HOUSE DOCKET, NO. 76 FILED ON: 1/7/2021

HOUSE . . . . . No. 2023

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph D. McKenna and Ryan C. Fattman

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 ensuring domestic violence victims' protections for all employees in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Joseph D. McKenna	*18th Worcester*	*1/7/2021*
Ryan C. Fattman	*Worcester and Norfolk*	*1/7/2021*
Adam J. Scanlon	*14th Bristol*	*1/19/2021*
Timothy R. Whelan	*1st Barnstable*	*1/21/2021*
Bud L. Williams	*11th Hampden*	*2/3/2021*
Angelo L. D'Emilia	*8th Plymouth*	*2/18/2021*
Michael J. Soter	*8th Worcester*	*2/23/2021*
Steven G. Xiarhos	*5th Barnstable*	*2/23/2021*
Hannah Kane	*11th Worcester*	*2/23/2021*
Lindsay N. Sabadosa	*1st Hampshire*	*2/24/2021*
Alyson M. Sullivan	*7th Plymouth*	*2/24/2021*
David Allen Robertson	*19th Middlesex*	*2/25/2021*
Walter F. Timilty	*Norfolk, Bristol and Plymouth*	*3/17/2021*

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HOUSE . . . . . No. 2023

By Representative McKenna of Webster and Senator Fattman, a joint petition (accompanied by bill, House, No. 2023) of Joseph D. McKenna, Ryan C. Fattman and others relative to employment protections for domestic violence victims. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *4566* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act ensuring domestic violence victims' protections for all employees in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after section 148B the following section:-

Chapter 148B ½: Leave from work when a contract worker has been victim of abusive behavior

(a) For purposes of this section, the following words shall have the following meanings, unless the context clearly indicates otherwise:

"Abuse", (i) attempting to cause or causing physical harm; (ii) placing another in fear of imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations by force, threat or duress or engaging or threatening to engage in sexual activity with a

dependent child; (iv) engaging in mental abuse, which includes threats, intimidation or acts designed to induce terror; (v) depriving another of medical care, housing, food or other necessities of life; or (vi) restraining the liberty of another.

"Abusive behavior", (i) any behavior constituting domestic violence, (ii) stalking in violation of section 43 of chapter 265, (iii) sexual assault, which shall include a violation of sections 13B, 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51 of chapter 265 or sections 3 or 35A of chapter 272 and (iv) kidnapping in violation of the third paragraph of section 26 of chapter 265.

“Client employers”, a business entity, regardless of its form, that obtains or is provided workers to perform labor or services within its usual course of business from a labor contractor, which includes a staffing agency as defined by section 159C of chapter 149.

"Contract workers", individuals who perform services for an employer but are not considered employees under section 148B of chapter 149 of the General Laws, including individuals who are contracted by client employers.

"Domestic violence", abuse against a contract worker by: (i) a current or former spouse of the contract worker; (ii) a person with whom the contract worker shares a child in common; (iii) a person who is cohabitating with or has cohabitated with the contract worker; (iv) a person who is related by blood or marriage to the contract worker; or (v) a person with whom the contract worker has or had a dating or engagement relationship.

(b) An employer shall permit a contract worker to take up to 15 days of leave from work in any 12 month period if:

(i) the contract worker is a victim of abusive behavior; and

(ii) the contract worker is using the leave from work to: seek or obtain medical attention, counseling, victim services or legal assistance; secure housing; obtain a protective order from a court; appear in court or before a grand jury; meet with a district attorney or other law enforcement official; or attend child custody proceedings or address other issues directly related to the abusive behavior against the contract worker.

The employer shall have sole discretion to determine whether any leave taken under this section shall be paid or unpaid.

(c) Except in cases of imminent danger to the health or safety of a contract worker, a contract worker seeking leave from work under this section shall provide appropriate advance notice of the leave to the employer as required by the employer's leave policy.

If there is a threat of imminent danger to the health or safety of a contract worker, the contract worker shall not be required to provide advanced notice of leave; provided, however, that the contract worker shall notify the employer within 3 workdays that the leave was taken or is being taken under this section. Such notification may be communicated to the employer by the contract worker, a family member of the contract worker or the contract worker's counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the contract worker in addressing the effects of the abusive behavior on the contract worker.

If an unscheduled absence occurs, an employer shall not take any negative action against the contract worker if the contract worker, within 30 days from the unauthorized absence or within 30 days from the last unauthorized absence in the instance of consecutive days of

unauthorized absences, provides any of the documentation described in paragraphs (1) to (7), inclusive, of subsection (d).

(d) An employer may require a contract worker to provide documentation evidencing that the contract worker has been a victim of abusive behavior and that the leave taken is consistent with the conditions of clauses (i) and (ii), inclusive, of subsection (b); provided, however, that an employer shall not require a contract worker to show evidence of an arrest, conviction or other law enforcement documentation for such abusive behavior. A contract worker shall provide such documentation to the employer within a reasonable period after the employer requests documentation relative to the contract worker's absence. A contract worker shall satisfy this documentation requirement by providing any 1 of the following documents to the employer.

(1) A protective order, order of equitable relief or other documentation issued by a court of competent jurisdiction as a result of abusive behavior against the contract worker.

(2) A document under the letterhead of the court, provider or public agency which the contract worker attended for the purposes of acquiring assistance as it relates to the abusive behavior against the contract worker.

(3) A police report or statement of a victim or witness provided to police, including a police incident report, documenting the abusive behavior complained of by the contract worker.

(4) Documentation that the perpetrator of the abusive behavior against the contract worker has: admitted to sufficient facts to support a finding of guilt of abusive behavior; or has been convicted of, or has been adjudicated a juvenile delinquent by reason of, any offense constituting abusive behavior and which is related to the abusive behavior that necessitated the leave under this section.

(5) Medical documentation of treatment as a result of the abusive behavior complained of by the contract worker.

(6) A sworn statement, signed under the penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the contract worker in addressing the effects of the abusive behavior.

(7) A sworn statement, signed under the penalties of perjury, from the contract worker attesting that the contract worker has been the victim of abusive behavior. Any documentation provided to an employer under this section may be maintained by the employer in the contract worker's employment record but only for as long as required for the employer to make a determination as to whether the contract worker is eligible for leave under this section.

(e) All information related to the contract worker's leave under this section shall be kept confidential by the employer and shall not be disclosed, except to the extent that disclosure is:

(i) requested or consented to, in writing, by the contract worker;

(ii) ordered to be released by a court of competent jurisdiction;

(iii) otherwise required by applicable federal or state law;

(iv) required in the course of an investigation authorized by law enforcement, including, but not limited to, an investigation by the attorney general; or

(v) necessary to protect the safety of the contract worker or others employed at the workplace.

(f) Any contract worker seeking leave under this section shall exhaust all annual or vacation leave, personal leave and sick leave available to the contract worker, prior to requesting or taking leave under this section, unless the employer waives this requirement.

(g) No employer shall coerce, interfere with, restrain or deny the exercise of, or any attempt to exercise, any rights provided under this section or to make leave requested or taken hereunder contingent upon whether or not the victim maintains contact with the alleged abuser.

(h) No employer shall discharge or in any other manner discriminate against a contract worker for exercising the contract worker's rights under this section. The taking of leave under this section shall not result in the loss of any employment benefit accrued prior to the date on which the leave taken under this section commenced. Upon the contract worker's return from such leave, the contract worker shall be entitled to restoration to the contract worker's original job or to an equivalent position.

(i) The attorney general shall enforce this section and may seek injunctive relief or other equitable relief to enforce this section.

(j) Employers shall notify each contract worker of the rights and responsibilities provided by this section including those related to notification requirements and confidentiality.

(k) This section shall not be construed to exempt an employer from complying with chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights of any contract worker under said chapter 258B, said section 14B of chapter 268 or any other general or special law.

(l) Any benefit received from this section shall not be considered relevant in any criminal or civil proceeding as it relates to the alleged abuse unless, after a hearing, a justice of the district, superior or probate court determines that such benefit is relevant to the allegations.