

SENATE NO. 1049

AN ACT CONCERNING EMPLOYEE PRIVACY AND MANDATORY EMPLOYER MEETINGS ABOUT RELIGIOUS, POLITICAL, OR LABOR REPRESENTATION MATTERS

*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 Protection Act of 2007.”

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

4 § 19D. Employee privacy; mandatory employer meetings

5 (a) The General Court finds that employers increasingly use mandatory workplace meetings to force
6 their religious or political beliefs on workers, including their beliefs about representation of employees
7 by labor unions, and it further finds that such meetings infringe employee rights of privacy and
8 freedom of conscience. It is the policy of the commonwealth that employees should not be compelled
9 to attend or participate in meetings where they are subjected to indoctrination about religious or
10 political matters unrelated to their job performance or matters concerning labor union representation,
11 nor should employees have to fear retaliation because they decline to attend or participate in such
12 meetings or because they do not share their employer’s beliefs on such matters.

13 (b) Definitions.

14 As used in this section:—

15 (1) “Constituent group” includes, but is not limited to, civic associations, community groups,
16 social clubs, advocacy organizations, mutual benefit alliances, and labor organizations.

17 (2) “Employee” means any person employed by or engaged in service to an employer.

18 (3) “Employer” means (A) any person or persons, corporation, unincorporated association,
19 partnership, institution, trustee, trustee-in-bankruptcy, receiver, or any other entity that
20 employs at least one person in the commonwealth; (B) the state of Massachusetts, any political
21 subdivision of the state, and any agency, board, authority, commission or body created by or
22 acting under the authority of the state; and (C) any person that is an agent of, acting for, or
23 acting under the authority of an employer.

24 (4) “Labor organization” means any organization, entity, or agency of any kind that exists for
25 the purpose, in whole or in part, of collective bargaining, or for dealing with employers
26 concerning grievances or terms and conditions of employment, or for other mutual aid or
27 protection in connection with employment.

28 (5) “Labor representation matters” includes representation of employees by a labor
29 organization or considerations relative to joining, not joining, participating in, not participating
30 in, supporting, or not supporting a labor organization or any lawful activity of a labor
31 organization.

32 (6) “Mandatory communication” includes oral and any other form of communications as to
33 which an employee is subject to adverse employment action used as a means of requiring an
34 employee to attend a meeting or to respond to, address, or participate in such communications.

35 (7) “Political matters” includes political party affiliation, campaigns for candidates for public
36 office, referenda, ballot questions and/or legislation, or considerations relative to joining, not

37 joining, participating in, not participating in, supporting, or not supporting any lawful political
38 or constituent group or activity.

39 (8) “Religious matters” includes religious affiliation or identification, or considerations relative
40 to joining, not joining, adhering to, not adhering to, supporting, or not supporting, any bona
41 fide religious faith, organization, or activity.

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

46 (c) Prohibition of Mandatory Meetings and Communications about Religious, Political, or Labor
47 Representation Matters

48 (1) No employer or employer’s agent, representative or designee may require employees of the
49 employer to attend an employer-sponsored meeting or to respond to, address, or participate in
50 any meetings or mandatory communications with the employer or its agents or representatives,
51 a purpose of which is to communicate the employer’s opinion about religious, political, or
52 labor representation matters.

53 (2) No employer or employer’s agent, representative or designee shall discharge, discipline, or
54 otherwise penalize, threaten to discharge, discipline, or otherwise penalize, or take any adverse
55 employment action against any employee:—

56 (A) as a means of requiring an employee to attend a meeting or to respond to, address,
57 or participate in a meeting or mandatory communication described in this subsection

58 (c); or

59 (B) because the employee refused to attend a meeting or to respond to, address, or
60 participate in a meeting or mandatory communication that violates or would violate this
61 section; or

62 (C) because the employee, or a person acting on behalf of the employee, makes a good
63 faith report, verbally or in writing, of a violation or suspected violation of this section,
64 except that such prohibition shall not be applicable when the employee knows that such
65 report is false; or

66 (D) because the employee has challenged or opposed any practice made unlawful by
67 this section, or because the employee has made a charge, filed suit, testified, assisted in
68 doing any of these things, or assisted or participated in any manner in any investigation,
69 proceeding, or hearing under this section.

70 (3) Any employee or person or entity acting on behalf of or as the designee of an employee
71 may enforce the provisions of this section by means of a civil action brought in the superior
72 court no later than ninety days after the date of the alleged violation. The superior court shall
73 have jurisdiction to hear and adjudicate such matters. Whenever the court shall determine that
74 a violation of this section has occurred, is occurring, or is likely to occur, the court shall award
75 such relief as shall be appropriate including, but without limitation to, equitable or injunctive
76 relief, rehiring or reinstatement of the employee to the employee's former position or an
77 equivalent position, backpay and reestablishment of any employee benefits, including
78 seniority, to which the employee would otherwise have been eligible if such violation had not
79 occurred, damages for any reasonably foreseeable losses sustained by such employee as a
80 result of such violation, reasonable attorneys' fees and costs, and any other appropriate relief as
81 deemed necessary by the court to make the employee whole or restrain violations of this

82 section. In the case of a knowing and willful violation of this section, the court shall award
83 treble backpay and damages. In any proceeding under this section, when it is alleged that an
84 employer or employer's agent, representative, or designee engaged in conduct constituting
85 retaliation prohibited by this subsection (c) within one hundred and eighty days of the date
86 upon which the employee refused to attend or to respond to, address, or participate in a
87 meeting or mandatory communication, made a good faith report, challenged or opposed a
88 practice, or charged, filed suit, testified, assisted, or participated as described in this subsection
89 (c), a presumption shall arise that the alleged conduct violated this section. The employer may
90 rebut said presumption by adducing clear and convincing evidence that the discharge of or
91 action taken against the employee was for a bona fide job-related or business reason unrelated
92 to any conduct prohibited by this section. An action under this section shall not be deemed to
93 concern, involve, or grow out of a labor dispute within the meaning of section twenty C of
94 chapter one hundred and forty-nine or any other provision of law; and the provisions of section
95 twenty-four of chapter one hundred and forty-nine, and section six of chapter two hundred and
96 fourteen shall not apply to any proceeding under this section.

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

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

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

105 (A) a religious organization from requiring its employees to attend an employer-
106 sponsored meeting or to respond to, address, or participate in a mandatory
107 communication with the employer or its agents or representatives, the primary purpose
108 of which is to communicate the employer's religious beliefs, practices, or tenets;

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

115 (C) a labor organization, when acting as an employer, from requiring its employees to
116 attend an employer-sponsored meeting or to respond to, address, or participate in a
117 mandatory communication, the primary purpose of which is to communicate the labor
118 organization's political beliefs, tenets, purposes, or goals;

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

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

125 (F) meetings of an employer's executive or administrative personnel to discuss issues
126 related to the employer's business;

127 (G) any employer from conducting any meeting for the purpose of collective bargaining
128 or the administration of a collective bargaining agreement, or the resolution of
129 employee grievances;

130 (H) any employer from conducting a meeting or making a mandatory communication,
131 with the assistance of consultants or experts retained for said activity, for the purpose of
132 training employers and employees with respect to understanding and eliminating
133 discrimination in the workplace on the basis of race, color, religion, religious creed,
134 national origin, sex, gender, sexual orientation or identity, disability, age, or any other
135 form of invidious discrimination, so long as such action does not include a meeting or
136 mandatory communication otherwise prohibited by this section; or

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

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

146 (8) The rights and procedures provided by this section may not be waived by contract or
147 otherwise, except if such waiver or disclaimer is contained in a written settlement agreed to
148 and signed by the parties to an action or proceeding under this section.

149 SECTION 3. If any section, subsection, sentence, clause, or phrase of this Act or of section nineteen
150 D of chapter one hundred and forty-nine of the General Laws as added by this Act, or any application
151 of same, is held to be unconstitutional or otherwise invalid under the constitution or laws of the United
152 States or of the state of Massachusetts by a decision of any court of competent jurisdiction, such
153 decision shall not affect the validity of the remaining portions or other applications of this Act or of
154 the said nineteen D. It is hereby declared that this Act and section nineteen D of chapter one hundred
155 and forty-nine of the General Laws as added by this Act, and each and every section, subsection,
156 sentence, clause, or phrase therein not declared unconstitutional or otherwise invalid would have been
157 passed without regard to whether any portion or application of the Act or the said section nineteen D
158 would subsequently be declared unconstitutional or otherwise invalid.