

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:-

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

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

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

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

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

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

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

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

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