

**SENATE . . . . . No. 1187**

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**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 Duaine 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>

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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.

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[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.

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

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

19 (3A) “Earnings” includes any wages, based on credible evidence, that the employer was  
20 required to pay pursuant to chapter 149, chapter 151, or any other local, state or federal law.  
21 When an employer has failed to pay an employee the full amount of wages required by law, and  
22 the insurer is required to pay compensation to that employee based on the higher required  
23 amount, the employer shall indemnify the insurer for any additional compensation owed under  
24 this chapter as a result of the additional wages.

25 SECTION 5. Section 22 of said chapter 152 of the General Laws, as so appearing, is  
26 hereby amended by striking out, in lines 9 and 10, the words “may be given in the manner  
27 therein provided or in such other manner as may be approved by the department” and inserting in  
28 place thereof the following words:-

29 shall be given to employees by posting a copy of the notice, as approved and issued by  
30 the department, in a visible location utilized by and accessible to all employees of the insured  
31 person and, depending on the customary manner in which the insured person communicates with  
32 employees, by providing a hard or electronic copy of the notice to each employee at the time of

33 hire and when information contained in the notice changes. The notice shall include information  
34 on unlawful retaliation, discrimination and fraud under chapter 152 and shall be made available  
35 by the department in English and all other languages required under subsection (d)(iii) of section  
36 62A of chapter 151A. The insured person shall post the notice in English and all other primary or  
37 preferred languages of current employees and shall provide the notice to individual employees in  
38 their primary or preferred languages, except when the notice is not available from the department  
39 in those languages.

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

43 (2) No person or entity, itself or through its agent, may discharge, refuse to hire, or in any  
44 other manner discriminate or take adverse action, or to threaten to discharge, refuse to hire, or in  
45 any other manner discriminate or take adverse action, against any person because that person  
46 has: (i) exercised a right afforded by this chapter, including reporting or seeking care for a work-  
47 related injury, which shall include reporting or seeking care for any COVID-19-related illness or  
48 reporting any exposure to COVID-19 and taking appropriate measures as a result, including self-  
49 quarantining; (ii) assisted any other person in exercising a right afforded by this chapter; (iii)  
50 informed any other person about a right afforded by this chapter; (iv) opposed a violation of this  
51 chapter; (v) testified or in any other manner cooperated with an inquiry or proceeding pursuant to  
52 this chapter; or (vi) because of a belief that the person may in the future engage in any such  
53 actions. For purposes of this paragraph, “adverse action” shall include any action to deprive an  
54 employee of any right afforded by this chapter, including through false denial of an employment  
55 relationship or false denial that an injury was work related.

56 (3) There shall be a rebuttable presumption of a violation of paragraph (2) of this section  
57 if a person or entity, itself or through its agent, discharges, refuses to hire, or in any other manner  
58 discriminates or takes adverse action, or threatens to discharge, refuses to hire, or in any other  
59 manner discriminates or take adverse action, against a person within 90 days of that person's  
60 exercise of a right afforded by this chapter, including reporting or seeking care for a work-related  
61 injury, which shall include reporting or seeking care for any COVID-19-related illness, or  
62 reporting any exposure to COVID-19 and taking appropriate measures as a result, including self-  
63 quarantining; assisting any other person in exercising a right afforded by this chapter; informing  
64 any other person about a right afforded by this chapter; opposing a violation of this chapter; or  
65 testifying or in any other manner cooperating with an inquiry or proceeding pursuant to this  
66 chapter. This presumption may be rebutted by clear and convincing evidence that the adverse  
67 action was taken for a permissible purpose and that the action would have been taken in the  
68 absence of the person's exercise of a right afforded by this chapter. For purposes of this  
69 paragraph, "adverse action" shall include any action to deprive an employee of any right  
70 afforded by this chapter, including through false denial of an employment relationship or false  
71 denial that an injury was work related.

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

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

84 (5) Upon a determination by the commissioner that a request for data maintained by the  
85 department is intended to be used in such a manner as to violate the purposes of this section, the  
86 commissioner may find that the disclosure of such data constitutes an unwarranted invasion of  
87 personal privacy pursuant to chapter 4 and deny said request. Nothing in this section shall be  
88 construed to prohibit an insurer's right to obtain information held by the department regarding  
89 any employee who has filed a claim against such insurer.