

SENATE No. 688

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing paid sick days.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patricia D. Jehlen	Second Middlesex
Steven A. Tolman	Second Suffolk and Middlesex
Gale D. Candaras	First Hampden and Hampshire
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Kenneth J. Donnelly	Fourth Middlesex
Stephen M. Brewer	Worcester, Hampden, Hampshire and Franklin
Marc R. Pacheco	First Plymouth and Bristol
Mark C. Montigny	Second Bristol and Plymouth
Susan C. Fargo	Third Middlesex
Jennifer L. Flanagan	Worcester and Middlesex
James B. Eldridge	Middlesex and Worcester
Sonia Chang-Díaz	Second Suffolk
Karen E. Spilka	Second Middlesex and Norfolk
Anthony W. Petruccelli	First Suffolk and Middlesex
Harriette L. Chandler	First Worcester
Stephen J. Buoniconti	Hampden
Thomas M. McGee	Third Essex and Middlesex
John A. Hart, Jr.	First Suffolk
Thomas P. Kennedy	Second Plymouth and Bristol
Kay Khan	11th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01073 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ESTABLISHING 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. SHORT TITLE**

2 This Act may be cited as the “Paid Sick Days Act”.

3 **SECTION 2: PREAMBLE**

4 The legislature, in order to promote the health and welfare of families and the public health of
5 the Commonwealth, and to advance healthier, more productive and more equitable workplaces
6 throughout the Commonwealth, hereby provides all employees shall be entitled to earn up to a
7 minimum of 7 paid sick days per year, or the appropriate percentage thereof, and directs all
8 employers to allow employees to use up to 7 paid sick days per year who have earned such time
9 as determined by this Act.

10 **SECTION 3: FINDINGS**

11 The Legislature of the Commonwealth of Massachusetts makes the following findings:

12 1) Preventive and routine medical care helps avoid illness and injury by detecting illnesses
13 early and shortening the duration of illnesses. Providing employees time off to attend to their
14 own health care needs ensures that they will be healthier and more efficient employees in the
15 long run. Routine medical care results in savings by detecting and treating illness and injury
16 early and decreasing the need for emergency care. These savings benefit public and private
17 payers of health insurance, including private businesses.

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

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

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

29 5) When parents are available to care for their children who become sick, the children's
30 recovery is faster, more serious illnesses are prevented, and the children's overall mental and
31 physical health is improved. Parents who cannot afford to miss work must send children with a

32 contagious illness to childcare or school, contributing to the high rate of infections in child care
33 centers and schools.

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

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

46 8) Allowing employees to earn 7 paid sick days per year is affordable for employers and good
47 for business. Requiring all employers to provide paid sick days levels the playing field for
48 employers so all those who want to provide this benefit can, without fear of being at a
49 competitive disadvantage. Employers who provide paid sick days see greater retention and avoid
50 the problems of “presenteeism” or employees coming to work sick. Studies have shown that
51 employers that offer paid sick days have higher productivity and morale, reduced absenteeism,
52 and decreased turnover and training costs. Sick workers are less productive and spread their
53 germs to about 20% of their co-workers. Paid sick days will save Massachusetts businesses

54 about \$63.2 million annually in wages paid to workers who are too sick to be productive, and
55 \$627.2 million in turnover costs.

56 **SECTION 4: PURPOSE AND CONSTRUCTION**

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

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

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

64 **SECTION 5:** Chapter 149 of the General Laws, as appearing in the 2006 Official
65 Edition, is hereby amended by inserting after section 148B the following section:-

66 Section 148C

67 (a) Definitions: As used in this section, the following terms shall have the following meanings:

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

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

73 “Employer”, any individual, corporation, partnership or other entity, including any agent
74 thereof, who engages the services of an employee or employees for wages, remuneration or other
75 compensation.

76 “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to
77 2654 inclusive, as it may be amended.

78 “Health care provider”, a provider who ___

79 (1)(i) is permitted, pursuant to written policy of each individual institution
80 providing health care services, to provide a patient with written notice of his/her illness or
81 condition resulting in absence from work, for the patient to provide his/her employer; or

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

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

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

89 “Seven Paid Sick Days”, the total number of paid sick hours computed by determining
90 the number of hours in a regular work day and multiplying this number by seven.

91 “Sick day”, a portion of, or a regular workday when an employee is unable to report to
92 work because of the reasons described in subsection (c).

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

95 (b) All employees who work in the Commonwealth who must be absent from work for the
96 reasons set forth in subsection (c) shall be entitled to not less than 7 sick days with pay during a
97 12-month period, or to a pro rata number of paid days or hours under the provisions of
98 subsection (d). The 12-month period for each employee shall be calculated from the date-of-hire
99 or subsequent anniversary date.

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

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

105 (2) care for the employee’s own physical or mental illness, injury, or medical condition
106 that requires home care, or professional medical diagnosis or care or preventative medical care,
107 or that is covered under the federal act; or

108 (3) an employee to attend a routine medical appointment for himself or herself or for a
109 child, or, in the case of a spouse, parent, or parent of spouse otherwise in need of care; or

110 4) an employee to address the psychological, physical or legal effects of domestic
111 violence as defined in subsection (g1/2) of section 1 of chapter 151A.

112 (d) Paid sick days leave shall accrue at the rate of one hour of pay for every 30 hours worked up
113 to the maximum of 7 paid sick days. Paid sick days may be used as accrued, or be loaned by
114 the employer, at its discretion, to the employee in advance of such accrual, provided that an
115 employer shall not require an employee to reimburse it for any unearned sick days the employee
116 is allowed to use. Unless the employer and employee agree to designate otherwise, for periods
117 of paid sick day leave that are less than a normal workday, the leave shall be counted on an
118 hourly basis, or the smallest increment that the employer's payroll system uses to account for
119 absences or use of leave.

120 (e) Subject to the provisions of subparagraph (o), an employer may require certification of the
121 qualifying illness, injury or health condition when a paid sick day leave period covers more than
122 3 consecutive workdays. Any reasonable documentation signed by a health care provider
123 involved in following or treating the illness, injury or health condition, and indicating the need
124 for the amount of sick days taken, shall be deemed acceptable certification. The certification
125 shall be issued at such time and in such manner the attorney general may by regulation require.
126 The employer shall not delay the commencement of leave taken for purposes of subsection (c)
127 or pay for this period on the basis that the employer has not yet received the certification.
128 Nothing in this act shall be construed to require an employee to provide as certification any
129 information from a health care provider that would be in violation of section 1177 of the Social
130 Security Act or the regulations promulgated pursuant to section 264(c) of the Health Insurance
131 Portability and Accountability Act, 42 U.S.C. 1320d-2 note.

132 (f) If the necessity for paid sick days leave under this section is foreseeable, the employee shall
133 provide the employer with not less than 7 days notice before the date the leave is to begin. If the
134 necessity for leave is not foreseeable, the employee shall provide such notice as soon as is
135 practicable after the employee is aware of the necessity of such leave.

136 (g) Paid sick days shall carry over annually to the extent not used by the employee, provided
137 that nothing in this section shall be construed to require an employer to allow use of more than 7
138 paid sick days leave in any given year for an employee unless an employer agrees to do so.
139 Employers shall not be required to pay out unused sick days upon the separation of the employee
140 from the employer.

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

146 (i) It shall be unlawful for any employer to take any adverse action against an employee because
147 the employee 1) exercises rights or attempts to exercise rights under this section, 2) opposes
148 practices which such employee believes to be in violation of this section, or 3) supports the
149 exercise of rights of another under this section. Exercising rights under this section shall include
150 but not be limited to filing an action, or instituting or causing to be instituted any proceeding
151 under or related to this section; providing or about to provide any information in connection with
152 any inquiry or proceeding relating to any right provided under this section; or testifying to about
153 to testify in any inquiry or proceeding relating to any right provided under this section.

154 (j) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief
155 for this purpose. Violation of this section shall be subject to the penalties in section
156 27C(b)(1),(2),(4),(6),(7) and the provisions in section 150.

157 (k) The attorney general shall prescribe the employer's obligation to make, keep, and preserve
158 records pertaining to this section and the requirements for keeping records under section 15 of
159 chapter 151 shall apply to the records required under this section.

160 (l) Nothing in this section shall be construed to discourage employers from adopting or retaining
161 paid sick day policies more generous than policies that comply with the requirements of this
162 section and nothing in this section shall be construed to diminish the obligation of an employer to
163 comply with any contract, collective bargaining agreement, or any employment benefit program
164 or plan that provides greater paid sick day leave rights to employees than the rights established
165 under this session.

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

172 (n) The attorney general may adopt such rules and regulations as may be necessary to carry out
173 the purpose and provisions of this act, including the manner in which an employee who does not
174 have a health care provider shall provide certification.

175 (o) A notice of the provisions of this section shall be prepared by the attorney general, in English
176 and other languages as required under section 62A(a)(iii) of chapter 151A. Each employer shall
177 post this notice in a conspicuous location accessible to employees in every establishment where
178 employees having rights under this section work and provide a copy to each such employee.

179 Such notice shall include the following information:

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

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

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

185 (iv) the name, address, and phone number of the relevant department of the attorney
186 general's office where questions about the rights and responsibilities under the act can be
187 answered; and

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

189 **SECTION 6: OUTREACH**

190 The executive office of health and human services, in coordination with the attorney general,
191 shall develop and implement a multilingual outreach program to inform employees, parents, and
192 persons who are under the care of a health care provider about the availability of paid sick days
193 under this act. This program shall include the distribution of notices and other written materials

194 in English and other languages to all child care and elder care providers, domestic violence
195 shelters, schools, hospitals, community health centers, and other health care providers.

196 **SECTION 7:** Section 150 of chapter 149 as so appearing is hereby further amended by
197 inserting after the number “148B” in line 21, the following:-148C.

198 **SECTION 8: EFFECTIVE DATES**

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

200 (b) In the case of a collective bargaining agreement in effect on the effective date

201 proscribed by subsection (a), this act shall take effect on the earlier of the date of the termination
202 of such agreement; or the date that occurs 12 months after the promulgation of regulations by the
203 attorney general.