

HOUSE No. 809

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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 adoption of the accompanying bill:

An Act to establish paid family leave.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>

HOUSE No. 809

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 809) of Antonio F. D. Cabral and others for legislation to provide for paid family leave within a new temporary disability insurance program. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to establish paid family leave.

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
2 following:-

3 CHAPTER 175K.

4 Section 1: Definitions

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

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

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

9 "Child" has the same meaning as provided by the federal Family Medical Leave Act.

10 “Commission” means the Massachusetts commission against discrimination, as
11 established by section 56 of chapter 6.

12 "Contributions" means the payments made to the family and employment security trust
13 fund and administrative account, as required by this chapter.

14 “Dependent” means an unemancipated child, as provided by section 29(c) of chapter
15 151A.

16 "Director" means the director of the Massachusetts family and medical leave program.

17 “Disability benefits” means cash payments made to a covered employee pursuant to
18 section 3 of this chapter.

19 "Division" means the Massachusetts division of family and medical leave as established
20 by subsection 8 of section 3 of this chapter.

21 “Employee” has the same meaning as provided by section 1(h) of chapter 151A.

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

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

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

27 “Family and medical leave act” means the federal family and medical leave act of 1993,
28 29 USC 2611.

29 "Family member" means the spouse, child, parent, parent of spouse, grandparent, or
30 grandchild of an individual seeking leave or disability benefits under this chapter.

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

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

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

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

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

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

51 "Temporary disability benefits" means disability benefits provided pursuant to section 3
52 of this chapter to a covered employee who is on a leave from or who has left his employment
53 because of a serious health condition of the employee that makes him or her unable to perform
54 the functions of his position.

55 "Temporary disability leave" means leave taken by a covered employee from
56 employment because of a serious health condition of the employee that makes him or her unable
57 to perform the functions of his position.

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

59 "Weekly benefit amount" means the amount of disability benefits paid to a covered
60 employee on a weekly basis, as provided by section 3, subsection 3, of this chapter.

61 Section 2: Temporary disability leave and family temporary disability leave

62 Subsection 1. Eligibility for Temporary Disability Leave.

63 An employee is eligible for temporary disability leave if he has met the monetary
64 eligibility requirements set forth in section 24(a) of chapter 151A.

65 Subsection 2. Eligibility for Family Temporary Disability Leave.

66 An employee is eligible for family temporary disability leave if he has met the monetary
67 eligibility requirements set forth in section 24(a) of chapter 151A and is employed by an

68 employer who employees at least eleven employees, as defined by subsection d(4) of section 148
69 of chapter 149.

70 Subsection 3. Length of Leave

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

76 Subsection 4. Timing of Leave.

77 In the case of family temporary disability leave taken because of (a) the birth of a child of
78 the employee, or (b) the placement of a child with the employee for adoption or foster care, the
79 entitlement to leave shall expire at the end of the 12-month period beginning on the date of the
80 birth or placement.

81 Subsection 5. Certification.

82 An employer may, at its option, require that a request for temporary disability leave or
83 family temporary disability leave be supported by a certification of the need for leave. The
84 certification shall be sufficient if it meets the criteria set forth in section 3, subsection 6, of this
85 chapter.

86 Subsection 6. Reinstatement and Employment Benefits.

87 (a) An employee who has taken temporary disability leave or family temporary disability
88 leave pursuant to this section shall be restored to his previous position, or to a substantially

89 similar position, with the same status, pay, employment benefits, length of service credit, and
90 seniority as of the date of leave.

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

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

102 (d) Employers may require employees taking family temporary disability leave to
103 use up to two weeks of accrued vacation time prior to taking said leave.

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

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

111 Subsection 6. Notice

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

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

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

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

128 Subsection 7. Unlawful Practices.

129 (a) It shall be unlawful for any employer to retaliate by discharging, firing, suspending,
130 expelling, disciplining or in any other manner discriminating against an employee for exercising
131 any right to which such employee is entitled under this section or with the purpose of interfering
132 with the exercise of any right to which such employee is entitled under this section.

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

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

143 Subsection 8. Administrative Enforcement.

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

146 Subsection 9. Enforcement and Relief.

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

149 Section 3: Temporary Disability Benefits And Family Temporary Disability Benefits

150 Subsection 1. Establishment of Temporary Disability Benefits and Family Temporary
151 Disability Benefits.

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

156 Subsection 2. Eligibility.

157 An employee is eligible to receive temporary disability benefits if he has met the
158 monetary eligibility requirements set forth in section 24(a) of chapter 151A.

159 Subsection 3. Eligibility.

160 An employee is eligible to receive family temporary disability benefits if he has met the
161 monetary eligibility requirements set forth in section 24(a) of chapter 151A and is employed by
162 an employer who employs at least eleven employees, as defined by subsection d(4) of section
163 148 of chapter 149.

164 Subsection 3. Amount of benefits.

165 (a)(1) For an employee who takes leave on a full-time basis, the weekly benefit amount
166 shall be equal to sixty-six (66%) percent of the eligible individual's weekly wage up to a
167 maximum of one thousand (\$1,000) dollars per week. Commencing January 1, 2018, the
168 division shall adjust annually the maximum weekly benefit amount to reflect changes in the
169 United States Bureau of Labor Statistics Consumer Price Index for the Boston-Cambridge-

170 Quincy consolidated metropolitan statistical area for all urban consumers, all goods, or its
171 successor index.

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

174 Subsection 4. Duration of Disability Benefits.

175 (a) Temporary disability benefits: The duration of temporary disability benefits shall not
176 exceed 26 weeks during the benefit year.

177 (b) Family temporary disability benefits: The duration of family temporary disability
178 benefits shall not exceed 12 weeks during the benefit year.

179 Subsection 5. Waiting Period

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

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

186 Subsection 6. Certification Required.

187 (a) An employee who makes a claim for temporary disability benefits shall provide a
188 certification issued by the health care provider of the employee. The certification shall be
189 sufficient if it states the date on which the serious health condition commenced, the probable

190 duration of the condition, the appropriate medical facts within the knowledge of the health care
191 provider as required by the division, and a statement that the employee is unable to perform the
192 functions of his position.

193 (b) An employee who makes a claim for family temporary disability benefits because of
194 the serious health condition of a family member of the employee shall provide a certification
195 issued by the health care provider of the family member. The certification shall be sufficient if it
196 states the date on which the serious health condition commenced, the probable duration of the
197 condition, the appropriate medical facts within the knowledge of the health care provider as
198 required by the division, a statement that the employee is needed to care for the family member,
199 and an estimate of the amount of time that the employee is needed to care for the family member.

200 (c) An employee who makes a claim for family temporary disability benefits because of
201 the birth of a child of the employee shall provide either a birth certificate or a certification issued
202 by the health care provider of the child of the eligible employee. The certification shall be
203 sufficient if it states the date of the child's birth.

204 (d) An employee who makes a claim for family temporary disability benefits because of
205 the placement of a child with the employee for adoption or foster care shall provide a
206 certification issued by the health care provider of the child, an adoption or foster care agency
207 involved in the placement, or by other persons as determined by the division. The certification
208 shall be sufficient if it states the date of placement.

209 (e) An employee who makes a claim for family temporary disability benefits because of
210 the placement with the employee for adoption or foster care of a child 18 years of age or older
211 and incapable of self-care because of a mental or physical disability shall, in addition to the

212 certification required by paragraph (d) of this subsection, also provide a certification issued by
213 the health care provider of the child, or by other persons as determined by the division. The
214 certification shall be sufficient if it states the nature of the disability and fact that the child is
215 incapable of self-care.

216 (f) Ineligibility In Certain Cases.

217 An individual shall not be eligible to receive disability benefits if the deputy director
218 finds that the individual, for the purpose of obtaining disability benefits, has willfully made a
219 false statement or representation, with actual knowledge of the falsity thereof, or has willfully
220 withheld a material fact concerning the facts required to be certified pursuant to this subsection.

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

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

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

239 Subsection 8. Massachusetts Division of Family and Medical Leave.

240 There shall be a division of family and medical leave within the executive office of labor
241 and workforce development which shall be administered by a director appointed by the
242 Governor. The division shall produce an annual report detailing all funds earned or received and
243 all costs and benefits paid and shall make this report available on line no later than sixty days
244 after the end of the commonwealth's fiscal year.

245 Section 4: Provision Of Temporary Disability Benefits And Family Temporary
246 Disability Benefits

247 Subsection 1. Provision for Payment of Disability Benefits.

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

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

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

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

266 (d) By any plan or agreement in existence by agreement or collective bargaining contract
267 between the employer or employers or an association of employers and an association of
268 employees, provided that the plan or agreement is acceptable to the division as satisfying the
269 obligation to provide for the payment of disability benefits under this chapter, that the benefits
270 under the plan or agreement are at least as favorable as the disability benefits required by this
271 chapter, and that the plan or agreement does not require contributions from any employee or of
272 any class of employees.

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

276 Subsection 2. Notice of Insurance.

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

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

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

286 Subsection 4. Employee Reimbursement of Family and Medical Leave Costs for
287 Employer with Private Plan.

288 Employers providing for the payment of disability benefits under subsection 1(b), (c), or
289 (d) of this section may seek reimbursement for that portion of the cost of said plans or
290 agreements which provide family temporary disability benefits, as required by this chapter, from
291 that employer's employees. Said reimbursement may not exceed the rate of employee
292 contributions for the previous full fiscal year established pursuant to subsection 11 of section 5
293 of this chapter. Said reimbursement shall be prorated for each employee to equal the percentage

294 of the employer's total compensation payments to all employees that is represented by said
295 employee's total compensation received from that employer.

296 Section 5: Temporary Disability Trust Fund and Family and Medical Leave Trust Fund
297 And Administrative Accounts

298 Subsection 1. Establishment of the Temporary Disability Trust Fund.

299 (A) There is established in the treasury of the state, separate and apart from all public
300 monies or funds of the state, a temporary disability trust fund which shall be administered by the
301 deputy director exclusively for the purposes of this chapter. All payments pursuant to this part
302 shall be paid into the trust fund and all disability benefits payable under this chapter shall be paid
303 from the trust fund. The trust fund shall consist of:

304 (a) All contributions collected pursuant to this section, together with any interest thereon;

305 (b) Interest earned on any monies in the trust fund;

306 (c) Any property or securities acquired through the use of monies belonging to the trust
307 fund;

308 (d) All earnings of such property and securities;

309 (e) All monies transferred into the trust fund from the family and employment security
310 administrative account; and

311 (f) All other monies received for the trust fund from any source.

312 Subsection 2. Establishment of the Temporary Disability Administrative Account.

313 There is established in the treasury of the state, separate and apart from all public monies
314 or funds of the state, a temporary disability administrative account which shall be administered
315 by the deputy director exclusively for the purposes of this chapter. The administrative account
316 shall consist of:

317 (a) All contributions collected pursuant to this section, together with any interest thereon;

318 (b) All fines and penalties for the administrative account pursuant to this chapter;

319 (c) All monies collected by way of subrogation;

320 (d) Interest earned on any monies belonging to the administrative account;

321 (e) Any property or securities acquired through the use of monies belonging to the
322 administrative account;

323 (f) All earnings of such property and securities;

324 (g) All monies appropriated to the administrative account by the legislature; and

325 (h) All other monies received for the administrative account from any source.

326 Subsection 3. Establishment of the Family and Medical Leave Trust Fund.

327 (A) There is established in the treasury of the state, separate and apart from all public
328 monies or funds of the state, a family and medical leave trust fund which shall be administered
329 by the deputy director exclusively for the purposes of this chapter. All payments pursuant to this
330 part shall be paid into the trust fund and all disability benefits payable under this chapter shall be
331 paid from the trust fund. The trust fund shall consist of:

- 332 (a) All contributions collected pursuant to this section, together with any interest thereon;
- 333 (b) Interest earned on any monies in the trust fund;
- 334 (c) Any property or securities acquired through the use of monies belonging to the trust
335 fund;
- 336 (d) All earnings of such property and securities;
- 337 (e) All monies transferred into the trust fund from the temporary disability administrative
338 account; and
- 339 (f) All other monies received for the trust fund from any source.

340 Subsection 4. Establishment of the Family and Medical Leave Administrative Account.

341 There is established in the treasury of the state, separate and apart from all public monies
342 or funds of the state, a family and medical leave administrative account which shall be
343 administered by the deputy director exclusively for the purposes of this chapter. The
344 administrative account shall consist of:

- 345 (a) All contributions collected pursuant to this section, together with any interest thereon;
- 346 (b) All fines and penalties for the administrative account pursuant to this chapter;
- 347 (c) All monies collected by way of subrogation;
- 348 (d) Interest earned on any monies belonging to the administrative account;
- 349 (e) Any property or securities acquired through the use of monies belonging to the
350 administrative account;

- 351 (f) All earnings of such property and securities;
- 352 (g) All monies appropriated to the administrative account by the legislature; and
- 353 (h) All other monies received for the administrative account from any source.

354 Subsection 5. Management of the Funds.

355 The state treasurer shall be the treasurer and custodian of the temporary disability trust
356 fund and the family and medical leave trust fund and the temporary disability administrative
357 account and the family and medical leave administrative account and shall administer the trust
358 funds and administrative accounts in accordance with the directions of the deputy director. All
359 monies in the trust funds and administrative accounts shall be held in trust for the purposes of
360 this part only and shall not be expended, released, appropriated, or otherwise disposed of for any
361 other purpose. Monies in the trust funds and administrative accounts may be deposited in any
362 depository bank in which general funds of the commonwealth may be deposited, but such
363 monies shall not be commingled with other commonwealth funds and shall be maintained in
364 separate accounts on the books of the depository bank. Such monies shall be secured by the
365 depository bank to the same extent and in the same manner as required by the general depository
366 law of the commonwealth, and collateral pledged for this purpose shall be kept separate and
367 distinct from any other collateral pledged to secure other funds of the commonwealth. The trust
368 funds shall maintain an annualized amount of at least 140 percent of the previous year's
369 expenditure.

370 Subsection 6. Management of the Administrative Accounts.

371 The deputy director shall pay all expenses incurred in administering the provisions of this
372 chapter. In the event that the balance in the temporary disability trust fund shall at any time be
373 insufficient to pay disability benefits under this chapter, the governor, upon the deputy director's
374 request, shall cause such sums as may be required for the payment of such disability benefits to
375 be transferred from the temporary disability administrative account to the temporary disability
376 trust fund. In the event that the balance in the family and medical leave trust fund shall at any
377 time be insufficient to pay disability benefits under this chapter, the governor, upon the deputy
378 director's request, shall cause such sums as may be required for the payment of such disability
379 benefits to be transferred from the family and medical leave administrative account to the family
380 and medical leave trust fund.

381 Subsection 7. Disbursements from the Funds.

382 Expenditures of monies in the temporary disability trust fund and the family and medical
383 leave trust fund shall not be subject to provisions of law requiring specific appropriations or
384 other formal release by state officers of money in their custody. All disability benefits shall be
385 paid from the trust funds upon warrants drawn upon the state treasurer by the comptroller of the
386 commonwealth supported by vouchers approved by the deputy director.

387 Subsection 8. Investment of Monies.

388 With the approval of the deputy director, the secretary of administration and finance may,
389 from time to time, invest such monies in the temporary disability trust fund and the family and
390 medical leave trust fund as are in excess of the amount deemed necessary for the payment of
391 disability benefits for a reasonable future period, subject to subsection 9. Such monies may be
392 invested in bonds of any political or municipal corporation or subdivision of the commonwealth,

393 or any of the outstanding bonds of the commonwealth, or invested in bonds or interest-bearing
394 notes or obligations of the commonwealth, or of the United States, or those for which the faith
395 and credit of the United States are pledged for the payment of principal and interest (or in federal
396 land bank bonds or joint stock farm bonds). The investments shall at all times be so made that
397 all the assets of the trust funds shall always be readily convertible into cash when needed for the
398 payment of disability benefits. The director of administration and finance shall dispose of
399 securities or other properties belonging to the trust funds only under the direction of the deputy
400 director.

401 Subsection 9. Federal Funds.

402 To the extent allowed by federal law, federal funds received by the commonwealth for
403 the specific purpose of maintaining or supporting paid family leave shall be used solely to reduce
404 the rate of contributions required of employees pursuant to subsection 11 of this section.

405 Subsection 10. Disability Benefits To Be Paid from the Trust Funds; Recovery of
406 Disability Benefits.

407 Temporary disability benefits shall be paid from the temporary disability trust fund to
408 eligible individuals. Disability benefits shall also be paid from the trust fund to an employee
409 who is entitled to receive such disability benefits but cannot because of the bankruptcy of his
410 employer or because the employer is not in compliance with this chapter. Disability benefits
411 paid from the trust fund to such employee may be recovered through bankruptcy proceedings or
412 from the noncomplying employer. The deputy director shall institute administrative and legal
413 action to effect recovery of such disability benefits.

414 Family temporary disability benefits shall be paid from the family and medical leave trust
415 fund to eligible individuals. Disability benefits shall also be paid from the trust fund to an
416 employee who is entitled to receive such disability benefits but cannot because of the bankruptcy
417 of his employer or because the employer is not in compliance with this chapter. Disability
418 benefits paid from the trust fund to such employee may be recovered through bankruptcy
419 proceedings or from the noncomplying employer. The deputy director shall institute
420 administrative and legal action to effect recovery of such disability benefits.

421 Subsection 11. Amount of Employer Payments to the Temporary Disability Trust Fund
422 and Administrative Account

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

430 Subsection 12. Amount of Employee Payments to the Family and Medical Leave Trust
431 Fund and Administrative Account

432 For the purpose of accumulating funds for the payment of family temporary disability
433 benefits and administrative costs, each employee, with the exception of an employee employed
434 by any employer complying with section 4, subsection 1(b), (c), or (d), shall in the first year after
435 the date the employee becomes subject to this chapter, and each year thereafter, pay amounts as

436 determined by the deputy director. Each employer shall transmit all such payments to the trust
437 fund or administrative account in such manner, at such time, and under such conditions as shall
438 be prescribed by regulations.

439 Subsection 13. Annual Establishment of Rates for Trust Fund Operations.

440 On or before October first of each year, the deputy director shall certify to the secretary
441 of administration and finance the estimated costs for the coming year of temporary disability
442 benefits and for related administrative services provided by the division. Said rates of employer
443 contribution to both the temporary disability trust fund and the temporary disability
444 administrative account as established by this chapter shall be adjusted annually as consistent with
445 the needs of the operation of said trust fund and administrative account.

446 On or before October first of each year, the deputy director shall certify to the secretary
447 of administration and finance the estimated costs for the coming year of family temporary
448 disability benefits and for related administrative services provided by the division. Said rates of
449 employee contribution to both the family and medical leave trust fund and the family and
450 medical leave administrative account as established by this chapter shall be adjusted annually as
451 consistent with the needs of the operation of said trust fund and administrative account.

452 Subsection 14. Request for Wage and Employment Information.

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

458 Section 6: Claims And Appeal

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

460 Claims for temporary disability benefits and family temporary disability benefits shall be
461 filed with the division and shall be handled under the procedures prescribed by f chapter 30A.

462 Section 7: Notice

463 Subsection 1. Notice to Employees.

464 (a) Every employer subject to this chapter shall keep posted in a conspicuous place or
465 places on its premises a workplace notice prepared or approved by the division which shall set
466 forth excerpts from this chapter and other information the division deems necessary to explain
467 the chapter. Such workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole,
468 Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the
469 primary language of at least 10,000 or one-half of one percent of all residents of the
470 commonwealth. Each employer with five or more employees whose primary language is not
471 English shall post the workplace notice in that language, if such notice is available from the
472 division.

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

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

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

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

500 Section 8: Purpose And Construction

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

506 SECTION 2. The General Laws are amended by inserting after paragraph 11A of section
507 4 of chapter 151B the following:-

508 11B. (1) For an employer to discharge, fire, suspend, expel, discipline or in any other
509 manner discriminate against an employee (i) for exercising any right to which such employee is
510 entitled under the provisions of section 2, subsection 7, of chapter 152A, or (ii) with the purpose
511 of interfering with the exercise of any right to which such employee is entitled under section 2,
512 subsection 7, of chapter 152A.

513 (2) For any employer to discharge, fine, suspend, expel, discipline or in any other
514 manner discriminate against an employee who has filed a complaint or instituted or caused to be
515 instituted a proceeding under or related to section 2, subsection 7, of chapter 152A, or who has
516 testified or is about to testify in an inquiry or proceeding, or who has given or is about to give
517 information connected to any inquiry or proceeding relating to section 2, subsection 7, of chapter
518 152A.

519 (3) For purposes of this subsection, any negative change in the seniority, status,
520 employment benefits, pay or other terms or conditions of employment of an employee who has
521 been restored to a position pursuant to section 2, subsection 7, of chapter 152A that occurs within

522 six months of such restoration, or of an employee who has participated in proceedings or
523 inquiries pursuant to section 2, subsection 7, of chapter 152A within six months of the
524 termination of proceedings shall be presumed to be retaliation.

525 SECTION 3. The General Laws are amended by inserting after subclause (Q) of section
526 2. (a)(2) of chapter 62 the following:-

527 (R) Amounts received by an individual for temporary disability leave or family
528 temporary disability leave under chapter 175K of the general laws.