

SENATE No. 690

The Commonwealth of Massachusetts

In the Year Two Thousand 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
4 following meaning unless the context clearly requires otherwise.

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

8 (2) “Client company” means an enterprise that receives services or functions from
9 another 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
11 implicit contract for long-term full-time employment. This includes:

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

14 (b) “Contractor employment”, which means employment in which a worker is employed
15 by a 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
17 day or 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
19 goods or delivers services in or about a home, apartment, tenement, or room in a residential
20 establishment for an employer who suffers or permits such production or service delivery,
21 regardless of the source (whether obtained from an employer or elsewhere) of the materials used
22 by the home worker in such production.

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

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

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

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

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

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

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

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

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

47 (7) “Full-time employment” means any job with regularly scheduled work of more than
48 32 hours per week, or greater than 64 hours in a biweekly period.

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

51 (9) “Independent contractor”, which means any worker who meets all of the following
52 criteria: (i) the individual is free from direction and control over the performance of the work; (ii)
53 the service is performed either outside the usual course of the business for which it is performed
54 or is performed outside of all places of business of the enterprise for which it is performed; and

55 (iii) the individual is customarily engaged in an independent trade, occupation, profession or
56 business. The failure to withhold federal or state income taxes, unemployment compensation or
57 workers compensation from an employee's wages shall not be used for the purposes of making a
58 determination under this section.

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

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

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

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

75 (b) No employer, including joint employers at a client work site, shall discriminate in any
76 way in the payment of wages as between full-time and part-time employees whether or not such

77 employees are employed in permanent or contingent jobs; or between permanent and contingent
78 employees; provided, however, that variations in rates of pay shall not be prohibited when based
79 upon a difference in seniority. For the purpose of determining the wages paid to full-time
80 employees which will be used to determine whether the employer is discriminating against
81 contingent workers or part-time workers, full-time wages shall be deemed to be the gross hourly
82 wages of similarly situated employees, plus a thirty percent surcharge. Such surcharge shall be
83 deemed to be paid to the contingent employee or part-time employee if it is included directly in
84 wages or offered as part of the cost of health, welfare and retirement benefits.

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

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

96 (a) a cap on the percentage of contingent jobs and on the percentage of the total payroll
97 that may be used to hire workers in contingent jobs, which cap shall be no greater than fifty
98 percent of the average number of contingent jobs found in the private sector; no more than 25%

99 of the funds derived from a contract with the state may be used for the payment of wages for
100 contingent jobs.

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

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

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