

SENATE No. 2723

The Commonwealth of Massachusetts

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

SENATE, March 3, 2022.

The committee on Labor and Workforce Development, to whom was referred the petition (accompanied by bill, Senate, No. 1200) of Paul R. Feeney, Harriette L. Chandler, Elizabeth A. Malia, James J. O'Day and other members of the General Court for legislation to address workplace bullying, mobbing, and harassment, without regard to protected class status while promoting healthy workplaces, reports the accompanying bill (Senate, No. 2723).

For the committee,
Patricia D. Jehlen

SENATE No. 2723

The Commonwealth of Massachusetts

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

An Act addressing workplace bullying, mobbing, and harassment, without regard to protected class status while promoting healthy workplaces.

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 151E the following
2 chapter:-

3 Chapter 151G The Healthy Workplace Act

4 SECTION 1. For the purposes of this chapter, the following words and phrases shall have
5 the following meanings:-

6 “Abusive conduct”, acts, omissions, or both, that a reasonable person would find abusive,
7 based on the severity, nature, and frequency of the conduct, including, but is not limited to:
8 repeated verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal, non-
9 verbal, or physical conduct of a threatening, intimidating, or humiliating nature; or the sabotage
10 or undermining of an employee’s work performance. It shall be considered an aggravating factor
11 if the conduct exploited an employee’s known psychological or physical illness or disability. A
12 single act normally shall not constitute abusive conduct, but an especially severe and egregious

13 act may meet this standard. Online communications shall be included in determining whether
14 abusive conduct has occurred;

15 “Abusive work environment”, an employment condition when an employer or one or
16 more its employees, acting with intent to cause pain or distress to an employee, subjects that
17 employee to abusive conduct that causes physical harm, psychological harm, or both;

18 “Adverse employment action”, an outcome which negatively impacts an employee,
19 including but not limited to: a termination, demotion, unfavorable reassignment, failure to
20 promote, disciplinary action, or reduction in compensation.

21 “Constructive discharge”, an adverse employment action where: (1) the employee
22 reasonably believed he or she was subjected to an abusive work environment; (2) the employee
23 resigned because of that conduct; and (3) the employer was aware of the abusive conduct prior to
24 the resignation and failed to stop it.

25 “Psychological harm”, the impairment of a person’s mental health, as established by
26 competent evidence.

27 “Physical harm”, the impairment of a person’s physical health or bodily integrity, as
28 established by competent evidence.

29 SECTION 2. (a) No employee shall be subjected to an abusive work environment.

30 (b) No employer or employee shall retaliate in any manner against an employee who has
31 opposed any unlawful employment practice under this chapter, or who has made a charge,
32 testified, assisted, or participated in any manner in an investigation or proceeding under this

33 chapter, including, but not limited to, internal complaints and proceedings, arbitration and
34 mediation proceedings, and legal actions.

35 SECTION 3. (a) An employer shall be vicariously liable for a violation of section 2 of
36 this chapter committed by its employee.

37 (b) Where the alleged violation of said section 2 does not include an adverse employment
38 action, it shall be an affirmative defense for an employer only that:

39 (1) the employer exercised reasonable care to prevent and correct promptly any
40 actionable behavior; and,

41 (2) the complainant employee unreasonably failed to take advantage of appropriate
42 preventive or corrective opportunities provided by the employer.

43 SECTION 4. (a) An employee may be individually liable for a violation of section 23 of
44 this chapter.

45 (b) It shall be an affirmative defense for an employee only that the employee committed a
46 violation of said section 2 at the direction of the employer, under actual or implied threat of an
47 adverse employment action.

48 SECTION 5. It shall be an affirmative defense that:

49 (a) The complaint is based on an adverse employment action reasonably made for poor
50 performance, misconduct, or economic necessity; or,

51 (b) The complaint is based on a reasonable performance evaluation; or,

52 (c) The complaint is based on an employer's reasonable investigation about potentially
53 illegal or unethical activity.

54 SECTION 7. (a) Where a party is liable for a violation of section 2 of this chapter, the
55 court may enjoin the defendant from engaging in the unlawful employment practice and may
56 order any other relief that is deemed appropriate, including, but not limited to: reinstatement,
57 removal of the offending party from the complainant's work environment, back pay, front pay,
58 medical expenses, compensation for pain and suffering, compensation for emotional distress,
59 punitive damages, and attorney's fees.

60 (b) Where an employer is liable for a violation of said section 2 that did not include an
61 adverse employment action, emotional distress damages and punitive damages may be awarded
62 only when the actionable conduct was extreme and outrageous. This limitation does not apply to
63 individually named employee defendants.

64 SECTION 7. (a) This chapter shall be enforced solely by a private right of action.

65 (b) An action under this chapter must be commenced no later than one year after the last
66 act that constitutes the alleged violation of section 3 of this chapter.

67 SECTION 8. (a) Nothing in this chapter shall supersede rights and obligations provided
68 under collective bargaining laws and regulations.

69 (b) The remedies provided in this chapter shall be in addition to any remedies provided
70 under any other law, and nothing in this chapter shall relieve any person from any liability, duty,
71 penalty or punishment provided by any other law, except that if an employee receives workers'
72 compensation for medical costs for the same injury or illness pursuant to both this chapter and

73 the workers' compensation law, or compensation under both this chapter and that law in cash
74 payments for the same period of time not working as a result of the compensable injury or illness
75 or the unlawful employment practice, the payments of workers' compensation shall be
76 reimbursed from compensation paid under this chapter.