

SENATE No. 1068

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 protecting injured workers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/29/2019</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>1/29/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>1/29/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>1/30/2019</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>1/30/2019</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>1/30/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/27/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/27/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>4/12/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>6/25/2019</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>6/27/2019</i>

SENATE No. 1068

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1068) of James B. Eldridge, Jack Patrick Lewis, Christopher Hendricks, Daniel J. Hunt and other members of the General Court for legislation to protect injured workers. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act protecting 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 1 of chapter 152 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “death,” in line 39, the following
3 paragraph:-

4 (3A) “Earnings” includes any wages, based on credible evidence, that the employer was
5 required to pay pursuant to chapter 149, chapter 151, or any other local, state or federal law.
6 When an employer has failed to pay an employee the full amount of wages required by law, and
7 the insurer is required to pay compensation to that employee based on the higher required
8 amount, the employer shall indemnify the insurer for any additional compensation owed under
9 this chapter as a result of the additional wages.

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

13 (2) It shall be an unlawful practice under chapter 151B for any person or entity, itself or
14 through its agent, to discharge, refuse to hire, or in any other manner discriminate or take adverse
15 action, or to threaten to discharge, refuse to hire, or in any other manner discriminate or take
16 adverse action, against any person because that person has: exercised a right afforded by this
17 chapter, including reporting or seeking care for a work-related injury; assisted any other person
18 in exercising a right afforded by this chapter; informed any other person about a right afforded
19 by this chapter; opposed a violation of this chapter; testified or in any other manner cooperated
20 with an inquiry or proceeding pursuant to this chapter; or because of a belief that the person may
21 in the future engage in any such actions. For purposes of this paragraph, “adverse action” shall
22 include any action to deprive an employee of any right afforded by this chapter, including
23 through false denial of an employment relationship or false denial that an injury was work-
24 related.

25 (3) There shall be a rebuttable presumption of an unlawful practice under paragraph (2)
26 of this section if a person or entity, itself or through its agent, discharges, refuses to hire, or in
27 any other manner discriminates or takes adverse action, or threatens to discharge, refuse to hire,
28 or in any other manner discriminate or take adverse action, against a person within 90 days of
29 that person’s exercise of a right afforded by this chapter, including reporting or seeking care for a
30 work-related injury, assisting any other person in exercising a right afforded by this chapter,
31 informing any other person about a right afforded by this chapter, opposing a violation of this
32 chapter, or testifying or in any other manner cooperating with an inquiry or proceeding pursuant
33 to this chapter. This presumption may be rebutted by clear and convincing evidence that the
34 adverse action was taken for a permissible purpose and that the action would have been taken in
35 the absence of the person’s exercise of a right afforded by this chapter.

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

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

46 SECTION 3. Section 3 of chapter 151B of the General Laws, as appearing in the 2016
47 Official Edition, is hereby amended by inserting, in line 23, after the word "person" the
48 following words:- , or as defined in paragraph (2) of section 75B of chapter 152.

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

53 shall be given to employees by posting a copy of the notice, as approved and issued by
54 the department, in a visible location utilized by and accessible to all employees of the insured
55 person and, depending on the customary manner in which the insured person communicates with
56 employees, by providing a hard or electronic copy of the notice to each employee at the time of
57 hire and when information contained in the notice changes. The notice shall include information

58 on unlawful retaliation, discrimination, and fraud under chapter 152 and shall be made available
59 by the department in English and all other languages required under subsection (d)(iii) of section
60 62A of chapter 151A. The insured person shall post the notice in English and all other primary or
61 preferred languages of current employees and shall provide the notice to individual employees in
62 their primary or preferred languages, except when the notice is not available from the department
63 in those languages.

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