

SENATE No. 690

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. 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:

Patricia D. Jehlen

DISTRICT/ADDRESS:

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:

1 SECTION 1. Chapter 23 of the General Laws is hereby amended by adding after section
2 11G the following new section:—

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

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

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

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

- 12 (a) “Casual employment”, which means work scheduled on an occasional or intermittent basis,
13 without a regular schedule;
- 14 (b) “Contractor employment”, which means employment in which a worker is employed by a
15 company that has contracted with a client company to provide services or functions;
- 16 (c) “Day labor employment”, which means employment in which a worker is hired for a day or
17 on a day-to-day basis to perform unskilled or semi-skilled tasks;
- 18 (d) “Home-based employment”, which means employment in which a person produces goods or
19 delivers services in or about a home, apartment, tenement, or room in a residential establishment
20 for an employer who suffers or permits such production or service delivery, regardless of the
21 source (whether obtained from an employer or elsewhere) of the materials used by the home
22 worker in such production.
- 23 (e) “Leased employment”, which means employment in which an individual performs services
24 for a client company through a leasing organization where the provision of the individual’s
25 services is pursuant to an agreement between the client company and the leasing organization;
- 26 (f) “On-call employment”, which means employment in which a worker reports to work only
27 when asked by her/his employer to do so, as opposed to having a regular schedule;
- 28 (g) “Seasonal employment”, which means a job which provides no work for at least 90 days;
- 29 (h) “Temporary agency employment”, which means work performed by a person who is hired
30 and remunerated by an agency which provides the worker to a client company, where there is no
31 implicit or explicit contract for long-term employment;

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

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

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

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

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

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

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

49 (9) “Independent contractor”, which means any worker who meets all of the following criteria:

50 (i) the individual is free from direction and control over the performance of the work; (ii) the
51 service is performed either outside the usual course of the business for which it is performed or is

52 performed outside of all places of business of the enterprise for which it is performed; and (iii)
53 the individual is customarily engaged in an independent trade, occupation, profession or
54 business. The failure to withhold federal or state income taxes, unemployment compensation or
55 workers compensation from an employee's wages shall not be used for the purposes of making a
56 determination under this section.

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

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

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

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

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

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

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

93 (a) a cap on the percentage of contingent jobs and on the percentage of the total payroll that may
94 be used to hire workers in contingent jobs, which cap shall be no greater than fifty percent of the

95 average number of contingent jobs found in the private sector; no more than 25% of the funds
96 derived from a contract with the state may be used for the payment of wages for contingent jobs.

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

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

102 Any employee claiming to be aggrieved by a violation of section 105E, 105F, 148, 148A, 148B,
103 150C, 152, 152A or 159C or section 19 of chapter 151 may, at the expiration of ninety days after
104 the filing of a complaint with the attorney general, or sooner, if the attorney general assents in
105 writing, and within three years of such violation, institute and prosecute in his own name and on
106 his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief
107 and any damages incurred, including treble damages for any loss of wages and other benefits.