

HOUSE No. 124

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act establishing 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 Chapter 151A of the General Laws as appearing in the 2006 Official Edition is hereby
2 amended by adding the following:—Section 75. Definitions. Section 75. The definitions
3 contained in section 1 of chapter 151A shall apply to section 75 to section 82, inclusive, unless a
4 term is also defined in this section 75. The following words or phrases as used in section 75 to
5 section 82, inclusive, shall have the following meanings unless the context clearly requires
6 otherwise: “Benefits” means moneys payable to a covered employee from the family fund
7 pursuant to this section. “Child” means a biological, adopted or foster son or daughter, a stepson
8 or stepdaughter, a legal ward under the age of eighteen years, or a son or daughter of a covered
9 employee who stands in loco parentis to that child. “Contribution Rate” means the percentage of
10 employees’ total compensation paid to the family fund annually. “Covered Employee” means any
11 Massachusetts resident meeting the qualifications of subsection h of section 1 of chapter
12 151A. “Family Fund” means a segregated account established by section 76 of chapter 151A.
13 “Family Member” means a covered employee’s spouse, child or parent. “Parent” means a
14 biological, foster, or adoptive parent, a stepparent, a legal guardian or other person who stood in

15 loco parentis to the covered employee or his spouse when the covered employee or spouse was a
16 child. "Serious Health Condition" means an illness, injury, impairment, or physical or mental
17 condition that involves inpatient care in a hospital, hospice, or residential health care facility, or
18 continuing treatment or continuing supervision by a health care provider. Section 76.

19 Contributions. Section 76. The contributions required hereunder shall be paid by all employees to
20 the commonwealth in such manner and at such times as the commissioner may prescribe, and
21 shall be paid over by the commissioner to the state treasurer and credited by him to the Family
22 Fund. Section 77. Rates. Section 77. Employee contributions required under section 2 shall equal
23 0.1% of wages, up to a maximum of \$120 annually. On or before September 30th of each year,
24 the commissioner shall prepare a statement, which shall be a public record, declaring the total
25 amount of contributions and benefits for the preceding calendar year, the administrative costs of
26 the family fund, the estimated benefits for the next calendar year and the percentage of
27 compensation to be paid to the family fund by covered employee in the next calendar year.

28 Notwithstanding this section 77, the commissioner may, at his discretion, increase or decrease,
29 by not to exceed 0.01 percent, the contribution rate if he determines the adjustment is necessary
30 to reimburse the fund for benefits paid or estimated to be paid to covered employees or to
31 prevent the accumulation of funds in excess of those needed to maintain an adequate fund
32 balance. Section 78. Benefits. Section 78. A covered employee who has satisfied the requirements
33 of this section shall be eligible for up to twelve weeks worth of benefits in any twelve month
34 period. Said weekly benefit amount shall be equal to the amount of the benefit for which the
35 individual would have been eligible at the start of said leave pursuant to chapter 151A had that
36 individual been in total unemployment, including any dependency benefits payable there under.
37 An individual is not eligible for benefits hereunder with respect to any day that he or she has

38 received unemployment compensation benefits pursuant to chapter 151 or any other
39 jurisdiction's similar unemployment compensation program. No two or more individuals are
40 eligible for benefits hereunder with respect to the same family member at the same time. Any
41 payment resulting from a birth or adoption described in this section from a disability insurance
42 plan contributed to by the individual's employer, in proportion to the employer's contribution to
43 such plan shall cause a reduction, in the same amount as the payments, to the total amount of
44 benefits for which the individual is otherwise eligible under this section. Employers may require
45 covered employees to use up to two weeks worth of vacation time prior to receiving benefits
46 hereunder. Section 79. Conflicts. Section 79. Nothing in this section shall interfere with any
47 greater rights or benefits under the terms of a collective bargaining agreement or any other
48 employment agreement between the employee and the employing unit, nor shall the payment of
49 benefits under this section require an employer not covered under 29 U.S.C. Section 2601 or
50 under section 105D of chapter 149 to provide a job-protected leave. Section 80.
51 Regulations. Section 80. The Commissioner shall issue regulations providing guidelines for
52 eligibility and the application procedure. Section 81. Eligibility. Section 81. In accordance with
53 the regulations issued pursuant hereto, a covered employee shall receive benefits pursuant to this
54 section upon establishing eligibility for each uninterrupted period of disability by filing a first
55 claim supported by the certificate of a treating physician or practitioner that establishes the
56 serious health condition or injury of the family member that warrants the care of the covered
57 employee or upon producing the relevant birth certificate or adoption certificate of the covered
58 employee's or his or her spouse's or domestic partner's new child. A certificate filed to establish
59 the serious health condition of the family member shall include: (a) a diagnosis and diagnostic
60 code prescribed in the International Classification of Diseases, or, where no diagnosis has yet

61 been obtained, a detailed statement of symptoms.(b) the date, if known, on which the condition
62 commenced. (c) The probably duration of the condition.(d) An estimate of the amount of time
63 that the physician or practitioner believes the covered employee is needed to care for the family
64 member.(e) A statement that the serious health condition warrants the participation of the
65 covered employee to provide care for his or her family member. “Warrants the participation of
66 the covered employee” includes, but is not limited to, providing psychological comfort, and
67 arranging “third party” care for the family member, as well as directly providing or participating
68 in medical care.Section 82. Further Evidence.Section 82. Nothing in this section shall be
69 construed to preclude the department from requesting additional medical evidence to supplement
70 a claim filed pursuant to this section if the evidence can be procured without additional cost to
71 the claimant. The commissioner may require that additional evidence include identification of
72 diagnoses, symptoms, or a statement as to the facts of the claimant’s disability by the physician
73 or practitioner treating the claimant, by the registrar, authorized medical officer, or other duly
74 authorized official of the hospital or health facility treating the claimant, or by an examining
75 physician or other representative of the department.

76 SECTION 2. Effective Date.This act shall become operative on January 1, 2008, except
77 that benefits shall be payable for periods of leave commencing on or after July 1, 2008.

78 SECTION 3. The General Laws are amended by inserting after paragraph 11A of section
79 4 of chapter 151 B the following:—11B. (1) For an employer to discharge, fine, suspend, expel,
80 discipline or in any other manner discriminate against an employee: (i) for exercising any right to
81 which such employee is entitled under the provisions of section 75 to section 82, inclusive, of
82 chapter 151A, or (ii) with the purpose of interfering with the exercise of any right to which such
83 employee is entitled under section 75 to section 82, inclusive, of chapter 151A. (2) For any

84 employer to discharge, fine, suspend, expel, discipline or in any other manner discriminate
85 against an employee who has filed a complaint or instituted or caused to be instituted a
86 proceeding under or related to section 75 to section 82, inclusive, of chapter 151 A, or who has
87 testified or is about to testify in an inquiry or proceeding, or who has given or is about to give
88 information connected to any inquiry or proceeding related to section 75 to section 82, inclusive,
89 of chapter 151 A. For purposes of this subsection, any negative change in the seniority, status,
90 employment benefits, pay or other terms or conditions of employment of an employee who has
91 been restored to a position pursuant to section 75 to section 82, inclusive, of chapter 151 A that
92 occurs within six months of such restoration, or of an employee who has participated in
93 proceedings or inquiries pursuant to section 75 to section 82, inclusive, of chapter 151A within
94 six months of the termination of proceedings shall be presumed to be retaliation.