

‘I’m a second-class employee.’ Contractors suing state over full-time status



PAT GREENHOUSE/GLOBE STAFF

Michael McHugh has spent the past 27 years protecting wetlands for the state Department of Environmental Protection. But unlike a typical state employee, McHugh is one of thousands of long-term state contractors who have never received health insurance benefits, vacation days, or a pension.

By [David Abel](#) GLOBE STAFF **NOVEMBER 23, 2017**

Michael McHugh has spent the past 27 years protecting wetlands for the state Department of Environmental Protection. Like most other state employees, he works at least 37.5 hours a week and has his performance regularly reviewed by supervisors.

But unlike a typical state employee, McHugh is one of thousands of long-term state contractors who have never received health insurance benefits, vacation days, or a pension. He can't join the union, and he's not protected by antidiscrimination laws. He only recently began receiving sick pay, and he has been ineligible for a range of promotions because his year-to-year contract doesn't allow him to supervise other employees.

“It’s as if I’m a second-class employee, separate and unequal to other state employees,” said McHugh, 56, of Littleton, who once earned a commissioner’s citation for outstanding work.

McHugh and three other DEP employees have filed a class-action lawsuit against the state, accusing it of violating equal protection laws by denying them the same benefits and protections as other state employees.

Their complaints reflect a growing problem in the workplace, as employers increasingly rely on part-timers and contractors, who are generally less expensive because companies often don’t provide them with insurance or other benefits.

The state contractors, classified as “03 employees,” are asking a Suffolk Superior Court judge to reimburse them — and as many as 10,000 other current and former contractors — for years of lost benefits and compensation, an award that could cost the state hundreds of millions of dollars.

While the contractors understood they were signing up for positions that lacked benefits and job security, many of them expected their positions would eventually lead to full-time work.

They’re now demanding that the state reclassify them as regular employees.

But state Attorney General Maura Healey has rejected their demands and has asked the court to dismiss the case.

Healey contends that the contractors lack the standing to sue because the state has “sovereign immunity” from such claims, meaning that a private party can’t take state agencies to court unless there’s a specific waiver in the law.

Stefan Jouret, a Boston lawyer representing the plaintiffs, disputed that argument in a 36-page response he submitted to the court last week.

“The damage here to class members is immense, and justice requires that they be allowed to have their day in court,” he said. “The doctrine of sovereign immunity is an outdated concept that is fundamentally unconstitutional.”

He also accused Healey of hypocrisy, noting that her office released an advisory on workplace protections in May that noted all workers in Massachusetts have “the right to be classified properly as an employee” under the state’s labor and employment laws.

“Healey is functionally endorsing the privatization of public-sector jobs,” Jouret said.

Emily Snyder, a spokeswoman for Healey, said the attorney general would not comment on the merits of the claims. Healey always advises agency officials to comply with the law, she said.

It’s unclear how many long-term contractors work for the state.

In 2010, the state auditor's office found the state had employed 18,600 contractors, at a cost of about \$386 million. Most were lecturers and other part-time faculty or student interns at the state's colleges and universities.

Its audit reviewed a selection of contracts at six agencies and found more than half failed to comply with a range of requirements.

The state defines contractors as "temporary employees," and forbids them from being used "as a permanent substitute for a state employee position."

Yet the audit found that more than 40 percent of the contracts had lasted "an excessive length of time," or more than three years. At the Department of Environmental Protection, the audit found that 75 percent of the contracts reviewed lasted longer than three years — more than the other agencies.

"Some contract employees appeared to be working essentially as full-time substitutes for state employees without receiving full-time employment benefits," the report found.

State environmental officials have been aware of the issue for years. In 2014, David Cash, the DEP commissioner at the time, said he tried to convert as many of the longtime contractors to full-time positions as possible. But complications arose, including union negotiations and a lack of state funding.

His effort came as the agency was making substantial cuts to its staff. Between 2006 and 2016, the agency lost nearly one-third of its employees.

There had also been good reasons to hire — and retain — many of the employees as contractors, Cash said. But the arrangement was never meant to serve as a long-term solution.

"It became a trap and unfair," Cash said. "The whole system needs to be rethought."

Since the suit was filed last spring, DEP officials have stepped up their efforts to make more of the contractors full-time employees.

"MassDEP is working to integrate all 03 contractors into full-time positions," said Ed Coletta, a spokesman for the agency.

As of last month, 14 of the agency's 18 remaining contractors had accepted offers to become full-time employees, while another contractor is finishing a short-term project, he said.

They will become full-time employees at "salary levels that are commensurate with their years of experience," Coletta said.

But McHugh and other contractors won't be eligible for back pay or other compensation for benefits they never received — a loss equivalent to about \$30,000 a year, they said.

“It’s a Hobson’s choice: accept conversion on DEP’s terms with no seniority or back benefits, or you’re fired,” Jouret said.

He disputed that the contractors were being offered appropriate salaries and benefits. For example, as new employees, they would not accrue past sick or vacation time.

The DEP is only taking action now “because the lawsuit serves as flame to its feet,” Jouret said. “This should have been done decades ago.”

Mark Stinson, a 63-year-old environmental analyst who has been working at DEP as a contractor since 2005, worries he won’t be able to retire.

Stinson, who like McHugh earns about \$90,000 a year, said more than a third of his wages have gone to pay for private health insurance. His expenses have been so high that he hasn’t been able to take vacations, he said.

“We always had to work harder than the regular employees because we had no protection, and they could fire us at any time,” Stinson said. “This inequity has gone on long enough.”

To view the article online, [CLICK HERE](#)