

HOUSE No. 1815

The Commonwealth of Massachusetts

In the Year Two Thousand 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.

2 SHORT TITLE

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

4 SECTION 2: PREAMBLE

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

11 SECTION 3: FINDINGS

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

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

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

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

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

30 5) When parents are available to care for their children who become sick, the children's
31 recovery is faster, more serious illnesses are prevented, and the children's overall mental and
32 physical health is improved. Parents who cannot afford to miss work must send children with a
33 contagious illness to childcare or school, contributing to the high rate of infections in child care
34 centers and schools.

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

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

47 8) Allowing employees to earn 7 paid sick days per year is affordable for employers
48 and good for business. Requiring all employers to provide paid sick days levels the playing
49 field for employers so all those who want to provide this benefit can, without fear of being at a
50 competitive disadvantage. Employers who provide paid sick days see greater retention and avoid
51 the problems of “presenteeism” or employees coming to work sick. Studies have shown that
52 employers that offer paid sick days have higher productivity and morale, reduced absenteeism,
53 and decreased turnover and training costs. Sick workers are less productive and spread their
54 germs to about 20% of their co-workers. Paid sick days will save Massachusetts businesses
55 about \$63.2 million annually in wages paid to workers who are too sick to be productive, and
56 \$627.2 million in turnover costs.

57 SECTION 4: PURPOSE AND CONSTRUCTION

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

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

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

65 SECTION 5:

66 Chapter 149 of the General Laws, as appearing in the 2006 Official Edition, is hereby
67 amended by inserting after section 148B the following section:-

68 Section 148C

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

71 "Child", a biological, adopted, or foster child, stepchild, legal ward, or child of a
72 parent standing in loco parentis who is under 18 years of age, or 18 years of age or older but
73 incapable of earning wages because of a mental or physical incapacity.

74 "Employee", any person who performs services for an employer for wage, remuneration,
75 or other compensation.

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

79 “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to
80 2654 inclusive, as it may be amended.

81 “Health care provider”, a provider who ___

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

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

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

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

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

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

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

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

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

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

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

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

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

115 (d) Paid sick days leave shall accrue at the rate of one hour of pay for every 30 hours
116 worked up to the maximum of 7 paid sick days. Paid sick days may be used as accrued, or be

117 loaned by the employer, at its discretion, to the employee in advance of such accrual, provided
118 that an employer shall not require an employee to reimburse it for any unearned sick days the
119 employee is allowed to use. Unless the employer and employee agree to designate otherwise, for
120 periods of paid sick day leave that are less than a normal workday, the leave shall be counted on
121 an hourly basis, or the smallest increment that the employer's payroll system uses to account for
122 absences or use of leave.

123 (e) Subject to the provisions of subparagraph (o), an employer may require certification
124 of the qualifying illness, injury or health condition when a paid sick day leave period covers
125 more than 3 consecutive workdays. Any reasonable documentation signed by a health care
126 provider involved in following or treating the illness, injury or health condition, and indicating
127 the need for the amount of sick days taken, shall be deemed acceptable certification. The
128 certification shall be issued at such time and in such manner the attorney general may by
129 regulation require. The employer shall not delay the commencement of leave taken for purposes
130 of subsection (c) or pay for this period on the basis that the employer has not yet received the
131 certification. Nothing in this act shall be construed to require an employee to provide as
132 certification any information from a health care provider that would be in violation of section
133 1177 of the Social Security Act or the regulations promulgated pursuant to section 264(c) of the
134 Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2 note.

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

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

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

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

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

161 (k) The attorney general shall prescribe the employer's obligation to make, keep, and
162 preserve records pertaining to this section and the requirements for keeping records under section
163 15 of chapter 151 shall apply to the records required under this section.

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

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

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

179 (o) A notice of the provisions of this section shall be prepared by the attorney general, in
180 English and other languages as required under section 62A(a)(iii) of chapter 151A. Each
181 employer shall post this notice in a conspicuous location accessible to employees in every

182 establishment where employees having rights under this section work and provide a copy to each
183 such employee. Such notice shall include the following information:

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

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

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

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

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

193 SECTION 6: OUTREACH

194 The executive office of health and human services, in coordination with the attorney
195 general, shall develop and implement a multilingual outreach program to inform employees,
196 parents, and persons who are under the care of a health care provider about the availability of
197 paid sick days under this act. This program shall include the distribution of notices and other
198 written materials in English and other languages to all child care and elder care providers,
199 domestic violence shelters, schools, hospitals, community health centers, and other health care
200 providers.

201 SECTION 7:

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

204 SECTION 8: EFFECTIVE DATES

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

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

207 proscribed by subsection (a), this act shall take effect on the earlier of the date of the

208 termination of such agreement; or the date that occurs 12 months after the promulgation of

209 regulations by the attorney general.