

HOUSE No. 1803

By Ms. Khan of Newton, petition of Kay Khan and others for legislation to require employers to grant paid sick leave days for employees in the Commonwealth. Labor and Workforce Development.

The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PAID SICK DAYS.

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.
- 2 SHORT TITLE.
- 3 This Act may be cited as the "Paid Sick Days Act".

1 SECTION 2. PREAMBLE.

2 The legislature, in order to advance healthier, more productive
3 and more equitable workplaces throughout the Commonwealth, and
4 to promote the health and welfare of families within the Common-
5 wealth, hereby direct all employers to provide a minimum of 7 paid
6 sick days per year, or the appropriate percentage thereof as deter-
7 mined by this Act, for all of their employees.

1 SECTION 3. FINDINGS.

2 The Legislature of the Commonwealth of Massachusetts makes
3 the following findings:—

4 1) Nearly every worker in the Commonwealth is likely to need,
5 during any given year, time-off to attend to their own illness or that
6 of an immediate family member, or for routine medical care. Almost
7 half of all private sector workers do not earn a single paid sick day
8 per year. Low-income workers are significantly worse off. Over
9 three quarters of the poorest families 76 percent lack any regular
10 paid sick leave.

11 2) Little more than 20% of workers who earn paid sick days can
12 use it to care for children or elder adult family members who may be
13 ill.

14 3) When parents are available to care for their children who
15 become sick, the children's recovery is faster, more serious illnesses
16 are prevented, and the children's overall mental and physical health
17 is improved. Parents who cannot afford to miss work must send chil-
18 dren with a contagious illness to childcare or school, contributing to
19 the high rate of infections in child care centers and schools.

20 4) The majority of elder-care is performed by working family
21 members. About one in every four employees has provided informal
22 care to an elderly family member or friend in the past year.

23 5) Preventive and routine medical care helps avoid illness and
24 injury by detecting illnesses early and shortening the duration of ill-
25 nesses. Providing employees time-off to attend to their own health
26 care needs ensures that they will be healthier and more efficient
27 employees in the long run. Routine medical care results in savings
28 by detecting and treating illness and injury early and decreasing the
29 need for emergency care. These savings benefit public and private
30 payers of health insurance, including private businesses.

31 6) Public health is jeopardized as many workers who do not have
32 paid sick days have the most frequent contact with the public such as
33 workers in food services, nursing homes, child care centers, and
34 retail clerks. The spread of contagious diseases such as the flu
35 cannot be stopped without a universally adopted paid sick days
36 policy.

37 7) Approximately 1.5 million women are assaulted, stalked or
38 raped by an intimate partner each year; 31% of American women
39 report being physically or sexually abused by a husband or
40 boyfriend at some point in their lives; and, on average, more than 3
41 women are murdered every day by their husbands or boyfriends.
42 96% of employed victims of domestic violence experience some
43 kind of work-related problem due to violence; victims may need to
44 take time off from work to participate in criminal and civil legal pro-
45 ceedings and to address the effects of domestic violence such as
46 relocating their family and obtaining medical care. Providing paid
47 sick days would mean important job security for domestic violence
48 victims, as between a quarter to a half of all victims of domestic vio-
49 lence lose their jobs.

50 8) Providing 7 paid sick days per year to employees is affordable
51 for employers and good for business. Requiring all employers to
52 provide paid sick days levels the playing field for employers by
53 taking this important benefit out of competition. Employers who
54 provide paid sick days see greater retention and avoid the problems
55 of “presenteeism” or employees coming to work sick. Studies have
56 shown that costs from on-the-job productivity losses as a result of
57 presenteeism exceed the costs of absenteeism, medical and disability
58 benefits.

1 SECTION 4. PURPOSE AND CONSTRUCTION.

2 1) The purpose of this Act is to ensure that all workers in the
3 Commonwealth of Massachusetts can address their own health
4 needs and the health needs of their families by requiring employers
5 to provide a minimum of 7 paid sick days per year; and

6 2) To alleviate undue burden on public and private health care
7 systems by enabling workers to seek early and routine medical care
8 for themselves and their family members.

9 3) This Act is a remedial act which shall be liberally construed to
10 further its purpose and all presumptions shall be made in favor of
11 providing workers with paid sick days leave.

1 SECTION 5. Section 148 of Chapter 149 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the word “agreement,” in line 54, the following
4 words:— and any paid sick days owed and due under Section 148C.

1 SECTION 6. Said Chapter 149 is hereby amended by inserting
2 after Section 148B the following section:—
3 Section 148C.

4 (a) Definitions. As used in this section, the following terms shall
5 have the following meanings:—

6 “Child”, a biological, adopted, or foster child, stepchild, legal
7 ward, or child of a parent standing in loco parentis who is under 18
8 years of age, or 18 years of age or older but incapable of earning
9 wages because of a mental or physical incapacity.

10 “Employee”, any person who performs services for an employer
11 for wage, remuneration, or other compensation.

12 “Employer”, any individual, corporation, partnership or other
13 entity, including any agent thereof, who engages the services of an
14 employee or employees for wages, remuneration or other compensa-
15 tion.

16 “Federal act”, the Family and Medical Leave Act of 1993, 29
17 U.S.C. Sections 2601 to 2654 inclusive, as it may be amended.

18 “Health care provider”, a provider who —

19 (1)(i) is a doctor of medicine or osteopathy who is authorized to
20 practice medicine or surgery (as appropriate); or who is a licensed
21 practical nurse; or

22 (ii) is any other person determined by the attorney general to be
23 capable of providing health care services; and

24 (2) is not employed by an employer to whom the provider issues
25 certifications under this section.

26 “Parent”, a biological, foster, stepparent or adoptive parent of an
27 employee or an employee’s spouse, or other person who stood in
28 loco parentis during the childhood of an employee or employee’s
29 spouse.

30 “Seven Paid Sick Days”, the total number of paid sick hours com-
31 puted by determining the number of hours in a regular work day and
32 multiplying this number by seven.

33 “Sick day”, a portion of, or a regular workday when an employee
34 is unable to report to work because of the reasons described in sub-
35 section (c).

36 “Spouse”, the meaning given such term by the marriage laws of
37 the Commonwealth of Massachusetts.

38 (b) All employees who work in the Commonwealth who must be
39 absent from work for the reasons set forth in subsection (c) shall be
40 entitled to not less than 7 sick days with pay during a 12-month
41 period, or to a pro rata number of paid days or hours under the provi-
42 sions of subsection (d). The 12-month period for each employee
43 shall be calculated from the date-of-hire or subsequent anniversary
44 date.

45 (c) Paid sick days shall be provided to an employee by an
46 employer for:—

47 (1) care for the employee’s child, spouse, parent, or parent of
48 spouse who is suffering from a physical or mental illness, injury, or
49 medical condition that requires home care, professional medical
50 diagnosis or care or preventative medical care, or that is covered
51 under the federal act; or

52 (2) care for the employee’s own physical or mental illness, injury,
53 or medical condition that requires home care, or professional med-
54 ical diagnosis or care or preventative medical care, or that is covered
55 under the federal act; or

56 (3) an employee to attend a routine medical appointment for him-
57 self or herself or for a child, or, in the case of a spouse, parent, or
58 parent of spouse otherwise in need of care; or

59 4) an employee to address the psychological, physical or legal
60 effects of domestic violence as defined in subsection (g^{1/2}) of Section
61 1 of Chapter 151A.

62 (d) Paid sick days leave shall accrue at the rate of one hour of pay
63 for every 30 hours worked up to the maximum of 7 paid sick days.
64 Paid sick days may be used as accrued, or be loaned by the
65 employer, at its discretion, to the employee in advance of such
66 accrual, provided that an employer shall not require an employee to
67 reimburse it for any unearned sick days. Unless the employer and
68 employee agree to designate otherwise, for periods of paid sick day

69 leave that are less than a normal workday, the leave shall be counted
70 on an hourly basis, or the smallest increment that the employer's
71 payroll system uses to account for absences or use of leave.

72 (e) Subject to the provisions of subparagraph (o), an employer
73 may require certification of the qualifying illness, injury or health
74 condition when a paid sick day leave period covers more than 3 con-
75 secutive workdays. Any reasonable documentation signed by a
76 health care provider involved in following or treating the illness,
77 injury or health condition, and indicating the need for the amount of
78 sick days taken, shall be deemed acceptable certification. The certifi-
79 cation shall be issued at such time and in such manner the attorney
80 general may by regulation require. The employer shall not delay the
81 commencement of leave taken for purposes of subsection (c) or pay
82 for this period on the basis that the employer has not yet received the
83 certification. Nothing in this act shall be construed to require an
84 employee to provide as certification any information from a health
85 care provider that would be in violation of Section 1177 of the
86 Social Security Act or the regulations promulgated pursuant to
87 Section 264(c) of the Health Insurance Portability and Account-
88 ability Act, 42 U.S.C. 1320d-2 note.

89 (f) If the necessity for paid sick days leave under this section is
90 foreseeable, the employee shall provide the employer with not less
91 than 7 days notice before the date the leave is to begin. If the neces-
92 sity for leave is not foreseeable, the employee shall provide such
93 notice as soon as is practicable after the employee is aware of the
94 necessity of such leave.

95 (g) Paid sick days shall carry over annually to the extent not used
96 by the employee, provided that nothing in this section shall be con-
97 strued to require an employer to allow accumulation of more than 7
98 paid sick days leave for an employee unless an employer agrees to
99 do so.

100 (h) It shall be unlawful for any employer to interfere with,
101 restrain, or deny the exercise of, or the attempt to exercise, any right
102 provided under, or in connection with this section, including, but not
103 limited to using the taking of paid sick days under this section as a
104 negative factor in an employment action such as hiring, evaluation,
105 promotion or a disciplinary action, or counting the paid sick days
106 under a no-fault attendance policy.

107 (i) It shall be unlawful for any employer to take any adverse
108 action against an employee because the employee 1) exercises rights
109 or attempts to exercise rights under this section, 2) opposes practices
110 which such employee believes to be in violation of this section, or 3)
111 supports the exercise of rights of another under this section. Exer-
112 cising rights under this section shall include but not be limited to
113 filing an action, or instituting or causing to be instituted any pro-
114 ceeding under or related to this section; providing or about to pro-
115 vide any information in connection with any inquiry or proceeding
116 relating to any right provided under this section; or testifying to
117 about to testify in any inquiry or proceeding relating to any right
118 provided under this section.

119 (j) The attorney general shall enforce this section, and may obtain
120 injunctive or declaratory relief for this purpose. Violation of this
121 section shall be subject to the penalties in Section
122 27C(b)(1),(2),(4),(6),(7) and the provisions in Section 150.

123 (k) The attorney general shall prescribe the employer's obligation
124 to make, keep, and preserve records pertaining to this section and the
125 requirements for keeping records under Section 15 of Chapter 151
126 shall apply to the records required under this section.

127 (l) Nothing in this section shall be construed to discourage
128 employers from adopting or retaining paid sick day policies more
129 generous than policies that comply with the requirements of this
130 section and nothing in this section shall be construed to diminish the
131 obligation of an employer to comply with any contract, collective
132 bargaining agreement, or any employment benefit program or plan
133 that provides greater paid sick day leave rights to employees than the
134 rights established under this session.

135 (m) Employers who have a paid time off leave policy providing
136 paid leave in excess of 20 days per year shall not be required to
137 modify such policy, if such policy offers an employee the option, at
138 the employee's discretion, to take paid sick days that is at least
139 equivalent to the paid sick days described in paragraphs (b), (c), and
140 (f), or if the policy offers paid sick days leave in amounts equivalent
141 to the amounts described in such paragraphs for the purposes that
142 include the reasons described in subparagraph (b).

143 (n) The attorney general may adopt such rules and regulations as
144 may be necessary to carry out the purpose and provisions of this act,

145 including the manner in which an employee who does not have a
146 health care provider shall provide certification.

147 (o) A notice of the provisions of this section shall be prepared by
148 the attorney general, in English and other languages as required
149 under Section 62A(a)(iii) of Chapter 151A. Each employer shall
150 post this notice in a conspicuous location accessible to employees in
151 every establishment where employees having rights under this
152 section work. Such notice shall include the following information:—

153 (i) information describing the rights to paid sick days leave under
154 this act;

155 (ii) information about the notices, documentation and any other
156 requirements placed on employees in order to exercise their rights to
157 paid sick days;

158 (iii) information that describes the protections that an employee
159 has in exercising rights under this act;

160 (iv) the name, address, and phone number of the relevant depart-
161 ment of the attorney general's office where questions about the
162 rights and responsibilities under the act can be answered; and

163 (v) information about filing of an action with the attorney general
164 under this act.

1 SECTION 7. OUTREACH.

2 The executive office of health and human services, in coordina-
3 tion with the attorney general, shall develop and implement a multi-
4 lingual outreach program to inform employees, parents, and persons
5 who are under the care of a health care provider about the avail-
6 ability of paid sick days under this act. This program shall include
7 the distribution of notices and other written materials in English and
8 other languages to all child care and elder care providers, domestic
9 violence shelters, schools, hospitals, community health centers, and
10 other health care providers.

1 SECTION 8. Section 150 of Chapter 149 as so appearing is
2 hereby further amended by inserting after the number "148B" in line
3 21, the following:— 148C.

1 SECTION 9. EFFECTIVE DATES.

2 (a) This act shall take effect within 90 days of its passage.

3 (b) In the case of a collective bargaining agreement in effect on
4 the effective date proscribed by subsection (a), this act shall take
5 effect on the earlier of the date of the termination of such agreement;
6 or the date that occurs 12 months after the promulgation of regula-
7 tions by the attorney general.