

By Mr. McGlynn of Medford, petition of Michael J. McGlynn relative to prohibiting retaliatory action by employers. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT PROHIBITING RETALIATORY ACTION BY EMPLOYERS.

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 149 of the General Laws shall be amended
2 by adding a new section.

1 SECTION 2. Definitions. For purposes of this section, unless
2 the context specifically indicates otherwise: —

3 “Employee” means an individual who performs services for and
4 under the control and direction of an employer for wages or other
5 remuneration.

6 “Employer” means any person, firm, partnership, corporation,
7 association or other entity that employs one or more employees.

8 “Law, rule or regulation” includes any duly enacted statute or
9 ordinance or rule or regulation promulgated pursuant to any fed-
10 eral, state or local statute or ordinance.

11 “Public body” includes the following: —

12 (i) The United States Congress, any state legislature, or any
13 popularly-elected local governmental body, or any member or
14 employee thereof;

15 (ii) Any federal, state, or local judiciary, or any member or
16 employee thereof, or any grand or petit jury;

17 (iii) Any federal, state, or local regulatory, administrative, or
18 public agency or authority, or instrumentality thereof; or

19 (iv) Any federal, state, or local law enforcement agency, prosecu-
20 torial office, or police or peace officer.

21 “Retaliatory personnel action” means the discharge, suspension
22 or demotion of any employee, or other adverse employment action

23 taken against an employee in the terms and conditions of employ-
24 ment.

25 “Supervisor” means any individual within an employer’s organi-
26 zation who has the authority to direct and control the work perform-
27 ance of the affected employee; or who has managerial authority
28 to take corrective action regarding the violation of the law, rule or
29 regulation of which the employee complains.

1 SECTION 3. Prohibitions. An employer shall not take any
2 retaliatory personnel action against an employee because such
3 employee: —

4 (i) Discloses, or threatens to disclose to a supervisor or to a
5 public body and activity, policy or practice of the employer that is
6 in violation of law, rule or regulation which violation creates and
7 presents a substantial and specific danger to the public health or
8 safety or to any employee;

9 (ii) Provides information to, or testifies before, any public body
10 conducting an investigation, hearing or inquiry into any such viola-
11 tion of a law, rule or regulation by such employer; or

12 (iii) Objects to, or refuses to participate in any such activity,
13 policy or practice in violation of a law, rule or regulation.

1 SECTION 4. Application. The protection against retaliatory
2 personnel action provided pertaining to disclosure to a public body
3 shall not apply to an employee who makes such disclosure to a
4 public body unless the employee has brought the activity, policy or
5 practice in violation of law, rule or regulation to the attention of a
6 supervisor of the employer and has afforded such employer a
7 reasonable opportunity to correct such activity, policy or practice.

1 SECTION 5. Violation; remedy.

2 (i) An employee who has been the subject of a retaliatory per-
3 sonnel action in violation of this section may institute a civil action
4 in a court of appropriate jurisdiction for relief as set forth within
5 one year after the alleged retaliatory personnel action was taken.

6 (ii) Any action authorized by this section may be brought in the
7 county in which the alleged retaliatory personnel action occurred,
8 in the county in which the complainant resides, or in the county in
9 which the employer has its principal place of business.

10 (iii) It shall be a defense to any action brought pursuant to this
11 section that the personnel action was predicted upon grounds other
12 than the employee's exercise of any rights protection by this section.
13 It shall also be a defense that the individual was an independent
14 contractor.

1 SECTION 6. Relief. In any action brought pursuant to this
2 section, the court may order relief as follows: —

3 (i) An injunction to restrain continued violation of this section;

4 (ii) The reinstatement of the employee to the same position held
5 before the retaliatory personnel action, or to an equivalent
6 position;

7 (iii) The reinstatement of full fringe benefits and seniority rights;

8 (iv) The compensation for lost wages, benefits and other remuneration;

9 (v) The payment by the employer of reasonable costs, disburse-
10 ments, and attorney's fees.

1 SECTION 7. Employer relief. A court, in its discretion, may
2 also order that reasonable attorney's fees and court costs and
3 disbursements be awarded to an employer if the court determines
4 that an action brought by an employee under this section was
5 without basis in law or fact.

1 SECTION 8. Existing rights. Nothing in this section shall be
2 deemed to diminish the rights, privileges, or remedies of any
3 employee under any other law or regulation or under any collective
4 bargaining agreement or employment contract.

