

By Mr. Lynch, a petition (accompanied by bill, Senate, No. 60) of Stephen F. Lynch, the Campaign on Contingent Work, by Tim Costello, Eugene L. O'Flaherty, Charles E. Shannon, Richard T. Moore, other members of the General Court and another for legislation relative to workplace equity. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT REGARDING WORKPLACE EQUITY.

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 23 of the General Laws is hereby
2 amended by adding after section 11G the following new
3 section:—

4 Section 12. (a) The following words and phrases as used in this
5 section shall have the following meaning unless the context
6 clearly requires otherwise.

7 (1) "Benefits" include but are not limited to accrual of
8 seniority, credit for length of service, holidays, vacations, sick
9 leave and other leave, disability and health insurance, health and
10 welfare, and pension benefits.

11 (2) "Client company" means an enterprise that receives services
12 or functions from another enterprise and that meets the criteria for
13 a joint employer.

14 (3) "Contingent job" means any job in which an individual does
15 not have an explicit or implicit contract for long-term full-time
16 employment. This includes:

17 (A) "Casual employment", which means work scheduled on an
18 occasional or intermittent basis, without a regular schedule;

19 (B) "Contractor employment", which means employment in
20 which a worker is employed by a company that has contracted
21 with a client company to provide services or functions;

22 (C) "Day labor employment", which means employment in
23 which a worker is hired for a day or on a day-to-day basis to per-
24 form unskilled or semi-skilled task;

25 (D) "Home-based employment", which means employment in
26 which a person produces goods or delivers services in or about a
27 home, apartment, tenement, or room in a residential establishment
28 for an employer who suffers or permits such production or service
29 delivery, regardless of the source (whether obtained from an
30 employer or elsewhere) of the materials used by the home worker
31 in such production;

32 (E) "Leased employment", which means employment in which
33 an individual performs services for a client company through a
34 leasing organization where the provision of the individual's serv-
35 ices is pursuant to an agreement between the client company and
36 the leasing organization;

37 (F) "On-call employment", which means employment in which
38 a worker reports to work only when asked by her/his employer to
39 do so, as opposed to having a regular schedule;

40 (G) "Seasonal employment", which means a job which provides
41 no work for at least 90 days;

42 (H) "Temporary agency employment", which means work per-
43 formed by a person who is hired and remunerated by an agency
44 which provides the worker to a client company, where there is no
45 implicit or explicit contract for long-term employment;

46 (I) "Temporary direct hire employment", which means work
47 performed by a person who is hired and remunerated by the com-
48 pany for which the worker provides services, where there is no
49 implicit or explicit contract for long-term employment;

50 (J) "Temporary employment", which means work with an
51 established employment period of one year or less;

52 (4) "Covered employee" means any individual who performs a
53 service for remuneration unless said individual meets the criteria
54 of an independent contractor as defined in this section.

55 (5) "Employer" includes any individual, organization
56 (including the commonwealth and all of its political subdivisions),
57 partnership, association, trust, estate, joint stock company, insur-
58 ance company or corporation, whether domestic or foreign, or
59 receiver or trustee in bankruptcy, or the legal representative of a
60 deceased person, who has one or more individuals in his or her
61 employment during any day or portion of any day.

62 (6) "Entry level job" means a job that requires one year or less
63 of training.

64 (7) "Full-time employment" means any job with regularly
65 scheduled work of more than 32 hours per week, or greater
66 than 64 hours in a biweekly period.

67 (8) "Health care costs" means the total cost of health insurance
68 premiums and out-of-pocket health care expenses.

69 (9) "Independent contractor", which means any worker who
70 meets all of the following criteria: (i) the individual is free from
71 direction and control over the performance of the work; (ii) the
72 service is performed either outside the usual course of the busi-
73 ness for which it is performed or is performed outside of all places
74 of business of the enterprise for which it is performed; and (iii)
75 the individual is customarily engaged in an independent trade,
76 occupation, profession or business. The failure to withhold federal
77 or state income taxes, unemployment compensation or workers
78 compensation from an employee's wages shall not be used for the
79 purposes of making a determination under this section.

80 (10) "Joint employer" means a contractor and a client where the
81 employees of the contractor perform work that is an on-going
82 component of the client's enterprise and in which one or more of
83 the following exists: i) the contractor's employees are required to
84 follow the client's instructions concerning the specifics of how
85 and when the services are to be performed; ii) the contractor's
86 employees perform the services on a regular basis on premises
87 owned or managed by the client; or iii) the capital goods used by
88 the contractor's employees in performing the services in question
89 are provided by, or substantially financed, directly or indirectly by
90 the client.

91 (11) "Part-time employment", which means regularly scheduled
92 work which is less than the full time work schedule customary for
93 the individual's occupation.

1 SECTION 2. Chapter 149 of General Laws is hereby amended
2 by inserting after section 105D of said chapter the following new
3 section:—

4 SECTION 105E. (a) Words and phrases used in this section
5 shall have the meanings stated in section twelve(a) of chapter 23,
6 unless the context clearly requires otherwise.

7 (b) No employer, including joint employers at a client work
8 site, shall discriminate in any way in the payment of wages as

9 between full-time and part-time employees whether or not such
10 employees are employed in permanent or contingent jobs; or
11 between permanent and contingent employees; provided, however,
12 that variations in rates of pay shall not be prohibited when based
13 upon a difference in seniority. For the purpose of determining the
14 wages paid to full-time employees which will be used to deter-
15 mine whether the employer is discriminating against contingent
16 workers or part-time workers, full-time wages shall be deemed to
17 be the gross hourly wages of similarly situated employees, plus a
18 thirty percent surcharge. Such surcharge shall be deemed to be
19 paid to the contingent employee or part-time employee if it is
20 included directly in wages or offered as part of the cost of health,
21 welfare and retirement benefits.

22 (c) Nothing in this section shall be construed to diminish or
23 otherwise affect the requirements, guarantees or protections under
24 any bargaining agreement, company policy or state or federal law
25 which provides for greater or additional benefits than those
26 required under this section.

1 SECTION 3. Any employer, as defined in section one hundred
2 and five-E of chapter one hundred and forty-nine of the General
3 Laws, who receives in excess of twenty-five thousand dollars per
4 year in funding or payment for services under any contract with
5 the commonwealth shall be subject to rules and regulations, pro-
6 mulgated by the office of purchased services, regarding the
7 employment of workers in contingent jobs as defined in said
8 section one hundred and five-E which rules shall include the
9 following.

10 (a) These rules shall include a cap on the percentage of contin-
11 gent jobs and on the percentage of the total payroll which may be
12 used to hire workers in contingent jobs. Such cap shall be no
13 greater than fifty percent of the average number of contingent jobs
14 found in the private sector. Moreover, no more than 25% of the
15 funds for a contract with the state may be used for the payment of
16 wages for contingent jobs.

17 (b) These rules shall further require that if the payment of
18 health benefits for employees covered by the contract with the
19 commonwealth is an amount that is less than the amount paid by
20 the commonwealth for state employees, the employer must pay a
21 wage surcharge equivalent to the difference in the amount.

1 SECTION 4. Section 150 of chapter 149 of the General Laws is
2 hereby amended by striking the first sentence of the second para-
3 graph of said section and substituting therefore the following:—

4 Any employee claiming to be aggrieved by a violation of
5 section one hundred and forty-eight, one hundred and forty-
6 eight B, one hundred and fifty C, one hundred and fifty E, one
7 hundred and fifty-two and one hundred and fifty-two A may, at
8 the expiration of ninety days after the filing of a complaint with
9 the attorney general, or sooner, if the attorney general assents in
10 writing, and within three years of such violation, institute and
11 prosecute in his own name and on his own behalf, or for himself
12 and for others similarly situated, a civil action for injunctive relief
13 and any damages incurred, including treble damages for any loss
14 of wages and other benefits.

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