

HOUSE No. 1779

By Mr. Cabral of New Bedford, petition of Antonio F. D. Cabral and others relative to establishing paid family and medical leave for Massachusetts employees. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

Antonio F. D. Cabral Christine E. Canavan
Patricia D. Jehlen Elizabeth A. Malia

In the Year Two Thousand and Seven.

AN ACT ESTABLISHING PAID FAMILY AND MEDICAL LEAVE FOR MASSACHUSETTS EMPLOYEES.

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. Chapter 151A of the General Laws as appearing in
2 the 2004 Official Edition is hereby amended by adding the
3 following:—

4 Section 75. Definitions.

5 Section 75. The definitions contained in Section 1 of Chapter
6 151A shall apply to Section 75 to Section 82, inclusive, unless a
7 term is also defined in this Section 75. The following words or
8 phrases as used in Section 75 to Section 82, inclusive, shall have the
9 following meanings unless the context clearly requires otherwise:—

10 “Benefits” means moneys payable to a covered employee from
11 the family fund pursuant to this section.

12 “Child” means a biological, adopted or foster son or daughter, a
13 stepson or stepdaughter, a legal ward under the age of eighteen
14 years, or a son or daughter of a covered employee who stands in
15 loco parentis to that child.

16 “Contribution Rate” means the percentage of employees’ total
17 compensation paid to the family fund annually.

18 “Covered Employee” means any Massachusetts resident meeting
19 the qualifications of subsection h of Section 1 of Chapter 151A.

20 “Family Fund” means a segregated account established by
21 Section 76 of Chapter 151A.

22 “Family Member” means a covered employee’s spouse, child or
23 parent.

24 “Parent” means a biological, foster, or adoptive parent, a step-
25 parent, a legal guardian or other person who stood in loco parentis to
26 the covered employee or his spouse when the covered employee or
27 spouse was a child.

28 “Serious Health Condition” means an illness, injury, impairment,
29 or physical or mental condition that involves inpatient care in a hos-
30 pital, hospice, or residential health care facility, or continuing treat-
31 ment or continuing supervision by a health care provider.

32 Section 76. Contributions.

33 Section 76. The contributions required hereunder shall be paid by
34 all employees to the commonwealth in such manner and at such
35 times as the commissioner may prescribe, and shall be paid over by
36 the commissioner to the state treasurer and credited by him to the
37 Family Fund.

38 Section 77. Rates.

39 Section 77. Employee contributions required under Section 2
40 shall equal 0.1% of wages, up to a maximum of \$120 annually. On
41 or before September 30th of each year, the commissioner shall pre-
42 pare a statement, which shall be a public record, declaring the total
43 amount of contributions and benefits for the preceding calendar year,
44 the administrative costs of the family fund, the estimated benefits for
45 the next calendar year and the percentage of compensation to be paid
46 to the family fund by covered employee in the next calendar year.
47 Notwithstanding this Section 77, the commissioner may, at his dis-
48 cretion, increase or decrease, by not to exceed 0.01 percent, the con-
49 tribution rate if he determines the adjustment is necessary to
50 reimburse the fund for benefits paid or estimated to be paid to cov-
51 ered employees or to prevent the accumulation of funds in excess of
52 those needed to maintain an adequate fund balance.

53 Section 78. Benefits.

54 Section 78. A covered employee who has satisfied the require-
55 ments of this section shall be eligible for up to twelve weeks worth
56 of benefits in any twelve month period. Said weekly benefit amount
57 shall be equal to the amount of the benefit for which the individual
58 would have been eligible at the start of said leave pursuant to

59 Chapter 151A had that individual been in total unemployment,
60 including any dependency benefits payable thereunder. An indi-
61 vidual is not eligible for benefits hereunder with respect to any day
62 that he or she has received unemployment compensation benefits
63 pursuant to Chapter 151 or any other jurisdiction's similar unem-
64 ployment compensation program. No two or more individuals are
65 eligible for benefits hereunder with respect to the same family
66 member at the same time. Any payment resulting from a birth or
67 adoption described in this section from a disability insurance plan
68 contributed to by the individual's employer, in proportion to the
69 employer's contribution to such plan shall cause a reduction, in the
70 same amount as the payments, to the total amount of benefits for
71 which the individual is otherwise eligible under this section.
72 Employers may require covered employees to use up to two weeks
73 worth of vacation time prior to receiving benefits hereunder.

74 Section 79. Conflicts.

75 Section 79. Nothing in this section shall interfere with any greater
76 rights or benefits under the terms of a collective bargaining agree-
77 ment or any other employment agreement between the employee and
78 the employing unit, nor shall the payment of benefits under this
79 section require an employer not covered under 29 U.S.C. Section
80 2601 or under Section 105D of Chapter 149 to provide a job-pro-
81 tected leave.

82 Section 80. Regulations.

83 Section 80. The Commissioner shall issue regulations providing
84 guidelines for eligibility and the application procedure.

85 Section 81. Eligibility.

86 Section 81. In accordance with the regulations issued pursuant
87 hereto, a covered employee shall receive benefits pursuant to this
88 section upon establishing eligibility for each uninterrupted period of
89 disability by filing a first claim supported by the certificate of a
90 treating physician or practitioner that establishes the serious health
91 condition or injury of the family member that warrants the care of
92 the covered employee or upon producing the relevant birth certifi-
93 cate or adoption certificate of the covered employee's or his or her
94 spouse's or domestic partner's new child. A certificate filed to estab-
95 lish the serious health condition of the family member shall
96 include:—

97 (a) a diagnosis and diagnostic code prescribed in the International
98 Classification of Diseases, or, where no diagnosis has yet been
99 obtained, a detailed statement of symptoms.

100 (b) the date, if known, on which the condition commenced.

101 (c) The probably duration of the condition.

102 (d) An estimate of the amount of time that the physician or practi-
103 tioner believes the covered employee is needed to care for the family
104 member.

105 (e) A statement that the serious health condition warrants the par-
106 ticipation of the covered employee to provide care for his or her
107 family member. “Warrants the participation of the covered
108 employee” includes, but is not limited to, providing psychological
109 comfort, and arranging “third party” care for the family member, as
110 well as directly providing or participating in medical care.

111 Section 82. Further Evidence.

112 Section 82. Nothing in this section shall be construed to preclude
113 the department from requesting additional medical evidence to sup-
114 plement a claim filed pursuant to this section if the evidence can be
115 procured without additional cost to the claimant. The commissioner
116 may require that additional evidence include identification of diag-
117 noses, symptoms, or a statement as to the facts of the claimant’s dis-
118 ability by the physician or practitioner treating the claimant, by the
119 registrar, authorized medical officer, or other duly authorized official
120 of the hospital or health facility treating the claimant, or by an exam-
121 ining physician or other representative of the department.

1 SECTION 2. Effective Date.

2 This act shall become operative on January 1, 2008, except that
3 benefits shall be payable for periods of leave commencing on or
4 after July 1, 2008.

1 SECTION 3. The General Laws are amended by inserting after
2 paragraph 11A of Section 4 of Chapter 151 B the following:—

3 11B. (1) For an employer to discharge, fine, suspend, expel, disci-
4 pline or in any other manner discriminate against an employee:— (i)
5 for exercising any right to which such employee is entitled under the
6 provisions of Section 75 to Section 82, inclusive, of Chapter 151A,
7 or (ii) with the purpose of interfering with the exercise of any right
8 to which such employee is entitled under Section 75 to Section 82,

9 inclusive, of Chapter 151A. (2) For any employer to discharge, fine,
10 suspend, expel, discipline or in any other manner discriminate
11 against an employee who has filed a complaint or instituted or
12 caused to be instituted a proceeding under or related to Section 75 to
13 Section 82, inclusive, of Chapter 151A, or who has testified or is
14 about to testify in an inquiry or proceeding, or who has given or is
15 about to give information connected to any inquiry or proceeding
16 related to Section 75 to Section 82, inclusive, of Chapter 151A. For
17 purposes of this subsection, any negative change in the seniority,
18 status, employment benefits, pay or other terms or conditions of
19 employment of an employee who has been restored to a position
20 pursuant to Section 75 to Section 82, inclusive, of Chapter 151A that
21 occurs within six months of such restoration, or of an employee who
22 has participated in proceedings or inquiries pursuant to Section 75 to
23 Section 82, inclusive, of Chapter 151A within six months of the ter-
24 mination of proceedings shall be presumed to be retaliation.