



# House of Representatives

General Assembly

**File No. 365**

January Session, 2015

House Bill No. 6791

*House of Representatives, April 1, 2015*

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING WORKERS' WAGES AT LARGE CORPORATIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section  
2 and section 2 of this act:

3 (1) "Person" has the same meaning as provided in section 42-133e of  
4 the general statutes, except "person" shall not include the state or any  
5 department, agency or political subdivision thereof;

6 (2) "Franchise" has the same meaning as provided in section 42-133e  
7 of the general statutes;

8 (3) "Franchisor" has the same meaning as provided in section 42-  
9 133e of the general statutes;

10 (4) "Franchisee" has the same meaning as provided in section 42-  
11 133e of the general statutes;

12 (5) "Employee" means any individual employed or permitted to  
13 work by an employer, but does not include any individual employed  
14 in any park, camp or resort that is open not more than six months of  
15 the year;

16 (6) "Covered employer" means:

17 (A) Any person, firm, business, educational institution, corporation,  
18 limited liability company or other entity that directly employs two  
19 hundred fifty or more employees in the state in any one quarter in the  
20 previous year, which shall be determined on January first, annually.  
21 Such determination shall be made based upon the wage information  
22 submitted to the Labor Commissioner pursuant to subsection (j) of  
23 section 31-225a of the general statutes; or

24 (B) Any franchisor whose franchisees, collectively, employ two  
25 hundred fifty or more employees in the state in any one quarter in the  
26 previous year, which shall be determined on January fifteenth,  
27 annually. Such determination shall be made based upon the  
28 information submitted to the Labor Commissioner pursuant to section  
29 2 of this act; and

30 (7) "Covered employer" does not include any private nonprofit  
31 entity, the state or any instrumentality or political subdivision thereof.

32 (b) Any covered employer that employs, or whose franchisee  
33 employs, any employee (1) who was listed on such covered employer's  
34 or such franchisee's payroll for at least ninety calendar days prior to  
35 the completion of the most recent calendar quarter, and (2) whose  
36 wages paid by such covered employer, or such covered employer's  
37 franchisee, during such quarter were less than or equal to fifteen  
38 dollars per hour, shall pay a fee to the Labor Commissioner for each  
39 such employee. Such fee shall be assessed quarterly and shall be equal  
40 to one dollar for each hour such employee worked for such covered  
41 employer during the previous quarter. Such fee shall not accrue until  
42 January 1, 2016.

43 (c) The commissioner shall collect such fees from each covered  
44 employer not later than sixty days after the completion of the quarter  
45 in which such fees were assessed. The commissioner shall deposit such  
46 revenue derived therefrom with the State Treasurer who shall deposit  
47 such revenue in the General Fund.

48 (d) On or before October 1, 2015, the Labor Commissioner shall  
49 adopt guidelines for the determination of and collection of fees  
50 pursuant to subsections (b) and (c) of this section.

51 (e) Any covered employer aggrieved by the Labor Commissioner's  
52 determination of fees pursuant to subsection (b) of this section may file  
53 a complaint with the commissioner. Upon receipt of the complaint, the  
54 commissioner shall investigate such complaint and may hold a  
55 hearing. After the hearing, the commissioner shall send the covered  
56 employer a written copy of his or her decision. Any covered employer  
57 who prevails in such hearing shall be awarded reasonable attorney's  
58 fees and costs. Any covered employer aggrieved by the decision of the  
59 commissioner may appeal the decision to the Superior Court in  
60 accordance with the provisions of chapter 54 of the general statutes.

61 (f) A covered employer shall not (1) designate, or cause such  
62 covered employer's franchisee to designate, an employee as an  
63 independent contractor or temporary employee, (2) reduce, or cause  
64 such covered employer's franchisee to reduce, an employee's hours of  
65 work, or (3) terminate, or cause such covered employer's franchisee to  
66 terminate, an employee for the purpose of avoiding such covered  
67 employer's obligations under this section.

68 (g) The Labor Commissioner may request the Attorney General to  
69 investigate any violation of subsection (b) or (f) of this section. Any  
70 information obtained pursuant to such investigation shall be exempt  
71 from disclosure under section 1-210 of the general statutes. If the  
72 Attorney General finds that a covered employer has violated or is  
73 violating any provision of subsection (b) or (f) of this section, the  
74 Attorney General may bring a civil action in the superior court for the  
75 judicial district of Hartford in the name of the state against such

76 covered employer.

77 (h) If any provision of this section or its application to any person or  
78 circumstance is held invalid by a court of competent jurisdiction, the  
79 invalidity does not affect other provisions or applications of this  
80 section that can be given effect without the invalid provision or  
81 application, and to this end the provisions of this section are severable.

82 (i) Nothing in this section shall be construed to preempt or override  
83 the terms of any collective bargaining agreement effective prior to  
84 January 1, 2016.

85 Sec. 2. (NEW) (*Effective from passage*) Not later than January 1, 2016,  
86 and annually thereafter, each employer that submits wage information  
87 to the Labor Commissioner pursuant to subsection (j) of section 31-  
88 225a of the general statutes shall indicate to the commissioner, on a  
89 form and in a manner prescribed by the commissioner, whether such  
90 employer is a franchisee, and if so, such employer shall provide to the  
91 commissioner the name and address of the franchisor that granted the  
92 franchise to such employer and any other information as the  
93 commissioner may prescribe.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

**LAB**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 16 \$</b>	<b>FY 17 \$</b>
Labor Dept.	GF - Potential Revenue Gain	Up to 171.0 million	Up to 341.9 million
Labor Dept.	GF - Cost	11.1 million	14.8 million
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	3.3 million	4.5 million

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill establishes a quarterly fee on certain employers at the rate of \$1.00 per work hour for each employee paid \$15 per hour or less. This results in a potential revenue gain of up to \$171 million in FY 16 and up to \$341.9 million annually thereafter. This also results in a cost of approximately \$14.4 million in FY 16 and approximately \$19.2 million annually thereafter to the Department of Labor (DOL).

**COST IMPACT**

The bill requires the Labor Commissioner to adopt guidelines for determining and collecting fees by October 1, 2015, and to begin collecting fees no later than 60 days after the close of the quarter for which they are assessed. Administration of this program is estimated to result in a cost of approximately \$19.2 million annually, including collections, data management, audit and all associated fringe benefit

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<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 38.65% of payroll in FY 16 and FY 17.

costs. The estimate is based on the current cost of agency management services under the unemployment insurance system.

The bill allows covered employers to file a complaint with the Labor Commissioner, who must investigate and hold a hearing. This is anticipated to result in a cost of approximately \$467,944 in FY 16 and \$623,925 annually thereafter for salary (\$75,000) and fringes (\$28,988) associated with the hiring of six Staff Attorneys.

Additionally, the bill allows the Labor Commissioner to request that the Office of the Attorney General (OAG) investigate certain violations. The OAG already has authority over wage violations. The bill is not anticipated to have a fiscal impact on OAG because it is not expected to lead to a higher rate of violations of wage and hour laws.

There is no impact to the Judicial Department from OAG to bring a civil suit to the Superior Court. The number of appeals is not anticipated to be great enough to need additional resources. The court system disposes of over 450,000 cases annually.

### **REVENUE IMPACT**

The revenue estimate assumes approximately 164,400 of the 832,886 employees estimated to work for firms with at least 250 employees would be covered under the bill. Additionally, the estimate assumes that the average annual hours worked per covered employee is approximately 2,080, based on hourly and annual wage data by job category and percentile compiled by DOL. Under the bill, it is uncertain how certain types of income (overtime, bonus, etc.) would be treated. Consequently, no adjustments are made to account for how this income would be treated. Additionally, the estimate assumes no behavior change on the part of employers or employees.

### **The Out Years**

The annualized ongoing cost impact identified above would continue into the future subject to inflation. The potential revenue gain described above would continue into the future subject to wage

inflation and fluctuation in the number of jobs paying above and below \$15 per hour.

*Sources: Department of Labor Labor Market Information  
United States Census Bureau*

**OLR Bill Analysis****HB 6791****AN ACT CONCERNING WORKERS' WAGES AT LARGE CORPORATIONS.****SUMMARY:**

Starting January 1, 2016, this bill assesses a quarterly fee on (1) certain employers with at least 250 employees and (2) franchisors whose franchisees collectively employ at least 250 employees. These employers and franchisors ("covered employers") must pay a \$1- per-work-hour fee for each person who was (1) on the employer's payroll, or the payroll of one of the franchisor's franchisees, for the last 90 days of the most recently completed calendar quarter and (2) paid \$15 per hour or less in wages by the employer or franchisee. The labor commissioner must collect the fees within 60 days after the end of the quarter for which they are assessed (presumably by the labor commissioner) and deposit them with the treasurer for deposit in the General Fund.

The bill requires the labor commissioner to adopt guidelines by October 1, 2015 for determining and collecting the fees. The fees start to accrue on January 1, 2016.

Any covered employer aggrieved by the commissioner's fee determination can file a complaint with the commissioner, who must investigate and may hold a hearing, after which she must send the covered employer a written decision. If the covered employer prevails, it must be awarded reasonable attorney's fees and costs. It can also appeal the commissioner's decision to the Superior Court.

The bill also:

1. prohibits covered employers from taking certain actions to

avoid the fees;

2. allows the labor commissioner to ask the attorney general to investigate violations;
3. includes a severability clause so that if a court finds any provision invalid, the remaining provisions are not affected; and
4. specifies that it does not preempt or override the terms of any collective bargaining agreement effective before January 1, 2016.

EFFECTIVE DATE: Upon passage

## **COVERED EMPLOYERS**

### ***Employers***

An employer subject to the bill is any person, firm, business, educational institution, corporation, limited liability company, or other entity that directly employed at least 250 employees in the state in any one of the previous year's quarters. It does not include any private nonprofit entity, the state, or the state's instrumentalities and political subdivisions. The determination whether an employer is subject to the fees must be made (presumably by the labor commissioner) annually on January 1, based on the quarterly wage information employers submit for unemployment tax purposes.

### ***Franchisors***

The bill subjects franchisors to its provisions if their franchisees collectively employed at least 250 employees in the state in any one of the previous year's quarters. A "franchisor" is an entity that grants a franchise to another entity, including the authority to use a trademark, trade name, service mark, or other identifying symbol or name under a franchise. A franchisee is the entity to which a franchise is granted by the franchisor.

Beginning by January 1, 2016, the bill requires employers submitting their quarterly wage reports for unemployment tax purposes to

annually indicate, on a form and in a manner determined by the labor commissioner, if they are a franchisee, and if so, their franchisor's contact information and any other information the commissioner requests. The determination whether a franchisor is subject to the bill must be made annually on January 15 (presumably by the labor commissioner) based on these responses.

(In general, the franchisee, not the franchisor, makes the hiring, firing, wage, and scheduling decisions for the franchisee's employees. Thus, it is unclear whether a franchisor could be held financially liable for wage and hour decisions that it does not control. It is also unclear whether the state can enforce and collect a fee imposed on an entity not located within the state (e.g., a franchisor that does not have a corporate headquarters in the state)).

## **FEES**

Under the bill, covered employers must pay a quarterly fee of \$1 per hour worked during the assessed quarter by each person who was (1) on the employer's or franchisee's payroll for the last 90 days of the most recently completed calendar quarter and (2) paid wages by the employer or franchisee that were \$15 per hour or less. Employers do not have to pay the fee for employees at parks, camps, or resorts open less than six months a year.

## **OTHER PROVISIONS**

### ***Prohibited Actions and Attorney General Investigations***

The bill prohibits covered employers from trying to avoid the fee by (1) designating (or causing a franchisee to designate) an employee as an independent contractor or temporary employee, (2) reducing an employee's work hours, or (3) terminating an employee.

The labor commissioner can ask the attorney general to investigate a violation of this provision or a covered employer's failure to pay the required fee. Any information obtained in the investigation is exempt from public disclosure under the state's Freedom of Information Act. If the attorney general finds that a covered employer has violated or is

violating the bill, he can bring a civil suit in Hartford Superior Court.

**Severability**

The bill specifies that, if a court finds any of the bill's provisions invalid, its remaining provisions remain in effect if they can be implemented without the invalid provision.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 7      Nay 6      (03/12/2015)