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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:

SECTION 1. Section 31(b) of chapter 118G of the General Laws is hereby amended by inserting prior to the final sentence in that subsection the following:

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

SECTION 2.

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

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

"Child", a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis.

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

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

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

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

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

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

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

"Parent", a biological, adoptive or foster parent, or stepparent of an employee or employee's spouse; or other person who stood in loco parentis during the childhood of an employee or employee's spouse.

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

"Spouse", the meaning given this term by the marriage laws of the commonwealth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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