

HOUSE No. 4606

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 4, 2022.

The committee on Labor and Workforce Development to whom was referred the 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, and the petition (accompanied by bill, House, No. 2032) of Tram T. Nguyen and others for legislation to protect injured workers during and after the COVID-19 pandemic, reports recommending that the accompanying bill (House, No. 4606) ought to pass.

For the committee,

JOSH S. CUTLER.

HOUSE No. 4606

The Commonwealth of Massachusetts

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

An Act to protect 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 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
24 under 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 or illness; (ii) assisted any other person in exercising a right afforded by this
48 chapter; (iii) informed any other person about a right afforded by this chapter; (iv) opposed a
49 violation of this chapter; (v) testified or in any other manner cooperated with an inquiry or
50 proceeding pursuant to this chapter; or (vi) because of a belief that the person may in the future
51 engage in any such actions. For purposes of this paragraph, “adverse action” shall include any
52 action to deprive an employee of any right afforded by this chapter, including through false
53 denial of an employment relationship or false denial that an injury or illness was work related.

54 (3) There shall be a rebuttable presumption of a violation of paragraph (2) of this section
55 if a person or entity, itself or through its agent, discharges, refuses to hire, or in any other manner
56 discriminates or takes adverse action, or threatens to discharge, refuse to hire, or in any other
57 manner discriminate or take adverse action, against a person within 90 days of that person’s

58 exercise of a right afforded by this chapter, including: (i) reporting or seeking care for a work-
59 related injury or illness; (ii) assisting any other person in exercising a right afforded by this
60 chapter; (iii) informing any other person about a right afforded by this chapter; (iv) opposing a
61 violation of this chapter; (v) or testifying or in any other manner cooperating with an inquiry or
62 proceeding pursuant to this chapter. This presumption may be rebutted by clear and convincing
63 evidence that the adverse action was taken for a permissible purpose and that the action would
64 have been taken in the absence of the person's exercise of a right afforded by this chapter. For
65 purposes of this paragraph, "adverse action" shall include any action to deprive an employee of
66 any right afforded by this chapter, including through false denial of an employment relationship
67 or false denial that an injury or illness was work related.

68 (4) A person claiming to be aggrieved by a violation of paragraph 2 of this section may
69 file a complaint with the attorney general, who may initiate criminal or civil proceedings
70 pursuant to section 27C of chapter 149. Alternatively, a person claiming to be aggrieved by a
71 violation of paragraph 2 of this section may, within 3 years after the violation, initiate a civil
72 action; provided, however, that the 3-year limitation period shall be tolled from the date that the
73 person files a complaint with the attorney general alleging violation of paragraph 2 of this
74 section until the date that the attorney general's office declines to pursue enforcement of that
75 complaint or the date that an enforcement action by the attorney general becomes final. A person
76 so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated
77 damages, for any lost wages and other benefits, other actual and compensatory damages, costs of
78 litigation and reasonable attorneys' fees and may be awarded injunctive relief, punitive damages
79 and other appropriate relief.

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