

SENATE No. 1187**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 to protect injured workers during and after the COVID-19 pandemic.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/26/2021</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/2/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/11/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/11/2021</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>3/12/2021</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>3/16/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>3/29/2021</i>
<i>Maria Duaime Robinson</i>	<i>6th Middlesex</i>	<i>3/30/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/7/2021</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>4/21/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>5/8/2021</i>

SENATE No. 1187

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1187) of James B. Eldridge, Christopher Hendricks, Michael O. Moore, Joanne M. Comerford and other members of the General Court for legislation to protect injured workers. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1068 OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act to protect injured workers during and after the COVID-19 pandemic.

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 2018
2 Official Edition, is hereby amended by inserting, in line 46, after the word “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. Subsection (a) of section 27C of chapter 149 of the General Laws, as so
8 appearing, is hereby amended by inserting, in line 5, after the number “151,” and also by
9 inserting, in line 15, after the number “151,” the following words:- , or paragraph 2 of section
10 75B of chapter 152.

SECTION 3. Subsection (b) of said section 27C of said chapter 149 of the General Laws, as so appearing, is hereby amended by inserting, in line 68, after the word “week.” the following sentence:- For purposes of a violation of paragraph 2 of section 75B of chapter 152, restitution shall include actual and compensatory damages, costs and reasonable attorneys’ fees, and rectifying the infraction may include injunctive relief, punitive damages and other appropriate relief.

SECTION 4. Section 1 of chapter 152 of the General Laws, as so appearing, is hereby amended by inserting after the word “death,” in line 39, the following paragraph:-

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

SECTION 5. Section 22 of said chapter 152 of the General Laws, as so appearing, is hereby amended by striking out, in lines 9 and 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 6. Section 75B of said chapter 152 of the General Laws, as so appearing, is hereby amended by striking out paragraphs (2) to (4) in their entirety and inserting in place thereof the following paragraphs:-

(2) No person or entity, itself or through its agent, may 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: (i) exercised a right afforded by this chapter, including reporting or seeking care for a work-related injury, which shall include reporting or seeking care for any COVID-19-related illness or reporting any exposure to COVID-19 and taking appropriate measures as a result, including self-quarantining; (ii) assisted any other person in exercising a right afforded by this chapter; (iii) informed any other person about a right afforded by this chapter; (iv) opposed a violation of this chapter; (v) testified or in any other manner cooperated with an inquiry or proceeding pursuant to this chapter; or (vi) 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 a violation of 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, refuses to hire, or in any other manner discriminates 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, which shall include reporting or seeking care for any COVID-19-related illness, or reporting any exposure to COVID-19 and taking appropriate measures as a result, including self-quarantining; 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. 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.

(4) A person claiming to be aggrieved by a violation of paragraph 2 of this section may file a complaint with the attorney general, who may initiate criminal or civil proceedings pursuant to section 27C of chapter 149. Alternatively, a person claiming to be aggrieved by a violation of paragraph 2 of this section may, within 3 years after the violation, initiate a civil action; provided, however, that the 3-year limitation period shall be tolled from the date that the person files a complaint with the attorney general alleging violation of paragraph 2 of this section until the date that the attorney general's office declines to pursue enforcement of that

complaint or the date that an enforcement action by the attorney general becomes final. A person so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits, other actual and compensatory damages, costs of litigation and reasonable attorneys' fees and may be awarded injunctive relief, punitive damages and other appropriate relief.

(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 4 and deny said request. Nothing in this section shall be construed to prohibit an insurer's right to obtain information held by the department regarding any employee who has filed a claim against such insurer.