

SENATE No. 1171

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 to require policies and training to prevent unlawful harassment, including sexual harassment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/24/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/18/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/18/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/19/2021</i>

SENATE No. 1171

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1171) of Cynthia Stone Creem, Harriette L. Chandler, Joanne M. Comerford, Jason M. Lewis and others for legislation to require policies and training to prevent unlawful harassment, including sexual harassment. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act to require policies and training to prevent unlawful harassment, including sexual harassment.

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

1 Chapter 151B, Section 3A of the General Laws, as appearing in the 2016 Official
2 Edition, is hereby amended by substituting the following section:

3 Section 3A: Employers' policies against harassment; preparation of model policy;
4 education and training programs

5 (a) All employers, employment agencies and labor organizations shall promote a
6 workplace free of all forms of unlawful harassment including sexual harassment.

7 (b) Every employer shall:

8 (1) adopt a policy against unlawful harassment including sexual harassment which shall
9 include:

10 (i) a statement that all forms of unlawful harassment including sexual harassment in the
11 workplace is unlawful and will not be tolerated, that explains that it is unlawful for a person to be
12 subject to harassment because of the person's sex or any other characteristic protected by section
13 4 of this chapter;

14 (ii) a statement that it is unlawful to retaliate against an employee for filing a complaint
15 of unlawful harassment, including sexual harassment, or for cooperating in an investigation of a
16 complaint for harassment;

17 (iii) a description and examples of unlawful harassment, including sexual harassment;

18 (iv) a statement of the range of consequences for employees who are found to have
19 committed unlawful harassment or sexual harassment;

20 (v) a description of the process for filing internal complaints about harassment and the
21 work addresses and telephone numbers of the person or persons to whom complaints should be
22 made; and

23 (vi) the identity of the appropriate state and federal employment discrimination
24 enforcement agencies, and directions as to how to contact such agencies.

25 (2) provide annually to all employees an individual written copy of the employer's policy
26 against unlawful harassment; provided, however, that a new employee shall be provided such a
27 copy at the time of hire.

28 (c) The commission shall prepare and provide to employers subject to this section a
29 model policy and poster consistent with federal and state statutes and regulations, which may be
30 used by employers for the purposes of this section.

31 (d) An employer's failure to provide the information required to be provided by this
32 section shall not, in and of itself, result in the liability of said employer to any current or former
33 employee or applicant in any action alleging unlawful harassment. An employer's compliance
34 with the notice requirements of this section shall not, in and of itself, protect the employer from
35 liability for unlawful harassment of any current or former employee or applicant.

36 (e) Employers and labor organizations are required to provide employees with training to
37 prevent unlawful harassment including sexual harassment within six months after the employee
38 is hired, and on an annual basis thereafter. An employer that does not use the model training
39 developed by the Massachusetts commission against discrimination must ensure that the training
40 that they use meets or exceeds the following minimum standards.

41 The training must:(1) be focused on compliance with the legal requirements of
42 employment non-discrimination law and on preventing unlawful harassment, including sexual
43 harassment in the workplace;

44 (2) be interactive meaning that it must be participatory though participation can be
45 remote; for employers with 50 or more employees it must be conducted by qualified, live,
46 interactive trainers, where participants can ask questions, and for employers with less than 50
47 employees, it can be on-line, video-based as long as it has an interactive component;

48 (3) for employers with 50 or more employees, it must be tailored to the specific type of
49 workplace, using examples and scenarios related to that workplace;

50 (4) be a minimum of two hours;

51 (5) include an explanation of unlawful harassment consistent with guidance issued by the
52 Massachusetts commission against discrimination;

53 (6) include examples of conduct that would constitute unlawful harassment, including
54 sexual harassment as well as conduct that, if left unchecked, might rise to the level of unlawful
55 harassment;

56 (7) include examples of conduct that would constitute unlawful retaliation;

57 (8) include the consequences of engaging in conduct that is unacceptable in the
58 workplace, including that corrective action will be proportionate to the severity of the conduct;

59 (9) include information concerning the federal and state statutory provisions concerning
60 unlawful harassment, including sexual harassment, and remedies available to victims of
61 harassment;

62 (10) include bystander intervention training to enable bystanders to recognize potentially
63 problematic behaviors, to provide bystanders with skills to intervene as appropriate, and to
64 explain how an employee who witnesses potentially harassing behavior can report that
65 information;

66 (11) include training that is geared toward preventing unlawful harassment, including
67 sexual harassment before it happens, such as training that promotes a respectful workplace;

68 (12) include information concerning employees' rights of redress internally and
69 externally and all available forums for adjudicating complaints;

70 (13) include the specific responsibilities of supervisory and managerial employees
71 regarding prohibitions of harassment and the methods that such employees should take to ensure

72 immediate and appropriate corrective action in addressing harassment complaints and in ending
73 any ongoing unlawful harassment including sexual harassment;

74 (14) include the specific responsibilities of supervisory and managerial employees
75 regarding prohibitions against retaliation and addressing complaints of retaliation; and

76 (15) include a climate survey (in a form provided by the commission or consistent with
77 the commission's model form) for employers with 50 or more employees, which must be
78 completed every five years to identify risk factors and ongoing problems, and gauge the
79 effectiveness of the employer's anti-harassment and sexual harassment prevention training.

80 Each employee must receive training on an annual basis, starting January 1, 2023. An
81 employer's or labor organization's compliance with the training requirements of this section
82 shall not, in and of itself, protect the employer or labor organization from liability for unlawful
83 harassment of any current or former employee or applicant. All employers shall keep a record of
84 their employees' completion of all trainings required by this subsection (e). Such records may be
85 electronic. Employers shall maintain such records for at least 3 years and must be made available
86 to the Attorney General or the Massachusetts Commission Against Discrimination.

87 (f) Employers and labor organizations are required annually to file a certification
88 statement with the Attorney General and signed by the chief executive, president, general
89 counsel or other senior executive certifying that all employees have received anti-harassment
90 training, including sexual harassment prevention training during the previous year. The Attorney
91 General shall conduct audits of employers' and labor organizations' certification statements to
92 ensure compliance with the training requirements of this statute.