

SENATE No. 1158

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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 the hospitality comeback.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>3/11/2021</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>3/15/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>4/1/2021</i>
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>4/1/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/1/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/26/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>4/26/2021</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>5/23/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>6/8/2021</i>

SENATE No. 1158

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 1158) of Joseph A. Boncore, David Henry Argosky LeBoeuf, Eric P. Lesser, Walter F. Timilty and other members of the General Court for legislation relative to the hospitality comeback. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act relative to the hospitality comeback.

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. Chapter 149 of the General Laws is hereby amended by adding the
2 following section:-

3 Section 204. (a) As used in this section, unless the context clearly implies otherwise, the
4 following words shall have the following meanings:-

5 “Employer”, a hotel employer.

6 “Hotel employer”, an owner, operator or manager of a residential building designated or
7 used for public lodging or other related service for the public that: (i) contains 50 or more
8 guestrooms or (ii) earned gross receipts in 2019 exceeding \$5,000,000; provided, that a hotel
9 employer shall include the owner, operator, manager or lessee of any restaurant located on hotel
10 premises.

11 “Laid off worker”, an individual employed for hire by an employer in any lawful
12 employment who was employed by the employer for six months or more in the 12 months
13 preceding March 4, 2020 and whose most recent separation from active employment with the
14 employer occurred on or after March 4, 2020 as a result of a lack of business, a reduction in
15 work force or other economic, non-disciplinary reason. For purposes of this section, a laid off
16 worker shall not include a manager, supervisor or a confidential employee as defined in section 1
17 of chapter 150E.

18 “Length of service”, the total time of an individual’s work for hire by an employer in any
19 lawful employment, including periods of time when the worker was on leave or vacation.

20 (b) In any city or town that accepts this section in the manner provided for in section 4 of
21 chapter 4, an employer shall offer any position that is or becomes available to a laid off worker
22 for which said laid off worker is qualified. The offer shall be sent in writing to the: (1) last
23 known mailing address of the laid off worker, (2) electronic mail address of the laid off worker
24 and (3) phone number of the laid off worker by text message. A laid off worker shall be qualified
25 for an available position if the laid off worker: (1) held the same or a substantially similar
26 position at the same employment site at the time of the laid off worker’s most recent separation
27 from active service with the employer; or (2) is or can become qualified for the position through
28 the same training that would be provided to a new worker hired for that position. If more than 1
29 laid off worker is entitled to preference for a position, first priority shall be for a laid off worker
30 with the greatest length of service in the same or a similar position and then for a laid off worker
31 with the greatest length of service at the employment site.

(c) A laid off worker offered a position pursuant to this section shall be given no less than 5 business days in which to accept or decline the offer. An employer may make simultaneous, conditional offers of employment to laid off workers, with final offer of employment conditioned on application of the priority system set forth in subsection (b).

(d) A laid off worker who is aggrieved by a violation of this section may bring a civil action for damages or injunctive relief or both in the superior court for the county in which the alleged unlawful practice occurred not later than 3 years after the alleged unlawful practice occurred.

(e) Prior to initiating a civil action pursuant to subsection (d), the laid off worker shall provide written notice to the employer of the alleged violation stating the provisions of this section that were violated and facts to support the alleged violation. The employer shall have 15 days from receipt of the written notice to cure any alleged violation.

(f) If a court finds for the laid off worker, the court may order: (i) hiring or reinstatement of the laid off worker, with or without back pay; and (ii) an award of actual damages including, but not limited to, lost pay and benefits, or statutory damages in the sum of \$1,000, whichever is greater. The court may additionally award punitive damages, injunctive relief or any other appropriate relief.

(g) A court shall award reasonable attorneys' fees and costs to a laid off worker who prevails in any such enforcement action or to an employer who prevails and obtains a court determination that the lawsuit was frivolous.

(h) No criminal penalties shall attach for violation of this section.

(i) No employer may discharge, reduce in compensation or otherwise discriminate against any employee or laid off worker for: (i) opposing any practice prescribed by this section; (ii) participating in proceedings related to this section; (iii) seeking to exercise their rights under this section by any lawful means; or (iv) otherwise asserting rights under this section.

(j) The attorney general shall promulgate rules and regulations to implement this section. The attorney general shall post the rules and regulations on the attorney general's website.

(k) A city or town that accepts this section in the manner provided in section 4 of chapter 4 may revoke its acceptance in the same manner.

SECTION 2. Prior to March 1, 2023, each municipality that has accepted section 204 of chapter 149 of the General Laws shall report to the chief executive officer of the municipality regarding: (i) the effectiveness of said section 204 of said chapter 149 in protecting workers' stability of employment; (ii) recommendations for additional employment stability protections; and (iii) whether the protections of said section 204 of said chapter 149 are still necessary based on the municipality's recovery from the impacts of the COVID-19 pandemic.