

September 19<sup>th</sup>, 2023

Representative Josh Cutler, Chair  
Joint Committee on Labor and Workforce  
Development  
State House, Room 472  
Boston, MA 02133

Senator Patricia Jehlen, Chair  
Joint Committee on Labor and Workforce  
Development  
State House, Room 424  
Boston, MA 02133

Dear Chair Cutler and Chair Jehlen,

On behalf of the Greater Boston Chamber of Commerce and our 1,200 members, I write to offer testimony on H.1868/S.1158, *An act to prevent wage theft, promote employer accountability, and enhance public enforcement*.

First and foremost, the Chamber staunchly opposes wage theft in any form. Improperly delaying or withholding wages for work is illegal under current law has no place in the Commonwealth. However, the proposed legislation raises several concerns for the state's employers and the negative impact it would have on our business climate. As in previous sessions, the content of the legislation remains unworkable for responsible employers and the Chamber opposes several specific provisions that are overly burdensome, punish law-abiding employers, or do not address the underlying problem of wage theft in the Commonwealth.

### **Joint and Several Liability (Vicarious Liability)**

The proposed bills create vicarious liability through its joint and several liability provisions in the proposed Section 148E for multiple levels beyond the direct employer or contractor. The Chamber opposes language that imposes liability for wage violations on employers with little control or influence on hiring and wage decisions.

The proposed vicarious liability would expose all employers to civil liability for wage violations against workers who are not their employees, including treble damages and attorney's fees. This means that an employer could be responsible for the actions of any contractor or subcontractor they do business with, regardless of whether such employer has control or knowledge of the wage violation or the employment relationship. This places an inordinate liability on employers for the actions of a contractor or subcontractor two or more levels removed from them and for actions they may have no ability to influence.

### **Independent Contractor Confusion**

The proposed legislation leaves the Commonwealth's independent contractor law entirely unaddressed. Wage theft is inextricably linked to independent contractor rules because of worker misclassification, oftentimes due to ambiguity in our statutes. Confusion about the state's independent contractor law contributes to and exacerbates ongoing wage theft problems. The state's Supreme Judicial Court in 2018 urged the Legislature to clarify the state's independent contractor law. Since then, the SJC heard multiple cases and a statewide ballot question was proposed to add clarity, but the law remains muddled.

### **Public Enforcement Action**

This legislative draft includes a sweeping expansion that adds a private right of action to wage theft that outsources, usurps, and undermines the Attorney General's enforcement authority. The Chamber opposes it for the following reasons:

- The definition of “relator” is extraordinarily broad. Under this legislation, the relator is the person or entity that may act as a plaintiff for any alleged violation of wage theft, and possibly other undefined violations as the language in section 6 is unclear. Under the bill, any current or former employee, even if not classified as an employee, of the defendant, or of any contractor, subcontractor, vender, or client may bring suit on behalf of any alleged violation without any relationship to such violations.
- The language adds a bureaucratic layer that requires the Attorney General to review public enforcement actions. This suggests that the Legislature anticipates there will be problems with the public enforcement mechanism. Instead of inserting language— and additional bureaucracy — that attempts to solve a problem *created* by the new public enforcement option, the Legislature should craft the legislation so that any resulting enforcement is fair, transparent, and legitimate.
- The public enforcement action distributes damages to three entities: the aggrieved, the Attorney General, and a newly created fund. It is unclear why the damages would not be directed entirely to an aggrieved party or the Commonwealth.
- The public enforcement action can proceed even if the Attorney General declines to investigate a claim of wage theft, usurping the Attorney General’s authority and undermining the sanctity of that constitutional office. Private rights of action to recover lost wages exists in current law, and there is no need to create another litigation tool to hold employers accountable for wage theft.
- The Attorney General has a dedicated and professional team specialized in Massachusetts wage and labor laws, and their expertise is essential in determining when enforcement actions are necessary to protect workers. Rather than creating an unnecessary and cumbersome new process for wage and labor law enforcement, the state should extend more resources to this division so it can build on its already successful efforts to ensure that workers are properly compensated.

### **Retaliation**

Existing law rightly prevents an employer from discharging an employee who brings a wage theft claim. However, the proposed language expands retaliation to include *any* adverse action taken against an employee involved in a wage theft claim or who *may* bring or cooperate with one in the future. The bill goes even further by including a presumption of retaliation for any action within 90 days.

The retaliation provisions mark a significant expansion in state policy that also implements a high burden of proof for employers. Existing law appropriately prohibits and penalizes any employer who retaliates by discharging or discriminating against an employee. The expansion included in the proposed legislative language adds subjectivity by using a blanket term of “adverse action” which could include an array of independent employment decisions.

### **Stop Work Orders**

Instituting a stop work order for an entire site for a single instance of wage theft is a blunt instrument, particularly given the vicarious liability provisions. A more reasonable approach would be to base the stop work order on a demonstrable pattern of conduct that involves a specific number of incidents during a set timeframe. This would target the bad actors and avoid penalizing employers who want to correct the problem.

As with the public enforcement provision, this provision seems to anticipate potential problems with implementation. The proposed legislation requires that the Attorney General give an employer the opportunity to meet prior to the work order taking effect, likely to avoid unintended consequences. Rather

than casting a wide net that will sweep up unintended targets, the better approach would be to base the stop work order on a pattern of conduct.

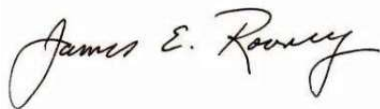
Furthermore, the stop work order becomes effective within 48 hours - but there is a 10-day window in which a contractor can file a timely appeal. A 10-day window for a timely appeal is far too short, and a 48-hour window is unworkable. At a minimum, the stop work order should not take effect until a sufficient window for a timely appeal closes.

### **Attorney General Powers**

This bill expands the Attorney General's authority and power from enforcement to bringing a suit on behalf of employees and suing for treble damages. The Chamber believes that a better approach is to strengthen the Attorney General's existing enforcement efforts by providing budgetary resources to support that work. Expanding the Attorney General's authority is not the right approach when funding could support additional enforcement of the laws already in place.

The Chamber remains vigorously opposed to wage theft and the bad actors create costs for the large majority of employers who comply with wage laws. We urge the committee to support existing state efforts to target and correct wage theft by increasing funding for the Attorney General to avoid unintended consequences for employers complying with state laws.

Sincerely,



James E. Rooney  
President and CEO