HOUSE . . . . . No. 3772

By Ms. Jehlen of Somerville, petition of Patricia D. Jehlen and other members of the House that the Department of Workforce Development be directed to compile certain data on employment, including workers in contingent and part-time positions in the Commonwealth. Commerce and Labor.

The Commonwealth of Massachusetts

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

AN ACT REGARDING WORKERS IN CONTINGENT AND PART-TIME JOBS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 23 of the General Laws is hereby amended by adding the following new section:—

(a) The department of workforce development shall, on or before the first day of December in each year, made a comprehensive report to the legislature regarding unemployment and underemployment in Massachusetts. In order to make such report, the department shall conduct a comprehensive study of unemployment and underemployment in Massachusetts which report shall be based on data and information, collected and analyzed by the department, which data and information shall include, but not be limited to, the following:—

1. Quantitative data on the numbers of unemployed and underemployed persons within the Commonwealth and the numbers and characteristics of job openings in the Commonwealth. Such data shall include but not be limited to the following:—

An identification and description of the underemployed and unemployed.

A count of jobs and wage rates, including job creation and loss studies, using a data base of wages by industry.

A count of the number of annual job openings.

Wage information, benefits and training requirements.

22 In each of the foregoing areas, the data shall be developed,
23 maintained and presented so as to clearly indicate its relationship
24 to and impact on contingent workers and independent contractors
25 as defined in section one hundred and five E of chapter one hun-
26 dred and forty-nine of the General Laws.
27 2. Qualitative information collected from professionals working
28 in demographics, poverty, workforce trends and employment
29 trends; counselors, program administrators, case workers and
30 service providers who, through their work, have contact with the
31 unemployed and underemployed and the issues to be addressed by
32 the study; representatives of organized labor; representatives of
33 the business and financial communities; unemployed and under-
34 employed workers. All such information shall be collected, main-
35 tained and presented so as to clearly indicate its relationship to
36 and impact on contingent workers and independent contractors as
37 defined in section one hundred and five E of chapter one hundred
38 and forty-nine of the General Laws.
39 In preparing the initial study under this section, the depart-
40 ment shall compile such data in each of the forgoing categories as
41 is available for each year since 1980. The report shall include an
42 analysis, as described above, using such data for each year since
43 1980.
44 (b) The department shall study the feasibility of creating a
45 Composite Index of Labor Market Hardship for the purpose of
46 assisting in monitoring the impact of economic policy on the
47 efforts of individuals and families in their efforts to achieve eco-
48 nomic self-sufficiency. Such index should attempt to measure eco-
49 nomic hardship based on various factors in several areas of the
50 labor force including, but not limited to, the following:—
51 - jobs in which employed workers receive inadequate income
52 and low wages;
53 - jobs in which employed workers receive inadequate or no
54 benefits;
55 - the unemployment rate for jobs in particular geographic and
56 market areas;
57 - jobs in which there is limited participation in the economy
58 or discouragement of certain classes of workers;

59 - jobs in which workers, although seeking full-time and/or
60 permanent work, are forced to accept part-time and/or temporary
61 positions;
62 (c) The department shall study and report on the impact of job
63 training on expanding job opportunities.
64 (d) Advisory Committee. There is hereby created an advisory
65 committee on issues of unemployment and underemployment. The
66 committee shall have nine members who shall be appointed by the
67 director. Three members of such committee shall be appointed
68 from organized labor.

1 SECTION 2. Section 105D of Chapter 149 of the General
2 Laws is hereby amended by striking the first sentence of said
3 section and substituting therefore the following:—
4 A female employee who has completed the initial probationary
5 period set by the terms of her employment or, if there is no such
6 probationary period, has been employed by the same employer for
7 at least three consecutive months as a full-time employee, or as a
8 contingent employee as defined in section 105E, who is absent for
9 a period not exceeding twelve weeks for the purpose of giving
10 birth or adopting a child under the age of eighteen or for adopting
11 a child under the age of twenty-three if the child is mentally or
12 physically disabled, said period to be hereinafter called maternity
13 leave, and who shall give at least two weeks' notice to her
14 employer of her anticipated date of departure and intention to
15 return, shall be restored to her previous, or a similar, position with
16 the same status, pay, length of service credit and seniority, wher-
17 ever applicable, as of the date of her leave.

1 SECTION 3. Chapter 149 of the General Law is hereby
2 amended by inserting after section 105D of said chapter the
3 following new section:—
4 Section 105E. (a) The following words and phrases as used in
5 this section shall have the following meanings unless the context
6 clearly requires otherwise.
7 "Benefits" include but are not limited to accrual of seniority,
8 credit for length of service, holidays, vacations, sick leave and
9 other leave, disability and health insurance, health and welfare,
10 and pension benefits.

11 "Contingent worker" means a part-time, seasonal, temporary,
12 contact, provisional, or free-lance worker;
13 "Employer" includes any individual, organization (including
14 the Commonwealth and all of its political subdivisions), partner-
15 ship, association, trust, estate, joint stock company, insurance
16 company or corporation, whether domestic or foreign, or receiver
17 or trustee in bankruptcy, or the legal representative of a deceased
18 person, who has one or more individuals in his or her employment
19 during any day or portion of any day.
20 "Employee" means any individual who performs services for
21 wages, salary or other reimbursement under any contract of hire,
22 written or oral, express or implied with an employer.
23 "Independent contractor" means any worker, other than a con-
24 tingent worker or an employee, who meets all of the following cri-
25 teria: (i) performs paid services; (ii) furnishes all equipment used
26 as well as the place of work; (iii) manifests clear and explicit
27 intent to perform work as an independent contractor.
28 "Pro rate" means to offer the proportion of each of the benefits
29 offered to full-time employees, including full-time contingent
30 employees, to part-time employees which for each benefit is equal
31 to the ratio of part-time hours worked in full-time hours worked,
32 or, for insurance, to offer the same insurance coverage to part-time
33 employees as full-time employees but with an employer premium
34 contribution which is equal to the ratio of part-time hours worked
35 to full-time hours worked.
36 (b) No employer shall discriminate in any way in the payment
37 of wages as between full-time and part-time employees whether or
38 not such employees are permanent or contingent employees; pro-
39 vided, however that variations in rates of pay shall not be prohib-
40 ited when based upon a difference in seniority.
41 (c) Any employer who provides benefits to his or her
42 employees may not discriminate against contingent employees in
43 the terms and conditions of employment and the provision of ben-
44 efits. Any employer shall provide the same benefits to contingent
45 employees that the employer offers to any full-time employees,
46 provided that the employer may pro rate the benefits of part-time
47 employees. An employer who offers health insurance, disability
48 insurance of health and welfare benefits to any of its full-time
49 employees must offer the same benefits to all full-time employees

50 including full-time contingent employees and any part-time
51 employees on a pro rated basis by prorating its share of the pre-
52 mium contribution.
53 (d) Nothing in this section shall be construed to diminish or
54 otherwise affect the requirements, guarantees or protections under
55 any bargaining agreement, company policy or state or federal law
56 which provides for greater or additional benefits than those
57 required under this section.
58 (e) Any employer who violates this section shall be liable to
59 any adversely affected employee for any amount of lost wages,
60 out-of-pocket damages caused by benefits lost, and any other cost
61 incurred or damages suffered as a result of said violation. Action
62 to recover damages pursuant to this section may be maintained in
63 any court of competent jurisdiction by any one or more employees
64 for and on behalf of her or himself and any and all other
65 employees similarly situated.
66 (f) In any action brought pursuant to the forgoing subsection (d)
67 in which the court finds that there was a violation of this section
68 by the employer, and that the employer knew or should have
69 known that its actions were or would be in violation of law, the
70 court shall award to the plaintiff or plaintiffs, in addition to any
71 damages awarded pursuant to subsection (d), an equal amount of
72 liquidated damages, a reasonable attorney's fee and the costs of
73 the action.
74 (g) Each violation of this section shall be punishable by a fine
75 of $500 per violation and/or by imprisonment in a house of cor-
76 rection for up to 6 months, which penalties shall be imposed irre-
77 spective of the existence of any proceeding or award pursuant to
78 subsections (d) or (e). The court shall consider any violation of
79 this section affecting any individual employee to be a separate
80 violation for purposes of imposing penalties. Where no action pur-
81 suant to said subsection (e) has been commenced at the time of the
82 imposition of penalties pursuant to this subsection, the court may
83 also require an employer to reimburse every employee for costs
84 and damages incurred as a result of said violation.
85 (h) The department may take such legal action as is necessary
86 to enforce this section, including criminal penalties and
87 restraining orders or injunctions.

88 (i) Any action arising under this section shall be instituted
89 within two years after the date of the alleged violation, provided
90 that where there is alleged to be a continuing pattern or practice of
91 violations, said action shall be instituted within two years of the
92 most recent alleged violation.

1 SECTION 4. 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 contingent workers as defined in said section one
8 hundred and five E.

1 SECTION 5. Chapter 151A of the General Laws is hereby
2 amended by inserting after section 24(c) the following subsec-
3 tion:—
4 Section 24(d). An individual who seeks part-time work shall be
5 considered available for work if the individual either has a history
6 of part-time work or if the individual has a history of full-time
7 work and restricts his or her work search to part-time work for
8 good cause. No individual who is otherwise eligible for benefits
9 shall be considered ineligible solely because the individual seeks
10 part-time work. For the purposes of this subsection, the term
11 "part-time work" shall mean work at less than the full-time work
12 schedule customary for the individual's occupation. The deputy
13 director shall promulgate regulations that define good cause for
14 restricting work search in the benefit year to part-time work and
15 said definition shall include the necessity to reduce hours of work
16 due to child care or similar caretaking responsibilities.