

# HOUSE . . . . . No.

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Denise Andrews*

*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 to provide veterans paid leave to attend health care appointments.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise Andrews</i>	<i>2nd Franklin</i>	<i>10/29/2014</i>

# HOUSE . . . . . No.

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By Ms. Andrews of Orange, a petition (subject to Joint Rule 12) of Denise Andrews relative to earned sick time for certain employees. Labor and Workforce Development.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen  
\_\_\_\_\_

An Act to provide veterans paid leave to attend health care appointments.

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

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

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

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

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

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

17          “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to  
18 2654, inclusive, as it may be amended.

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

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

23 “Veteran”, a person defined in clause Forty-third of section 7 of chapter 4, or who is a  
24 person on active service in the armed forces of the United States, as defined in said clause Forty-  
25 third of said section 7 of said chapter 4, or who is a person with a history of military service in  
26 the armed forces of the United States.

27 (b) All veterans who work in the commonwealth who must be absent from work for the  
28 reasons set forth in subsection (c) shall be entitled to not less than the hours of earned paid sick  
29 time provided in subsection (d) during a calendar year.

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

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

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

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

38 During the 12-month period commencing with the date of hire, any employee who is a  
39 veteran with a service-connected disability is entitled to leave, without loss or reduction in pay,  
40 for purposes of undergoing medical treatment for such disability for which sick leave could  
41 regularly be used.

42 Employees who are exempt from overtime requirements under 29 U.S.C. section  
43 213(a)(1) of the Federal Labor Standards Act will be assumed to work 40 hours in each work  
44 week for purposes of earned paid sick time accrual unless their normal work week is less than 40  
45 hours, in which case earned paid sick time accrues based on that normal work week. Employees  
46 shall not accrue more than 56 hours of earned paid sick time in a calendar year, unless the  
47 employer selects a higher limit.

48 Earned sick time may be used as accrued, or shall be loaned by the employer, to the  
49 employee in advance of accrual, provided that an employer shall not require an employee to  
50 reimburse it for any unearned sick time loaned by the employer. Accrued earned sick time shall  
51 be used in the smaller of hourly increments or the smallest increment that the employer’s payroll  
52 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

90 this section shall include but not be limited to filing an action, or instituting or causing to be  
91 instituted any proceeding under, or related to this section; providing or intending to provide any  
92 information in connection with any inquiry or proceeding relating to any right provided under  
93 this section; or testifying or intending to testify in any inquiry or proceeding relating to any right  
94 provided under this section.

95 (j) Nothing in this section shall be construed to discourage employers from adopting or  
96 retaining paid sick time policies more generous than policies that comply with the requirements  
97 of this section and nothing in this section shall be construed to diminish the obligation of an  
98 employer to comply with any contract, collective bargaining agreement, or any employment  
99 benefit program or plan that provides to employees greater paid sick time rights than the rights  
100 established under this section.

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

106 (l) The attorney general shall enforce this section, and may obtain injunctive or  
107 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),  
108 (4), (6) and (7) under subsection (b) of section 27C and section 150.

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

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

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

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

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

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

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

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

129 Section 148D. The department of veterans services, in consultation with the attorney  
130 general, shall develop and implement a multilingual outreach program to inform employees and  
131 veterans who are under the care of a health care provider about the availability of earned paid  
132 sick time under this section. This program shall include the distribution of notices and other  
133 written materials in English and in other languages to all veteran service officers, hospitals,  
134 community health centers, and other health care providers.

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