

SENATE No. 2434

Senate, July 13, 2016 -- Text of the Senate Bill to prevent wage theft and promote employer accountability (Senate, No. 2434) (being the text of Senate, No. 2416, printed as amended)

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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. Section 27C of said chapter 149, as appearing in the 2014 Official Edition,
2 is hereby amended by striking out, in line 159, the words “Civil and criminal” and inserting in
3 place thereof the following word:- Criminal.

4 SECTION 2. Chapter 149 of the General Laws is hereby amended by inserting after
5 section 148D the following 2 sections:-

6 Section 148E. (a) As used in this section and section 148F, the following words shall
7 have the following meanings unless the context clearly requires otherwise:-

8 “Contracted entity”, a person or entity that directly enters into an agreement with a direct
9 company to perform labor or services for the direct company.

10 “Direct company”, a business entity that directly enters into an agreement with a
11 contracted entity for labor or services.

12 “Wage theft violation”, a violation of section 27, 27F, 27G, 27H, 148, 148A, 148B,
13 148C, 150, 150C, 152A, subsection (c) or (d) of section 159C or section 1, 1A, 1B, 2A, 7, 19 or
14 20 of chapter 151.

15 (b) A direct company shall be subject to joint and several civil liability and shall share
16 civil legal responsibility for wages owed by a contracted entity as the result of a wage theft
17 violation; provided, however, that if the contracted entity also qualifies as a sub-bidder under
18 section 44F, a direct company shall not share civil responsibility for wages owed by the
19 contracted entity that also qualifies as a sub-bidder under said section 44F as a result of a wage
20 theft violation unless the direct company knew or should have known that the contracted entity
21 committed a wage theft violation.

22 (c) A direct company shall be subject to joint and several civil liability and shall share
23 civil legal responsibility for any penalties or fines owed by a contracted entity as a result of a
24 wage theft violation if the direct company knew or should have known that a contracted entity
25 has committed a wage theft violation.

26 (d) Nothing in this section shall preclude the exercise or enforcement of any lawful rights
27 or remedies available for a wage theft violation.

28 (e) Notice of this section shall be prepared by the attorney general in the languages
29 required in clause (iii) of subsection (d) of section 62A of chapter 151A. Direct companies and
30 contracted entities shall post this notice in a conspicuous location accessible to employees or
31 contracted workers in establishments where employees or contracted workers with rights under
32 this section perform their duties. Direct companies and contracted entities shall provide a copy of
33 the notice to their employees or contracted workers. This notice shall include the following

34 information: (i) information describing wage theft violations; (ii) information about the notices,
35 documentation and other requirements placed on employees or contracted workers in order to
36 exercise their right to collect wages; (iii) information that describes the protections that an
37 employee or contracted workers has in exercising rights under this section; and (iv) the name,
38 address, phone number and website of the attorney general's office where questions about the
39 rights and responsibilities under this section can be answered. Where the attorney general
40 informs the director of the department of unemployment assistance or the director determines
41 through credible evidence that an employer, person or entity responsible for the payment of
42 contributions under section 14 of said chapter 151A has committed a wage theft violation or
43 otherwise failed to timely pay wages to an individual, the individual's unemployment benefit
44 shall be calculated as if the wages had been timely paid.

45 Section 148F. (a) Upon determination by the director of unemployment assistance or a
46 designee that a person or entity has violated section 14 of chapter 151A, the director may issue a
47 stop work order against the violator requiring the cessation of all business operations of the
48 violator related to the violation cited in the stop work order; provided, however, that a stop work
49 order shall only be issued against the person or entity found to be in violation and only related to
50 the worksite or place of business or employment for which the violation exists. If a stop work
51 order is issued, it shall be served at the worksite or place of business or employment of the
52 violator by posting a copy of the stop work order in a conspicuous location at the place of
53 business or employment. The stop work order shall be effective 96 hours after the order is
54 served upon the violator or at the worksite or place of business or employment of the violator.
55 The stop work order shall contain the amount of contributions owed to the trust fund. If a person
56 or entity submits documentation to the satisfaction of the director that all contributions owed

57 related to the stop work order are properly paid prior to the stop work order taking effect, the
58 director shall rescind the stop work order.

59 If the stop work order goes into effect, it shall remain in effect until the director or
60 designee rescinds the stop work order upon a finding that the wage theft violation has been
61 corrected.

62 A person or entity against which a stop work order is issued may request a hearing by
63 providing a written appeal, in a manner determined by the director, within 10 days from the date
64 the stop work order is served.

65 (b) Upon determination by the attorney general that a person or entity has committed a
66 wage theft violation, the attorney general may issue a stop work order against the violator
67 requiring the cessation of all business operations of the violator; provided, however, that a stop
68 work order shall only be issued against the person or entity found to be in violation and only
69 related to the worksite or place of business or employment for which the violation exists. If a
70 stop work order is issued, it shall be served at the worksite or place of business or employment of
71 the violator by posting a copy of the stop work order in a conspicuous location at the place of
72 business or employment. The stop work order shall be effective 96 hours after the order is
73 served upon the violator or at the worksite or place of business or employment of the violator.
74 The stop work order shall contain a description of the violation, including the total amount owed
75 to correct the violation. If a person or entity submits documentation to the satisfaction of the
76 attorney general that all wages owed related to the stop work order are properly paid to all
77 workers prior to the stop work order taking effect, the director shall rescind the stop work order.

78 If the stop work order goes into effect, it shall remain in effect until the attorney general
79 rescinds the stop work order upon a finding that the violation has been corrected.

80 A person or entity against which a stop work order is issued may request a hearing by
81 providing a written appeal, in a manner determined by the attorney general, within 10 days from
82 the date the stop work order is served.

83 (c) A stop work order and any penalty imposed against a person or entity shall be
84 effective against any successor person or entity that: (i) has at least 1 of the same principals or
85 officers as the person or entity against whom the stop work order or penalty was issued; and (ii)
86 is engaged in the same or an equivalent trade or activity as the person or entity the stop work
87 order was imposed against.

88 (d) An employee affected by a stop work order under this section shall be paid for the
89 period the stop work order is in place or the first 10 days the employee was scheduled to work if
90 the stop work order had not been issued, whichever is less. Any time lost pursuant to this section,
91 not to exceed 10 days, shall be considered time worked under chapter 149. Subsection (b) and (c)
92 of section 148E shall not apply to wages under this subsection.

93 SECTION 3. The department of unemployment assistance may promulgate regulations to
94 implement sections 148E and 148F of chapter 149 of the General Laws, but not including
95 subsection (b) of said section 148F of said chapter 149.

96 SECTION 3A. The office of the attorney general may promulgate regulations to
97 implement sections 148E and 148F of chapter 149 of the General Laws, but not including
98 subsection (a) of said section 148F of said chapter 149.

99 SECTION 4. A direct company shall not be liable under section 148E or 148F of chapter
100 149 of the General Laws unless a wage theft violation occurs on or after January 1, 2017.

101 SECTION 5. This act shall take effect on January 1, 2017.