

HOUSE No. 2045

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers and Jay D. Livingstone

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 protections for vulnerable employees during a public health or safety emergency.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/18/2021</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>2/19/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/26/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/26/2021</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/26/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/15/2021</i>

HOUSE No. 2045

By Messrs. Rogers of Cambridge and Livingstone of Boston, a petition (accompanied by bill, House, No. 2045) of David M. Rogers, Jay D. Livingstone and others relative to protections for vulnerable employees during public health or safety emergencies. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act relative to protections for vulnerable employees during a public health or safety emergency.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect vulnerable employees during a public health or safety emergency, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and health.

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 4(1) of chapter 151B of the General Laws, is hereby amended by
2 inserting after the words “genetic information,” the following words:-

3 Vulnerable Employees during a public health or public safety emergency and up to
4 six months after said emergency ends,

5 SECTION 2. Section 4 of chapter 151B of the General Laws, is hereby amended by
6 inserting after subsection 1E the following subsection:-

7 1F. (a) For an employer, employment agency, labor organization, the commonwealth or
8 any of its political subdivisions, by itself or its agents, to deny a reasonable accommodation to a
9 Vulnerable Employee during a public health or safety emergency and six months after a declared
10 public health or public safety emergency ends, as established through an executive order of the
11 Governor under section 37 of Chapter 161A of the General Laws, if the Vulnerable Employee
12 requests such an accommodation; provided, however, that an employer may deny such an
13 accommodation if the employer can demonstrate that the accommodation would impose an
14 undue hardship on the employer's program, enterprise or business. It shall also be an unlawful
15 practice under this subsection to:

16 (i) take adverse action against a Vulnerable Employee who requests or uses a reasonable
17 accommodation in terms, conditions or privileges of employment including, but not limited to,
18 failing to reinstate the Vulnerable Employee to the original employment status or to an
19 equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits
20 and other applicable service credits when the need for a reasonable accommodation ceases;

21 (ii) deny a Vulnerable Employee an employment opportunity if the denial is based on
22 the need of the employer to make a reasonable accommodation to the known conditions related
23 to the Vulnerable Employee's medical requirements or age, including, but not limited to, social
24 distancing measures, or work-from-home options;

25 (iii) require a Vulnerable Employee affected by a medical condition or age, to accept an
26 accommodation that the Vulnerable Employee chooses not to accept, if that accommodation is
27 unnecessary to enable the Vulnerable Employee to perform the essential functions of the job;

28 (iv) require a Vulnerable Employee to take a leave or vacation if another reasonable
29 accommodation may be provided for the known conditions related to the Vulnerable Employee's
30 medical condition, including, but not limited to, social distancing measures or work-from-home
31 options, without undue hardship on the employer's program, enterprise or business; or

32 (v) refuse to hire a Prospective Vulnerable Employee during a public health or safety
33 emergency or six months after the emergency ends because of the Vulnerable Employee's
34 medical condition or age; provided, however, that the Vulnerable Employee is capable of
35 performing the essential functions of the position with a reasonable accommodation and that
36 reasonable accommodation would not impose an undue hardship, demonstrated by the employer,
37 on the employer's program, enterprise or business.

38 (b) As used in this subsection, the following words shall have the following meanings
39 unless the context clearly requires otherwise:

40 "Appropriate health care or rehabilitation professional" shall include, but shall not be
41 limited to, a medical doctor, including a psychiatrist, a psychologist, a nurse practitioner, a
42 physician assistant, a psychiatric clinical nurse specialist, a physical therapist, an occupational
43 therapist, a vocational rehabilitation specialist, a midwife or another licensed mental health
44 professional.

45 "Prospective Vulnerable Employee," means any person who has made an application, or
46 has sent a resume or other correspondence indicating an interest in employment, or who has
47 otherwise committed to working for an employer and who qualifies as a bone fide Vulnerable
48 Employee as defined in this chapter.

49 “Reasonable accommodation”, may include, but shall not be limited to: (i) more frequent
50 or longer paid or unpaid breaks; (ii) time off to attend to medical complications or recover from
51 medical procedures with or without pay; (iii) acquisition or modification of equipment or
52 seating; (iv) temporary transfer to a less strenuous or hazardous position; (v) job restructuring;
53 (vi) light duty; (vii) private space to socially distance; (viii) assistance with manual labor if
54 manual labor brings said person into close proximity to other employees; (ix) a modified work
55 schedule; or (x) work-from-home options; provided, however, that an employer shall not be
56 required to discharge or transfer an employee with more seniority or promote an employee who
57 is not able to perform the essential functions of the job with or without a reasonable
58 accommodation.

59 “Undue hardship”, means an action requiring significant difficulty or expense; provided,
60 however, that the employer shall have the burden of proving undue hardship; provided further,
61 that in making a determination of undue hardship, the following factors shall be considered: (i)
62 the nature and cost of the needed accommodation; (ii) the overall financial resources of the
63 employer; (iii) the overall size of the business of the employer with respect to the number of
64 employees and the number, type and location of its facilities; and (iv) the effect on expenses and
65 resources or any other impact of the accommodation on the employer’s program, enterprise or
66 business.

67 “Vulnerable Employee”, shall include all people: (i) with serious underlying health
68 conditions, or people who live in the same household as a person with serious underlying health
69 conditions, including high blood pressure, chronic lung disease, diabetes, pregnancy, obesity,
70 asthma, organ transplant, or any other medical condition generally believed to put an individual
71 at high-risk during a public health emergency; (ii) whose immune system is compromised,

72 including people undergoing chemotherapy for cancer and people with other immune system
73 conditions requiring such therapy, or people who live in the same household as a person whose
74 immune system is compromised; and (iii) who are members of high risk populations as defined
75 by the Center for Disease Control or live in the same household as a member of a person who is
76 a member of a high risk population.

77 “work-from-home options,” means the ability of a Vulnerable Employee to use
78 technology to perform the essential functions of employment, including all forms of telework,
79 mobile and remote work possibilities, which shall be offered as a reasonable accommodation for
80 said employees.

81 (c) Upon request for an accommodation from the Vulnerable Employee or prospective
82 Vulnerable Employee capable of performing the essential functions of the position involved, the
83 Vulnerable Employee or prospective Vulnerable Employee and the employer shall engage in a
84 timely, good faith and interactive process to determine a reasonable accommodation to enable
85 the Vulnerable Employee or prospective Vulnerable Employee to perform the essential functions
86 of the Vulnerable Employee’s job or the position to which the prospective Vulnerable Employee
87 has applied. An employer may require that documentation about the need for a reasonable
88 accommodation come from an appropriate health care or rehabilitation professional; provided,
89 however, that an employer shall not require documentation from an appropriate health care or
90 rehabilitation professional for the following accommodations: (i) to provide work-from-home
91 options or find other remote alternatives (ii) to socially distance from other employees by
92 moving physical work space or seating to another location; or (iii) to limit interaction with other
93 employees. An employer may require documentation for an extension of the accommodation
94 beyond the originally agreed to accommodation.

95 (d) Written notice of the right to be free from discrimination in relation to a Vulnerable
96 Employee's medical condition or age, including the desire to implement social distancing
97 measures or work-from-home options, during a public health or public safety emergency to six
98 months after the emergency ends, shall be distributed by an employer to its employees. The
99 notice shall be provided in a handbook, pamphlet or other means of notice to all employees
100 including, but not limited to: (i) new employees at or prior to the commencement of
101 employment; and (ii) a Vulnerable Employee who notifies the employer of a medical condition,
102 not more than 10 days after such notification.

103 (e) Subject to appropriation, the commission shall develop courses of instruction and
104 conduct public education efforts as necessary to inform employers, employees and employment
105 agencies about the rights and responsibilities established under this subsection not more than 60
106 days after the appropriation.

107 (f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect
108 any other law relating to discrimination or in any way diminish the coverage for a Vulnerable
109 Employee, the Vulnerable Employee's medical condition or a condition related to the medical
110 condition under subsections 1B, 1C, 16 of this Chapter, section 185 of chapter 149 of the
111 General Laws, the Americans with Disabilities Act or the Massachusetts Fair Employment
112 Practices Law.

113 SECTION 3. An employer shall provide written notice in a handbook, pamphlet or by
114 other means to its employees of the right to be free from discrimination in relation to a medical
115 condition or a condition related to a medical condition, during a public health or safety
116 emergency until six months after the emergency ends, including the right to reasonable

117 accommodations for conditions related to a medical condition, pursuant to subsection 1F of
118 section 4 of chapter 151B of the General Laws not later than August 1, 2020.

119 SECTION 4. This act shall take effect immediately.