

# HOUSE . . . . . No. 1848

By Mr. Spellane of Worcester (by request), petition of Robert P. Spellane and others relative to employee privacy and mandatory employer meetings. Labor and Workforce Development.

## The Commonwealth of Massachusetts

### PETITION OF:

Robert P. Spellane	Jennifer M. Callahan
Joyce A. Spiliotis	Christine E. Canavan
Edward M. Augustus, Jr.	Steven J. D'Amico
Alice K. Wolf	Kathi-Anne Reinstein
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Timothy J. Toomey, Jr.	Stephen Stat Smith
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John D. Keenan	Michael E. Festa
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Louis L. Kafka	Christopher N. Speranzo
Joseph R. Driscoll	

In the Year Two Thousand and Seven.

AN ACT CONCERNING EMPLOYEE PRIVACY AND MANDATORY EMPLOYER MEETINGS.

*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. This Act may be cited as the “Worker Privacy Pro-  
2 tection Act of 2007”.

1 SECTION 2. Chapter one hundred and forty-nine of the General  
2 Laws is hereby amended by inserting therein the following new  
3 section to be designated section nineteen D:—

4 Section 19D. Employee privacy; mandatory employer meetings.  
5 (a) The General Court finds that employers increasingly use  
6 mandatory workplace meetings to force their religious or political  
7 beliefs on workers, including their beliefs about representation of  
8 employees by labor unions, and it further finds that such meetings

9 infringe employee rights of privacy and freedom of conscience. It is  
10 the policy of the Commonwealth that employees should not be com-  
11 pelled to attend or participate in meetings where they are subjected  
12 to indoctrination about religious or political matters unrelated to  
13 their job performance or matters concerning labor union representa-  
14 tion, nor should employees have to fear retaliation because they  
15 decline to attend or participate in such meetings or because they do  
16 not share their employer's beliefs on such matters.

17 (b) Definitions.

18 As used in this section:—

19 (1) "Constituent group" includes, but is not limited to, civic asso-  
20 ciations, community groups, social clubs, advocacy organizations,  
21 mutual benefit alliances, and labor organizations.

22 (2) "Employee" means any person employed by or engaged in  
23 service to an employer.

24 (3) "Employer" means (A) any person or persons, corporation,  
25 unincorporated association, partnership, institution, trustee, trustee-  
26 in-bankruptcy, receiver, or any other entity that employs at least one  
27 person in the Commonwealth; (B) the state of Massachusetts, any  
28 political subdivision of the state, and any agency, board, authority,  
29 commission or body created by or acting under the authority of the  
30 state; and (C) any person that is an agent of, acting for, or acting  
31 under the authority of an employer.

32 (4) "Labor organization" means any organization, entity, or  
33 agency of any kind that exists for the purpose, in whole or in part, of  
34 collective bargaining, or for dealing with employers concerning  
35 grievances or terms and conditions of employment, or for other  
36 mutual aid or protection in connection with employment.

37 (5) "Labor representation matters" includes representation of  
38 employees by a labor organization or considerations relative to  
39 joining, not joining, participating in, not participating in, supporting,  
40 or not supporting a labor organization or any lawful activity of a  
41 labor organization.

42 (6) "Mandatory communication" includes oral and any other form  
43 of communications as to which an employee is subject to adverse  
44 employment action used as a means of requiring an employee to  
45 attend a meeting or to respond to, address, or participate in such  
46 communications.

47 (7) “Political matters” includes political party affiliation, cam-  
48 paigns for candidates for public office, referenda, ballot questions  
49 and/or legislation, or considerations relative to joining, not joining,  
50 participating in, not participating in, supporting, or not supporting  
51 any lawful political or constituent group or activity.

52 (8) “Religious matters” includes religious affiliation or identifica-  
53 tion, or considerations relative to joining, not joining, adhering to,  
54 not adhering to, supporting, or not supporting, any bona fide reli-  
55 gious faith, organization, or activity.

56 (9) “Student instructors” includes, but is not limited to, teaching  
57 assistants, teaching fellows, research assistants, research fellows,  
58 post-doctoral associates, post-doctoral fellows, interns, and residents  
59 of a bona fide educational or health-care teaching institution. Student  
60 instructors employed in any capacity by such institution shall be  
61 deemed employees within this section.

62 (c) Prohibition of Mandatory Meetings and Communications  
63 about Religious, Political, or Labor Representation Matters.

64 (1) No employer or employer’s agent, representative or designee  
65 may require employees of the employer to attend an employer-spon-  
66 sored meeting or to respond to, address, or participate in any meet-  
67 ings or mandatory communications with the employer or its agents  
68 or representatives, a purpose of which is to communicate the  
69 employer’s opinion about religious, political, or labor representation  
70 matters.

71 (2) No employer or employer’s agent, representative or designee  
72 shall discharge, discipline, or otherwise penalize, threaten to dis-  
73 charge, discipline, or otherwise penalize, or take any adverse  
74 employment action against any employee:—

75 (A) as a means of requiring an employee to attend a meeting or to  
76 respond to, address, or participate in a meeting or mandatory com-  
77 munication described in this subsection (c); or

78 (B) because the employee refused to attend a meeting or to  
79 respond to, address, or participate in a meeting or mandatory com-  
80 munication that violates or would violate this section; or

81 (C) because the employee, or a person acting on behalf of the  
82 employee, makes a good faith report, verbally or in writing, of a vio-  
83 lation or suspected violation of this section, except that such prohibi-  
84 tion shall not be applicable when the employee knows that such  
85 report is false; or

86 (D) because the employee has challenged or opposed any practice  
87 made unlawful by this section, or because the employee has made a  
88 charge, filed suit, testified, assisted in doing any of these things, or  
89 assisted or participated in any manner in any investigation, pro-  
90 ceeding, or hearing under this section.

91 (3) Any employee or person or entity acting on behalf of or as the  
92 designee of an employee may enforce the provisions of this section  
93 by means of a civil action brought in the superior court no later than  
94 ninety days after the date of the alleged violation. The superior court  
95 shall have jurisdiction to hear and adjudicate such matters. When-  
96 ever the court shall determine that a violation of this section has  
97 occurred, is occurring, or is likely to occur, the court shall award  
98 such relief as shall be appropriate including, but without limitation  
99 to, equitable or injunctive relief, rehiring or reinstatement of the  
100 employee to the employee's former position or an equivalent posi-  
101 tion, back pay and reestablishment of any employee benefits,  
102 including seniority, to which the employee would otherwise have  
103 been eligible if such violation had not occurred, damages for any  
104 reasonably foreseeable losses sustained by such employee as a result  
105 of such violation, reasonable attorneys' fees and costs, and any other  
106 appropriate relief as deemed necessary by the court to make the  
107 employee whole or restrain violations of this section. In the case of a  
108 knowing and willful violation of this section, the court shall award  
109 treble back pay and damages. In any proceeding under this section,  
110 when it is alleged that an employer or employer's agent, representa-  
111 tive, or designee engaged in conduct constituting retaliation prohib-  
112 ited by this subsection (c) within one hundred and eighty days of the  
113 date upon which the employee refused to attend or to respond to,  
114 address, or participate in a meeting or mandatory communication,  
115 made a good faith report, challenged or opposed a practice, or  
116 charged, filed suit, testified, assisted, or participated as described in  
117 this subsection (c), a presumption shall arise that the alleged conduct  
118 violated this section. The employer may rebut said presumption by  
119 adducing clear and convincing evidence that the discharge of or  
120 action taken against the employee was for a bona fide job-related or  
121 business reason unrelated to any conduct prohibited by this section.  
122 An action under this section shall not be deemed to concern, involve,  
123 or grow out of a labor dispute within the meaning of section twenty  
124 C of chapter one hundred and forty-nine or any other provision of

125 law; and the provisions of section twenty-four of chapter one hun-  
126 dred and forty-nine, and section six of chapter two hundred and four-  
127 teen shall not apply to any proceeding under this section.

128 (4) Nothing in this section shall be construed so as to limit an  
129 employee's right to bring a common law cause of action against an  
130 employer for wrongful termination or to diminish or impair the  
131 rights of or remedies available to any person under any collective  
132 bargaining agreement.

133 (5) Nothing in this section shall be construed so as to limit an  
134 employer's right to express any views to its employees or others on  
135 religious, political, or labor representation matters in any manner or  
136 form except a communication or meeting prohibited by this section.

137 (6) Nothing in this section shall prohibit:—

138 (A) a religious organization from requiring its employees to  
139 attend an employer-sponsored meeting or to respond to, address, or  
140 participate in a mandatory communication with the employer or its  
141 agents or representatives, the primary purpose of which is to com-  
142 municate the employer's religious beliefs, practices, or tenets;

143 (B) a political organization, including political parties, constituent  
144 groups, and other organizations which engage, in substantial part, in  
145 political activities, from requiring its employees to attend an  
146 employer-sponsored meeting or to respond to, address, or participate  
147 in a mandatory communication with the employer or its agents or  
148 representatives, the primary purpose of which is to communicate the  
149 employer's political beliefs, tenets, purposes, or goals;

150 (C) a labor organization, when acting as an employer, from  
151 requiring its employees to attend an employer-sponsored meeting or  
152 to respond to, address, or participate in a mandatory communication,  
153 the primary purpose of which is to communicate the labor organiza-  
154 tion's political beliefs, tenets, purposes, or goals;

155 (D) a bona fide educational or health-care teaching institution  
156 from requiring student instructors to attend lectures or classes on  
157 religious, political, or labor representation matters, that are a part of  
158 the regular course of instruction at such institution;

159 (E) communications of information about religious, political, or  
160 labor representation matters that the employer is required by law to  
161 communicate, but only to the extent of such legal requirement;

162 (F) meetings of an employer's executive or administrative per-  
163 sonnel to discuss issues related to the employer's business;

164 (G) any employer from conducting any meeting for the purpose of  
165 collective bargaining or the administration of a collective bargaining  
166 agreement, or the resolution of employee grievances;

167 (H) any employer from conducting a meeting or making a manda-  
168 tory communication, with the assistance of consultants or experts  
169 retained for said activity, for the purpose of training employers and  
170 employees with respect to understanding and eliminating discrimina-  
171 tion in the workplace on the basis of race, color, religion, religious  
172 creed, national origin, sex, gender, sexual orientation or identity, dis-  
173 ability, age, or any other form of invidious discrimination, so long as  
174 such action does not include a meeting or mandatory communication  
175 otherwise prohibited by this section; or

176 (I) any employer from allowing employees to utilize its facilities,  
177 bulletin boards, inter-office mail, or electronic messaging systems  
178 for or in connection with voluntary meetings or expression by  
179 employees on religious, political, or labor representation matters, so  
180 long as such access is extended on a non-discriminatory basis, and  
181 so long as the grant of such access does not involve a meeting or  
182 mandatory communication otherwise prohibited by this section.

183 (7) Employers shall post notices to employees of employee rights  
184 under this bill. Such postings shall be in at least one place commonly  
185 frequented by employees, and in any place normally utilized for  
186 employment-related notices.

187 (8) The rights and procedures provided by this section may not be  
188 waived by contract or otherwise, except if such waiver or disclaimer  
189 is contained in a written settlement agreed to and signed by the par-  
190 ties to an action or proceeding under this section.

1 SECTION 3. If any section, subsection, sentence, clause, or  
2 phrase of this Act or of section nineteen D of chapter one hundred  
3 and forty-nine of the General Laws as added by this Act, or any  
4 application of same, is held to be unconstitutional or otherwise  
5 invalid under the constitution or laws of the United States or of the  
6 state of Massachusetts by a decision of any court of competent juris-  
7 diction, such decision shall not affect the validity of the remaining  
8 portions or other applications of this Act or of the said nineteen D. It  
9 is hereby declared that this Act and section nineteen D of chapter  
10 one hundred and forty-nine of the General Laws as added by this  
11 Act, and each and every section, subsection, sentence, clause, or

12 phrase therein not declared unconstitutional or otherwise invalid  
13 would have been passed without regard to whether any portion or  
14 application of the Act or the said section nineteen D would subse-  
15 quently be declared unconstitutional or otherwise invalid.