

SENATE No. 2327

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

SENATE, Friday, March 9, 2018

The committee on Labor and Workforce Development, to whom was referred the petitions (accompanied by bill, Senate, No. 999) of Sal N. DiDomenico, Kenneth J. Donnelly, Michael D. Brady, John H. Rogers and other members of the General Court for legislation to prevent wage theft and promote employer accountability; and (accompanied by bill, House, No. 1033) of Aaron Michlewitz and others relative to preventing wage theft and promoting employer accountability,- reports the accompanying bill (Senate, No. 2327).

For the committee,
Jason M. Lewis

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An Act to prevent wage theft and promote employer accountability.

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. Paragraph (1) of subsection (b) of section 27C of chapter 149 of the
2 General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting, in line
3 58, after the words “subsection (a),” the words “or as otherwise provided in sections 100, 150C
4 and 148E of chapter 149,”.

5 SECTION 2. Subsection (c) of section 27C of said chapter 149 of the General Laws is
6 hereby further amended by striking out, in line 159 the words “civil and criminal” and inserting
7 in place thereof the following word: - criminal.

8 SECTION 3: Section 27C of said chapter 149 of the General Laws is hereby amended by
9 inserting at the end of the last paragraph, the following: -

10 (d) As a further alternative to initiating criminal proceedings pursuant to subsection (a),
11 the attorney general may file a civil action for injunctive relief, for any damages incurred, and for
12 any lost wages and other benefits on behalf of an employee or multiple, similarly situated
13 employees. If the attorney general prevails in such an action, the employee or employees on

14 whose behalf the attorney general brought the civil action shall be awarded treble damages, as
15 liquidated damages, for any lost wages and other benefits, and the attorney general shall also be
16 awarded the costs of the litigation and reasonable attorneys' fees.

17 SECTION 4. Chapter 149 of the general laws, as appearing in the 2016 Official Edition,
18 is hereby further amended by inserting after section 148D, the following sections:-

19 Section 148E. Accountability in labor contracting and subcontracting

20 (a) As used in this section, and in section 148F the following words have the following
21 meanings:-

22 (1) "Lead contractor" means a business, regardless of form, who obtains, engages, or is
23 provided 1 or more individuals, directly from a labor contractor or indirectly from a labor
24 subcontractor, to perform labor or services that have a significant nexus with the lead
25 contractor's business activities, operations, or purposes.

26 (2) "Labor contractor" means any person or entity who obtains, engages, or provides 1 or
27 more individuals to perform labor or services, with or without a written contract, directly or
28 indirectly, to a lead contractor.

29 (3) "Labor subcontractor" means any person or entity who obtains, engages, or provides,
30 1 or more individuals to perform labor or services, with or without a written contract, directly or
31 indirectly, to a labor contractor.

32 (4) "Wage theft" means any violation of sections 27, 27F, 27G, 27H, 148, 148A, 148B,
33 148C, 150, 150C, or 152A of this chapter, or subsection (c) or (d) of section 159C of this

34 chapter, or sections 1, 1A, 1B, 2A, 7, 19 or 20 of chapter 151, with respect to any individual
35 obtained, engaged, or employed by a lead contractor, labor contractor, or labor subcontractor.

36 (b) An employer, except a staffing agency defined under section 159C of this chapter that
37 is licensed or registered pursuant to section 46A-46R of chapter 140, shall furnish each employee
38 within 10 days of the commencement of their employment with written notice in the language
39 the employer normally uses to communicate employment-related information to the employee,
40 containing the following information:

41 (i) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
42 salary, piece, commission or otherwise, including any rates for overtime if applicable.

43 (ii) Allowances, if any, claimed as part of the minimum wage, including meal, tip or
44 lodging allowances.

45 (iii) The regular payday designated by the employer.

46 (iv) The name of the employer, including any “doing business as” names used by the
47 employer.

48 (v) The physical address of the employer’s main office or principal place of business, and
49 a mailing address, if different.

50 (vi) The telephone number of the employer.

51 (vii) The name, address, and telephone number of the employer’s workers’ compensation
52 insurance carrier.

53 (c) A lead contractor shall be subject to joint and several civil liability with a labor
54 contractor and a labor subcontractor provided that:

55 (i) the lead contractor knew or should have known that a labor contractor or a labor
56 subcontractor has committed a wage theft violation; and

57 (ii) at least 30 days prior to the filing of a civil action against a lead contractor for wage
58 theft violations pursuant to this section, notice shall be provided to the lead contractor, labor
59 contractor and labor subcontractor, in writing, of the alleged violation to be raised in that action.

60 (1) The notice shall provide a detailed description of the nature of the alleged violation,
61 including specific information regarding what allegedly occurred and the amount of wages that
62 are allegedly owed.

63 (2) Any written offer and payment in full of all such wages that are allegedly owed
64 during the 30 day period by a lead contractor, labor contractor or labor subcontractor shall be a
65 defense to any future civil action based upon the same allegation.

66 (d) For purposes of this section, a labor contractor or a labor subcontractor shall
67 indemnify a lead contractor for any wages, damages, interest, penalties or attorneys' fees owed
68 by the lead contractor as a result of the labor contractor's or labor subcontractor's wage theft
69 violations.

70 (e) For purposes of this section, a labor subcontractor shall indemnify a labor contractor
71 for any wages, damages, interest, penalties or attorneys' fees owed by the labor contractor as a
72 result of the labor subcontractor's wage theft violations.

73 (f) No person shall by special contract or by any other means exempt himself from
74 section 148F or from subsection (a), (b), (c), (f), (g), (h), (i) or (j) of this section.

75 (g) Upon notice from the Attorney General or a court order or judgment that a
76 subcontractor has failed to pay wages to its employees, a lead contractor must withhold or cause
77 to be withheld from any payment due to the noncompliant subcontractor on account of such
78 contract, the amount indicated by the Attorney General or court order or judgment as sufficient
79 to satisfy the unpaid wages.

80 (h) Notice of this section shall be prepared by the attorney general, in English and in
81 other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A.
82 Employers shall post this notice in a conspicuous location accessible to employees or contracted
83 workers in establishments where employees or contracted workers with rights under this section
84 perform their duties. Employers shall provide a copy of the notice to their employees or
85 contracted workers. This notice shall include the following: (i) information describing wage theft
86 violations; (ii) information about notices, documentation and other requirements placed on
87 employees or contracted workers in order to exercise their right to collect wages; (iii)
88 information that describes the protection that an employee or contracted worker has in exercising
89 their rights under this section; and (iv) the name, address, phone number and website of the
90 attorney general's office where questions about the rights and responsibilities under this section
91 can be answered. Where the attorney general informs the director of the department of
92 unemployment assistance or the director determines through credible evidence that an employer,
93 person or entity responsible for the payment of contributions under section 14 of said chapter
94 151A has committed a wage theft violation or otherwise failed to timely pay wages to an

95 individual, the individual's unemployment benefit shall be calculated as if the wages has been
96 timely paid.

97 (i) The attorney general shall enforce this section, and may obtain injunctive or
98 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),
99 (4), (6) and (7) of subsection (b) of section 27C and to section 150.

100 (j) Nothing in this chapter shall limit the availability of any other remedies at law or
101 equity.

102 Section 148F. Stop Work Order

103 (a) Notwithstanding sections 15 and 47 of chapter 151A, on determination by the director
104 of the department of unemployment assistance, or a designee, that any person or entity that is
105 failing to make contributions required by section 14 of chapter 151A, the director, or designee
106 may issue a stop work order to an employing unit and the officer or agent of the employing unit,
107 requiring the cessation of all business operations of the violator. The stop work order may be
108 issued only against the person or entity found to be in violation, and only as to the specific place
109 of business or employment for which the violation exists. The stop work order shall be effective
110 when served upon the violator or at the place of business or employment. A stop work order
111 may be served in hand or at a place of business, employment, or job site by posting a copy of the
112 stop work order in a conspicuous location. The stop work order shall remain in effect until the
113 director, or designee, issues an order releasing the stop work order upon a finding that the
114 violation has been corrected.

115 (b) On determination by the attorney general, or a designee, that any person or entity is
116 engaging in a wage theft violation, the attorney general, or designee, may issue a stop work order

117 to an employing unit and the officer or agent of the employing unit, requiring the cessation of all
118 business operations of the violator. The stop work order may be issued only against the
119 individual or entity found to be in violation, and only as to the specific place of business and
120 employment for which the violation exists. The stop work order shall be effective when served
121 upon the violator or at the place of business or employment. A stop work order may be served in
122 hand or at a place of business, employment, or job site by posting a copy of the stop work order
123 in a conspicuous location. The stop work order shall remain in effect until the attorney general,
124 or designee issues an order releasing the stop work order upon a finding that the violation has
125 been corrected.

126 (c) Any person who is aggrieved by the imposition of a stop work order issued pursuant
127 to subsections (a) or (b) of this section shall have 10 days from the date of its service to make a
128 request to the issuing agency for a hearing. Any person who timely files such an appeal shall be
129 granted a hearing in accordance with chapter 30A within 14days of receipt of the appeal. The
130 stop work order shall not be in effect during the pendency of any timely filed appeal.

131 (d) A stop work order imposed hereunder against a person or entity shall be effective
132 against any successor person or entity that (i) has at least 1 of the same principals or officers as
133 the person or entity against whom the stop work order was issued; and (ii) is engaged in the same
134 or equivalent trade or activity as the person or entity for which the stop work order was imposed.

135 (e) Any employee affected by a stop work order pursuant to this section shall be paid for
136 the first 10 days lost pursuant to the stop work order, and any time lost pursuant to this section
137 not exceeding 10 days shall be considered time worked under chapters 149 and 151. Subsection
138 (b) of section 148E shall not apply to wages due and payable under this subsection.

139 (f) The department of unemployment assistance may promulgate regulations to
140 implement sections 148F (a) of chapter 149 of the General Laws.

141 (g) The attorney general may promulgate regulations to implement sections 148E and
142 148F of chapter 149 of the General Laws, but not including subsection (a) of said section 148F
143 of said chapter 149.

144 SECTION 5. Section 150 of said chapter 149 of the General Laws is hereby amended by
145 inserting after the word “148C” in line 22, the following word: - “, 148E.”

146 SECTION 6. Section 150C of said chapter 149 of the General Laws is hereby amended
147 by inserting after the words “one thousand dollars,” in line 9 the words “or shall be subject to a
148 civil citation or order as provided in section 27C”, and further amended by adding the following
149 sentence after the word “force” in line 14: “The president and treasurer of a corporation and any
150 officers or agents having the management of such corporation shall be deemed to be the
151 employers of the employees of the corporation within the meaning of this section.”