

HOUSE No. 3995

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act Establishing Earned Paid Sick Time.

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 31(b) of chapter 118G of the General Laws is hereby amended by
2 inserting prior to the final sentence in that subsection the following:

3 “In addition, the PCA quality home care workforce council shall be the employer of all
4 personal care attendants for the purposes of determining the employer size and sick time accrual
5 rate under Section 148C(d) of Chapter 149 of the General Laws.”

6 SECTION 2.

7 Chapter 149 of the General Laws is hereby amended by inserting after section 148B the
8 following two sections:-

9 Section 148C. (a) As used in this section and section 148D, the following words, unless
10 the context clearly requires otherwise, shall have the following meanings:-

11 “Child”, a biological, adopted, or foster child, stepchild, legal ward, or child of a person
12 standing in loco parentis.

13 “Earned paid sick time”, the time that is provided by an employer to an employee as
14 computed under subsection (d) that can be used for the purposes described in subsection (c) and
15 is compensated at the same hourly rate as the employee earns from the employee’s employment
16 at the time the employee uses the paid sick time; provided, however, that this hourly rate shall
17 not be less than the effective minimum wage under section 1 of chapter 151.

18 “Earned sick time”, the time that is provided by an employer to an employee as computed
19 under subsection (d) that can be used for the purposes described in subsection (c).

20 “Earned unpaid sick time”, the time that is provided by an employer to an
21 employee as computed under subsection (d) that can be used for the purposes described in
22 subsection (c), for which the employer is not required to provide compensation.

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

25 “Employer”, any individual, corporation, partnership or other entity, including any agent
26 thereof, who engages the services of an employee for wages, remuneration or other
27 compensation.

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

30 “Health care provider”, the meaning given this term by regulation promulgated under the
31 Family and Medical Leave Act of 1993, as it may be amended.

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

35 “Seasonal employee”, any employee who is employed by a seasonal employer in
36 seasonal employment as defined in subsection (bb) of section 1 of chapter 151A.

37 “Spouse”, the meaning given this term by the marriage laws of the commonwealth.

38 (b) All employees who work in the commonwealth who must be absent from work for the
39 reasons set forth in subsection (c) shall be entitled to not less than the hours of earned paid sick
40 time and earned unpaid sick time provided in subsection (d) during a calendar year, except for
41 seasonal employees who shall be entitled to earned paid sick time or earned unpaid sick time
42 under this section at the option of the employer.

43 (c) Earned paid sick time and earned unpaid sick time shall be provided to an employee
44 by an employer for:

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

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

52 (3) an employee to attend the employee's routine medical appointment or a
53 routine medical appointment for the employee's child, spouse, parent, or parent of spouse; or

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

56 (d) Earned sick time shall accrue at the rate of 1 hour for every 30 hours worked,
57 commencing with the date of hire.

58 Employees who are exempt from overtime requirements under 29 U.S.C. section
59 213(a)(1) of the Federal Labor Standards Act will be assumed to work 40 hours in each work
60 week for purposes of earned paid sick time accrual unless their normal work week is less than 40
61 hours, in which case earned paid sick time accrues based on that normal work week. Employees
62 shall not accrue more than 56 hours of earned paid sick time in a calendar year, unless the
63 employer selects a higher limit. During a calendar year, employers with 6 to 10 employees shall
64 not be required to provide more than 40 hours of earned paid sick time to their employees;
65 employers with more than 10 employees shall not be required to provide more than 56 hours of
66 earned paid sick time.

67 Employers with fewer than 6 employees shall be required to provide a minimum of 40
68 hours of earned unpaid sick time to their employees during a calendar year.

69 Earned sick time may be used as accrued, or be loaned by the employer, at its discretion,
70 to the employee in advance of accrual, provided that an employer shall not require an employee
71 to reimburse it for any unearned sick time loaned by the employer. Accrued earned sick time
72 shall be used in the smaller of hourly increments or the smallest increment that the employer's
73 payroll system uses to account for absences or use of other time. Earned paid sick time and

74 earned unpaid sick time shall carry over annually to the extent not used by the employee;
75 however, an employer shall not be required to allow use of earned paid sick time and earned
76 unpaid sick time in 1 calendar year that exceeds the maximum benefit they are required to
77 provide under this subsection. Employers shall not be required to pay out unused earned paid
78 sick time upon the separation of the employee from the employer.

79 (e) If an employee is absent from work for any reason listed in subsection (c) and by
80 mutual consent of the employer and the employee, the employee works an equivalent number of
81 additional hours or shifts during the same or the next pay period as the hours or shifts not worked
82 due to reasons listed in subsection (c), an employee shall not be required to use accrued and
83 earned paid sick time or earned unpaid sick time for the employee's absence during that time
84 period and the employer shall not be required to pay for sick time taken during the time period.
85 However, the employer shall not require the employee to work additional shifts or hours, or
86 require, as a condition of an employee's taking earned paid sick time or earned unpaid sick time,
87 that the employee search for or find a replacement employee to cover the hours during which the
88 employee is utilizing earned paid sick time or earned unpaid sick time.

89 (f) Subject to the provisions of subsection (n), an employer may require certification of
90 the qualifying illness, injury or health condition when a sick time period covers more than 24
91 consecutive scheduled work hours. Any reasonable documentation signed by a health care
92 provider involved in following or treating the illness, injury or health condition, and indicating
93 the need for the amount of sick time taken, shall be deemed acceptable certification. The
94 employer shall not delay the commencement of sick time taken for purposes of subsection (c), or
95 pay for this period for employees entitled to pay under subsection (d), on the basis that the
96 employer has not yet received the certification. Nothing in this section shall be construed to

97 require an employee to provide as certification any information from a health care provider that
98 would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the
99 regulations promulgated under section 264(c) of the Health Insurance Portability and
100 Accountability Act of 1996, 42 U.S.C. 1320d-2 note.

101 (g) When the use of earned sick time is foreseeable, the employee shall make a good faith
102 effort to provide notice of this need to the employer in advance of the use of the sick time.

103 (h) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise
104 of, or the attempt to exercise, any right provided under, or in connection with this section,
105 including, but not limited to, using the taking of earned sick time under this section as a negative
106 factor in an employment action such as hiring, evaluation, promotion, disciplinary action,
107 termination, or counting earned sick time under a no-fault attendance policy.

108 (i) It shall be unlawful for any employer to take any adverse action against an employee
109 because the employee opposes practices which the employee believes to be in violation of this
110 section, or supports the exercise of rights of another under this section. Exercising rights under
111 this section shall include but not be limited to filing an action, or instituting or causing to be
112 instituted any proceeding under, or related to this section; providing or intending to provide any
113 information in connection with any inquiry or proceeding relating to any right provided under
114 this section; or testifying or intending to testify in any inquiry or proceeding relating to any right
115 provided under this section.

116 (j) Nothing in this section shall be construed to discourage employers from adopting or
117 retaining paid sick time policies more generous than policies that comply with the requirements
118 of this section and nothing in this section shall be construed to diminish the obligation of an

119 employer to comply with any contract, collective bargaining agreement, or any employment
120 benefit program or plan that provides to employees greater paid sick time rights than the rights
121 established under this section.

122 (k) Employers who provide their employees paid time off under a paid time off, vacation
123 or other paid leave policy who make available an amount of paid time off sufficient to meet the
124 accrual requirements of this section that may be used for the same purposes and under the same
125 conditions as paid sick time under this section are not required to provide additional paid sick
126 time.

127 (l) The attorney general shall enforce this section, and may obtain injunctive or
128 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),
129 (4), (6) and (7) under subsection (b) of section 27C and section 150.

130 (m) The attorney general shall prescribe the employer's obligation to make, keep, and
131 preserve records pertaining to this section consistent with the requirements of section 15 of
132 chapter 151.

133 (n) The attorney general may adopt rules and regulations necessary to carry out the
134 purpose and provisions of this section, including the manner in which an employee who does not
135 have a health care provider shall provide certification.

136 (o) Notice of this section shall be prepared by the attorney general, in English and in
137 other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A.
138 Employers shall post this notice in a conspicuous location accessible to employees in every
139 establishment where employees with rights under this section work, and shall provide a copy to
140 their employees. This notice shall include the following information:

141 (1) information describing the rights to earned paid sick time and earned unpaid
142 sick time under this section;

143 (2) information about the notices, documentation and any other requirements
144 placed on employees in order to exercise their rights to earned paid sick time and earned unpaid
145 sick time;

146 (3) information that describes the protections that an employee has in exercising
147 rights under this section;

148 (4) the name, address, and phone number of the attorney general's office where
149 questions about the rights and responsibilities under this section can be answered; and

150 (5) information about filing an action with the attorney general under this
151 section.

152 Section 148D. The executive office of health and human services, in consultation with
153 the attorney general, shall develop and implement a multilingual outreach program to inform
154 employees, parents, and persons who are under the care of a health care provider about the
155 availability of earned paid sick time and earned unpaid sick time under this section. This
156 program shall include the distribution of notices and other written materials in English and in
157 other languages to all child care and elder care providers, domestic violence shelters, schools,
158 hospitals, community health centers, and other health care providers.

159 SECTION 3. Section 150 of chapter 149, as appearing in the 2010 Official Edition, is
160 hereby amended by inserting after the word "148B", in line 21, the following word:- , 148C.

161 SECTION 4. (a) This act shall take effect within 6 months of its passage for employers
162 with more than 10 employees, and within 1 year of its passage for all other employers.

163 (b) In the case of a collective bargaining agreement in effect on the effective date
164 prescribed by subsection (a), this act shall take effect on the date of the termination of the
165 agreement, unless the collective bargaining agreement does not provide for paid sick time as
166 provided under this act, in which case this act shall take effect within 6 months of its passage.