

**SENATE . . . . . No. 688**

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**The Commonwealth of Massachusetts**

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**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. 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  
5 health of the Commonwealth, and to advance healthier, more productive and more equitable  
6 workplaces throughout the Commonwealth, hereby provides all employees shall be entitled to  
7 earn up to a minimum of 7 paid sick days per year, or the appropriate percentage thereof, and  
8 directs all employers to allow employees to use up to 7 paid sick days per year who have earned  
9 such time 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  
13 illnesses early and shortening the duration of illnesses. Providing employees time off to attend to  
14 their own health care needs ensures that they will be healthier and more efficient employees in  
15 the 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  
19 most frequent contact with the public, such as workers in food services, nursing homes, child  
20 care centers, and retail clerks. The spread of contagious diseases such as the flu cannot be  
21 stopped without a universally adopted paid sick days policy.

22           3)     Nearly every worker in the Commonwealth is likely to need, during any given  
23 year, time off to attend to their own illness or that of an immediate family member, or for routine  
24 medical 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  
28 children or 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  
35 every four employees has provided informal care to an elderly family member or friend in the  
36 past year.

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

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

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

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

77 “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to  
78 2654 inclusive, as it may be amended.

79 “Health care provider”, a provider who \_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

## 191 SECTION 6: OUTREACH

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

199 SECTION 7: Section 150 of chapter 149 as so appearing is hereby further amended by  
200 inserting after the number "148B" in line 21, the following:-148C.

201 SECTION 8: EFFECTIVE DATES

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

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

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

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

206 regulations by the attorney general.