

By Mr. Magnani of Framingham, petition of David P. Magnani and other members of the House for legislation to prohibit retaliation and other wrongful actions by employers. Commerce and Labor.

*The Commonwealth of Massachusetts*

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT PROHIBITING RETALIATION AND OTHER WRONGFUL 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 Chapter 149 of the General Laws shall be amended by adding  
2 the following new sections: —

3 Section 52D. Definitions. For purposes of this section, unless  
4 the context specifically indicates otherwise: —

5 “Adverse personnel action” means the discharge, suspension or  
6 demotion of any employee, or other employment action taken  
7 against an employee which makes the terms and conditions of  
8 employment less favorable to the employee.

9 “Employee” means an individual who performed services for  
10 and under the control and direction of an employer for wages or  
11 other remuneration.

12 “Employer” means any person, firm, partnership, corporation,  
13 association or agent thereof, any department or agency of the state  
14 or any political subdivision thereof or any other public or private  
15 entity that employs one or more employees.

16 “Law, rule or regulation” includes any duly enacted statute or  
17 ordinance or rule or regulation promulgated pursuant to any  
18 federal, state or local statute or ordinance.

19 “Public body” includes the following: —

20 (i) The United States Congress, any state legislature, or any  
21 popularly elected local governmental body, or any member or  
22 employee thereof;

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

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

27 (iv) Any federal, state, or local law enforcement agency,  
28 prosecutorial office, or police and peace officer.

29 "Public policy" means the rights secured under statutory and  
30 constitutional provisions of Massachusetts and the United States,  
31 judicial decisions, applicable principles of common law and  
32 acknowledged prevailing concepts having a public purpose  
33 relating to and affecting the safety, health, morals and general  
34 welfare of the public.

35 "Supervisor" means any individual within an employer's  
36 organization who has the authority to direct or control the work  
37 performance of the affected employees; or who has managerial  
38 authority to take corrective action regarding the violation of the  
39 law, rule or regulation of which the employee complains.

40 "Unfair deceptive or in bad faith" includes unfair, deceptive,  
41 in bad faith, unethical, unscrupulous, immoral, oppressive;  
42 violations of standards of good faith and fair dealing; or violation  
43 of the reasonable expectations of an employee based on express  
44 statements or patterns and practices of the employer.

45 Section 52E. An employer shall not take any adverse personnel  
46 action against an employee because such employee:

47 (i) Discloses, or threatens to disclose to a supervisor or to a  
48 public body any activity, policy or practice of the employer that  
49 is in violation of any law, rule or regulation;

50 (ii) Provides information to, or testifies before, any public body  
51 conducting an investigation, hearing or inquiry into any such  
52 violation of a law, rule or regulation by such employer; or

53 (iii) Objects to, or refuses to participate in any such activity,  
54 policy or practice in violation of a law, rule or regulation;

55 (iv) Gives notice to a supervisor of an employer as provided  
56 in Section 52F.

57 Section 52F. The prohibition against adverse personnel action  
58 pertaining to disclosure to a public body shall also apply to an  
59 employee who has brought the activity, policy or practice in  
60 violation of law, rule or regulation to the attention of a supervisor  
61 of the employer. The taking of any adverse personnel action  
62 against an employee within six months of the employee's engaging  
63 in conduct protected under section fifty-two E and F shall create

64 a rebuttable presumption that such adverse personnel action has  
65 been taken as a result of such conduct.

66 Section 52G. An employer shall not take any adverse  
67 personnel action against an employee where such action would  
68 violate public policy.

69 Section 52H. An employer shall not take any adverse  
70 personnel action against an employee where such action, in the  
71 context of the employee's hiring and employment, is unfair,  
72 deceptive, or in bad faith.

73 Section 52I. (i) An employee who has been the subject of an  
74 adverse personnel action in violation of Sections 52E through 52H  
75 may institute a civil action in a court of appropriate jurisdiction  
76 for relief as set forth within one year after the alleged adverse  
77 personnel action was taken, and may claim a right to trial by jury  
78 on the issues of whether an adverse personnel action has been  
79 taken and, if so, whether such action was in violation of sections  
80 fifty-two E through fifty-two H and the damages the employee  
81 suffered as a result of said violations.

82 (ii) Any action authorized by this section may be brought in  
83 the county in which the alleged adverse personnel action occurred,  
84 in the county in which the complainant resides, or in the county  
85 in which the employer has its principal place of business.

86 (iii) It shall be a defense to any action brought pursuant to this  
87 section that the personnel action was predicated upon grounds  
88 other than the employee's exercise of any rights protected by this  
89 section.

90 Section 52J. In any action brought pursuant to this section, the  
91 court may order relief as follows: —

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

93 (ii) The reinstatement of the employee to the same position held  
94 before the retaliatory personnel action, or to an equivalent  
95 position;

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

98 (iv) The compensation for lost wages, benefits and seniority  
99 rights; and any other damages suffered by the employee;

100 (v) The payment by the employer of reasonable costs,  
101 disbursements, and attorney's fees.

102 Section 52K. Nothing in sections 52D through 52J shall be

103 deemed to limit or diminish the rights, privileges, or remedies of  
104 any employee under any other statute, regulation or judicial  
105 decision or under any collective bargaining agreement or  
106 employment contract.