

# **HOUSE . . . . . No. 4174**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, November 6, 2019.

The committee on Labor and Workforce Development, to whom was referred the petition (accompanied by bill, House, No. 1670) of Tram T. Nguyen and others relative to the protection of injured workers under the workers' compensation law, reports recommending that the accompanying bill (House, No. 4174) ought to pass.

For the committee,

PAUL BRODEUR.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
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An Act to protect injured workers.

*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. Section 3 of chapter 23E of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by inserting, in line 46, after the words “claims” the  
3 following words:- ; and further provided that the department shall promptly undertake the  
4 investigation, hold an investigative conference to obtain any additional evidence or statements,  
5 and report the findings regardless of whether a case is open or active in the Division of Dispute  
6 Resolution.

7           SECTION 2. Section 3 of chapter 151B of the General Laws, as appearing in the 2018  
8 Official Edition, is hereby amended by inserting, in line 23, after the word “person” the  
9 following words:- , or as defined in paragraph (2) of section 75B of chapter 152.

10           SECTION 3. Section 1 of chapter 152 of the General Laws, as appearing in the 2016  
11 Official Edition, is hereby amended by inserting after the word “death,” in line 39, the following  
12 paragraph:-

13           (3A) “Earnings” includes any wages, based on credible evidence, that the employer  
14 was required to pay pursuant to chapter 149, chapter 151, or any other local, state or federal law.  
15 When an employer has failed to pay an employee the full amount of wages required by law, and  
16 the insurer is required to pay compensation to that employee based on the higher required  
17 amount, the employer shall indemnify the insurer for any additional compensation owed under  
18 this chapter as a result of the additional wages.

19           SECTION 4. Section 22 of chapter 152 of the General Laws, as appearing in the 2016  
20 Official Edition, is hereby amended by striking out, in line 10, the words “may be given in the  
21 manner therein provided or in such other manner as may be approved by the department” and  
22 inserting in place thereof the following words:-

23           shall be given to employees by posting a copy of the notice, as approved and issued by  
24 the department, in a visible location utilized by and accessible to all employees of the insured  
25 person and, depending on the customary manner in which the insured person communicates with  
26 employees, by providing a hard or electronic copy of the notice to each employee at the time of  
27 hire and when information contained in the notice changes. The notice shall include information  
28 on unlawful retaliation, discrimination, and fraud under chapter 152 and shall be made available  
29 by the department in English and all other languages required under subsection (d)(iii) of section  
30 62A of chapter 151A. The insured person shall post the notice in English and all other primary or  
31 preferred languages of current employees and shall provide the notice to individual employees in  
32 their primary or preferred languages, except when the notice is not available from the department  
33 in those languages.

34 SECTION 5. Section 75B of chapter 152 of the General Laws, as so appearing, is  
35 hereby amended by striking out paragraphs (2) to (4) in their entirety and inserting in place  
36 thereof the following paragraphs:-

37 (2) It shall be an unlawful practice under chapter 151B for any person or entity, itself  
38 or through its agent, to discharge, refuse to hire, or in any other manner discriminate or take  
39 adverse action, or to threaten to discharge, refuse to hire, or in any other manner discriminate or  
40 take adverse action, against any person because that person has: exercised a right afforded by this  
41 chapter, including reporting or seeking care for a work-related injury; assisted any other person  
42 in exercising a right afforded by this chapter; informed any other person about a right afforded  
43 by this chapter; opposed a violation of this chapter; testified or in any other manner cooperated  
44 with an inquiry or proceeding pursuant to this chapter, unless the person knowingly participated  
45 in a fraudulent proceeding; or because of a belief that the person may in the future engage in any  
46 such actions. For purposes of this paragraph, “adverse action” shall include any action to deprive  
47 an employee of any right afforded by this chapter, including through false denial of an  
48 employment relationship or false denial that an injury was work-related.

49 (3) There shall be a rebuttable presumption of an unlawful practice under paragraph  
50 (2) of this section if a person or entity, itself or through its agent, discharges, refuses to hire, or in  
51 any other manner discriminates or takes adverse action, or threatens to discharge, refuse to hire,  
52 or in any other manner discriminate or take adverse action, against a person within 90 days of  
53 that person’s exercise of a right afforded by this chapter, including reporting or seeking care for a  
54 work-related injury, assisting any other person in exercising a right afforded by this chapter,  
55 informing any other person about a right afforded by this chapter, opposing a violation of this  
56 chapter, or testifying or in any other manner cooperating with an inquiry or proceeding pursuant

57 to this chapter. This presumption may be rebutted by clear and convincing evidence that the  
58 adverse action was taken for a permissible purpose and that the action would have been taken in  
59 the absence of the person's exercise of a right afforded by this chapter.

60 (4) Any person claiming to be aggrieved by a violation of this section may pursue a  
61 complaint and remedies pursuant to section 5 or section 9 of chapter 151B; provided, however,  
62 that an action alleging a violation of paragraph (2) of this section may be filed in court without  
63 first filing with or notifying the commission.

64 (5) Upon a determination by the commissioner that a request for data maintained by  
65 the department is intended to be used in such a manner as to violate the purposes of this section,  
66 the commissioner may find that the disclosure of such data constitutes an unwarranted invasion  
67 of personal privacy pursuant to chapter four and deny said request. Nothing in this section shall  
68 be construed to prohibit an insurer's right to obtain any information held by the department  
69 regarding any employee who has filed a claim against such insurer.