

HOUSE No. 5086

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 29, 2020.

The committee on Labor and Workforce Development to whom were referred the petition (accompanied by bill, House, No. 1605) of Mark J. Cusack for an investigation by a special commission relative to accountability in labor and services provided by contractors and subcontractors in the Commonwealth, and the petition (accompanied by bill, House, No. 1610) of Daniel M. Donahue and others for legislation to prevent wage theft, promote employer accountability, and enhance public enforcement, reports recommending that the accompanying bill (House, No. 5086) ought to pass.

For the committee,

STEPHAN HAY.

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

An Act to prevent wage theft, promote employer accountability, and enhance public enforcement.

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 General
2 Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting, in line 58, after
3 the words “subsection (a)”, the following words:- , or as otherwise provided in sections 100,
4 148E or 150C.

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

8 SECTION 3. Section 27C of said chapter 149, as so appearing, is hereby further amended
9 by inserting at the end of the last paragraph, the following subsection:-

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 is hereby further amended by inserting
18 after section 148D, the following sections:-

19 Section 148E. Accountability in labor contracting and subcontracting

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

22 "Labor contractor", means any person or entity who obtains, engages or provides 1 or
23 more individuals to perform labor or services, with or without a written contract, directly or
24 indirectly, to a lead contractor.

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

28 "Lead contractor", means a business, regardless of form, that obtains, engages or is
29 provided 1 or more individuals, directly from a labor contractor or indirectly from a labor
30 subcontractor, to perform labor or services that have a significant nexus with the lead
31 contractor's business activities, operations or purposes.

32 "Wage theft", means any violation of sections 27, 27F, 27G, 27H, 148, 148A, 148B,
33 148C, 150, 150C, or 152A of this chapter, or subsections (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 as defined by section 159C of this chapter that
37 is licensed or registered pursuant to sections 46A to 46R, inclusive, of chapter 140, shall provide
38 each employee, not later than 10 days after the commencement of employment, with written
39 notice in the language the employer normally uses to communicate employment-related
40 information to the employee, containing the following information: (i) the rate or rates of pay
41 and the basis for those rates, whether paid by the hour, shift, day, week, salary, piece,
42 commission or otherwise, including methods of calculation for overtime, if applicable; (ii)
43 allowances, if any, claimed as part of the minimum wage, including meal, tip or lodging
44 allowances; (iii) the regular pay day designated by the employer; (iv) the name of the employer,
45 including any “doing business as” names used by the employer; (v) the physical address of the
46 employer’s main office or principal place of business, and a mailing address, if different; (vi) the
47 telephone number of the employer; and (vii) the name, address, and telephone number of the
48 employer’s workers’ compensation insurance carrier.

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

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

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

56 (1) The notice shall provide a detailed description of the nature of the alleged violation,
57 Including specific information regarding what allegedly occurred and the amount of
58 wages that are allegedly owed.

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

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

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

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

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

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

93 (i) The attorney general shall enforce this section, and may obtain injunctive or
94 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),
95 (4), (6) and (7) of subsection (b) of section 27C and to section 150.

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

98 Section 148F. Stop Work Order

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

111 (b) On determination by the attorney general, or a designee, that any person or entity is
112 engaging in a wage theft violation, the attorney general, or a designee, may issue a stop work
113 order to an employing unit and the officer or agent of the employing unit, requiring the cessation
114 of all business operation of the violator. The stop work order may be issued only against the
115 individual or entity found to be in violation, and only as to the specific place of business and
116 employment for which the violation exists. The stop work order shall be effective when served
117 upon the violator or at the place of business or employment. A stop work order may be served in
118 hand or at a place of business, employment or job site by posting a copy of the stop work order
119 in a conspicuous location. The stop work order shall remain in effect until the attorney general,

120 or designee, issues an order releasing the stop work order upon a finding that the violation has
121 been corrected.

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

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

131 (e) Any employee affected by a stop work order pursuant to this section shall be paid for
132 the period the stop work order is in place or the first 10 days the employee would have been
133 scheduled to work if the stop work order had not been issued, whichever is less, by the person or
134 entity that was served the stop work order. Time lost by an employee affected by a stop work
135 order pursuant to this section, not exceeding 10 days, shall be considered time worked under
136 chapters 149 and 151. Subsection (b) of section 148E shall not apply to wages due and payable
137 under this subsection.

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

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

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

145 SECTION 6. Section 150C of said chapter 149 of the General Laws is hereby amended
146 by striking out, in line 9, the words “one thousand dollars,” and inserting in place thereof the
147 following words:- \$1,000 or shall be subject to a civil citation or order as provided in section
148 27C”, and further amended by adding the following sentence after the word “force” in line 14:
149 “The president and treasurer of a corporation and any officers of agents having the management
150 of such corporation shall be deemed to be the employers of the employees of the corporation
151 within the meaning of this section.”