

HOUSE No. 1409

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

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 clarifying parental rights to unpaid leave.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>	<i>1/19/2011</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/4/2011</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>	<i>2/4/2011</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	<i>2/3/2011</i>
<i>William N. Brownsberger</i>		<i>2/3/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>2/3/2011</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2011</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/3/2011</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>	<i>2/3/2011</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/4/2011</i>
<i>Bruce E. Tarr</i>		<i>2/4/2011</i>

HOUSE No. 1409

By Mr. Walsh of Boston, a petition (accompanied by bill, House, No. 1409) of Martin J. Walsh and others clarifying parental rights to unpaid family leave. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act clarifying parental rights to unpaid 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. Section 105D of chapter 149 of the General Laws is amended by striking
2 out section 105D and inserting in place thereof the following section:-

3 Section 105D. (a) Any full-time or part-time employee who has completed the initial
4 probationary period, not to exceed six months or, if there is no such probationary period, has
5 been employed by the same employer for at least three consecutive months as an employee,
6 shall be entitled to eight weeks of parental leave for the birth of the child of the employee, for the
7 purpose of giving birth or adopting a child, or for the birth, placement or arrival of a child under
8 the age of eighteen, or a child under the age of twenty-three if the child is mentally or physically
9 disabled, into the employee’s household whom the employee intends to adopt or for whom the
10 employee will serve as in loco parentis. The employee shall give at least two weeks’ notice to
11 the employer of the anticipated date of departure and intention to return, as soon as both possible
12 and practicable taking into account the facts and circumstances of the individual’s situation. The
13 employee shall be restored to the employee’s previous, or a similar, position with the same

14 status, pay, length of service credit and seniority, wherever applicable, as of the date of the leave.
15 At the discretion of the employer, said parental leave may be with or without pay. If the
16 employer agrees to provide parenting leave for a period of time that exceeds eight weeks, the
17 employer may not deny the employee the rights under this section unless the employer clearly
18 informs the employee in writing prior to the commencement of the parenting leave and prior to
19 any subsequent extension of said leave that taking more than eight weeks of leave will result in
20 the denial of reinstatement or other rights and benefits.

21 (b) Such employer shall not be required to restore an employee on parental leave to the
22 employee's previous or a similar position if other employees of equal length of service credit
23 and status in the same or similar position have been laid off due to economic conditions or other
24 changes in operating conditions affecting employment during the period of such parental leave;
25 provided, however, that such employee on parental leave shall retain any preferential
26 consideration for another position to which the employee may be entitled as of the date of her
27 leave.

28 (c) Such parental leave shall not affect the employee's right to receive vacation time, sick
29 leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for
30 which the employee was eligible at the date of the leave, and any other advantages or rights of
31 her employment incident to the employee's position; provided, however, that such parental leave
32 shall not be included, when applicable, in the computation of such benefits, rights, and
33 advantages; and provided, further, that the employer need not provide for the cost of any
34 benefits, plans, or programs during the period of parental leave unless such employer so provides
35 for other similarly situated employees on leave of absence. Nothing in this section shall be

36 construed to affect any bargaining agreement or company policy which provides for greater or
37 additional benefits than those required under this section.

38 (d) A notice of this provision shall be posted in every establishment in which employees
39 are employed.

40 (e) For the purposes of this section, an “employer” shall be defined as in subsection 5 of
41 section one of chapter one hundred and fifty-one B.

42 (f) For the purposes of this section, a “part time employee” shall be defined as an
43 employee who has been employed for at least 625 hours of service during the 6 month period
44 immediately preceding the leave.

45 (g) This section shall be construed liberally for the accomplishment of its purpose which
46 is to afford employees eight weeks parenting leave and the Massachusetts Commission Against
47 Discrimination shall have the authority to promulgate regulations to effectuate these remedial
48 purposes.

49 SECTION 2. Section 4 of chapter 151B is hereby amended by striking out paragraph
50 11A and inserting in place thereof the following paragraph:

51 11A. For an employer, by itself or its agent, to refuse to restore certain employees to
52 employment following their absence by reason of a parental leave taken in accordance with
53 section one hundred and five D of chapter one hundred and forty-nine or to otherwise fail to
54 comply with the provisions of said section, or for the commonwealth and any of its boards,
55 departments and commissions to deny vacation credit to any employee for the fiscal year during

56 which said employee is absent due to a parental leave taken in accordance with said section or to
57 impose any other penalty as a result of a parental leave of absence.