

HOUSE No. 4170

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 6, 2019.

The committee on Labor and Workforce Development, to whom was referred the petition (accompanied by bill, House, No. 1618) of Dylan A. Fernandes, Mike Connolly and others relative to the recoupment of overpayment of wages, reports recommending that the accompanying bill (House, No. 4170) ought to pass.

For the committee,

PAUL BRODEUR.

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 2018 Official Edition,
2 is hereby amended by inserting before the first paragraph of 150C, the following paragraph:-

3 Except as otherwise authorized by law, no deductions from wages shall be made except
4 those that 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 for the
6 period during which the employee is employed by the employer and for three years after such
7 employment ends in accordance with section 15 of chapter 151.

8 SECTION 2. Chapter 149 of the General Laws, as appearing in the 2018 Official Edition,
9 is hereby amended by inserting after section 150C, the following section:

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

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

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

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

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

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

30 (1) The initiation of legal action against an employee to recover an overpayment shall not
31 constitute discipline or retaliation under this Section.

32 (e) Unless the employee voluntarily opts otherwise, in writing and in advance, the
33 recovery of an overpayment may not exceed 10% of the gross wages earned in any pay period
34 from which deduction is made. In no case shall such deduction reduce the effective hourly wage
35 below the state minimum wage under section 1 of chapter 151, section 7 of chapter 151 or below
36 the minimum wage for employees who calculate their wages using a “Regular Hourly Rate”
37 under 454 CMR 27.02.

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

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

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

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

56 (i) Where more than 500 Massachusetts employees are affected by the occurrence of a
57 payroll system failure that results in inaccurate payroll records and payment of wages, whether
58 under or overpayments have occurred, or some combination thereof, the employer shall provide
59 notice to the Attorney General within one week of the occurrence, including the course of action
60 it is taking to remedy the problem.