

HOUSE No. 1618

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes and Mike Connolly

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 recoument of overpayments.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Peter Capano</i>	<i>11th Essex</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>

Jon Santiago

9th Suffolk

HOUSE No. 1618

By Messrs. Fernandes of Falmouth and Connolly of Cambridge, a petition (accompanied by bill, House, No. 1618) of Dylan A. Fernandes and others relative to the recoupment of overpayment of wages. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3141 OF 2017-2018.]

The Commonwealth of Massachusetts

**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 2012 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, as appearing in the 2012 Official Edition,
7 is hereby amended by inserting after 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 (1) The initiation of legal action against an employee to recover an overpayment shall not
29 constitute discipline or retaliation under this Section.

30 (e) 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.

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

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

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

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

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

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

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