

THE COMMONWEALTH OF MASSACHUSETTS
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August 27, 2015

The Honorable Karen E. Spilka, Chair
Senate Committee on Ways and Means
Room 212
State House
Boston, MA 02133

RE: S. 967, An Act Relative to Enhanced Enforcement of Civil Penalties

Dear Chairwoman Spilka:

On behalf of the Attorney General, I write to express support for S. 967, *An Act Relative to Enhanced Enforcement of Civil Penalties*, sponsored by Sen. Sal N. DiDomenico. This legislation clarifies the authority of the Attorney General's Office to enforce wage and hour violations under G.L. c. 149 and 151 directly in Massachusetts courts, thereby providing our office with the same options as private litigants.

Over the years, the Legislature has guaranteed important legal protections for workers throughout the Commonwealth, including through the Wage Act, G.L. c. 149, § 148, which establishes the fundamental right to be paid in a timely manner for all hours worked. The majority of matters our Fair Labor Division handles involve enforcement of the Wage Act. Other workers' rights our office enforces include the right to a prevailing wage, minimum wage and overtime requirements, as well as protections against the use of child labor and employee misclassification. Timely and robust enforcement of these laws serves two important purposes. First, it ensures that workers are compensated for the hours they have worked, so that they can support themselves and their families. Second, it protects businesses that comply with the wage and hour laws. Businesses that comply with the law should not be at a disadvantage when competing against other businesses that do not play by the rules.

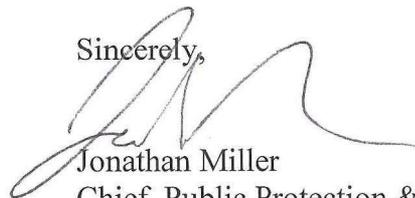
As it stands now, the Attorney General's authority to file directly in court is only specifically set forth with respect to minimum wage and overtime cases under G.L. c. 151. In those circumstances, the Office may file only upon receipt of an assignment of an employee's private right of action. With respect to all other violations, our Fair Labor Division has only two

clear enforcement options when it determines a violation has occurred: civil citation or criminal prosecution. Citations, which generally contain orders to pay penalties and provide restitution to employees, may be appealed to the Division of Administrative Law Appeals (“DALA”). Unfortunately, delays in the process before DALA can impair effective enforcement, leave workers without their hard-earned wages for months, and may not stop ongoing violations of the law. Following the issuance of a DALA decision, employers can file an appeal under G.L. c. 30A in the Superior Court, which can cause further delays. In one instance, a prevailing wage case our office cited in 2006 was not decided until December 2013. In addition, criminal prosecutions under the statutes are appropriate in limited circumstances and represent a small percentage of the matters handled by the Fair Labor Division.

By contrast, under the existing framework, employees pursuing claims under G.L. c. 149 are authorized to file immediately and directly in court upon receipt of a private right of action letter from the Fair Labor Division. (We provide these as a matter of course when requested by an individual or their counsel.) In the case of claims arising under G.L. c. 151, filing with the office first is not required. Clarifying that our office has the same, specific authority to file enforcement cases directly in court would enhance our ability to stop serious, ongoing wage and hour violations and prevent further financial harm to employees. Moreover, we believe that the potential for business interruption caused by the issuance of a Superior Court injunction may cause employers to come into compliance more quickly when they become aware of a complaint.

I urge you to give S. 967 a favorable recommendation. If you have any questions, please do not hesitate to contact Shane Blundell, Policy Advisor in our Policy and Government Division, at 617-963-2348. Thank you for your consideration.

Sincerely,



Jonathan Miller

Chief, Public Protection & Advocacy Bureau

Cc: The Honorable Sal N. DiDomenico
The Honorable Daniel A. Wolf