

**SENATE . . . . . No. 1192**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Paul R. Feeney***

*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>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/1/2021</i>

**SENATE . . . . . No. 1192**

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By Mr. Feeney, a petition (accompanied by bill, Senate, No. 1192) of Paul R. Feeney and Patricia D. Jehlen for legislation relative to wrongful discharge from employment. Labor and Workforce Development.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1685 OF 2019-2020.]

**The Commonwealth of Massachusetts**

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

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 or 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.