

By Her Excellency

[PRINTED NAME]

[ACTING] GOVERNOR

EXECUTIVE ORDER NO. 637

**FURTHERING TRANSPARENCY AND ACCOUNTABILITY AND PREVENTING
ABUSE OF TAXPAYER DOLLARS**

WHEREAS, transparency and accountability are cornerstones of a democratic system of government;

WHEREAS, transparency and accountability, including through appropriate public disclosure, promote public confidence in government and can inform residents, taxpayers and others of the operations of their government and the actions taken in their names;

WHEREAS, the Commonwealth of Massachusetts employs more than 45,000 people who ably serve the Commonwealth;

WHEREAS, in any large organization, a subset of employees may enter into a good-faith disagreement with their employer;

WHEREAS, those disagreements, and their proper resolution, may be of particular public interest when their employer is the Commonwealth of Massachusetts, and by extension, its People;

WHEREAS, the use of settlement or non-disclosure agreements by the Commonwealth of Massachusetts and its instrumentalities can obscure from public view, and therefore appropriate public accountability, bad acts by State agencies, their managers, employees, contractors, or others;

WHEREAS, as discovered in the #MeToo movement, the abuse of non-disclosure agreements has been well-documented to perpetrate abuse, silence victims, and protect powerful perpetrators of abuse such as Roger Ailes, Larry Nassar, and Harvey Weinstein;

WHEREAS, the abuse of non-disclosure agreements was found to aid the decades-long coverup of widespread and systemic child sex abuse by numerous priests of the Roman Catholic Archdiocese of Boston;

WHEREAS, the abuse of taxpayer-funded non-disclosure agreements in the Commonwealth has been found to obscure from public view unlawful acts in the workplace, such as harassment, discrimination, and retaliation;

WHEREAS, the Commonwealth recognizes its responsibility to protect victims, prevent future abuse, and hold perpetrators of abuse accountable;

WHEREAS, the use of taxpayer funds to silence victims and protect perpetrators of abuse is unacceptable, unethical, and immoral;

WHEREAS, there exists an opportunity to effectuate meaningful, positive change within the executive department to protect victims, prevent future abuse, and hold perpetrators of abuse accountable; and

WHEREAS, there exists an opportunity to increase transparency, promote accountability, and prevent the abuse of our taxpayer dollars.

NOW, THEREFORE, I, _____, [Acting] Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Articles of Amendment, Art. LV, do hereby order as follows:

Section 1. It is the policy of the Commonwealth that no settlement agreement executed between a complainant and any executive department agency or office shall include any non-disclosure, non-disparagement, or confidentiality provisions, or any other provisions that attempt to restrict disclosure of unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct, with a complainant, including, but not limited to the terms of the employee settlement, payments, and associated facts, including the reason for said settlement, except as provided for in this executive order.

Any non-disclosure, non-disparagement, or confidentiality provision, or any other provision that attempts to restrict disclosure regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct related to settlement agreements entered into before the effective date of the Executive Order, with a complainant, including, but not limited to the terms of the employee settlement, payments, and associated facts, including the reason for said settlement, except as provided for in this executive order, are void with respect to the executive department's ability to enforce such provisions against a complainant..

For the purposes of this executive order, the executive department includes the office of the Governor, any executive office of the Commonwealth, as defined by section 2 of chapter 6A of the General Laws, and any agency, bureau, department, office, or division of the Commonwealth within or reporting to such an executive office of the Commonwealth.

For the purposes of this executive order, the definition of complainant shall be any person: 1) who performs or has performed services for a Commonwealth executive department agency, bureau, department, office, or division of the Commonwealth for wage, remuneration, or other compensation, including full-time, part-time, seasonal, intermittent, temporary, post-retiree and contract employees, and interns; and 2) who is resolving or has resolved a claim (as defined by 815 CMR 5.02), against the executive department regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct with a settlement agreement.

For the purposes of this executive order, the definition of settlement agreement shall mean a written agreement resolving any claim (as defined by 815 CMR 5.02), written or unwritten, by any claimant for damages to compensate an injury or wrong allegedly suffered, directly or a result of the Commonwealth failing to prevent such damages, including but not limited to personal injury, violation of civil rights, breach of contract, failure to comply with contract bidding laws, assault, harassment, discrimination, retaliation, whistle blowing, incorrect or improper personnel determinations regarding pay, promotion or discipline, failure to comply with statutory or constitutional provisions applicable to employment, and eminent domain taking damages, misconduct, including any attorney's fees and interest associated with these claims.

Section 2. No settlement agreement may prevent a complainant from discussing or disclosing information about unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct. Use of confidentiality language may only be permitted in limited circumstances to prevent the disclosure of a complainant's identity, facts that might lead to the discovery of the complainant's identity, or factual circumstances relating to the employment that reasonably implicate legitimate privacy interests held by the complainant who is a party to the agreement, if and only if the complainant elects in writing to restrict such disclosure. Such election may be made at the time of the execution of the settlement agreement or at any time thereafter, with written notification provided to the Human Resources Division of the Commonwealth, or other executive department agency, bureau, department, office, or division having a different name but performing its function, if such election is made after the execution of the agreement. The Human Resources Division or its successor entity shall notify appropriate personnel in the executive department of this election in a timely manner to prevent the disclosure of said information.

The provisions of Section 2 shall apply to those settlement agreements entered into before the effective date of this Executive Order.

Section 3. To ensure accountability regarding the appropriate application of Section 2, use of confidentiality language regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct must be approved in writing, by (1) the Secretary or other official in charge of the executive department agency, bureau, department, office, or division of the Commonwealth, (2) the official in charge of the Human Resources Division of the Commonwealth, or other executive department agency, bureau, department, office, or division having a different name but performing its function, and (3) the Office of the Governor.

Attached to said approvals shall be a written explanation of why these officials believed the proposed provisions are in the best interest of the Commonwealth. Said approvals and written explanations shall be public records and subject to any applicable privacy exemptions to prevent the disclosure of a complainant's identity, facts that might lead to the discovery of the complainant's identity, or factual circumstances relating to the employment that reasonably implicate legitimate privacy interests held by the complainant.

Section 4. Every settlement agreement, including all potential non-disclosure, non-disparagement, or confidentiality provisions, or any other provisions that attempt to restrict

disclosure of unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct, shall be processed in accordance with 815 CMR 5.00.

Section 5. Every settlement agreement shall be posted to CTHRU, the Commonwealth's Financial Records Transparency Platform, that is administered by the Office of the Comptroller.

Section 6. All employee settlements are public records and thus, subject to the public records law, including all applicable exemptions related to privacy. Under no circumstance shall an executive department official directly or indirectly ask, incentivize or coerce any complainant to request the redaction or restriction of any details of any settlement agreement regarding unlawful acts in the workplace, such as harassment, discrimination or other forms of misconduct.

Section 7. On the first business day of February of each calendar year, the executive department shall report to the Office of the Comptroller all settlement agreements entered into during the prior calendar year, which the Office of the Comptroller may compile into a single record and make available to the public as a public document on its website.

Section 8. This Executive Order shall not be construed to require the Commonwealth to release information that could negatively affect public safety or the safety of any particular individual, or to release trade secrets or proprietary information, though maximum public disclosure shall still occur within these limitations.

Section 9. All settlement agreements issued by the executive department shall grant each complainant executing a settlement agreement no less than five (5) business days to review and/or consult an attorney regarding the proposed settlement agreement, prior to execution of any such agreement, and shall notify each such complainant of their right to do so, in writing. No negative action shall be taken against any complainant who seeks to review a proposed settlement and/or seeks the advice of an attorney, and no incentives shall be offered or provided to any complainant to coerce them to not review or consult with an attorney.

Section 10. Other state governmental entities, including state agencies outside the executive department, independent agencies, and constitutional offices, and municipalities are encouraged to adopt the terms of this Executive Order, where applicable, and effectuate meaningful, positive change to protect victims, prevent future abuse, and hold perpetrators of abuse accountable while increasing transparency, promoting accountability, and preventing the abuse of our taxpayer dollars.

Section 11. This Executive Order shall take effect on _____, 2024, and shall continue in effect until amended, superseded, or revoked by subsequent Executive Order.

Given in Boston this ____ day of
_____ in the year of our Lord two
thousand and twenty-four, and of the
Independence of the United States of
America two hundred and forty-
seven.

Printed Name
[Acting] Governor
Commonwealth of Massachusetts

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS