

**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>

**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.