

# SENATE NO. 1071

## **AN ACT** RELATIVE TO ESTABLISHING FAMILY AND EMPLOYMENT SECURITY THROUGH TEMPORARY DISABILITY INSURANCE AND FAMILY TEMPORARY DISABILITY INSURANCE

*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: The General Laws are amended by inserting after chapter 175J the following:-

2 CHAPTER 175K.

3 SECTION 1: DEFINITIONS

4 The following words and phrases as used in this chapter shall have the following  
5 meanings unless the context clearly requires otherwise:

6 "Base period" has the same meaning as provided by section 1(a) of chapter 151A.

7 "Benefit year" has the same meaning as provided by section 1(c) of chapter 151A.

8 "Commission" means the massachusetts commission against discrimination, as  
9 established by section 56 of chapter 6.

10 "Contributions" means the payments made by an employer to the family and  
11 employment security trust fund and administrative account, as required by this chapter.

12 "Dependent" means an unemancipated child, as provided by section 29(c) of chapter  
13 151A.

14 "Deputy director" means the deputy director of the massachusetts division of  
15 employment and training, as established by section 3 of chapter 3.

16 "Disability benefits" means cash payments made to a covered employee pursuant to  
17 section 3 of this chapter.

18 "Division" means the massachusetts division of employment and training, as established  
19 by section 3 of chapter 3.

20 "Employee" has the same meaning as provided by section 1(h) of chapter 151A.

21 "Employer" has the same meaning as provided by section 1(i) of chapter 151A.

22 "Employment" has the same meaning as provided by section 1(k) of chapter  
23 151A.

24 "Employment benefits" means all benefits provided or made available to  
25 employees by an employer, including group life insurance, health insurance, disability  
26 insurance, sick leave, annual or vacation leave, educational benefits, and pensions.

27 "Family member" means the spouse, son or daughter, parent, parent of spouse,  
28 sister, brother, grandparent, grandchild, or a person living in the immediate household who is a  
29 relative of an individual seeking leave or disability benefits under this chapter.

30 "Family temporary disability benefits" means disability benefits provided  
31 pursuant to section 3 of this chapter to a covered employee who is on leave from or who has left  
32 his or her employment because he or she is caring for a family member for one of the following  
33 reasons: (1) the birth of a son or daughter of the employee, (2) the placement of a son or  
34 daughter with the employee for adoption or foster care, or (3) a serious health condition of a  
35 family member of the employee.

36                   “Family temporary disability leave” means leave taken by a covered employee  
37 from employment to provide care for a family member for one of the following reasons: (1) the  
38 birth of a son or daughter of the employee, (2) the placement of a son or daughter with the  
39 employee for adoption or foster care, or (3) a serious health condition of a family member of the  
40 employee.

41                   “Health care provider” means a person licensed to practice medicine, surgery,  
42 dentistry, chiropractic, podiatry, or osteopathy, or any other person determined by the division  
43 to be capable of providing health care services.

44                   "Individual average weekly wage" has the same meaning as “average weekly  
45 wage” as defined in section 1(w) of chapter 151A and shall be calculated using the base period  
46 earnings as defined by section 1(a) of chapter 151A.

47                   “Serious health condition” means an illness, injury, impairment, or physical or  
48 mental condition that involves either (1) inpatient care in a hospital, hospice, or residential  
49 medical facility; or (2) continuing treatment by a health care provider.

50                   “Son or daughter” means a biological, adopted, or foster child, a stepchild, a  
51 legal ward, or a child of a person standing in loco parentis who is either (1) under 18 years of  
52 age, or (2) 18 years of age or older and incapable of self-care because of a mental or physical  
53 disability.

54                   "State average weekly wage" means the average weekly wage as determined by  
55 the division of employment and training pursuant to section 29(a) of chapter 151A.

56                   “Temporary disability benefits” means disability benefits provided pursuant to  
57 section 3 of this chapter to a covered employee who is on a leave from or who has left his or her

58 employment because of a serious health condition of the employee that makes him or her unable  
59 to perform the functions of his or her position.

60                   “Temporary disability leave” means leave taken by a covered employee from  
61 employment because of a serious health condition of the employee that makes him or her unable  
62 to perform the functions of his or her position.

63                   "Wages" means all remuneration as defined in section 1(s) of chapter 151A.

64                   “Weekly benefit amount” means the amount of disability benefits paid to a  
65 covered employee on a weekly basis, as provided by section 3, subsection 3, of this chapter.

66 SECTION 2: TEMPORARY DISABILITY LEAVE AND FAMILY TEMPORARY  
67 DISABILITY LEAVE

68 Subsection 1. Eligibility for Temporary Disability Leave or Family Temporary  
69 Disability Leave.

70 An employee is eligible for temporary disability leave or family temporary  
71 disability leave if he or she has met the monetary eligibility requirements set forth in section  
72 24(a) of chapter 151A.

73 Subsection 2. Length of Leave

74 The duration of temporary disability leave or family temporary disability leave  
75 shall be limited to the following maximum amounts of time during any 12-month period: (a) 12  
76 weeks on a full-time basis; (b) the equivalent of 12 weeks on a full-time basis, where the  
77 employee takes leave on a part-time basis; or (c) a combination of full-time and part-time leave  
78 as set forth in (a) and (b), provided that such leave shall not exceed the equivalent of 12 weeks  
79 on a full-time basis.

80 Subsection 3. Timing of Leave.

81 In the case of family temporary disability leave taken because of (a) the birth of a  
82 son or daughter of the employee, or (b) the placement of a son or daughter with the employee  
83 for adoption or foster care, the entitlement to leave shall expire at the end of the 12-month  
84 period beginning on the date of the birth or placement.

85 Subsection 4. Certification.

86 An employer may, at its option, require that a request for temporary disability  
87 leave or family temporary disability leave be supported by a certification of the need for leave.

88 The certification shall be sufficient if it meets the criteria set forth in section 3, subsection 6, of  
89 this chapter.

90 Subsection 5. Reinstatement and Employment Benefits.

91 (a) An employee who has taken temporary disability leave or family temporary  
92 disability leave pursuant to this section shall be restored to his or her previous position, or to a  
93 substantially similar position, with the same status, pay, employment benefits, length of service  
94 credit, and seniority as of the date of leave.

95 (b) An employer shall not be required to restore an employee who has taken  
96 temporary disability leave or family temporary disability leave to the previous or to a  
97 substantially similar position if other employees of equal length of service credit and status in  
98 the same or substantially similar positions have been laid off due to economic conditions or  
99 other changes in operating conditions affecting employment during the period of leave;  
100 provided, however, that the employee who has taken leave shall retain any preferential  
101 consideration for another position to which he or she was entitled as of the date of leave.

102 (c) Taking of temporary disability leave or family temporary disability leave  
103 shall not affect an employee's right to receive accrued vacation time, sick leave, bonuses,  
104 advancement, seniority, length of service credit, employment benefits, plans or programs for  
105 which he or she was eligible at the date of his or her leave, and any other rights incident to his  
106 or her employment.

107 (d) During the duration of an employee's temporary disability leave or family  
108 temporary disability leave, the employer shall continue to provide for and contribute to the  
109 employee's employment-related health insurance benefits, if any, under the same terms and  
110 conditions as those existing prior to leave.

111 (e) Nothing in this section or chapter shall be construed so as to affect any  
112 bargaining agreement, company policy, or other federal, state, or municipal law which provides  
113 for greater or additional rights to leave than those provided for by this section.

114 Subsection 6. Notice

115 (a) Where an employee intends to take family temporary disability leave because  
116 of the birth of a son or daughter of the employee, or the placement of a son or daughter with the  
117 employee for adoption or foster care, and where the need for leave is foreseeable, the employee  
118 shall notify the employer of the intended leave at least 30 days prior to the date that the leave is  
119 to begin, except that if the date of the birth or placement requires leave to begin in less than 30  
120 days, the employee shall provide such notice as is practicable.

121 (b) Where an employee intends to take temporary disability leave or family  
122 temporary disability leave because of a serious health condition of the employee or of a family  
123 member of the employee, and where the need for leave is foreseeable based on planned medical  
124 treatment, the employee shall notify the employer of the intended leave at least 30 days prior to  
125 the date that the leave is to begin, except that if the date of the treatment requires leave to begin  
126 in less than 30 days, the employee shall provide such notice as is practicable.

127 (c) The notice required under this subsection shall consist of the anticipated  
128 starting date of the leave, the length of the leave, and the expected date of return.

129 (d) Where an employer fails to provide notice of the provisions of this chapter as  
130 required under section 7 of this chapter, the employee's notice requirement shall be waived.

131 Subsection 7. Unlawful Practices.

132 (a) It shall be unlawful for any employer to retaliate by discharging, fining,  
133 suspending, expelling, disciplining or in any other manner discriminating against an employee

134 for exercising any right to which such employee is entitled under this section or with the  
135 purpose of interfering with the exercise of any right to which such employee is entitled under  
136 this section.

137 (b) It shall be unlawful for any employer to retaliate by discharging, fining,  
138 suspending, expelling, disciplining or in any other manner discriminating against an employee  
139 who has filed a complaint or instituted or caused to be instituted a proceeding under or related to  
140 this section, has testified or is about to testify in an inquiry or proceeding, or has given or is  
141 about to give information connected to any inquiry or proceeding relating to this section.

142 (c) Any negative change in the seniority, status, employment benefits, pay, or  
143 other terms or conditions of employment of an employee who has been restored to a position  
144 pursuant to this section that occurs within six months of such restoration, or of an employee  
145 who has participated in proceedings or inquiries pursuant to this section within six months of  
146 the termination of proceedings shall be presumed to be retaliation under this section.

147 Subsection 8. Administrative Enforcement.

148 The commission shall be responsible for the interpretation and enforcement of  
149 this section and may promulgate rules and regulations pursuant thereto.

150 Subsection 9. Enforcement and Relief.

151 Enforcement of this section and relief for violations of this section shall be  
152 governed by the procedures set forth in sections 5 through 9 of chapter 151B.

153 SECTION 3: TEMPORARY DISABILITY BENEFITS AND FAMILY TEMPORARY  
154 DISABILITY BENEFITS

155 Subsection 1. Establishment of Temporary Disability Benefits and Family  
156 Temporary Disability Benefits.

157                   An otherwise eligible employee who is on leave from employment or who has  
158 left employment because he or she is ineligible or is no longer eligible for a leave shall be  
159 entitled to receive temporary disability benefits or family temporary disability benefits in the  
160 amount and manner provided by this section and according to regulations promulgated by the  
161 division.

162                   Subsection 2. Eligibility.

163                   An employee is eligible to receive temporary disability benefits or family  
164 temporary disability benefits if he or she has met the monetary eligibility requirements set forth  
165 in section 24(a) of chapter 151A.

166                   Subsection 3. Weekly Benefit Amount.

167                   (a) The weekly benefit amount shall be equal to 66 percent of the individual's  
168 average weekly wage, but not to exceed 57 ½ percent of the state average weekly wage, plus 25  
169 dollars for each dependent, provided that the total weekly benefit amount shall not exceed 75  
170 percent of the individual's average weekly wage.

171                   (b) For an employee who takes leave on a part-time basis, the weekly benefit  
172 amount shall be prorated.

173                   Subsection 4. Duration of Disability Benefits.

174                   (a) Temporary disability benefits: The duration of temporary disability benefits  
175 shall not exceed 26 weeks during the benefit year unless the employee takes leave on a part-  
176 time basis, in which case the duration of temporary disability benefits shall not exceed 52  
177 calendar weeks and the total benefit amount shall not exceed 26 times the weekly benefit  
178 amount.

179 (b) Family temporary disability benefits: The duration of family temporary  
180 disability benefits shall not exceed 12 weeks during the benefit year unless the employee takes  
181 leave on a part-time basis, in which case the duration of family temporary disability benefits  
182 shall not exceed 24 calendar weeks and the total benefit amount shall not exceed 12 times the  
183 weekly benefit amount.

184 Subsection 5. Waiting Period

185 (a) No disability benefits shall be paid during the first seven consecutive days of  
186 any claim for temporary disability benefits. This waiting period shall not apply to claims for  
187 family temporary disability benefits.

188 (b) This subsection does not in any way prohibit an employee from utilizing, at  
189 his or her option, accrued sick or vacation pay during the first seven consecutive days of his or  
190 her claim for temporary disability benefits.

191 Subsection 6. Certification Required.

192 (a) An employee who makes a claim for temporary disability benefits shall  
193 provide a certification issued by the health care provider of the employee. The certification  
194 shall be sufficient if it states the date on which the serious health condition commenced, the  
195 probable duration of the condition, the appropriate medical facts within the knowledge of the  
196 health care provider as required by the division, and a statement that the employee is unable to  
197 perform the functions of his or her position.

198 (b) An employee who makes a claim for family temporary disability benefits  
199 because of the serious health condition of a family member of the employee shall provide a  
200 certification issued by the health care provider of the family member. The certification shall be  
201 sufficient if it states the date on which the serious health condition commenced, the probable

202 duration of the condition, the appropriate medical facts within the knowledge of the health care  
203 provider as required by the division, a statement that the employee is needed to care for the  
204 family member, and an estimate of the amount of time that the employee is needed to care for  
205 the family member.

206 (c) An employee who makes a claim for family temporary disability benefits  
207 because of the birth of a son or daughter of the employee shall provide either a birth certificate  
208 or a certification issued by the health care provider of the son or daughter of the eligible  
209 employee. The certification shall be sufficient if it states the date of the son or daughter's birth.

210 (d) An employee who makes a claim for family temporary disability benefits  
211 because of the placement of a son or daughter with the employee for adoption or foster care  
212 shall provide a certification issued by the health care provider of the son or daughter, an  
213 adoption or foster care agency involved in the placement, or by other persons as determined by  
214 the division. The certification shall be sufficient if it states the date of placement.

215 (e) An employee who makes a claim for family temporary disability benefits  
216 because of the placement with the employee for adoption or foster care of a son or daughter 18  
217 years of age or older and incapable of self-care because of a mental or physical disability shall,  
218 in addition to the certification required by paragraph (d) of this subsection, also provide a  
219 certification issued by the health care provider of the son or daughter, or by other persons as  
220 determined by the division. The certification shall be sufficient if it states the nature of the  
221 disability and fact that the son or daughter is incapable of self-care.

222 (f) Ineligibility In Certain Cases.

223 An individual shall not be eligible to receive disability benefits if the deputy  
224 director finds that the individual, for the purpose of obtaining disability benefits, has willfully

225 made a false statement or representation, with actual knowledge of the falsity thereof, or has  
226 willfully withheld a material fact concerning the facts required to be certified pursuant to this  
227 subsection.

228 Subsection 7. Wages and Other Forms of Wage Replacement.

229 (a) No individual may receive disability benefits under this section for a week in  
230 which the individual receives an amount equal to or greater than the weekly benefit amount in  
231 the form of wages or a wage replacement under any of the following: (i) any government  
232 program or law, including but not limited to unemployment insurance, worker's compensation  
233 other than for permanent partial disability incurred prior to the temporary disability claim, or  
234 under other state or federal temporary or permanent disability benefits law, (ii) a permanent  
235 disability policy or program of an employer, (iii) a temporary disability policy or program of an  
236 employer, or (iv) a paid sick, vacation, family, or medical leave policy of an employer. For a  
237 week in which an individual receives wages or a wage replacement less than the weekly benefit  
238 amount, the individual shall receive disability benefits equal to the difference between the  
239 weekly benefit amount and the amount of wages or wage replacement received.

240 (b) Any wage replacement received under the programs or policies listed in  
241 paragraph (a) of this subsection and resulting from the same birth, adoption, or serious health  
242 condition on which the individual's claim for disability benefits is based shall be deducted from  
243 the total amount of disability benefits for which the individual would otherwise be eligible;  
244 provided that this paragraph shall not apply to wage replacement received as a result of a paid  
245 sick or vacation policy of an employer.

246 SECTION 4: PROVISION OF TEMPORARY DISABILITY BENEFITS AND  
247 FAMILY TEMPORARY DISABILITY BENEFITS

248 Subsection 1. Provision for Payment of Disability Benefits.

249 An employer or an association of employers shall secure temporary disability  
250 benefits and family temporary disability benefits for employees in any of the following ways:

251 (a) By depositing and maintaining with the treasurer of the commonwealth, the  
252 contributions which the employer is required to pay according to the terms of this chapter and in  
253 the form and manner determined by the division; or

254 (b) By insuring and keeping insured the payment of temporary disability  
255 benefits and family temporary disability benefits with any stock, mutual, reciprocal or other  
256 insurer authorized to transact the business of disability insurance in the commonwealth,  
257 provided that the policy is acceptable to the division as satisfying the obligation to provide for  
258 the payment of disability benefits under this chapter, that the benefits under the policy are at  
259 least as favorable as the disability benefits required by this chapter and that the policy does not  
260 require contributions from any employee or class of employees; or

261 (c) By a private plan or agreement which the employer may, by her or his sole  
262 act, terminate at any time, provided that the plan or agreement is acceptable to the division as  
263 satisfying the obligation to provide for the payment of disability benefits under this chapter, that  
264 the benefits under the plan or agreement are at least as favorable as the disability benefits  
265 required by this chapter, and that the policy does not require contributions from any employee  
266 or class of employees; or

267 (d) By any plan or agreement in existence by agreement or collective bargaining  
268 contract between the employer or employers or an association of employers and an association  
269 of employees, provided that the plan or agreement is acceptable to the division as satisfying the  
270 obligation to provide for the payment of disability benefits under this chapter, that the benefits

271 under the plan or agreement are at least as favorable as the disability benefits required by this  
272 chapter, and that the plan or agreement does not require contributions from any employee or of  
273 any class of employees.

274 (e) Nothing in this section or chapter shall be construed as to affect any  
275 bargaining agreement, company policy, or other state or federal law which provides for greater  
276 or additional benefits than those required under this chapter.

277 Subsection 2. Notice of Insurance.

278 If payment of disability benefits is provided in whole or in part pursuant to  
279 subsection 1(b), (c), or (d) of this section, the employer or insurer shall file with the division a  
280 notice of coverage and statement of benefits provided.

281 Subsection 3. No Contribution Required by Employer with Private Plan.

282 Employers providing for the payment of disability benefits under subsection  
283 1(b), (c), or (d) of this section shall not be required to make contributions pursuant to subsection  
284 1(a) of this section.

285 SECTION 5: FAMILY AND EMPLOYMENT SECURITY TRUST FUND  
286 AND ADMINISTRATIVE ACCOUNT

287 Subsection 1. Establishment of the Family and Employment Security Trust  
288 Fund.

289 There is established in the treasury of the state, separate and apart from all public  
290 monies or funds of the state, a family and employment security trust fund which shall be  
291 administered by the deputy director exclusively for the purposes of this chapter. All payments  
292 pursuant to this part shall be paid into the trust fund and all disability benefits payable under this  
293 chapter shall be paid from the trust fund. The trust fund shall consist of:

- 294 (a) All contributions collected pursuant to this section, together with any interest  
295 thereon;
- 296 (b) Interest earned on any monies in the trust fund;
- 297 (c) Any property or securities acquired through the use of monies belonging to  
298 the trust fund;
- 299 (d) All earnings of such property and securities;
- 300 (e) All monies transferred into the trust fund from the family and employment  
301 security administrative account; and
- 302 (f) All other monies received for the trust fund from any source.

303 Subsection 2. Establishment of the Family and Employment Security  
304 Administrative Account.

305 There is established in the treasury of the state, separate and apart from all public  
306 monies or funds of the state, a family and employment security administrative account which  
307 shall be administered by the deputy director exclusively for the purposes of this chapter. The  
308 administrative account shall consist of:

- 309 (a) All contributions collected pursuant to this section, together with any interest  
310 thereon;
- 311 (b) All fines and penalties for the administrative account pursuant to this chapter;
- 312 (c) All monies collected by way of subrogation;
- 313 (d) Interest earned on any monies belonging to the administrative account;
- 314 (e) Any property or securities acquired through the use of monies belonging to  
315 the administrative account;
- 316 (f) All earnings of such property and securities;

- 317 (g) All monies appropriated to the administrative account by the legislature; and  
318 (h) All other monies received for the administrative account from any source.

319 Subsection 3. Management of the Fund.

320 The state treasurer shall be the treasurer and custodian of the family and  
321 employment security trust fund and the family and employment security administrative account  
322 and shall administer the trust fund and administrative account in accordance with the directions  
323 of the deputy director. All monies in the trust fund and administrative account shall be held in  
324 trust for the purposes of this part only and shall not be expended, released, appropriated, or  
325 otherwise disposed of for any other purpose. Monies in the trust fund and administrative  
326 account may be deposited in any depository bank in which general funds of the commonwealth  
327 may be deposited, but such monies shall not be commingled with other commonwealth funds  
328 and shall be maintained in separate accounts on the books of the depository bank. Such monies  
329 shall be secured by the depository bank to the same extent and in the same manner as required  
330 by the general depository law of the commonwealth, and collateral pledged for this purpose  
331 shall be kept separate and distinct from any other collateral pledged to secure other funds of the  
332 commonwealth. The trust fund shall maintain an annualized amount of at least 140 percent of  
333 the previous year's expenditure.

334 Subsection 4. Management of the Administrative Account.

335 The deputy director shall pay all expenses incurred in administering the  
336 provisions of this chapter. In the event that the balance in the family and employment security  
337 trust fund shall at any time be insufficient to pay disability benefits under this chapter, the  
338 governor, upon the deputy director's request, shall cause such sums as may be required for the

339 payment of such disability benefits to be transferred from the family and employment security  
340 administrative account to the family and employment security trust fund.

341           Subsection 5. Disbursements from the Fund.

342           Expenditures of monies in the family and employment security trust fund shall  
343 not be subject to provisions of law requiring specific appropriations or other formal release by  
344 state officers of money in their custody. All disability benefits shall be paid from the trust fund  
345 upon warrants drawn upon the state treasurer by the comptroller of the commonwealth  
346 supported by vouchers approved by the deputy director.

347           Subsection 6. Investment of Monies.

348           With the approval of the deputy director, the secretary of administration and  
349 finance may, from time to time, invest such monies in the family and employment security trust  
350 fund as are in excess of the amount deemed necessary for the payment of disability benefits for  
351 a reasonable future period. Such monies may be invested in bonds of any political or municipal  
352 corporation or subdivision of the commonwealth, or any of the outstanding bonds of the  
353 commonwealth, or invested in bonds or interest-bearing notes or obligations of the  
354 commonwealth, or of the United States, or those for which the faith and credit of the United  
355 States are pledged for the payment of principal and interest (or in federal land bank bonds or  
356 joint stock farm bonds). The investments shall at all times be so made that all the assets of the  
357 trust fund shall always be readily convertible into cash when needed for the payment of  
358 disability benefits. The director of administration and finance shall dispose of securities or  
359 other properties belonging to the trust fund only under the direction of the deputy director.

360                    Subsection 7. Temporary Disability Benefits and Family Temporary Disability  
361 Benefits To Be Paid from the Family and Employment Security Trust Fund; Recovery of  
362 Disability Benefits.

363                    Temporary disability benefits and family temporary disability benefits shall be  
364 paid from the family and employment security trust fund to eligible individuals. Disability  
365 benefits shall also be paid from the trust fund to an employee who is entitled to receive such  
366 disability benefits but cannot because of the bankruptcy of his or her employer or because the  
367 employer is not in compliance with this chapter. Disability benefits paid from the trust fund to  
368 such employee may be recovered through bankruptcy proceedings or from the noncomplying  
369 employer. The deputy director shall institute administrative and legal action to effect recovery  
370 of such disability benefits.

371                    Subsection 8. Amount of Employer Payments to the Family and Employment  
372 Security Trust Fund and Administrative Account

373                    For the purpose of accumulating funds for the payment of temporary disability  
374 benefits, family temporary disability benefits, and administrative costs, each employer, with the  
375 exception of any employer complying with section 4, subsection 1(b), (c), or (d), shall in the  
376 first year after the date the employer becomes subject to this chapter, and each year thereafter,  
377 pay amounts as determined by the deputy director. Each employer shall transmit all such  
378 payments to the trust fund or administrative account in such manner, at such time, and under  
379 such conditions as shall be prescribed by regulations.

380                    Subsection 9. Annual Establishment of Rates for Trust Fund Operations.

381                    On or before October first of each year, the deputy director shall certify to the  
382 secretary of administration and finance the estimated costs for the coming year of disability

383 benefits and for administrative services provided by the division. Said rates of employer  
384 contribution to both the trust fund and the administrative account as established by this chapter  
385 shall be adjusted annually as consistent with the needs of the operation of said trust fund and  
386 administrative account.

387 Subsection 10. Request for Wage and Employment Information.

388 An employer to whom the division has sent a request for wage and employment  
389 information for an employee claiming temporary disability benefits or family temporary  
390 disability benefits under this chapter shall complete and file such information within ten days  
391 from the date the request was sent. If an employer does not respond within ten days, that  
392 employer may be held liable for any and all related costs incurred by the commonwealth.

#### 393 SECTION 6: CLAIMS AND APPEAL

394 Subsection 1. Filing of Claims, and Reports Thereon; Giving and Return of  
395 Notice.

396 (a) Claims for temporary disability benefits and family temporary disability  
397 benefits shall be filed with the division and shall be handled under the procedures prescribed by  
398 sections 38 through 43 of chapter 151A and regulations promulgated thereunder.

399 (b) The division shall provide the same level of assistance to individuals filing  
400 claims for disability benefits under this chapter as it provides to unemployment benefits  
401 claimants pursuant to subsections 62A(a) through 62A(f) of chapter 151A.

#### 402 SECTION 7: NOTICE

403 Subsection 1. Notice to Employees.

404 (a) Every employer subject to this chapter shall keep posted in a conspicuous  
405 place or places on its premises a workplace notice prepared or approved by the division which

406 shall set forth excerpts from this chapter and other information the division deems necessary to  
407 explain the chapter. Such workplace notice shall be issued in English, Spanish, Chinese,  
408 Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other  
409 language that is the primary language of at least 10,000 or one-half of one percent of all  
410 residents of the commonwealth. Each employer with five or more employees whose primary  
411 language is not English shall post the workplace notice in that language, if such notice is  
412 available from the division.

413 (b) Each employer shall issue to each employee, within 30 days from date of the  
414 employee's first day of work, written information provided or approved by the division which  
415 explains the availability of temporary disability leave, family temporary disability leave,  
416 temporary disability benefits and family temporary disability benefits provided pursuant to this  
417 chapter.

418 (c) Each employer shall issue to each employee taking temporary disability  
419 leave or family temporary disability leave, as soon as practicable, but not more than 30 days  
420 from the date that the employee gives notice of leave, written information provided or approved  
421 by the division which shall contain the name and mailing address of the employer; the  
422 identification number assigned to the employer by the division; information describing the  
423 availability of temporary disability benefits and family temporary disability benefits provided  
424 pursuant to this chapter; instructions on how to file a claim for disability benefits; the address  
425 and telephone number of the regional office of the division which serves the recipient; and the  
426 telephone number of the division. Delivery is made when an employer provides such  
427 information to an employee in person or by mail to the employee's last known address.

428 (d) Any employer who fails to comply with the provisions of subsection 1(a) or  
429 1(b) of this section shall be punished by a fine of not less than 50 dollars nor more than 300  
430 dollars. A subsequent violation of this subsection by the same employer shall be punished by a  
431 fine of not less than 250 dollars nor more than 1,000 dollars. Where an employer fails to  
432 comply with this provision, an employee shall be deemed to have provided notice of leave  
433 under section 2, subsection 5, of this chapter. The employer shall have the burden of  
434 demonstrating compliance with subsections 1(a) and 1(b) of this section.

435 (e) The waiting period under section 3, subsection 5, of this chapter for an  
436 employee who did not receive the information required by subsection 1(c) of this section and  
437 who failed to file timely for disability benefits, shall be the initial week that such employee  
438 would have been eligible to receive temporary disability benefits or family temporary disability  
439 benefits. The employer shall have the burden of demonstrating compliance with subsection 1(c)  
440 of this section.

#### 441 SECTION 8: PURPOSE AND CONSTRUCTION

442 This act shall be liberally construed as remedial legislation to further its purpose of  
443 providing job-protected temporary disability leave and family temporary disability leave, as  
444 well as temporary disability benefits and family temporary disability benefits, to the employees  
445 of the commonwealth. All presumptions shall be made in favor of the availability of leave and  
446 the payment of disability benefits under this chapter.

447 SECTION 2. The General Laws are amended by inserting after paragraph 11A of  
448 section 4 of chapter 151B the following:-

449 11B. (1) For an employer to discharge, fine, suspend, expel, discipline or in any other  
450 manner discriminate against an employee (i) for exercising any right to which such employee is

451 entitled under the provisions of section 2, subsection 7, of chapter 152A, or (ii) with the purpose  
452 of interfering with the exercise of any right to which such employee is entitled under section 2,  
453 subsection 7, of chapter 152A.

454 (2) For any employer to discharge, fine, suspend, expel, discipline or in any  
455 other manner discriminate against an employee who has filed a complaint or instituted or caused  
456 to be instituted a proceeding under or related to section 2, subsection 7, of chapter 152A, or who  
457 has testified or is about to testify in an inquiry or proceeding, or who has given or is about to  
458 give information connected to any inquiry or proceeding relating to section 2, subsection 7, of  
459 chapter 152A.

460 (3) For purposes of this subsection, any negative change in the seniority, status,  
461 employment benefits, pay or other terms or conditions of employment of an employee who has  
462 been restored to a position pursuant to section 2, subsection 7, of chapter 152A that occurs  
463 within six months of such restoration, or of an employee who has participated in proceedings or  
464 inquiries pursuant to section 2, subsection 7, of chapter 152A within six months of the  
465 termination of proceedings shall be presumed to be retaliation.