

By Mr. Bosley of North Adams, petition of Daniel E. Bosley, Robert Correia, Kevin P. Blanchette, Daniel J. Valianti and Kevin G. Honan relative to prohibiting retaliatory action by employers. Commerce and Labor.

**The Commonwealth of Massachusetts**

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

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 Chapter 149 of the General laws, as appearing in the 1988  
2 Official Edition, shall be amended by adding the following: —

3 Section 142H. For the purpose of sections 142H to 142O,  
4 inclusive, these words shall have the following meaning, unless  
5 the context specifically indicates otherwise: —

6 “Employee” means an individual who performs services for and  
7 under the control and direction of an employer for wages or other  
8 remuneration.

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

11 “Law, rule or regulation” includes a duly enacted statute or  
12 ordinance or rule or regulation promulgated pursuant to any  
13 federal, state or local statute or ordinance.

14 “Public body” includes the following: —

15 (i) The United States Congress, any state legislature, or any  
16 popularly-elected local government body, or any member or  
17 employee thereof;

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

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

22 (iv) Any federal, state, or local law enforcement agency,  
23 prosecutorial office, or police or peace officer.

24 “Retaliatory personnel action” means the discharge, supervi-  
25 sion or demotion of any employee, or other adverse employment  
26 action taken against an employee in the terms and conditions of  
27 employment.

28 “Supervisor” means any individual within an employer’s  
29 organization who has the authority to direct and control the work  
30 performance of the affected employee; or who has managerial  
31 authority to take corrective action regarding the violation of the  
32 law, rule or regulation of which the employee complains.

33 Section 142I. An employer shall not take any retaliatory  
34 personnel action against an employee because such employee: —

35 (i) Discloses, or threatens to disclose to a supervisor or to a  
36 public body any activity, policy or practice of the employer that  
37 is in violation of law, rule or regulation which violation creates  
38 and presents a substantial and specific danger to the public health  
39 or safety or to any employee;

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

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

45 Section 142J. The protection against retaliatory personnel  
46 action provided pertaining to disclosure to a public body shall not  
47 apply to an employee who makes such disclosure to a public body  
48 unless the employee has, in writing, brought the activity, policy  
49 or practice in violation of law, rule or regulation to the attention  
50 of a supervisor of the employer and has afforded such employer  
51 a reasonable opportunity to correct such activity, policy or  
52 practice.

53 Section 142K. (i) An employee who has been the subject of a  
54 retaliatory personnel action in violation of this act may institute  
55 a civil action in a court of appropriate jurisdiction for relief as  
56 set forth within one year after the alleged retaliatory personnel  
57 action was taken.

58 (ii) Any action authorized by this section may be brought in  
59 the county in which the alleged retaliatory personnel action  
60 occurred, in the county in which the complainant resides, or in  
61 the county in which the employer has its principal place of  
62 business.

63 (iii) It shall be a defense to any action brought pursuant to this  
64 act that the personnel action was predicated upon grounds other  
65 than the employee's exercise of any rights protected by this  
66 section. It shall also be a defense that the individual was an  
67 independent contractor.

68 Section 142L. In any action brought pursuant to this act the  
69 court may order relief as follows: —

70 (i) An injunction to restrain continued violation of this act;

71 (ii) The reinstatement of the employee to the same position held  
72 before the retaliatory personnel action, or to an equivalent  
73 position;

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

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

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

79 Section 142M. A court, in its discretion, may also order that  
80 reasonable attorney's fees and court costs and disbursements be  
81 awarded to an employer if the court determines that an action  
82 brought by an employee under this act was without basis in law  
83 or fact.

84 Section 142N. If it is determined that an action brought by an  
85 employee under this act was without basis in law or fact, the  
86 employee shall be punished by a fine of not less than two hundred  
87 and fifty nor more than one thousand dollars.

88 Section 142O. Nothing in this act shall be deemed to diminish  
89 the rights, privileges, or remedies of any employee under any other  
90 law or regulation or under any collective bargaining agreement  
91 or employment contract.

