

HOUSE No. 1685

The Commonwealth of Massachusetts

PRESENTED BY:

Lindsay N. Sabadosa and Paul W. Mark

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 wrongful discharge from employment.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-------------------------------|-----------------------|
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> |
| <i>Tami L. Gouveia</i> | <i>14th Middlesex</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> |
| <i>Christina A. Minicucci</i> | <i>14th Essex</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>Bud L. Williams</i> | <i>11th Hampden</i> |

HOUSE No. 1685

By Representatives Sabadosa of Northampton and Mark of Peru, a petition (accompanied by bill, House, No. 1685) of Lindsay N. Sabadosa and others relative to wrongful discharge from employment. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to wrongful discharge from employment.

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. Chapter 150A of the General Laws is hereby amended by adding the
2 following in Section 2-

3 (13) "Constructive discharge" means the voluntary termination of employment by an
4 employee because of a situation created by an act or omission of the employer which an
5 objective, reasonable person would find so intolerable that voluntary termination is the only
6 reasonable alternative. Constructive discharge does not mean voluntary termination because of
7 an employer's refusal to promote the employee or improve wages, responsibilities, or other terms
8 and conditions of employment.

9 (14) "Discharge" includes a constructive discharge as defined in subsection (1) and any
10 other termination of employment, including resignation, elimination of the job, layoff for lack of
11 work, failure to recall or rehire, and any other cutback in the number of employees for a
12 legitimate business reason.

13 (15) "Employee" means a person who works for another for hire. The term does not
14 include a person who is an independent contractor.

15 (16) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave,
16 medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in
17 force on the date of the termination.

18 (17) "Good cause" means reasonable job-related grounds for dismissal based on a failure
19 to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate
20 business reason. The legal use of a lawful product by an individual off the employer's premises
21 during nonworking hours is not a legitimate business reason, unless otherwise proscribed by law.

22 (18) "Lost wages" means the gross amount of wages that would have been reported to the
23 internal revenue service as gross income on form W-2 and includes additional compensation
24 deferred at the option of the employee.

25 SECTION 2. Chapter 150A of the General Laws is hereby amended by adding the
26 following section-

27 Section 3B. Wrongful discharge from employment

28 (a) A discharge is wrongful only if:

29 (i) It was in retaliation for the employee's refusal to violate public policy or for reporting
30 a violation of public policy;

31 (ii) The discharge was not for good cause and the employee had completed the
32 employer's probationary period of employment; or

33 (iii) The employer violated the express provisions of its written personnel policy.

34 (b) (i) During a probationary period of employment, the employment may be terminated
35 at the will of either the employer or the employee on notice to the other for any reason or for no
36 reason.

37 (ii) If an employer does not establish a specific probationary period or provide that there
38 is no probationary period prior to or at the time of hire, there is a probationary period of six
39 months from the date of hire.

40 (c) (i) If an employer has committed a wrongful discharge, the employee may be awarded
41 lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge,
42 together with interest on the lost wages and fringe benefits. Interim earnings, including amounts
43 the employee could have earned with reasonable diligence, must be deducted from the amount
44 awarded for lost wages. Before interim earnings are deducted from lost wages, there must be
45 deducted from the interim earnings any reasonable amounts expended by the employee in
46 searching for, obtaining, or relocating to new employment.

47 (ii) The employee may recover punitive damages otherwise allowed by law if it is
48 established by clear and convincing evidence that the employer engaged in actual fraud of actual
49 malice in the discharge of an employee in violation of Section 3B(a)(i).

50 (iii) There is no right under any legal theory to damages for wrongful discharge under
51 this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or
52 any other form of damages, except as provided in this section.

53 (iv) An action under this part must be filed within one year after the date of discharge.

54 (d) This part does not apply to a discharge:

55 (i) That is subject to any other state or federal statute that provides a procedure or remedy
56 for contesting the dispute. The statutes include those that prohibit discharge for filing complaints,
57 charges, or claims with administrative bodies or that prohibit unlawful discrimination based on
58 race, national origin, sex, age, disability, creed, religion, political belief, color, marital status, and
59 other similar grounds;

60 (ii) An employee covered by a written collective bargaining agreement or a written
61 contract of employment for a specific term;

62 (iii) Except as provided in the section, no claim for discharge may arise from tort or
63 express or implied contract.