sufficient
203 investigation to determine whether the rule was violated; (iv) employer's investigation was fair,
204 impartial and provided the employee adequate due process; (v) investigation provided adequate
205 proof of the violation of the rule; (vi) employer applied the rule fairly and consistently to all
206 employees; and (vii) punishment for violation of the rule was reasonable given the seriousness of

207 the offense and the totality of the employee's work record. To establish economic necessity for
208 the purposes of this subsection, the employer shall establish, by a preponderance of the evidence,
209 that action was taken because the employer had no economic option but to take the management
210 action, including, but not limited to, laying off employees as a result of economic losses.

211 The complainant shall then be afforded an opportunity to show that the employer's
212 preferred reasons for the action were a pretext to cover up bullying or harassing behavior or were
213 not economically necessary.

214 The trier of fact shall make the determination as to whether such management action or
215 organizational practice was either bullying, harassment or justified behavior based on the totality
216 of the evidence presented.

217 Section 8. (a) Targets of workplace bullying shall be entitled to all remedies necessary to
218 make the targets whole. Remedies shall include, but not be limited to: (i) economic damages for
219 lost wages, back pay and front pay and any expenses related to treatment related to the bullying;
220 (ii) compensatory damages to compensate for the pain and suffering and emotional and
221 psychological damages resulting from such workplace bullying; (iii) punitive damages as
222 deemed necessary to deter future acts of workplace bullying; (iv) injunctive relief, whereby the
223 court may enjoin the defendant from engaging in the unlawful employment practice; (v)
224 equitable remedies; and (vi) any other relief that is deemed appropriate, including but not limited
225 to medical expenses, psychological treatment, restorative measures, organizational training and
226 attorney's fees.

227 (b) A complaining party may recover punitive damages under this chapter if the
228 complaining party can demonstrate that the employer engaged in prohibited conduct with intent

229 to injure or with knowing disregard of the protected rights of an aggrieved individual or the
230 employer failed to meet their obligations as described in section 4.

231 (c) The remedies provided in this chapter shall be in addition to any remedies provided
232 by any other law. Nothing in this chapter shall relieve any person from any liability, duty,
233 penalty or punishment provided by any other law.

234 Section 9. (a) There is hereby established a fair work commission to address workplace
235 bullying and enforce this chapter.

236 (b) In enforcing this chapter, the commission shall have the powers and duties to: (i) issue
237 enforcement guidance and formulate policies to effectuate the purposes of this chapter; (ii) make
238 recommendations to agencies and officers of the state or its political subdivisions in aid of said
239 policies and purposes; (iii) receive, initiate, investigate and seek to conciliate complaints made
240 pursuant to this chapter; (iv) adjudicate and issue orders on complaints alleging violations of this
241 chapter; provided, that such adjudication shall be final and binding on all parties and any appeals
242 of such decision shall be filed at the state appellate court level; (v) compel the attendance of
243 witnesses, examine witnesses under oath or affirmation in person by deposition and require
244 answers to interrogatories and the production of documents relevant to a complaint filed in
245 accordance with this chapter, during both the investigation and adjudication of complaints made
246 pursuant to this chapter; (vi) issue right to sue letters to complainants who choose to litigate their
247 claims in the court system of the state rather than pursuing the commission's adjudication
248 process; provided, that a right to sue letter shall extend the statute of limitations for filing a
249 complaint to at least 120 days after the date of the issuance of said letter; and (vii) make
250 available to the public information concerning this chapter, grievance procedures, public records

251 of the commission, and any other information that would further the purposes and intentions of
252 this chapter.

253 (c) The commission shall have the right to represent claimants in judicial proceedings and
254 during the hearing process under the commission's powers. At the conclusion of the
255 investigation, the commission may bring the complaint in front of an administrative law judge to
256 litigate the commission's determination, recommend appropriate penalties against an employer,
257 engage in mediation between the claimant and employer or issue the claimant a right to sue letter
258 to bring a private claim of action.

259 Section 10. (a) Claimants shall have 3 years from the last act of bullying or moral,
260 psychological or general harassment to either file a complaint with the commission or to file
261 litigation.

262 (b) If a claimant files a complaint with the commission, the statute of limitations for filing
263 a private cause of action shall be tolled.

264 (c) Claimants who file with the commission shall have the later of 3 years from the date
265 of the last alleged bullying action or 120 days from the issuance of the right to sue letter to file a
266 private cause of action after the commission issues a right to sue determination.

267 (d) Under this subsection, apprentices, trainees, unpaid interns, volunteers and
268 independent contractors may file a complaint alleging unlawful bullying and harassment.
269 Nothing in this subsection shall create an employment relationship with respect to wage and hour
270 provisions, workers' compensation or unemployment insurance.

271 Section 11. The rights afforded to targets, witnesses, bystanders and others harmed by
272 workplace bullying may not be waived. Complainants may not be required to waive their rights
273 under this law directly or indirectly via collective bargaining agreements, mandatory arbitration
274 clauses or non-disclosure agreements.

275 Section 12. (a) Nothing in this chapter should be construed as limiting employee rights
276 under any other general, special or federal law, including chapter 151B, Title VII of the federal
277 Civil Rights Act, the federal Americans with Disabilities Act, the federal Age Discrimination in
278 Employment Act or the National Labor Relations Act. Concerted activity under the National
279 Labor Relations Act, as interpreted by the National Labor Relations Board, shall not be
280 construed as workplace bullying or moral, psychological or general harassment.

281 (b) Nothing under this chapter shall restrict workers from negotiating broader protections
282 of their dignity or protections against workplace bullying or harassment through collective
283 bargaining or other concerted activity.