

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers and Jay D. Livingstone

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to protections for vulnerable employees during a public health or safety emergency.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>5/21/2020</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>5/21/2020</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>5/21/2020</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>5/21/2020</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>5/21/2020</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>5/21/2020</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>5/21/2020</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>5/21/2020</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>5/21/2020</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>5/21/2020</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>5/21/2020</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>5/21/2020</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>5/21/2020</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>5/21/2020</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>5/21/2020</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>5/21/2020</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>5/21/2020</i>

<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>5/22/2020</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>5/22/2020</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>5/22/2020</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>5/22/2020</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>5/22/2020</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>5/22/2020</i>
<i>Carmin Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>5/22/2020</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>5/27/2020</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>5/27/2020</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>5/27/2020</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>5/27/2020</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>5/27/2020</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>5/27/2020</i>
<i>David Biele</i>	<i>4th Suffolk</i>	<i>5/27/2020</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>5/27/2020</i>

HOUSE No.

By Messrs. Rogers of Cambridge and Livingstone of Boston, a petition (subject to Joint Rule 12) of David M. Rogers, Jay D. Livingstone and others relative to protections for vulnerable employees during public health or safety emergencies. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to protections for vulnerable employees during a public health or safety emergency.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect vulnerable employees during a public health or safety emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and health.

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 4(1) of chapter 151B of the General Laws, is hereby amended by
2 inserting after the words “genetic information,” the following words:-

3 Vulnerable Employees during a public health or public safety emergency and up
4 to six months after said emergency ends,

5 SECTION 2. Section 4 of chapter 151B of the General Laws, is hereby amended by
6 inserting after subsection 1E the following subsection:-

7 1F. (a) For an employer, employment agency, labor organization, the
8 commonwealth or any of its political subdivisions, by itself or its agents, to deny a reasonable

9 accommodation to a Vulnerable Employee during a public health or safety emergency and six
10 months after a declared public health or public safety emergency ends, as established through an
11 executive order of the Governor under section 37 of Chapter 161A of the General Laws, if the
12 Vulnerable Employee requests such an accommodation; provided, however, that an employer
13 may deny such an accommodation if the employer can demonstrate that the accommodation
14 would impose an undue hardship on the employer's program, enterprise or business. It shall also
15 be an unlawful practice under this subsection to:

16 (i) take adverse action against a Vulnerable Employee who requests or uses a
17 reasonable accommodation in terms, conditions or privileges of employment including, but not
18 limited to, failing to reinstate the Vulnerable Employee to the original employment status or to
19 an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits
20 and other applicable service credits when the need for a reasonable accommodation ceases;

21 (ii) deny a Vulnerable Employee an employment opportunity if the denial is
22 based on the need of the employer to make a reasonable accommodation to the known conditions
23 related to the Vulnerable Employee's medical requirements or age, including, but not limited to,
24 social distancing measures, or work-from-home options;

25 (iii) require a Vulnerable Employee affected by a medical condition or age, to
26 accept an accommodation that the Vulnerable Employee chooses not to accept, if that
27 accommodation is unnecessary to enable the Vulnerable Employee to perform the essential
28 functions of the job;

29 (iv) require a Vulnerable Employee to take a leave or vacation if another
30 reasonable accommodation may be provided for the known conditions related to the Vulnerable

31 Employee’s medical condition, including, but not limited to, social distancing measures or work-
32 from-home options, without undue hardship on the employer’s program, enterprise or business;
33 or

34 (v) refuse to hire a Prospective Vulnerable Employee during a public health or
35 safety emergency or six months after the emergency ends because of the Vulnerable Employee’s
36 medical condition or age; provided, however, that the Vulnerable Employee is capable of
37 performing the essential functions of the position with a reasonable accommodation and that
38 reasonable accommodation would not impose an undue hardship, demonstrated by the employer,
39 on the employer’s program, enterprise or business.

40 (b) As used in this subsection, the following words shall have the following
41 meanings unless the context clearly requires otherwise:

42 “Appropriate health care or rehabilitation professional” shall include, but shall not
43 be limited to, a medical doctor, including a psychiatrist, a psychologist, a nurse practitioner, a
44 physician assistant, a psychiatric clinical nurse specialist, a physical therapist, an occupational
45 therapist, a vocational rehabilitation specialist, a midwife or another licensed mental health
46 professional.

47 “Prospective Vulnerable Employee,” means any person who has made an
48 application, or has sent a resume or other correspondence indicating an interest in employment,
49 or who has otherwise committed to working for an employer and who qualifies as a bone fide
50 Vulnerable Employee as defined in this chapter.

51 “Reasonable accommodation”, may include, but shall not be limited to: (i) more
52 frequent or longer paid or unpaid breaks; (ii) time off to attend to medical complications or

53 recover from medical procedures with or without pay; (iii) acquisition or modification of
54 equipment or seating; (iv) temporary transfer to a less strenuous or hazardous position; (v) job
55 restructuring; (vi) light duty; (vii) private space to socially distance; (viii) assistance with manual
56 labor if manual labor brings said person into close proximity to other employees; (ix) a modified
57 work schedule; or (x) work-from-home options; provided, however, that an employer shall not
58 be required to discharge or transfer an employee with more seniority or promote an employee
59 who is not able to perform the essential functions of the job with or without a reasonable
60 accommodation.

61 “Undue hardship”, means an action requiring significant difficulty or expense;
62 provided, however, that the employer shall have the burden of proving undue hardship; provided
63 further, that in making a determination of undue hardship, the following factors shall be
64 considered: (i) the nature and cost of the needed accommodation; (ii) the overall financial
65 resources of the employer; (iii) the overall size of the business of the employer with respect to
66 the number of employees and the number, type and location of its facilities; and (iv) the effect on
67 expenses and resources or any other impact of the accommodation on the employer’s program,
68 enterprise or business.

69 “Vulnerable Employee”, shall include all people: (i) with serious underlying
70 health conditions, or people who live in the same household as a person with serious underlying
71 health conditions, including high blood pressure, chronic lung disease, diabetes, pregnancy,
72 obesity, asthma, organ transplant, or any other medical condition generally believed to put an
73 individual at high-risk during a public health emergency; (ii) whose immune system is
74 compromised, including people undergoing chemotherapy for cancer and people with other
75 immune system conditions requiring such therapy, or people who live in the same household as a

76 person whose immune system is compromised; and (iii) who are members of high risk
77 populations as defined by the Center for Disease Control or live in the same household as a
78 member of a person who is a member of a high risk population.

79 “work-from-home options,” means the ability of a Vulnerable Employee to use
80 technology to perform the essential functions of employment, including all forms of telework,
81 mobile and remote work possibilities, which shall be offered as a reasonable accommodation for
82 said employees.

83 (c) Upon request for an accommodation from the Vulnerable Employee or
84 prospective Vulnerable Employee capable of performing the essential functions of the position
85 involved, the Vulnerable Employee or prospective Vulnerable Employee and the employer shall
86 engage in a timely, good faith and interactive process to determine a reasonable accommodation
87 to enable the Vulnerable Employee or prospective Vulnerable Employee to perform the essential
88 functions of the Vulnerable Employee’s job or the position to which the prospective Vulnerable
89 Employee has applied. An employer may require that documentation about the need for a
90 reasonable accommodation come from an appropriate health care or rehabilitation professional;
91 provided, however, that an employer shall not require documentation from an appropriate health
92 care or rehabilitation professional for the following accommodations: (i) to provide work-from-
93 home options or find other remote alternatives (ii) to socially distance from other employees by
94 moving physical work space or seating to another location; or (iii) to limit interaction with other
95 employees. An employer may require documentation for an extension of the accommodation
96 beyond the originally agreed to accommodation.

97 (d) Written notice of the right to be free from discrimination in relation to a
98 Vulnerable Employee's medical condition or age, including the desire to implement social
99 distancing measures or work-from-home options, during a public health or public safety
100 emergency to six months after the emergency ends, shall be distributed by an employer to its
101 employees. The notice shall be provided in a handbook, pamphlet or other means of notice to all
102 employees including, but not limited to: (i) new employees at or prior to the commencement of
103 employment; and (ii) a Vulnerable Employee who notifies the employer of a medical condition,
104 not more than 10 days after such notification.

105 (e) Subject to appropriation, the commission shall develop courses of instruction
106 and conduct public education efforts as necessary to inform employers, employees and
107 employment agencies about the rights and responsibilities established under this subsection not
108 more than 60 days after the appropriation.

109 (f) This subsection shall not be construed to preempt, limit, diminish or otherwise
110 affect any other law relating to discrimination or in any way diminish the coverage for a
111 Vulnerable Employee, the Vulnerable Employee's medical condition or a condition related to the
112 medical condition under subsections 1B, 1C, 16 of this Chapter, section 185 of chapter 149 of
113 the General Laws, the Americans with Disabilities Act or the Massachusetts Fair Employment
114 Practices Law.

115 SECTION 3. An employer shall provide written notice in a handbook, pamphlet or by
116 other means to its employees of the right to be free from discrimination in relation to a medical
117 condition or a condition related to a medical condition, during a public health or safety
118 emergency until six months after the emergency ends, including the right to reasonable

119 accommodations for conditions related to a medical condition, pursuant to subsection 1F of
120 section 4 of chapter 151B of the General Laws not later than August 1, 2020.

121 SECTION 4. This act shall take effect immediately.