

HOUSE No. 1610

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel M. Donahue

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 adoption of the accompanying bill:

An Act to prevent wage theft, promote employer accountability, and enhance public enforcement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>David Biele</i>	<i>4th Suffolk</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>

<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>

<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Christopher M. Markey</i>	<i>9th Bristol</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>

<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Jerald A. Parisella</i>	<i>6th Essex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Joseph F. Wagner</i>	<i>8th Hampden</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>

HOUSE No. 1610

By Mr. Donahue of Worcester, a petition (accompanied by bill, House, No. 1610) of Daniel M. Donahue and others for legislation to prevent wage theft, promote employer accountability, and enhance public enforcement. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to prevent wage theft, promote employer accountability, and enhance public enforcement.

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 27C of chapter 149 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the words “subsection (a)”, in line 58, the
3 following words:- , or section 100, 148E or 150C.

4 SECTION 2. Said section 27C of said chapter 149, as so appearing, is hereby further
5 amended by striking out, in line 159, the words “Civil and criminal” and inserting in place
6 thereof the following word:- Criminal.

7 SECTION 3. Said section 27C of said chapter 149, as so appearing, is hereby further
8 amended by adding the following subsection:-

9 (d) As a further alternative to initiating criminal proceedings pursuant to subsection (a) or
10 civil proceedings pursuant to subsection (b), the attorney general may file a civil action for
11 injunctive relief, for any damages incurred, and for any lost wages and other benefits on behalf

12 of an employee or multiple, similarly situated employees. If the attorney general prevails in such
13 an action, the employee or employees on whose behalf the attorney general brought the civil
14 action shall be awarded treble damages, as liquidated damages, for any lost wages and other
15 benefits, and the attorney general shall also be awarded the costs of the litigation and reasonable
16 attorneys' fees.

17 SECTION 4. Chapter 149 of the General Laws is hereby amended by inserting after
18 section 148D the following 3 sections:-

19 Section 148E. (a) As used in this section and sections 148F to 148H, inclusive, the
20 following words shall have the following meanings unless the context clearly indicates
21 otherwise:-

22 "Labor contractor", a person or entity who obtains, engages or provides 1 or more
23 individuals to perform labor or services, with or without a written contract, directly or indirectly,
24 to a lead contractor or from a labor subcontractor.

25 "Labor subcontractor", a person or entity who engages or provides 1 or more individuals
26 to perform labor or services, with or without a written contract, directly or indirectly, to a labor
27 contractor.

28 "Lead contractor", a business, regardless of form, that obtains, engages or is provided
29 with 1 or more individuals, directly from a labor contractor or indirectly from a labor
30 subcontractor, to perform labor or services that has a significant nexus with the lead contractor's
31 business activities, operations or purposes.

32 “Wage theft”, a violation of sections 27, 27F, 27G or 27H, the first and third sentences
33 and the fourth paragraph of section 148, sections 148B or 148C, the fourth sentence of section
34 150, section 152A, subsections (c) or (d) of section 159C, sections 1, 1A, 1B, 2A or 7 of chapter
35 151, clauses (4) or (5) of section 19 of chapter 151 or section 20 of chapter 151.

36 (b) An employer, except a staffing agency as defined by section 159C that is licensed or
37 registered pursuant to sections 46A to 46R, inclusive, of chapter 140, shall provide each
38 employee, not later than 10 days after the commencement of employment, with written notice in
39 the language the employer normally uses to communicate employment-related information to the
40 employee, of the following information: (i) the rate or rates of pay and the basis for those rates,
41 whether paid by the hour, shift, day, week, salary, piece, commission or otherwise, including
42 methods of calculation for overtime, if applicable; (ii) allowances, if any, claimed as part of the
43 minimum wage, including meal, tip or lodging allowances; (iii) the regular pay day designated
44 by the employer; (iv) the name of the employer, including any “doing business as” names used
45 by the employer; (v) the physical address of the employer’s main office or principal place of
46 business and mailing address, if different; (vi) the telephone number of the employer; and (vii)
47 the name, address, and telephone number of the employer’s workers’ compensation insurance
48 carrier.

49 (c) A lead contractor shall be subject to joint and several civil liability with a labor
50 contractor and a labor subcontractor for wage theft, provided that written notice of the alleged
51 violation to be raised in that action is provided to the lead contractor, labor contractor and labor
52 subcontractor, if applicable, not less than 15 days before the filing of a civil action for wage theft
53 under this section. A successor entity to any lead contractor, labor contractor or labor
54 subcontractor subject to liability under this section shall also be liable under this section if that

55 entity: (i) has 1 or more of the same principals or officers as the person or entity subject to
56 liability; and (ii) is engaged in the same or equivalent trade or activity as the person or entity
57 subject to liability.

58 A written offer and payment in full of all such wages allegedly owed during the 15 day
59 period by a lead contractor, labor contractor or labor subcontractor shall be a defense to any
60 future civil action based upon the same allegation.

61 (d) For purposes of this section, a labor contractor or a labor subcontractor shall
62 indemnify a lead contractor for any wages, damages, interest, penalties or attorneys' fees owed
63 or incurred by the lead contractor as a result of the labor contractor or labor subcontractor's wage
64 theft. For purposes of this section, a labor subcontractor shall indemnify a labor contractor for
65 any wages, damages, interest, penalties or attorneys' fees owed by the labor contractor as a result
66 of the labor subcontractor's wage theft.

67 (e) A person or entity that has been found to have committed wage theft in the previous 5
68 years shall notify a lead contractor or labor contractor prior to entering into an agreement to
69 engage or provide 1 or more individuals, directly or indirectly, to a lead contractor or labor
70 contractor.

71 A lead contractor or labor contractor that was jointly and severally liable under
72 subsection (c) but was not the entity that committed the wage theft shall not be required to
73 provide notice under this subsection.

74 (f) When a lead contractor receives written notice that a labor contractor or labor
75 subcontractor has allegedly failed to pay wages to a person performing labor for the lead
76 contractor, the lead contractor may do one or both of the following: (i) provide the unpaid wages

77 directly to the person performing labor for the lead contractor; or (ii) withhold or cause to be
78 withheld from any payment due to the labor contractor or labor subcontractor the amount
79 sufficient to satisfy the unpaid wages.

80 (g) When an individual applies for unemployment benefits pursuant to chapter 151A, and
81 wage theft occurred during the base period as determined based on credible evidence, the
82 individual's unemployment benefits shall be calculated as if wages had been timely and lawfully
83 paid.

84 (h) The attorney general shall enforce this section, and may obtain injunctive or
85 declaratory relief. Violation of this section shall be subject to paragraphs (1), (2), (4) and (7) of
86 subsection (b) of section 27C, and subsection (d) of section 27C, except in cases where the lead
87 contractor, labor contractor or labor subcontractor provides payment in full during the 15-day
88 notice period for any wages allegedly owed, as described in subsection (c).

89 (i) No person or entity shall by contract or any other means be exempted from
90 subsections (a), (b), (c), (e), (f), (g), (h), or (i) or from sections 148F or 148G. Nothing in this
91 chapter shall limit the availability of other remedies at law or equity.

92 (j) The attorney general may promulgate regulations to implement this section.

93 Section 148F. (a) The attorney general may investigate an employer's failure to obtain
94 unemployment insurance as required under chapter 151A. Upon finding a violation of section 15
95 or section 47 of chapter 151A, the attorney general may issue a stop work order to an employing
96 unit and the officer or agent of the employing unit, requiring the cessation of all business
97 operations of the violating person or entity as to the specific place of business and employment
98 for which the violation exists.

99 Not less than 5 days before the commencement of a stop work order under this section,
100 the attorney general shall notify the violating person or entity of the intended action and give the
101 person or entity an opportunity to confer with the attorney general in person or through counsel
102 or other representative as to the proposed action. Notice shall be given to the person or entity by
103 mail, postage prepaid, to the usual place of business or, if there is no usual place of business, to
104 the last known address.

105 The stop work order may be issued only against the person or entity found to be in
106 violation of section 15 or section 47 of chapter 151A and only as to the specific place of business
107 or employment for which the violation exists. The stop work order shall be effective 24 hours
108 after it is served upon the violator or the place of business or employment. A stop work order
109 may be served in hand or at a place of business, employment or job site by posting a copy of the
110 stop work order in a conspicuous location. The stop work order shall be in effect, subject to an
111 appeal under subsection (b), until the attorney general issues an order to release the stop work
112 order upon a finding that the violation has been corrected.

113 (b) A person or entity aggrieved by the imposition of a stop work order shall have 10
114 days from the date of its service to make a request for a hearing to be held in a manner
115 determined by the attorney general. A person or entity that timely files such an appeal shall be
116 granted a hearing in accordance with chapter 30A not later than 21 days after receipt of the
117 appeal. The stop work order shall not be in effect during the pendency of a timely filed appeal.

118 (c) A stop work order imposed against a person or entity shall be effective against any
119 successor person or entity that: (i) has at least 1 of the same principals or officers as the person or

120 entity against whom the stop work order was issued; and (ii) is engaged in the same or equivalent
121 trade or activity as the person or entity for which the stop work order was imposed.

122 (d) An employee affected by a stop work order pursuant to this section shall be paid for
123 the period the stop work order is in place or the first 10 days the employee would have been
124 scheduled to work if the stop work order had not been issued, whichever is less, by the person or
125 entity that was served the stop work order. Time lost by an employee affected by a stop work
126 order pursuant to this section, not exceeding 10 days, shall be considered time worked under
127 chapters 149 and 151. Subsection (c) of section 148E shall not apply to wages due and payable
128 under this subsection.

129 (e) The attorney general may promulgate regulations to implement this section.

130 Section 148G. (a) Upon finding that any person or entity has engaged in a wage theft
131 violation, the attorney general may issue a stop work order to an employing unit and the officer
132 or agent of the employing unit, requiring the cessation of all business operations of the violating
133 person or entity as to the specific place of business and employment for which the violation
134 exists.

135 Not less than 5 days before the commencement of a stop work order under this section,
136 the attorney general shall notify the violating person or entity of the intended action and give the
137 person or entity an opportunity to confer with the attorney general in person or through counsel
138 or other representative as to the proposed action. Notice shall be given to the person or entity by
139 mail, postage prepaid, to the usual place of business, or if there is no usual place of business, to
140 the last known address.

141 The stop work order may be issued only against the person or entity found to be in
142 violation, and only as to the specific place of business and employment for which the violation
143 exists. The stop work order shall be effective 24 hours after it is served upon the violator or the
144 place of business or employment. A stop work order may be served in hand or at a place of
145 business, employment or job site by posting a copy of the stop work order in a conspicuous
146 location. The stop work order shall be in effect, subject to an appeal under subsection (b), until
147 the attorney general issues an order to release the stop work order upon a finding that the
148 violation has been corrected.

149 (b) A person or entity aggrieved by the imposition of a stop work order shall have 10
150 days from the date of its service to make a request for a hearing to be held in a manner
151 determined by the attorney general. A person or entity that timely files such an appeal shall be
152 granted a hearing in accordance with chapter 30A not later than 21 days after receipt of the
153 appeal. The stop work order shall not be in effect during the pendency of a timely filed appeal.

154 (c) A stop work order imposed under this section against a person or entity shall be
155 effective against any successor person or entity that: (i) has at least 1 of the same principals or
156 officers as the person or entity against whom the stop work order was issued; and (ii) is engaged
157 in the same or equivalent trade or activity as the person or entity for which the stop work order
158 was imposed.

159 (d) An employee affected by a stop work order pursuant to this section shall be paid for
160 the period the stop work order is in place or the first 10 days the employee would have been
161 scheduled to work if the stop work order had not been issued, whichever is less, by the person or
162 entity that was served the stop work order. Time lost by an employee affected by a stop work

163 order issued pursuant to this section, not exceeding 10 days, shall be considered time worked
164 under chapters 149 and 151. Subsection (c) of section 148E shall not apply to wages due and
165 payable under this subsection.

166 (e) The attorney general may promulgate regulations to implement this section.

167 SECTION 5. Section 150 of said chapter 149, as appearing in the 2016 Official Edition,
168 is hereby amended by inserting, in line 22, after the word “148C” the following word:- , 148E.

169 SECTION 6. Section 150C of said chapter 149, as appearing in the 2016 Official Edition,
170 is hereby amended by striking out, in line 9, the words “one thousand dollars,” and inserting in
171 place thereof the following words:- \$1,000 or shall be subject to a civil citation or order as
172 provided in subsection (b) of section 27C.

173 SECTION 7. Said section 150C of said chapter 149, as so appearing, is hereby further
174 amended by adding the following sentence:- The president and treasurer of a corporation and any
175 officers or agents having the management of such corporation shall be considered the employers
176 of the employees of the corporation for the purposes of this section.

177 SECTION 8. Said chapter 149 of the General Laws is hereby amended by striking out
178 section 148A and inserting in place thereof the following section:-

179 Section 148A. (a) Any person or entity, including an employer or its agent, who in any
180 manner discriminates or takes adverse action, or threatens to discriminate or take adverse action,
181 against any person because that person has opposed a violation of this chapter, complained to the
182 attorney general or to any other person of a violation of this chapter, assisted any other person in
183 exercising rights under this chapter, informed any other person of rights under this chapter, or

184 instituted, assisted in, or testified in any investigation or proceedings under or related to this
185 chapter, or because of a belief that the person may in the future engage in any such actions, shall
186 have violated this section and shall be punished or subject to civil proceedings as provided in
187 subsection (b) or subsection (d) of section 27C, or section 150, and shall recover actual damages,
188 compensatory damages, punitive damages, injunctive relief or any other appropriate relief.

189 (b) There shall be a rebuttable presumption of a violation of this section if a person or
190 entity discriminates or takes adverse action, or threatens to discriminate or take adverse action,
191 against any person within 90 days of that person's exercise of rights under this chapter, including
192 activity protected by this section. This presumption may be rebutted by clear and convincing
193 evidence that the action was taken for a permissible purpose and that it would have been taken in
194 the absence of the protected activity.

195 SECTION 9. Section 19 of chapter 151 of the General Laws, as appearing in the 2016
196 Official Edition, is hereby amended by striking out subsection (1) and inserting in place thereof
197 the following subsection:-

198 (1) (a) Any person or entity, including an employer or its agent, who in any manner
199 discriminates or takes adverse action, or threatens to discriminate or take adverse action, against
200 any person because that person has opposed a violation of this chapter, complained to the
201 attorney general or to any other person of a violation of this chapter, assisted any other person in
202 exercising rights under this chapter, informed any other person of rights under this chapter, or
203 instituted, assisted in, or testified in any investigation or proceedings under or related to this
204 chapter, or because of a belief that the person may in the future engage in any such actions, shall
205 have violated this section and shall be punished or subject to civil proceedings as provided in

206 subsection (b) or subsection (d) of section 27C, or section 150, and shall recover actual damages,
207 compensatory damages, punitive damages, injunctive relief or any other appropriate relief.

208 (b) There shall be a rebuttable presumption of a violation of this subsection if a person or
209 entity discriminates or takes adverse action, or threatens to discriminate or take adverse action,
210 against any person within 90 days of that person's exercise of rights under this chapter, including
211 activity protected by this subsection. This presumption may be rebutted by clear and convincing
212 evidence that the action was taken for a permissible purpose and that it would have been taken in
213 the absence of the protected activity.

214 SECTION 10. Chapter 149 of the General Laws, as so appearing, is hereby amended by
215 inserting after section 148G the following section 148H:-

216 (a) For purposes of this section, the following terms shall have the following meanings:

217 (1) "Aggrieved person", any employee, prospective or former employee, or person
218 providing services for remuneration to another against whom one or more of the alleged
219 violations was committed by the alleged violator, whether or not employed by the violator at the
220 time an action is filed, including any person who is not classified by an employer as an employee
221 but who claims to be an employee and whose claims against the purported employer relate to
222 such alleged misclassification.

223 (2) "Public enforcement action", a civil action brought by a relator under this section to
224 enforce protections enforceable by the attorney general.

225 (3) "Relator", a whistleblower or a representative organization that acts as a plaintiff in a
226 public enforcement action under this section.

227 (4) “Representative organization”, an organization that is tax-exempt under subsection
228 (c)(3), (c)(4) or (c)(5) of the federal Internal Revenue Code, 26 U.S. C. section 501, and that
229 regularly advocates on behalf of employees or that regularly assists in enforcement of this
230 chapter or chapter 151 and that has been elected by an aggrieved person to initiate a public
231 enforcement action on the aggrieved person’s behalf, in writing in a form prescribed by the
232 attorney general. In such cases, the aggrieved party’s name and personal identifying information
233 shall be kept confidential if the aggrieved party so chooses.

234 (5) “Whistleblower”, an aggrieved person or any current or former employee, contractor,
235 subcontractor, employee of a contractor or subcontractor of the defendant, vendor, or client with
236 knowledge of the alleged violations that is independent of and materially adds to any publicly
237 disclosed information about the alleged violations.

238

239 (b) (1) A relator, on behalf of the attorney general, may initiate a public enforcement
240 action pursuant to the procedures and subject to the limitations specified in subsection (e) of this
241 section. Such action may be brought in any court of competent jurisdiction. Such an action may
242 allege multiple violations that have affected different parties aggrieved by the same defendant.

243 (2) For purposes of public enforcement actions brought pursuant to this section,
244 whenever the attorney general is authorized to assess or seek civil remedies, including penalties,
245 equitable and declaratory relief, and other civil relief, for a violation of section 21, 26-27H, 52D,
246 100, 148, 148A, 148B, 148C, 148E, 150A, 150C, 152, 152A, 159C, or 190 of this chapter, or of
247 chapter 151, a court is hereby authorized to assess the same civil remedies. Where the section of
248 chapter 149 or chapter 151 establishes an employer’s obligation to maintain certain working

249 conditions, but no civil penalty is specifically provided for a breach of that obligation, there is
250 hereby established a civil penalty of \$500 for each aggrieved person per two-week period in
251 which the breach occurred. All civil penalties shall be awarded for each person aggrieved by the
252 violation during each two-week period in which the violation occurred.

253 (3) When a civil remedy is recovered pursuant to decision or settlement in any public
254 enforcement action, the relator shall be awarded reasonable attorneys' fees and costs.

255 (4) Nothing in this section shall operate to limit an aggrieved party's right to pursue a
256 private action based on the same violation or injury.

257 (5) Nothing in this section shall operate to limit the attorney general's right to seek
258 restitution and damages, where available, for aggrieved parties as part of a public enforcement
259 action in which it has intervened.

260 (6) Civil remedies recovered in a public enforcement action or settlement of a proposed
261 action shall be distributed as follows:

262 (i) Where the attorney general has not intervened, 30 percent to the relator and 70 percent
263 to the attorney general for enforcement of and education about the rights and obligations
264 enforceable under this chapter and chapter 151. Twenty-five percent of the attorney general's
265 share shall be reserved for providing funding to community-based outreach and enforcement
266 activities under subsection (f) of this section. The Attorney General shall promulgate regulations
267 relative to further distribution and disbursement of recoveries. Any funding received by the attorney
268 general under this section shall be continuously appropriated to supplement, and not supplant,
269 other funding for those purposes;

270 (ii) Where the attorney general has intervened, 20 percent to the relator and 80 percent to
271 the attorney general for enforcement of and education about the rights and obligations
272 enforceable under chapters 149 and 151. Twenty-five percent of the attorney general's share
273 shall be reserved for providing funding to community-based outreach and enforcement activities
274 under subsection (f) of this section. The attorney general shall promulgate regulations relative to
275 further distribution and disbursement of recoveries. Any funding received by the attorney general
276 under this section shall be continuously appropriated to supplement, and not supplant, other
277 funding for those purposes;

278 (7) The right to bring a public enforcement action under this section shall not be impaired
279 by any special contract.

280 (8) Notwithstanding any other provision of law, a public enforcement action authorized
281 by this section shall be commenced within the same period of time that the attorney general has
282 to take enforcement action under this chapter or chapter 151. The statute of limitations for
283 bringing a public enforcement action under this section shall be tolled from the date that a relator
284 files a notice pursuant to subsection (e) of this section with the attorney general, or the date that
285 the attorney general commences an investigation, whichever is earlier.

286 (c) (1) Notwithstanding the provisions of subsection (b) of this section, no public
287 enforcement action may be brought by a relator:

288 (i) If the attorney general, on the same facts and theories, cites a person or entity within
289 the time periods set forth in subsection (e) of this section for a violation of the same section or
290 sections of the General Laws under which such relator is attempting to recover a civil penalty or
291 other remedy on behalf of aggrieved employees or others, or files a proceeding to assess

292 penalties or to enforce other remedies available to the attorney general, provided that the attorney
293 general serves notice on the relator pursuant to subsection (e) of this section. Public enforcement
294 actions belong to the attorney general and preclude subsequent attorney general enforcement
295 efforts based on the same facts and law, whether brought by the attorney general or by a relator
296 under this section. However, nothing in this section shall operate to limit the attorney general's
297 right to seek additional civil remedies for aggrieved parties as part of a public enforcement action
298 in which it has intervened.

299 (ii) For any violation of a posting, notice, agency reporting, or filing requirement, except
300 where the filing or reporting requirement involves mandatory payroll reporting.

301 (2) The attorney general shall establish a publicly available online database of public
302 enforcement actions brought pursuant to this section, which shall include the names of the
303 parties, the date filed, the disposition, and any other information that the attorney general shall by
304 regulation prescribe.

305 (d) (1) No one shall retaliate or take adverse action in any manner against an aggrieved
306 person or whistleblower, or threaten to retaliate or take adverse action, because:

307 (i) the aggrieved person or whistleblower has brought a public enforcement action;

308 (ii) the aggrieved person or whistleblower has cooperated with a relator in a public
309 enforcement action or the attorney general in investigating, prosecuting, or intervening in a
310 public enforcement action; or

311 (iii) it is believed that the aggrieved person or whistleblower may bring a public
312 enforcement action or cooperate with one.

313 (2) Any person aggrieved by a violation of this subsection may enforce it as provided by
314 section 27C or section 150 of this chapter, or as provided by section 19 of chapter 151.

315 (e) (1) No public enforcement action pursuant to this section may be commenced prior to
316 60 days after written notice of the claim has been filed by the relator with the attorney general.

317 (2) The relator shall submit a filing fee of 75 dollars with each filing of notice, subject to
318 waiver in accordance with regulations promulgated by the attorney general. Notice and
319 submission of the filing fee shall toll the statute of limitations on the enforcement action for
320 which notice has been provided.

321 (3) The attorney general shall establish an online portal to provide for efficient electronic
322 filing of the notice.

323 (4) The notice shall be construed in the light most favorable to the relator, and shall
324 include:

325 (i) The name, address, and contact information of the alleged violator.

326 (ii) The name and contact information of the relator.

327 (iii) The name, address, and contact information of the relator's legal counsel, should one
328 exist.

329 (iv) A concise statement of the underlying claim reasonably calculated to apprise the
330 attorney general of the substance and nature of the claim.

331 (5) The attorney general shall, by regulation, provide for the right of a relator to furnish
332 an amended notice, if the attorney general determines that the relator's original notice pursuant

333 to paragraph (1) of this subsection was not in compliance with this section or the regulations
334 issued thereunder. Such determination by the attorney general shall identify with particularity
335 the deficiencies in the original notice. If such determination and the opportunity to amend are not
336 provided by the attorney general within thirty days of the original notice, the original notice shall
337 be deemed to comply with this section. The relator shall have thirty days from receiving the
338 determination of the attorney general of noncompliance with this section to amend the notice.
339 The amended notice will relate back to the original notice.

340 (6) If the attorney general intends to investigate the alleged violation, it shall notify the
341 relator of its decision within 30 calendar days of the date of the notice received pursuant to
342 paragraph (1) of this subsection. Within 120 calendar days of that decision, the attorney general
343 may investigate the alleged violation and issue any appropriate citation. If the attorney general,
344 during the course of its investigation, determines that additional time is necessary to complete
345 the investigation, it may extend the time by not more than 30 additional calendar days and shall
346 issue a notice of the extension. If the attorney general determines that a citation shall not be
347 issued, it shall notify the relator of that decision within five business days thereof by certified
348 mail.

349 (7) Upon receipt of notice that no citation will be issued, or if no citation is issued by the
350 attorney general within the time limits prescribed herein, or if the attorney general fails to
351 provide timely or any notification, the relator may commence a public enforcement action.

352 (8) If the attorney general does not object to the filing of a public enforcement action
353 pursuant to this section, but objects to the attorney general being represented by a particular
354 attorney proposed by the relator, the attorney general may, within the time limits set forth in

355 paragraph (6) of this subsection, may put the relator on notice of the attorney general's objection.
356 The attorney general will establish regulations for notice and a hearing, for purposes of
357 reviewing the attorney general's objection to counsel. Upon finding, after notice and hearing,
358 that, based on the attorney's past conduct while representing a client or clients, the attorney does
359 not meet the required professional standards of representatives, or, alternatively, if the attorney
360 fails to zealously pursue the remedies available under this section, the attorney general may order
361 that the public enforcement shall not be filed by the particular attorney on behalf of the relator.

362 (9) The attorney general may intervene in a public enforcement action and proceed with
363 any and all claims in the action:

364 (i) As of right within 30 days after the filing of the action;

365 (ii) For good cause shown, as determined by the court, after the expiration of the 30 day
366 period after the filing of the action.

367 (10) If the attorney general intervenes in an action it shall have primary responsibility for
368 prosecuting the action and shall not be bound by an act of the relator bringing the action. In such
369 cases, the relator shall remain a party to the action. The attorney general may move to dismiss or
370 settle the action after the relator has been notified of the filing of the motion and has been
371 provided with an opportunity to be heard, and the court determines that such dismissal or
372 settlement is fair, adequate, reasonable, and in the public interest. Any disposition by the
373 attorney general shall provide compensation for reasonable attorneys' fees and costs expended
374 on behalf of the relator in instituting the action.

375 (11) If the attorney general does not intervene in the action, the relator shall have the
376 right to conduct such an action subject to the following limitations:

377 (i) The court shall review and approve any settlement of any action filed pursuant to this
378 section. The proposed settlement shall be submitted to the attorney general concurrent with
379 submission to the court. The court shall approve a settlement of the action only upon a
380 determination that such settlement or voluntary dismissal is fair, adequate, reasonable, and in the
381 public interest.

382 (ii) If the attorney general so requests, it shall be served with copies of all pleadings filed
383 in the action and shall be supplied with copies of all deposition transcripts. The attorney general
384 shall bear any costs associated with service of such pleadings and depositions.

385 (12) No public enforcement action brought pursuant to this section shall be subject to the
386 requirements of rule 23 of the Massachusetts rules of civil procedure.

387

388 (f) (1) The Community Outreach and Labor Education Fund is established as a special
389 fund, separate and distinct from the General Fund. Interest earned by the Community Outreach
390 and Labor Education Fund shall be credited to the same Fund. All moneys in the Community
391 Outreach and Labor Education Fund shall be continuously appropriated for the purpose of
392 awarding grants as provided in paragraph (3) of this subsection.

393 (2) The 25 percent of the attorney general's share of recoveries reserved for providing
394 funding to community-based outreach and enforcement activities pursuant to paragraph (6) of
395 subsection (b) of this section shall be reported to the treasurer of the commonwealth, who shall
396 credit such amount to the Community Outreach and Labor Education Fund.

397 (3) Moneys in the Community Outreach and Labor Fund shall be granted from time to
398 time by the attorney general to organizations that are tax-exempt under subsection (c)(3), (c)(4)
399 or (c)(5) of the federal Internal Revenue Code, 26 U.S. C. section 501, for purposes of funding
400 outreach, education and technical assistance to Massachusetts workers pertaining to workplace
401 rights.

402 (4) Grants provided from the Community Outreach and Labor Education Fund shall be
403 used for activities to assist workers in enforcing employment rights, including outreach,
404 community-based education events, training materials, technical assistance, counseling, research
405 and referral services.

406 (5) When considering applications for grants, the attorney general shall give priority to
407 projects that provide services to especially vulnerable workers.

408 (g) (1) If any word, phrase, clause, sentence, paragraph, section or part of this section or
409 the application thereof to any person or circumstances shall be adjudged invalid by a court of
410 competent jurisdiction, such order or judgment shall be confined in its operation to the
411 controversy in which it was rendered, and shall not affect or invalidate the remainder of this
412 section, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph,
413 section or part thereof directly involved in the controversy in which such judgment shall have
414 been rendered.

415 (2) This section shall be liberally construed in light of its remedial purposes to expand the
416 enforcement of statutes protecting workers in the commonwealth.