

SENATE No. 2129

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth J. Donnelly

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 protecting workers' wages from arbitrary recoupment of overpayments.

PETITION OF:

NAME:

Kenneth J. Donnelly

DISTRICT/ADDRESS:

Fourth Middlesex

SENATE No. 2129

By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 2129) (subject to Joint Rule 12) of Kenneth J. Donnelly for legislation to protect workers' wages from arbitrary recoupment of overpayments. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act protecting workers' wages from arbitrary recoupment of overpayments.

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 149 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting before the first paragraph of 150C, the following paragraph:-

3 Except for as otherwise authorized by law, no deductions from wages shall be made
4 except as are expressly authorized in writing by the employee and are for the benefit of the
5 employee; provided that such authorization is kept on file on the employer's premises.

6 SECTION 2. Chapter 149 of the General Laws is hereby amended by inserting after
7 section 150C, the following section:

8 Section 150D Overpayment of Wages; Restrictions on Recoupment; Penalties

9 No person shall make deductions from an employee's wages for an overpayment of
10 wages and such deductions shall not constitute a valid set-off against wages under this Chapter,
11 except under the following conditions:

12 (a) The employer shall only recover such overpayments as were made in the eight (8)
13 weeks prior to the issuance of the notice described in subdivision (e) below. The employer may
14 make deductions to recover overpayments for a period of six (6) years from the original
15 overpayment;

16 (b) The employer shall recover overpayments by wage deduction no more frequently than
17 once per pay period, provided that such deduction complies with this Section.

18 (c) An employer may recover overpayments by deducting the amount of the overpayment
19 from the employee's wages if, in advance of said deduction, the employee voluntarily agrees in
20 writing that the amount constitutes an overpayment and that the overpayment may be deducted
21 from the employee's future wages. If the employee does not voluntarily agree in writing as to
22 the validity of the claim of overpayment, the employer is prohibited from making any deductions
23 from the employee's wages to recover the alleged overpayment.

24 (d) An employer shall not retaliate against an employee who does not voluntarily agree in
25 writing to the deduction from wages sought and must provide notice to the employee that refusal
26 by the employee to consent to wage deduction(s) will not result in any disciplinary or retaliatory
27 action.

28 (e) The initiation of legal action against an employee to recover an overpayment shall
29 not constitute discipline or retaliation under this Section.

30 (f) Unless the employee voluntarily opts otherwise, in writing and in advance, the
31 recovery of an overpayment may not exceed 10% of the gross wages earned in any pay period
32 from which deduction is made. In no case shall such deduction reduce the effective hourly wage
33 below the statutory state minimum hourly wage.

(g) The employer shall provide the employee with notice of the intent to commence the deductions to recover the overpayment. Notice shall be given at least two weeks before the deductions may commence. Such notice shall contain the amount overpaid in total and per pay period, the total amount to be deducted and the date each deduction shall occur followed by the amount of each deduction. The notice shall also provide notice to the employee that he or she may contest the overpayment, provide the date by which the employee shall contest, and include the procedure by which the employee may contest the overpayment and/or terms of recovery, or provide a reference to where such procedure can be located. The failure of an employer to afford this process to the employee shall create the presumption that the contested deduction was impermissible.

(h) No employer or person shall by a special contract with an employee or by any other means exempt itself from this section.

(i) The employer shall provide notice to the Attorney General within one week of the occurrence, including the course of action it is taking to remedy the problem.

Whoever violates this section shall be subject to all of the civil and criminal penalties and remedies set forth in section 27C.

An employee claiming to be aggrieved by a violation of this section may proceed pursuant to the second paragraph of section 150. The attorney general or, under said section 150, an employee may bring an action under this section within 3 years of any violation of this section.