SENATE DOCKET, NO. FILED ON: 1/12/2009

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

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The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PRESENTED BY:

**Ms. Jehlen**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*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 passage of the accompanying bill:

An Act regarding workplace equity.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Ms. Jehlen | Second Middlesex |

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01074 OF 2007-2008.]

The Commonwealth of Massachusetts

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In the Year Two Thousand and 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:*

SECTION 1. Chapter 23 of the General Laws is hereby amended by adding after section 11G the following new section:—

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

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

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

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

(a) “Casual employment”, which means work scheduled on an occasional or intermittent basis, without a regular schedule;

(b) “Contractor employment”, which means employment in which a worker is employed by a company that has contracted with a client company to provide services or functions;

(c) “Day labor employment”, which means employment in which a worker is hired for a day or on a day-to-day basis to perform unskilled or semi-skilled tasks;

(d) “Home-based employment”, which means employment in which a person produces goods or delivers services in or about a home, apartment, tenement, or room in a residential establishment for an employer who suffers or permits such production or service delivery, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the home worker in such production.

(e) “Leased employment”, which means employment in which an individual performs services for a client company through a leasing organization where the provision of the individual’s services is pursuant to an agreement between the client company and the leasing organization;

(f) “On-call employment”, which means employment in which a worker reports to work only when asked by her/his employer to do so, as opposed to having a regular schedule;

(g) “Seasonal employment”, which means a job which provides no work for at least 90 days;

(h) “Temporary agency employment”, which means work performed by a person who is hired and remunerated by an agency which provides the worker to a client company, where there is no implicit or explicit contract for long-term employment;

(i) “Temporary direct hire employment”, which means work performed by a person who is hired and remunerated by the company for which the worker provides services, where there is no implicit or explicit contract for long-term employment;

(j) “Temporary employment”, which means work with an established employment period of one year or less;

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

(5) “Employer” includes any individual, organization (including the commonwealth and all of its political subdivisions), partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who has one or more individuals in his or her employment during any day or portion of any day.

(6) “Entry level job” means a job that requires one year or less of training.

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

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

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

(10) “Joint employer” means a contractor and a client where the employees of the contractor perform work that is an ongoing component of the client’s enterprise and in which one or more of the following exists: (i) the contractor’s employees are required to follow the client’s instructions concerning the specifics of how and when the services are to be performed; (ii) the contractor’s employees perform the services on a regular basis on premises owned or managed by the client; or (iii) the capital goods used by the contractor’s employees in performing the services in question are provided by, or substantially financed, directly or indirectly by the client, provided, however, that no contractor and client shall be considered a joint employer unless one of the two entities receives fifty percent or more of its funds directly or indirectly from the commonwealth.

(11) “Part-time employment”, which means regularly scheduled work, which is less than the full time, work schedule customary for the individual’s occupation.

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

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

(b) No employer, including joint employers at a client work site, shall discriminate in any way in the payment of wages as between full-time and part-time employees whether or not such employees are employed in permanent or contingent jobs; or between permanent and contingent employees; provided, however, that variations in rates of pay shall not be prohibited when based upon a difference in seniority. For the purpose of determining the wages paid to full-time employees which will be used to determine whether the employer is discriminating against contingent workers or part-time workers, full-time wages shall be deemed to be the gross hourly wages of similarly situated employees, plus a thirty percent surcharge. Such surcharge shall be deemed to be paid to the contingent employee or part-time employee if it is included directly in wages or offered as part of the cost of health, welfare and retirement benefits.

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

SECTION 3. Section 149 of the General Laws is hereby amended by inserting the following new section 105F — Any employer, as defined in section one hundred and five E of chapter one hundred and forty-nine of the General Laws, who receives in excess of twenty-five thousand dollars per year in funding or payment for services under any contract with the commonwealth shall be subject to rules and regulations, promulgated by the office of purchased services, regarding the employment of workers in contingent jobs as defined in said section one hundred and five E. These rules shall include:

(a) a cap on the percentage of contingent jobs and on the percentage of the total payroll that may be used to hire workers in contingent jobs, which cap shall be no greater than fifty percent of the average number of contingent jobs found in the private sector; no more than 25% of the funds derived from a contract with the state may be used for the payment of wages for contingent jobs.

(b) a requirement that any employer receiving such funding or payment for services shall pay a wage surcharge to each employee equal to the share of health insurance costs paid by the Commonwealth.

SECTION 4. Section 150 of chapter 149 of the General Laws is hereby amended by striking the first paragraph of said section and substituting therefore the following:—

Any employee claiming to be aggrieved by a violation of section 105E, 105F, 148, 148A, 148B, 150C, 152, 152A or 159C or section 19 of chapter 151 may, at the expiration of ninety days after the filing of a complaint with the attorney general, or sooner, if the attorney general assents in writing, and within three years of such violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief and any damages incurred, including treble damages for any loss of wages and other benefits.