

HOUSE No. 49

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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 establishing paid family leave..

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/19/2011</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2011</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>2/3/2011</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	<i>2/4/2011</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>	<i>2/4/2011</i>

HOUSE No. 49

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 49) of Antonio F. D. Cabral and others relative to establishing a paid family leave program. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 124 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing paid family 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 Chapter 151A of the General Laws as appearing in the 2008 Official Edition is hereby
2 amended by adding the following:

3 Section 75. Definitions.

4 Section 75. The definitions contained in section 1 of chapter 151A shall apply to section
5 75 to section 82, inclusive, unless a term is also defined in this section 75. The following words
6 or phrases as used in section 75 to section 82, inclusive, shall have the following meanings
7 unless the context clearly requires otherwise: “Benefits” means moneys payable to a covered
8 employee from the family fund pursuant to this section. “Child” means a biological, adopted or
9 foster son or daughter, a stepson or stepdaughter, a legal ward under the age of eighteen years, or
10 a son or daughter of a covered employee who stands in loco parentis to that child. “Contribution

11 Rate” means the percentage of employees’ total compensation paid to the family fund annually.
12 “Covered Employee” means any Massachusetts resident meeting the qualifications of subsection
13 h of section 1 of chapter 151A. “Family Fund” means a segregated account established by
14 section 76 of chapter 151A. “Family Member” means a covered employee’s spouse, child or
15 parent. “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian or
16 other person who stood in loco parentis to the covered employee or his spouse when the covered
17 employee or spouse was a child. “Serious Health Condition” means an illness, injury,
18 impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or
19 residential health care facility, or continuing treatment or continuing supervision by a health care
20 provider.

21 Section 76. Contributions.

22 Section 76. The contributions required hereunder shall be paid by all employees to the
23 commonwealth in such manner and at such times as the commissioner may prescribe, and shall
24 be paid over by the commissioner to the state treasurer and credited by him to the Family Fund.

25 Section 77. Rates.

26 Section 77. Employee contributions required under section 76 shall equal 0.1% of wages,
27 up to a maximum of \$120 annually. On or before September 30th of each year, the commissioner
28 shall prepare a statement, which shall be a public record, declaring the total amount of
29 contributions and benefits for the preceding calendar year, the administrative costs of the family
30 fund, the estimated benefits for the next calendar year and the percentage of compensation to be
31 paid to the family fund by covered employee in the next calendar year. Notwithstanding this
32 section 77, the commissioner may, at his discretion, increase or decrease, by not to exceed 0.01

33 percent, the contribution rate if he determines the adjustment is necessary to reimburse the fund
34 for benefits paid or estimated to be paid to covered employees or to prevent the accumulation of
35 funds in excess of those needed to maintain an adequate fund balance.

36 Section 78. Benefits.

37 Section 78. A covered employee who has satisfied the requirements of this section shall
38 be eligible for up to twelve weeks worth of benefits in any twelve month period. Said weekly
39 benefit amount shall be equal to the amount of the benefit for which the individual would have
40 been eligible at the start of said leave pursuant to chapter 151A had that individual been in total
41 unemployment, including any dependency benefits payable there under. An individual is not
42 eligible for benefits hereunder with respect to any day that he or she has received unemployment
43 compensation benefits pursuant to chapter 151 or any other jurisdiction's similar unemployment
44 compensation program. No two or more individuals are eligible for benefits hereunder with
45 respect to the same family member at the same time. Any payment resulting from a birth or
46 adoption described in this section from a disability insurance plan contributed to by the
47 individual's employer, in proportion to the employer's contribution to such plan shall cause a
48 reduction, in the same amount as the payments, to the total amount of benefits for which the
49 individual is otherwise eligible under this section. Employers may require covered employees to
50 use up to two weeks worth of vacation time prior to receiving benefits hereunder.

51 Section 79. Conflicts.

52 Section 79. Nothing in this section shall interfere with any greater rights or benefits under
53 the terms of a collective bargaining agreement or any other employment agreement between the
54 employee and the employing unit, nor shall the payment of benefits under this section require an

55 employer not covered under 29 U.S.C. Section 2601 or under section 105D of chapter 149 to
56 provide a job-protected leave.

57 Section 80. Regulations.

58 Section 80. The Commissioner shall issue regulations providing guidelines for eligibility
59 and the application procedure.

60 Section 81. Eligibility.

61 Section 81. In accordance with the regulations issued pursuant hereto, a covered
62 employee shall receive benefits pursuant to this section upon establishing eligibility for each
63 uninterrupted period of disability by filing a first claim supported by the certificate of a treating
64 physician or practitioner that establishes the serious health condition or injury of the family
65 member that warrants the care of the covered employee or upon producing the relevant birth
66 certificate or adoption certificate of the covered employee's or his or her spouse's or domestic
67 partner's new child. A certificate filed to establish the serious health condition of the family
68 member shall include:(a) a diagnosis and diagnostic code prescribed in the International
69 Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of
70 symptoms. (b) the date, if known, on which the condition commenced. (c) The probably duration
71 of the condition. (d) An estimate of the amount of time that the physician or practitioner believes
72 the covered employee is needed to care for the family member. (e) A statement that the serious
73 health condition warrants the participation of the covered employee to provide care for his or her
74 family member. "Warrants the participation of the covered employee" includes, but is not limited
75 to, providing psychological comfort, and arranging "third party" care for the family member, as
76 well as directly providing or participating in medical care.

77 Section 82. Further Evidence.

78 Section 82. Nothing in this section shall be construed to preclude the department from
79 requesting additional medical evidence to supplement a claim filed pursuant to this section if the
80 evidence can be procured without additional cost to the claimant. The commissioner may require
81 that additional evidence include identification of diagnoses, symptoms, or a statement as to the
82 facts of the claimant's disability by the physician or practitioner treating the claimant, by the
83 registrar, authorized medical officer, or other duly authorized official of the hospital or health
84 facility treating the claimant, or by an examining physician or other representative of the
85 department.

86 SECTION 2. Effective Date.

87 This act shall become operative on January 1, 2013, except that benefits shall be payable
88 for periods of leave commencing on or after July 1, 2013.

89 SECTION 3. The General Laws are amended by inserting after paragraph 11A of section
90 4 of chapter 151 B the following:—

91 11B. (1) For an employer to discharge, fine, suspend, expel, discipline or in any other
92 manner discriminate against an employee: (i) for exercising any right to which such employee is
93 entitled under the provisions of section 75 to section 82, inclusive, of chapter 151A, or (ii) with
94 the purpose of interfering with the exercise of any right to which such employee is entitled under
95 section 75 to section 82, inclusive, of chapter 151A. (2) For any employer to discharge, fine,
96 suspend, expel, discipline or in any other manner discriminate against an employee who has filed
97 a complaint or instituted or caused to be instituted a proceeding under or related to section 75 to
98 section 82, inclusive, of chapter 151 A, or who has testified or is about to testify in an inquiry or

99 proceeding, or who has given or is about to give information connected to any inquiry or
100 proceeding related to section 75 to section 82, inclusive, of chapter 151 A. For purposes of this
101 subsection, any negative change in the seniority, status, employment benefits, pay or other terms
102 or conditions of employment of an employee who has been restored to a position pursuant to
103 section 75 to section 82, inclusive, of chapter 151 A that occurs within six months of such
104 restoration, or of an employee who has participated in proceedings or inquiries pursuant to
105 section 75 to section 82, inclusive, of chapter 151A within six months of the termination of
106 proceedings shall be presumed to be retaliation.