

SENATE No. 2448

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Thursday, April 19, 2018

The committee on Labor and Workforce Development, to whom was referred the petition (accompanied by bill, Senate, No. 1013) of Jennifer L. Flanagan, Diana DiZoglio, Frank I. Smizik, John W. Scibak and other members of the General Court for legislation to address workplace bullying, mobbing and harassment without regard to protected class status, - reports the accompanying bill (Senate, No. 2448).

For the committee,
Jason M. Lewis

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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

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

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 or
10 undermining of an employee’s work performance. It shall be considered an aggravating factor if
11 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;

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

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

20 “Constructive discharge”, an adverse employment action where:

21 (1) the employee reasonably believed he or she was subjected to an abusive work
22 environment;

23 (2) the employee resigned because of that conduct; and,

24 (3) the employer was aware of the abusive conduct prior to the resignation and failed to
25 stop it.

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

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

30 Section 2. (a) No employee shall be subjected to an abusive work environment.

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

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

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

38 (b) Where the alleged violation of said section 3 does not include an adverse
39 employment action, it shall be an affirmative defense for an employer that:

40 (1) the employer was not aware of a violation of said section 3;

41 (2) the employer exercised reasonable care to prevent and correct promptly any
42 actionable behavior; or,

43 (3) the complainant employee unreasonably failed to take advantage of appropriate
44 preventive or corrective opportunities provided by the employer.

45 Section 4. (a) An employee may be individually liable for a violation of section 3 of this
46 chapter.

47 (b) It shall be an affirmative defense for an employee only that the employee committed
48 a violation of said section 3 at the direction of the employer, under actual or implied threat of an
49 adverse employment action.

50 Section 5. It shall be an affirmative defense that:

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

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

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

56 Section 6. (a) Where a party is liable for a violation of section 3 of this chapter, the court
57 may enjoin the defendant from engaging in the unlawful employment practice and may order any
58 other relief that is deemed appropriate, including, but not limited to: reinstatement, removal of
59 the offending party from the complainant's work environment, back pay, front pay, medical
60 expenses, compensation for pain and suffering, compensation for emotional distress, punitive
61 damages and attorney's fees.

62 (b) Where an employer is liable for a violation of said section 3 that did not include an
63 adverse employment action, emotional distress damages and punitive damages may be awarded
64 only when the actionable conduct was extreme and outrageous. This limitation does not apply to
65 individually named employee defendants.

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

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

69 Section 8. (a) Nothing in this chapter shall supersede rights and obligations provided
70 under collective bargaining laws and regulations.

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

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