

By Ms. Lewis of Dedham, petition of Maryanne Lewis, Marc R. Pacheco and another relative to displaced janitors or building maintenance personnel of certain contractors or subcontractors. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Two.

AN ACT RELATIVE TO DISPLACED 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. Definitions.
- 2 (A) "Awarding authority" means any person that awards or oth-
- 3 erwise contracts for janitorial or building maintenance service
- 4 performed within the Commonwealth including any subcontracts
- 5 for janitorial or building maintenance services.
- 6 (B) "Contractor" means any person that employs 10 or more
- 7 individuals and that enters into a service contract with the
- 8 awarding authority for janitorial or building maintenance service.
- 9 (C) "Employee" means any person employed as a service
- 10 employee of a subcontractor who works at least 15 hours per week
- 11 and whose primary place of employment is in the Commonwealth
- 12 under a contract to provide janitorial or building maintenance
- 13 services."Employee" does not include a person who is a manage-
- 14 rial, supervisory, or confidential employee, including those
- 15 employees who would be so defined under the federal Fair Labor
- 16 Standards Act.
- 17 (D) "Person" means any individual, proprietorship, partnership,
- 18 joint venture, corporation, limited liability company, trust, associ-
- 19 ation, or other entity that may employ individuals or enter into
- 20 contracts.
- 21 (E) "Service contract" means any contract that has the principal
- 22 purpose of providing janitorial or building maintenance services
- 23 through the use of service employees.

24 (F) "Subcontractor" means any person who is not an employee
25 who enters into a contract with a contractor at any tier or who
26 assists the contractor or subcontractor in performing a service
27 contract.

28 (G) "Successor service contract" means a service contract for
29 the performance of essentially the same services as were previ-
30 ously performed pursuant to a different service contract at the
31 same facility that terminated within the previous 30 days. A
32 service contract entered into more than 30 days after the termina-
33 tion of a predecessor service contract shall be considered a "suc-
34 cessor service contract" if its execution was delayed for the
35 purpose of avoiding application of this chapter.

36 Section 2.

37 (A) If an awarding authority notifies a contractor and/or sub-
38 contractor that the service contract between the awarding
39 authority and/or the contractor or subcontractor has been termi-
40 nated or will be terminated, the awarding authority shall indicate
41 in that notification whether a successor service contract has been
42 or will be awarded in its place and, if so, shall identify the name
43 and address of the successor contractor. The terminated contractor
44 shall, within three working days after receiving that notification,
45 provide to the successor contractor identified by the awarding
46 authority, the name, date of hire, and job classification of each
47 employee employed at the site or sites covered by the terminated
48 service contract at the time of contract termination.

49 (B) If the terminated contractor has not learned the identity of
50 the successor contractor, if any, the terminated contractor or sub-
51 contractor shall provide that information to the awarding
52 authority, which shall be responsible for providing that informa-
53 tion to the successor contractor as soon as that contractor has been
54 selected.

55 (C) The requirements of this selection shall be equally applic-
56 able to all subcontractors of a terminated contractor.

57 Section 3.

58 (A) A successor contractor or successor subcontractor shall
59 retain, for a 90-day transition employment period, employees who
60 have been employed by the terminated contractor or its subcon-
61 tractors, if any, for the preceding four months or longer at the site
62 or sites covered by the successor service contract. This require-

63 ment shall be stated by awarding authorities in all initial bid pack-
64 ages that are governed by this chapter.

65 (B) The successor contractor or successor subcontractor shall
66 make a written offer of employment to each employee, as required
67 by this section, in the employee's primary language or another
68 language in which the employee is literate. That offer shall state
69 the time within which the employee must accept that offer, but in
70 no case may the time be less than 10 days. Nothing in this section
71 requires the successor contractor or successor subcontractor to pay
72 the same wages or offer the same benefits as were provided by the
73 prior contractor or prior subcontractor.

74 (C) If at any time the successor contractor or successor subcon-
75 tractor, upon commencing service under the subcontract deter-
76 mines that fewer employees are needed to perform services under
77 the successor service contract or successor subcontract than were
78 required by the terminated contractor under the terminated con-
79 tract or terminated subcontract, the successor contractor or suc-
80 cessor subcontractor shall retain employees by seniority within the
81 job classification.

82 (D) The successor contractor or successor subcontractor, upon
83 commencing service under the successor service contract, shall
84 provide a list of its employees and a list of employees of its sub-
85 contractors providing services at the site or sites covered under
86 that contract to the awarding authority. These lists shall indicate
87 which of these employees were employed at the site or sites by the
88 terminated contractor or terminated subcontractor. The successor
89 contractor or successor subcontractor shall also provide a list of
90 any of the terminated contractor's employees who were not
91 retained either by the successor contractor or successor subcon-
92 tractor, stating the reason these employees were not retained.

93 (E) During the 90-day transition employment period, the suc-
94 cessor contractor or successor subcontractor shall maintain a pref-
95 erential hiring list of eligible covered employees not retained by
96 the successor contractor or successor subcontractor from until
97 such time as all of the terminated contractor's or terminated sub-
98 contractor's employees have been offered employment with the
99 successor contractor or successor subcontractor.

100 (F) During the initial 90-day transition employment period, the
101 successor contractor or successor subcontractor shall not dis-

102 charge without cause an employee retained pursuant to this
103 chapter. Cause shall be based only on the performance or conduct
104 of the particular employee.

105 Section 4.

106 (A) An employee, who was not offered employment or who has
107 been discharged in violation of this chapter by a successor con-
108 tractor or successor subcontractor, or an agent or the employee
109 may bring an action against a successor contractor or successor
110 subcontractor in any Superior Court of the Commonwealth having
111 jurisdiction over the successor contractor or successor subcon-
112 tractor. Upon finding a violation of this chapter, the court shall
113 award backpay, including the value of the benefits, for each day
114 during which the violation has occurred and continues to occur.
115 The amount of backpay shall be calculated as the greater of either
116 of the following:

117 (1) The average regular rate of pay received by the employee
118 during the last year of the employee's employment in the same
119 occupation classification multiplied by the average hours worked
120 during the last year of the employee's employment.

121 (2) The final regular rate of pay received by the employee at the
122 time of termination of the predecessor contract multiplied by the
123 number of hours usually worked by the employee.

124 (B) The court may order a preliminary or permanent injunction
125 to stop the continued violation of this chapter.

126 (C) If the employee is the prevailing party in the legal action,
127 the court shall award the employee reasonable attorney's fees and
128 costs as part of the costs recoverable.

129 (D) This section shall not be construed to limit an employee's
130 right to bring a cause of action for wrongful termination.

131 (E) Any contractor who violate this Chapter shall pay penalties
132 per employee per day of violation of \$50.00 to \$100.00.

133 (F) Each day a violation continues shall constitute a separate
134 violation.

135 Section 5.

136 This chapter shall only apply to contracts entered into on or
137 after January 1, 2002.