

SENATE No. 1185

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio, (BY REQUEST)

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 establish the Dignity At Work Act (DAWA).

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Debra Falzoi</i>		
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/2/2021</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>3/2/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/3/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>3/29/2021</i>

SENATE No. 1185

By Ms. DiZoglio (by request), a petition (accompanied by bill, Senate, No. 1185) of Debra Falzoi, Michael O. Moore, Anne M. Gobi, Joanne M. Comerford and others for legislation to establish the Dignity At Work Act (DAWA). Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act to establish the Dignity At Work Act (DAWA).

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

1 Section 1. Findings

2 1. Generalized workplace harassment and bullying is a severe and pervasive problem. At
3 least one third of workers in the United States will face workplace bullying during their careers.
4 Workplace bullying leads to a loss of esteem, dignity, and self-worth for targets and witnesses.
5 Workplace bullying also leads to severe emotional, psychological, economic, and physical harm
6 to targets. Such harms include feelings of shame and humiliation, anxiety, depression, insomnia,
7 hypertension, substance abuse, post-traumatic stress disorder, suicidal ideation, heart disease,
8 stress-induced illnesses, suicide, workplace violence, and job loss.

9 2. Generalized workplace harassment and bullying costs American employers billions of
10 dollars in lost productivity, turnover, absenteeism, presenteeism, decreased morale, increased
11 insurance premiums, workers’ compensation, and medical and legal costs.

12 3. Workplace bullying and general harassment has been studied in the United States since
13 at least 1976, when psychiatrist Carroll Brodsky published the earliest examination of workplace
14 bullying in America. Since then, a multitude of employer systems have been made available to
15 address the problem. Despite these decades of work and awareness, employer policies alone have
16 been ineffective in preventing, remedying, and eliminating workplace bullying.

17 4. In 1986, the United States Supreme Court first determined that discriminatory
18 harassment in the workplace that creates a hostile work environment is prohibited under federal
19 law. Hostile work environments are prohibited under various federal anti-discrimination statutes,
20 such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990
21 (ADA), and the Age Discrimination in Employment Act of 1967 (ADEA). However, a hostile
22 work environment unconnected to an employee's membership in a protected group is not
23 actionable under these laws. If mistreated employees who have been subjected to harassment
24 cannot establish that the behavior was motivated by discrimination, such employees are unlikely
25 to be protected by the law against such mistreatment.

26 5. Existing workers' compensation provisions and common law tort law are inadequate to
27 discourage workplace bullying or to provide adequate redress to employees who have been
28 harmed by workplace bullying.

29 6. Since the 1940s, the right to dignity has been recognized as an inalienable human right
30 and the foundation of freedom, justice, and peace in the world. A typical adult will spend at least
31 a third of their waking hours at work. Therefore, the right to dignity must be assured in the
32 workplace. To protect workers' right to dignity, legislation must be passed protecting this right

33 and providing legal recourse for targets of workplace bullying and/or general harassment and
34 other abusive behaviors.

35 Section 2. Purpose

36 It is the purpose of this Act to:

37 1. Recognize and protect the right to dignity and other human rights in the workplace and
38 to prevent any abusive or negative behaviors that infringe upon these rights in the workplace.

39 2. Prevent, detect, remedy, and eliminate workplace bullying, moral, psychological, and
40 general harassment, and other abusive behavior from the American workplace.

41 3. Provide a remedy for workers who are targets of workplace bullying, moral,
42 psychological, or general harassment, and/or other forms of workplace abuse to make whole
43 such targets of workplace abuse.

44 4. Provide an incentive for employers to prevent, detect, remedy, and eliminate
45 workplace bullying, moral, psychological, and general harassment, and other forms of abuse in
46 the workplace so that such behaviors shall be addressed and eliminated before they cause harm
47 to the targets of such behaviors.

48 Section 3. Definitions

49 For the purposes of this Act, the following words and phrases shall have the following
50 meanings:

51 1. “Employer” – Employers shall be defined as any organization or individual employing
52 an individual to engage in any work on their behalf or on behalf of their subsidiaries, customers,

53 or clients, whether such work is paid or unpaid. Employers shall include non-profit agencies
54 employing volunteers and organizations hiring workers through a temporary agency or other
55 such organization to perform work on their behalf. Employers who exert control over the means,
56 methods, payroll, or personnel practices of their suppliers shall be considered joint employers
57 with said supplier for the purpose of this Act. Where more than one organization or individual
58 meets the definition of employer under this Act, for the purpose of a claim by a targeted
59 employee, such organizations shall have joint and several liability as co-employers.

60 2. “Employee” – One who engages in work for another, whether such work is paid or
61 unpaid or whether such other directly employs said employee. Employees includes individuals
62 who perform work in any capacity, including apprentices, trainees, unpaid interns, volunteers,
63 farm workers, union stewards, and other representatives or independent contractors.

64 3. “Supervisor” – One who has control over any of the means, methods, wages, benefits,
65 terms, or conditions of another either through formal or implied authority. The term “supervisor”
66 shall not be limited to only those with the power to hire, fire, demote, promote, transfer, or
67 discipline. It includes those with the power to set schedules, make task assignments, mediate
68 complaints, distribute rewards and punishments, or assert other intangible forms of authority.

69 4. “Right to Dignity” – The fundamental right to receive respect for one’s dignity as a
70 human being and the right to enjoy the conditions necessary for human dignity to flourish.
71 Respect for dignity implies the right not to be treated in a degrading or humiliating manner.

72 5. “Workplace Bullying” – Workplace bullying shall be defined as the unwanted abuse of
73 any source of power that has the effect of or intent to intimidate, control, or otherwise strip a
74 target of his or her right to esteem, growth, dignity, voice, or other human right in the workplace.

75 Workplace bullying may take the form of moral, psychological, or general harassment, incivility,
76 abusive supervision, violence, mobbing, aggressions, and other types of objectionable behaviors.
77 Further, these behaviors may take the form of interpersonal interactions or organizational
78 practices or management actions. These behaviors may occur face-to-face or via cyberbullying.
79 The behaviors may come from any level of the

80 organization – supervision, co-workers, customers, and other third parties. The source of
81 power shall not be considered as limited to formal organizational power or authority.

82 6. “Moral, Psychological, or General Harassment” – Unwelcome, objectionable conduct
83 that is severe or pervasive enough to create an intimidating, hostile, or abusive environment.

84 7. “Management Action” – A course of action that is taken by an employer or its
85 supervisors or its agents to direct and control the way work is done.

86 8. “Organizational Practices” – Actions taken and policies and practices implemented in
87 the workplace to direct the work and production of an organization.

88 9. “Just Cause” – Standard of reasonableness used to evaluate a person’s actions in a
89 given set of circumstances. If a person acts with just cause, their actions are based on reasonable
90 grounds and committed in good faith.

91 10. “Retaliation” – Retaliation is a materially adverse action that might deter a reasonable
92 person from engaging in protected activity such as submitting a complaint or reporting abuse.
93 “Materially adverse” includes any form of unfavorable treatment that rises above trivial harms,
94 petty slights, or minor annoyances. Materially adverse action need not be job-related or occur in
95 the workplace to constitute unlawful retaliation.

- 96 11. “Constructive discharge” – an adverse employment action where:
- 97 a. The employee reasonably believed he or she was subjected to an abusive work
- 98 environment;
- 99 b. The employee resigned because of that conduct; and,
- 100 c. The employer knew or should have known of the abusive conduct prior to the
- 101 resignation and failed to stop it.

102 Section 4. Worker Right to Dignity in the Workplace

103 Every worker shall have the right to a work environment that affords them the dignity to

104 which all human beings are entitled — free from all forms of bullying, mobbing, and harassment.

105 Section 5. Prohibited Activities under this Act

106 1. It shall be unlawful for any person to engage in workplace bullying or moral,

107 psychological, or general harassment of a co-worker or other employee in the work environment.

108 Bullying and moral, psychological, or general harassment shall be prohibited without regard to

109 its subject matter or motivating animus.

110 There is no requirement that the bullying behavior be extreme, outrageous, or repetitive

111 to be unlawful under this Act.

112 a. Workplace bullying and general, psychological, and moral harassment can encompass

113 a broad spectrum of conduct. Examples of workplace bullying include but are not limited to:

114 i. Persistent or egregious use of abusive, insulting, or offensive language;

- 115 ii. Unwarranted physical contact or threatening gestures;
- 116 iii. Interfering with a person’s personal property or work equipment;
- 117 iv. The use of humiliation, personal criticism, ridicule, and demeaning comments;
- 118 v. Overbearing or intimidating levels of supervision;
- 119 vi. Withholding information, supervision, training, or resources to prevent someone from
120 doing their job;
- 121 vii. Changing work arrangements, such as rosters, offices, assignments, leave, and
122 schedules to deliberately inconvenience someone;
- 123 viii. Isolating or marginalizing a person from normal work activities;
- 124 ix. Inconsistently following or enforcing rules to the detriment of an employee;
- 125 x. Unjustifiably excluding colleagues from meetings or communications;
- 126 xi. Intruding on a person's privacy by pestering, spying, or stalking;
- 127 xii. Any abusive or unjust use of employment or workplace policies including
128 performance reviews, assignments of work, excessive monitoring of work, or unreasonable
129 assignment of or removal of work tasks;
- 130 xiii. Spreading misinformation or malicious rumors;
- 131 xiv. Subjecting individuals to excessive supervision and unwarranted monitoring;
- 132 xv. Inappropriate use of disciplinary procedures, including using performance reviews to
133 misrepresent an employee’s work history;

134 xvi. Arbitrarily withholding information that is vital for effective work performance;

135 xvii. Unjustifiably removing whole areas of work responsibility from a person;

136 xviii. Setting impossible targets and objectives or changing targets without telling the
137 person;

138 xix. Deliberate isolation by ignoring or excluding a person;

139 xx. Setting tasks that are unreasonably below or beyond a person's skill level;

140 xxi. Denying access to information, supervision, consultation, or resources to the
141 detriment of the worker;

142 xxii. Conducting an unfair workplace investigation;

143 xxiii. Any disciplinary action taken not based on just cause.

144 b. A single incident of bullying or harassment is sufficient to create a triable issue
145 regarding the existence of a hostile work environment if the bullying or harassing conduct
146 creates an intimidating, hostile, or offensive working environment. The question of whether an
147 environment is objectively hostile or abusive is a question of fact that must be answered by
148 reference to all circumstances.

149 c. The offender's intent shall not be a required element to support a claim of workplace
150 bullying or moral, general or psychological harassment. The

151 decision on whether bullying or any form of harassment has occurred is not to be
152 determined by the intent of the offender but rather by the nature of the behavior itself.

153 d. The analysis of whether bullying or harassment has occurred shall be conducted from
154 the view of a reasonable person under the totality of the circumstances.

155 e. Bullying and harassment shall be unlawful when it rises to the level that creates any
156 harm to dignity and other human rights in the workplace, causes any level of emotional,
157 psychological, social, or physical harm, otherwise creates an intimidating, hostile, or abusive
158 working environment, or otherwise unreasonably interferes with the working environment of the
159 target of such behavior.

160 f. A management action shall not be considered bullying if it is carried out with just cause
161 and is conducted in a reasonable manner.

162 2. It shall be unlawful for any person to aid, abet, incite, compel, or coerce the doing of
163 an act forbidden under this Act or to attempt to do so.

164 3. It shall be an unlawful employment practice to coerce, intimidate, threaten, or interfere
165 with or otherwise retaliate against any person in the exercise of any right under this Act,
166 including but not limited to filing a claim internally with an employer or externally through any
167 agency or court on the behalf of oneself or other, encouraging one to file such a claim, objecting
168 to behavior one perceives to be in violation of this Act, participating in such claim as an
169 advocate, witness, or complainant, defending oneself from against a claim under this Act, or
170 engaging in any other reasonable participation in a claim under this Act. Any action that would
171 have a chilling effect on a current target or future targets filing a complaint or any other
172 participation in a complaint as a witness shall be considered unlawful retaliation under the Act.

173 4. It shall be an unlawful employment practice to require any complainant under this Act
174 enter into a non-disclosure agreement.

175 5. It shall be an unlawful employment practice to require any complainant to enter into
176 any pre-interest binding arbitration agreement addressing any potential unlawful practices under
177 this Act.

178 Section 7. Employer Responsibility To Assure Worker Dignity and To Prevent, Detect,
179 Remedy, and Eliminate All Forms of Workplace Bullying and Harassment

180 1. Employers shall have a general duty to provide a workplace free from bullying and
181 moral, psychological, and general harassment and a workplace that protects each employee's
182 personal integrity, dignity, and human rights.

183 2. Employers shall be required to post notice of employees' rights under this law and to
184 distribute the employer's anti-bullying policy, including an explanation of reporting measures,
185 investigation process, and remedial processes. While posting of such notices does not abdicate an
186 employer from legal liability for workplace bullying, failure to post such notice is a per se
187 violation of this Act, may lead to fines and penalties against the employer, and will make any
188 and all affirmative defenses against a claim of workplace bullying or general or moral
189 harassment unavailable to said employer.

190 3. Employers shall have a general duty to ensure to take all necessary steps to prevent,
191 detect, remedy, and eliminate workplace bullying and general harassment from their workplaces.
192 At a minimum, they shall put in place a

193 system to monitor, prevent, and manage workplace bullying and assure that workers are
194 adequately informed and trained on workplace bullying prevention and management. The
195 presence of such a policy does not in itself create an affirmative defense, but the absence of such

196 a policy is a per se violation of this Act, could lead to fines and penalties against the employer,
197 and will result in affirmative defenses being unavailable against a claim file under this Act.

198 4. Employers shall take all necessary steps to assure that there be no retaliation against
199 any complainant who has filed a complaint under this Act in good faith.

200 5. Employers shall take all necessary steps to assure that there be no retaliation against
201 any individual for participating in a complaint as a witness, for taking action as a bystander to
202 prevent or eliminate bullying of a target, or for opposing any behavior made unlawful by this
203 Act.

204 Section 8. Employer Liability

205 1. An employer shall be liable for any damages, including economic, compensatory, and
206 punitive damages, to any employee who has been the target of any of the prohibited behaviors in
207 this Act in the scope of their employment, unless the employer can demonstrate they have met all
208 elements of the affirmative defense as established under Section 10 of this Act. An employee is
209 entitled to recover the greater of all actual damages or five thousand dollars (\$5000) for each
210 violation of this Act.

211 2. An employer shall be strictly liable for all damages, including economic,
212 compensatory, and punitive damages, resulting from any prohibited behaviors of this Act carried
213 out by a supervisor of such employer.

214 3. Any employer who fails to file notice of employees' rights under this act in such a a
215 manner that all employees have reasonable access to such notice shall be subject to fines and

216 penalties as deemed appropriate by the Fair Work Commission established in Section 12 of this
217 Act.

218 4. Any employer who fails to implement and notify employees of a workplace bullying
219 prevention policy that includes reasonable reporting, investigatory, remedial, and anti-retaliation
220 provisions shall be deemed in violation of this Act and shall be subject to fines and penalties
221 deemed appropriate by the Fair Work Commission established in Section 12 of this Act. Further,
222 such employer shall not have available the affirmative defenses established in Section 10 of this
223 Act.

224 5. In civil actions brought under this section, the court shall award to the prevailing party
225 reasonable attorney's fees and costs, including expert witness fees, except that, notwithstanding
226 Section 998 of the Code of Civil Procedure, a prevailing defendant shall not be awarded fees and
227 costs unless the court finds the action was frivolous, unreasonable, or groundless when brought,
228 or the plaintiff continued to litigate after it clearly became so.

229 Section 9. Individual Liability

230 Any individual who engages in workplace bullying, moral, psychological or general
231 harassment, retaliation, or any other prohibited behavior under this Act shall be jointly and
232 severally liable along with their employer for any and all damages including economic,
233 compensatory, and punitive damages.

234 Section 10. Affirmative Defense

235 1. An employer may establish an affirmative defense to limit damages for prohibited
236 behaviors under this Act where such behaviors are committed by non-supervisory employees.

- 237 2. An employer must show the following in order to establish such defense:
- 238 a. The employer took all necessary steps to prevent, detect, and remedy behaviors
- 239 prohibited under this Act.
- 240 b. Such steps shall include at a minimum:
- 241 i. Posting notice of employees’ rights under this Act;
- 242 ii. Establishing an Anti-bullying, Anti-general harassment policy. Such a policy includes
- 243 at a minimum:
- 244 1. A broad reporting procedure;
- 245 2. Formal and informal reporting methods;
- 246 3. Affirmative steps to detect bullying and harassment in the workplace including
- 247 periodic workplace audits and climate surveys of the employer workplace;
- 248 4. An effective investigatory policy that assures neutral, well-trained investigators; a
- 249 neutral fact-finding investigation of each claim of bullying and/or harassment; a prompt
- 250 investigation that begins within 24 hours of the filing of a claim or employer knowledge of a
- 251 potential violation under this Act; completion of such investigation within a reasonable period
- 252 time, not to exceed 5 days, unless a clear justification for such extended time exists;
- 253 5. An effective remedial process that assures an immediate cessation of any bullying and
- 254 harassing behavior, that assures that the bullying or harassing behavior shall not re-commence,
- 255 and that deters future bullying or harassing behaviors throughout the organization;

256 6. An effective anti-retaliation provision that assures no retaliation occurs against any
257 complainant, target, or other participant in any claim of workplace bullying or harassment.

258 3. An employer may establish an affirmative defense against a claim of bullying or
259 harassment based on an organizational practice or management action only where they can
260 establish by a preponderance of the evidence that such practice or action was carried out with
261 just cause and meets each of the seven tests of just cause or that such action was taken out of
262 economic necessity. Burden of proof in a claim involving an organizational practice or
263 management action shall entail:

264 a. The complainant must establish that such action meets the basic elements of workplace
265 bullying (unwanted, objectionable behavior that has the effect of infringing on the human rights
266 of the target or creating an intimidating, hostile, or abusive working environment).

267 b. The employer must either:

268 i. Establish that such action was taken out of just cause:

269 1. The action was based on a reasonable work rule;

270 2. The employee was notified of such rule and the potential penalty for such rule
271 violation;

272 3. The employer conducted a sufficient investigation to determine whether the rule was
273 violated;

274 4. The employer's investigation was fair, impartial, and provided the employee adequate
275 due process;

276 5. The investigation provided adequate proof of the violation of the rule;
277 6. The employer has applied the rule fairly and consistently to all employees;
278 7. The punishment for such rule violation was reasonable given the seriousness of the
279 offense and the totality of the employee's work record.

280 ii. Show the action was taken out of economic necessity, such that the employer had no
281 economic option but to take the management action (i.e. laying off employees as a result of
282 economic losses).

283 c. The complainant will then be afforded an opportunity to show that the employer's
284 preferred reasons for the action were merely pretext to cover up bullying or harassing behavior
285 and/or were not economically necessary.

286 d. The trier of fact shall make the determination as to whether such management action or
287 organizational practice was either bullying or harassment or justified behavior based on the
288 totality of the evidence presented.

289 Section 11. Remedies

290 1. Targets of workplace bullying shall be entitled to all remedies necessary to make such
291 targets whole. Such remedies shall include:

292 a. Economic damages for lost wages, both back pay and front pay, and any expenses
293 related to treatment related to the bullying

294 b. Compensable damages to compensate for the pain and suffering and emotional and
295 psychological damages resulting from such workplace bullying

- 296 c. Punitive damages as deemed necessary to deter future acts of workplace bullying
- 297 d. Injunctive relief, whereby the court may enjoin the defendant from engaging in the
- 298 unlawful employment practice
- 299 e. Equitable remedies
- 300 f. Any other relief that is deemed appropriate, including but not limited to medical
- 301 expenses, psychological treatment, restorative measures, organizational training, and attorney's
- 302 fees.

303 2. A complaining party may recover punitive damages under this Act:

304 a. If the complaining party can demonstrate that the employer engaged in prohibited

305 conduct with intent to injure or with knowing disregard of the protected rights of an aggrieved

306 individual OR

307 b. The employer failed to meet their obligations under Section 7 of this Act.

308 3. The remedies provided in this chapter shall be in addition to any remedies provided

309 under any other law, and nothing in this chapter shall relieve any person from any liability, duty,

310 penalty, or punishment provided by any other law.

311 Section 12. Cause of Action

312 1. The state shall establish a Fair Work Commission (FWC) to address workplace

313 bullying and to enforce this Act. In the enforcement of this chapter, the Commission shall have

314 the following powers and duties to:

315 a. Issue enforcement guidance and formulate policies to effectuate the purposes of this
316 Act and make recommendations to agencies and officers of the state or its political subdivisions
317 in aid of such policies and purposes.

318 b. Receive, initiate, investigate, and seek to conciliate complaints under this Act.

319 c. Adjudicate and issue orders on complaints alleging violations of this Act. Such
320 adjudication shall be final and binding on all parties and any appeals of such decision shall be
321 filed at the state appellate court level.

322 d. To require answers to interrogatories, compel the attendance of witnesses, examine
323 witnesses under oath or affirmation in person by deposition, and require the production of
324 documents relevant to the complaint in accordance with this Act both during the investigations of
325 and adjudication of complaints under this Act.

326 e. To issue right to sue letters to complainants who choose to litigate their claims in the
327 court system of the state rather than pursuing the FWC's adjudication process. Such right to sue
328 letter shall extend the statute of limitations for filing such a complaint to no less than 120 days
329 from the date of the issuance of such letter.

330 f. To make available to the public information on this Act, grievance procedures, public
331 records of the Commission, and any other information that would further the purposes and
332 intentions of this chapter.

333 2. Such Commission shall also have the right to represent claimants in judicial
334 proceedings and during the hearing process under the Commission's powers. At the conclusion
335 of the investigation, the Commission may bring the complaint in front of an administrative law

336 judge to litigate the Commission’s determination, recommend appropriate penalties against an
337 employer, and/or engage in mediation between the claimant and employer or issue the claimant a
338 right to sue letter to bring a private claim of action.

339 Section 13. Statute of Limitations

340 1. Claimants shall have three years from the last act of bullying or moral, psychological,
341 or general harassment to either file a complaint with the FWC or to file litigation.

342 2. If a claimant files a complaint with the FWC, the statute of limitations for filing a
343 private cause of action is tolled.

344 3. Claimants who file with the FWC shall have the later of three years from the date of
345 the last alleged bullying action or 120 days from the issuance of the FWC right to sue letter to
346 file a private cause of action after the Commission issues a right to sue determination.

347 4. Under this subsection, apprentices, trainees, unpaid interns, volunteers, and
348 independent contractors may file a complaint alleging unlawful bullying and harassment.
349 Nothing in this subsection shall create an employment relationship

350 under wage and hour provision, workers' compensation, or unemployment insurance.

351 Section 14. Non-waivable Rights

352 The rights afforded to targets, witnesses, bystanders, and others harmed by workplace
353 bullying are non-waivable. Complainants may not be required to waive their rights under this
354 law directly or indirectly via collective bargaining agreements, mandatory arbitration clauses, or
355 non-disclosure agreements.

356 Section 15. Conflict with Laws

357 1. Nothing in this law should be construed as limiting employee rights under any other
358 law including rights under Title VII of the Civil Rights Act, The Americans with Disabilities
359 Act, the Age Discrimination in Employment Act, and state EEO laws.

360 2. Nothing in this law should be construed as limiting employee rights under the National
361 Labor Relations Act (NLRA) and/or State Labor Rights laws. Concerted Activity/Section 7
362 activity under the NLRA as interpreted by the National Labor Relations Board shall not be
363 construed as workplace bullying or moral, psychological, or general harassment.

364 3. Nothing under this law shall restrict workers from negotiating broader protections of
365 their dignity or protections against workplace bullying or harassment via collective bargaining or
366 other concerted activity.