

HOUSE No. 3884

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, January 30, 2014.

The committee on Labor and Workforce Development to whom were referred the petition (accompanied by bill, Senate, No. 882) of Anthony W. Petruccelli, Katherine M. Clark, Sal N. DiDomenico, William N. Brownsberger and other members of the General Court for legislation to establish a domestic workers bill of rights and the petition (accompanied by bill, House, No. 1750) of Michael J. Moran and others for legislation to establish employment rights for certain domestic workers, reports recommending that the accompanying bill (House, No. 3884) ought to pass.

For the committee,

THOMAS P. CONROY.

HOUSE No. 3884

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act establishing the domestic workers' bill of rights.

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. Section 105D of chapter 149 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by inserting after the word “fifty-one B”, in line 39, the
3 following words:-

4 “and section 189 of this chapter”.

5 SECTION 2. Section 150 of chapter 149, is hereby further amended by striking the
6 words “or 159C, in line 21, and inserting in their place the following words:-

7 “159C, or 189”.

8 SECTION 3. Chapter 149 is hereby further amended by inserting after section 188 the
9 following sections:-

10 Section 189 (a) As used in this section and section 190, the following words, unless the
11 context clearly requires otherwise, shall have the following meanings:-

12 “Domestic worker”, any individual or employee who is paid by a household, family or
13 any person to perform work of a domestic nature, including, but not limited to, housekeeping,
14 house cleaning, home management, nanny services including childcare and child monitoring,
15 caretaking of individuals in the home including sick, convalescing and elderly individuals,
16 laundering, cooking, home companion services and other household services for members of
17 households or their guests in private homes; provided that the term “domestic worker” shall not
18 include an individual whose vocation is not childcare and whose services for the employer
19 primarily consist of childcare on a casual, intermittent and irregular basis for one or more family
20 or household members, and shall not include a personal care attendant.

21 “Employer”, any person who suffers or permits a domestic worker to work. An employer
22 shall not include a staffing agency or placement agency licensed or registered under chapter 140
23 and shall not include an individual to whom a personal care attendant provides personal care
24 attendant services.

25 “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to
26 2654, inclusive, as it may be amended.

27 “Forced services”, services performed or provided by a domestic worker, as defined
28 under section 49 of chapter 265, as it may be amended, that are obtained or maintained by
29 another person.

30 “Rest” or “period of rest”, a period of time with complete freedom from all duties and
31 during which a domestic worker may either leave the employer’s premises or stay on the
32 employer’s premises for purely personal pursuits. Paid days of rest shall be considered as
33 vacation time and pay under chapter 149.

34 “Person”, one or more individuals, partnerships, associations, corporations, legal
35 representatives, trustees, trustees in bankruptcy or receivers.

36 “Personal care attendant”, an individual who provides personal care attendant services to
37 persons with disabilities or seniors under the Masshealth personal care attendant program or any
38 successor program under sections 70 to 75, inclusive, of chapter 118E, as it may be amended.

39 “Working time”, compensable time that includes all time during which a domestic
40 worker is required to be on the employer’s premises or to be on duty and any time worked before
41 or beyond the end of the normal scheduled shift to complete work. Working time includes meal
42 periods, rest periods and sleeping periods unless a domestic worker is free to leave the
43 employer’s premises and use the time for the domestic worker’s sole use and benefit and is
44 completely relieved of all work-related duties.

45 (b) An employer who employs a domestic worker for 40 hours a week or more shall
46 provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48
47 consecutive hours during each calendar month, and where possible, this time shall allow time for
48 religious worship. The domestic worker may voluntarily agree to work on a day of rest;
49 provided that the agreement is in writing and the domestic worker is compensated at the
50 overtime rate for all hours worked on that day. Days or periods of rest whether paid or unpaid
51 shall be job-protected leave from employment.

52 (c) When a domestic worker who does not reside on the employer’s premises is on duty
53 for less than 24 consecutive hours, the employer shall pay the domestic worker for all hours as
54 working time in compliance with 455 CMR 2.03 as amended.

55 (d) When a domestic worker is required to be on duty for a period of 24 consecutive
56 hours or more, the employer and the domestic worker may agree under terms that are in
57 compliance with 455 CMR 2.03 as amended, to exclude a regularly scheduled sleeping period of
58 not more than 8 hours from working time for each 24-hour period.

59 (e) When a domestic worker is required to be on duty for a period of 24 consecutive
60 hours or more and if no prior written agreement is made, all meal periods, rest periods and
61 sleeping periods shall constitute working time.

62 (f) A domestic worker shall pay for food or beverages only if it is voluntarily and freely
63 chosen. Payments shall not be unreasonable or exceed the actual cost to the employer for the
64 food or beverages. If a domestic worker cannot easily bring or prepare meals on premises, the
65 employer shall not accept any payments for food or beverages. No employer shall deduct from
66 the wages of a domestic worker an amount for food and beverages that exceeds the amounts
67 permitted under 455 CMR 2.04 as amended.

68 (g) A domestic worker shall pay for lodging only if it is voluntarily and freely accepted,
69 desired and actually used by the domestic worker and meets the standards for adequate, decent
70 and sanitary lodging under 455 CMR 2.04 as amended and 105 CMR 410.000 as amended.
71 Payments for lodging shall not be allowed if the employer requires that a domestic worker reside
72 on the employer's premises or a particular location. No employer shall deduct an amount from
73 the wages of a domestic worker for lodging that exceeds the amounts permitted under 455 CMR
74 2.04 as amended.

75 (h) No deductions for meals or lodging shall be made from a domestic worker's wages
76 without the domestic worker's prior written consent. No other deductions shall be made from a
77 domestic worker's wages other than for specifically named and identified purposes, goods, or
78 services required or expressly allowed by law.

79 (i) A domestic worker shall have a right to privacy under section 1B of chapter 214. An
80 employer shall not restrict or interfere with a domestic worker's means of private
81 communication, monitor a domestic worker's private communications, or take any of the
82 domestic worker's documents or other personal effects, or engage in any conduct which
83 constitutes forced services or trafficking of a person in violation of sections 50 and 51 of chapter
84 265.

85 (j) A domestic worker who is involuntarily terminated shall have the right to a written
86 explanation of the grounds for termination, and if the domestic worker disagrees with this
87 explanation, the domestic worker shall have the right to submit an explanation and to
88 enforcement of these rights under section 52C of chapter 149. A domestic worker shall have the
89 right to a written evaluation of work performance from his or her employer after three months of
90 employment, and annually thereafter. A domestic worker shall have the right to inspect and
91 dispute the written evaluation under section 52C of chapter 149.

92 (k) If a domestic worker resides in the employer's household, and the employer
93 terminates employment without cause, the employer shall provide written notice and at least 30
94 days of lodging, either on-site or in comparable off-site conditions, or severance pay in an
95 amount equivalent to the average earnings during two weeks of employment. Neither notice nor
96 a severance payment shall be required in cases involving good faith allegations that are made
97 with reasonable basis and belief and without reckless disregard or willful ignorance of the truth
98 that abuse, neglect or any other harmful conduct has been committed by the domestic worker
99 against the employer or members of the employer's family or individuals residing in the
100 employer's home.

101 (l) Any employer who employs a domestic worker shall keep a record of wages and
102 hours under section 15 of chapter 151. Any employer who employs a domestic worker for 16
103 hours or more a week shall provide, in addition to the information required under section 15 of
104 chapter 151 the following: the rate of pay including overtime and additional compensation for
105 added duties or multilingual skills; working hours including meal breaks and other time off; and
106 where applicable, the provisions for days of rest, earned sick days, vacation days, personal days,
107 holidays, transportation, health insurance, severance, yearly raises, and whether or not earned,
108 sick days, vacation days, personal days, holidays, severance, transportation costs and health
109 insurance are paid or reimbursed; any fees or other costs including costs for meals and lodging;
110 the responsibilities associated with the job; the process for raising and addressing grievances and
111 additional compensation if new duties are added; the right to collect workers compensation if
112 injured; the circumstances under which the employer will enter the domestic worker's designated
113 living space on the employer's premises; the required notice of employment termination by
114 either party; and any other rights or benefits afforded to the domestic worker. Failure to comply
115 with this paragraph shall constitute a violation of section 19(3) of chapter 151.

116 (m) An employer shall provide a domestic worker with a notice that contains all
117 applicable state and federal laws that apply to the employment of domestic workers. This
118 requirement shall be satisfied if the employer provides a notice as described in paragraph (o).

119 (n) Nothing in this section shall be construed to affect any policies or practices of an
120 employer which provides for greater, additional or more generous wages, benefits or working
121 conditions to a domestic worker than those required under this section.

122 (o) The attorney general shall enforce this section, shall promulgate rules and regulations
123 necessary for the enforcement of this section and may obtain injunctive or declaratory relief for
124 this purpose, and shall post on its website a sample written record of information required under
125 paragraph (l), a multilingual notice of employment rights under this section, and state and federal
126 employment laws that apply to the employment of domestic workers required under paragraph
127 (m). Violation of this section shall be subject to sections 27C (b)(1) and (2), (c) and 150.

128 Section 190 (a) It shall be an unlawful discriminatory practice for an employer to: (1)
129 engage in unwelcome sexual advances, requests for sexual favors or other verbal or physical
130 conduct of a sexual nature to a domestic worker when: (i) submission to such conduct is made
131 either explicitly or implicitly a term or condition of an individual’s employment; (ii) submission
132 to or rejection of such conduct by an individual is used as the basis for employment decisions
133 affecting such individual; or (iii) such conduct has the purpose or effect of unreasonably
134 interfering with an individual’s work performance by creating an intimidating, hostile or
135 offensive working environment; (2) subject a domestic worker to unwelcome harassment based
136 on sex, sexual orientation, gender identity, race, religion, national origin or disability where such
137 harassment has the purpose or effect of unreasonably interfering with an individual’s work
138 performance by creating an intimidating, hostile or offensive working environment; or (3) refuse
139 job-protected leave for the birth or adoption of a child by the domestic worker or his or her
140 spouse under section 105D.

141 (b) For the purposes of paragraph (a)(1), the term domestic worker shall include personal
142 care attendants as defined in section 189(a).

143 (c) The provisions of this section shall be enforced by the Massachusetts commission
144 against discrimination under chapter 151B.

145 SECTION 4. Section 19 of chapter 151 of the General Laws, as appearing in the 2012
146 Official Edition, is hereby amended by striking out, in lines 4 and 5, the following words:-

147 “for not less than sixteen hours per week”.

148 SECTION 5. Sections 189 through 190 may be cited as “The Domestic Workers’ Bill of
149 Rights” and shall be liberally construed in aid of its purpose which is to establish industry
150 specific protections and labor standards that protect domestic workers’ basic workplace rights.

151 SECTION 6. Section 4A of chapter 151A of the General Laws, is hereby amended by
152 inserting after the word “unit”, in line 23, the words:-

153 “or domestic service performed by one of more individuals.”

154 SECTION 7. Section 6 (b) of chapter 151A of the General Laws, is hereby repealed.

155 SECTION 8. Section 1 of chapter 151B of the General Laws, as appearing in the 2010
156 Official Edition, is hereby amended by inserting after the word “include”, in line 18, the words:-

157 “an employer of domestic workers including those covered under section 189 of chapter
158 149, and”.

159 SECTION 9. Section 1 of chapter 151B of the General Laws, as appearing in the 2010
160 Official Edition, is hereby amended by striking out, in line 32, the words:-

161 “or in the domestic service of any person.”

162 SECTION 10. Section 1 of chapter 153 of the General Laws, is hereby amended by
163 striking out, in line 33, the words:-

164 “domestic servants”.

165 SECTION 11. (a) Within one year of the effective date of this act, the executive office
166 of labor and workforce development, in consultation with the attorney general and the office of
167 access and opportunity, shall develop and implement a multilingual outreach and training
168 program to inform domestic workers and employers about their rights and responsibilities. This
169 program shall include the distribution of know your rights information, model employment
170 agreements, which shall include but not be limited to sample written provisions for all benefits
171 required under this section, as well as vacation time, sick time, and severance pay, educational
172 materials for employers on their human resources duties in employing domestic workers,
173 including information on benefits, tax and insurance laws, a professional development training
174 program for domestic workers on safe care-giving and housekeeping practices, including the use
175 of nontoxic household cleaning products and protection from injuries, illness and disease, and a
176 model written work evaluation form.

177 (b) Within one year of the effective date of this act, the executive office of labor and
178 workforce development shall report to the governor and to the senate president, the speaker of
179 the house and the joint committee of labor and workforce development on: (1) developing a
180 framework within the unique domestic work context for the collective bargaining rights of
181 domestic workers under section 3A of chapter 150A; (2) developing a state supported mediation
182 program to address disputes between domestic workers and their employers; (3) developing
183 occupational safeguards and standards for domestic workers; and (4) providing a domestic
184 worker health care and retirement fund. This report shall be prepared in consultation with
185 domestic workers and their representatives, and with the Massachusetts AFL-CIO, 1199SEIU
186 United Health Care Workers East, SEIU 615, employers of domestic workers, the department of
187 labor relations and other interested state and federal agencies.

188 SECTION 12. Sections 1 through 5 shall take effect on September 7, 2015.