SENATE DOCKET, NO. 1853 FILED ON: 1/16/2015

SENATE . . . . . No. 1008

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

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 a family and medical leave and temporary disability leave insurance program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Karen E. Spilka	*Second Middlesex and Norfolk*	
Sonia Chang-Diaz	*Second Suffolk*	
Kenneth J. Donnelly	*Fourth Middlesex*	
Jason M. Lewis	*Fifth Middlesex*	
Michelle M. DuBois	*10th Plymouth*	
Michael O. Moore	*Second Worcester*	
Louis L. Kafka	*8th Norfolk*	
Barbara A. L'Italien	*Second Essex and Middlesex*	
James B. Eldridge	*Middlesex and Worcester*	
Mary S. Keefe	*15th Worcester*	
Ruth B. Balser	*12th Middlesex*	
Carmine L. Gentile	*13th Middlesex*	
Tricia Farley-Bouvier	*3rd Berkshire*	
Carolyn C. Dykema	*8th Middlesex*	
Thomas M. McGee	*Third Essex*	
Daniel A. Wolf	*Cape and Islands*	
Diana DiZoglio	*14th Essex*	

Thomas M. Stanley	*9th Middlesex*	
Harriette L. Chandler	*First Worcester*	
Patricia D. Jehlen	*Second Middlesex*	
Sal N. DiDomenico	*Middlesex and Suffolk*	
William N. Brownsberger	*Second Suffolk and Middlesex*	
Angelo J. Puppolo, Jr.	*12th Hampden*	
James J. O'Day	*14th Worcester*	
Linda Dorcena Forry	*First Suffolk*	
James T. Welch	*Hampden*	
Frank A. Moran	*17th Essex*	
Timothy J. Toomey, Jr.	*26th Middlesex*	
Carlos Gonzalez	*10th Hampden*	
Anne M. Gobi	*Worcester, Hampden, Hampshire and Middlesex*	
Cynthia S. Creem	*First Middlesex and Norfolk*	
Danielle W. Gregoire	*4th Middlesex*	
Paul R. Heroux	*2nd Bristol*	
Kenneth I. Gordon	*21st Middlesex*	
Mark C. Montigny	*Second Bristol and Plymouth*	
Benjamin Swan	*11th Hampden*	
Daniel J. Ryan	*2nd Suffolk*	
Eric P. Lesser	*First Hampden and Hampshire*	*4/27/2015*
Michael J. Barrett	*Third Middlesex*	*6/18/2015*
Benjamin B. Downing	*Berkshire, Hampshire, Franklin and Hampden*	*10/6/2015*
Joan B. Lovely	*Second Essex*	*1/14/2016*
Lori A. Ehrlich	*8th Essex*	*1/14/2016*
Marc R. Pacheco	*First Plymouth and Bristol*	*1/27/2016*
James E. Timilty	*Bristol and Norfolk*	*3/2/2016*
Brendan P. Crighton	*11th Essex*	*3/2/2016*

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SENATE . . . . . No. 1008

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1008) of Karen E. Spilka, Sonia Chang-Diaz, Kenneth J. Donnelly, Jason M. Lewis and other members of the General Court for legislation to establish a family and medical leave and temporary disability leave insurance program. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing a family and medical leave and temporary disability leave insurance program.

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: The General Laws are amended by inserting after chapter 175J the following:-

CHAPTER 175K.

Section 1. The following words and phrases as used in this chapter shall have the following meanings unless the context clearly requires otherwise:

(a) "Benefit year" has the same meaning as provided by section 1(c) of chapter 151A.

(b) “Child” has the same meaning as provided by the federal Family Medical Leave Act.

(c) “Commission” means the Massachusetts commission against discrimination, as established by section 56 of chapter 6.

10 (d) "Contributions" means the payments made by an employer to the family and
11 employment security trust fund and administrative account, as required by this chapter.

12 (e) "Director" means the director of the Massachusetts family and medical leave program.

13 (f) "Division" means the Massachusetts division of family and medical leave as
14 established by subsection (g) of section 3 of this chapter.

15 (g) “Employee” has the same meaning as provided by section 1(h) of chapter 151A,
16 provided that notwithstanding section 1(h) if chapter 151A or any other special or general law to
17 the contrary, Family Child Care Providers, as defined in section 17(a) of chapter 15D, shall be
18 deemed employees for purposes of this section.

19 (h) "Employer" has the same meaning as provided by section 1(i) of chapter151A,
20 provided that notwithstanding section 1(i) of chapter 151A, section 17 of chapter 15 , sections
21 70-75 of chapter 118E, or any other special or general law to the contrary, the Department of
22 Early Education and Care shall be deemed the Employer of Family Child Care Providers, as
23 defined in section 17(a) of chapter 17 and the PCA Quality Home Care Workforce Council shall
24 be deemed the Employer of all Personal Care Attendants, as defined in section 70 of chapter
25 118E, for purposes of this section.

26 (i) “Employment” has the same meaning as provided by section 1(k) of chapter 151A.

27 (j) “Employment benefits” means all benefits provided or made available to employees
28 by an employer, including group life insurance, health insurance, disability insurance, sick leave,
29 annual or vacation leave, educational benefits, and pensions.

30 (k) "Family member" means the spouse, child, parent, parent of spouse, grandparent, or
31 grandchild of an individual seeking leave or disability benefits under this chapter.

32 (l) “Family care benefits” means disability benefits provided pursuant to section 3 of this
33 chapter to a covered employee who is on leave from or who has left employment with the
34 employer because the employee is caring for a family member for one of the following reasons:
35 (1) the birth of a child of the employee, (2) the placement of a child with the employee for
36 adoption or foster care, or (3) a serious health condition of a family member of the employee.

37 (m) “Family care leave” means leave taken by a covered employee from employment to
38 provide care for a family member for one of the following reasons: (1) the birth of a child of the
39 employee, (2) the placement of a child with the employee for adoption or foster care, or (3) a
40 serious health condition of a family member of the employee.

41 (n) “Health care provider” means a person licensed to practice medicine, surgery,
42 dentistry, chiropractic, podiatry, or osteopathy, or any other person determined by the division to
43 be capable of providing health care services.

44 (o) "Individual average weekly wage" has the same meaning as “average weekly wage”
45 as defined in section 1(w) of chapter 151A and shall be calculated using the base period earnings
46 as defined by section 1(a) of chapter 151A.

47 (p) “Serious health condition” means an illness, injury, impairment, or physical or mental
48 condition that involves either (1) inpatient care in a hospital, hospice, or residential medical
49 facility; or (2) continuing treatment by a health care provider.

50 (q) “Temporary disability benefits” means disability benefits provided pursuant to section
51 3 of this chapter to a covered employee who is on a leave from or who has left employment with
52 the employer because of a serious health condition of the employee that makes the employee
53 unable to perform the functions of the employee’s position.

54 (r) “Temporary disability leave” means leave taken by a covered employee from
55 employment because of a serious health condition of the employee that makes the employee
56 unable to perform the functions of the employee’s position.

57 (s) "Wages" means all remuneration as defined in section 1(s) of chapter 151A.

58 (t) “Weekly benefit amount” means the amount of disability benefits paid to a covered
59 employee on a weekly basis, as provided by section 3, subsection (a), of this chapter.

60 Section 2.

61 (a) An employee is eligible for temporary disability leave or family care leave if the
62 employee has at least 1,250 hours of service for the employer.

63 (b) The duration of temporary disability or family care leave shall be limited as set forth
64 in section 3, subsections (b) and (c) of this chapter.

65 (c) In the case of family care leave taken because of (1) the birth of a child of the
66 employee, or (2) the placement of a child with the employee for adoption or foster care, the
67 entitlement to leave shall expire at the end of the 12-month period beginning on the date of the
68 birth or placement.

69 (d) An employer may, at its option, require that a request for temporary disability or
70 family care leave be supported by a certification of the need for leave. The certification shall be
71 sufficient if it meets the criteria set forth in section 3, subsection (e), of this chapter.

72 (e) An employee who has taken temporary disability or family care leave pursuant to this
73 section shall be restored to the employee's previous position, or to a substantially similar
74 position, with the same status, pay, employment benefits, length of service credit, and seniority
75 as of the date of leave, provided that the right to such restoration shall be limited to 12 weeks
76 during any 12-month period. Nothing herein shall interfere with the rights of parents or legal
77 guardians under section 17(i) of chapter 15D of the general laws or the rights of consumers or
78 consumer surrogates under section 73(a) of chapter 118E of the general laws.

79 (f) An employer shall not be required to restore an employee who has taken temporary
80 disability or family care leave to the previous or to a substantially similar position if other
81 employees of equal length of service credit and status in the same or substantially similar
82 positions have been laid off due to economic conditions or other changes in operating conditions
83 affecting employment during the period of leave; provided, however, that the employee who has
84 taken leave shall retain any preferential consideration for another position to which the employee
85 was entitled as of the date of leave.

86 (g) Taking of temporary disability or family care leave shall not affect an employee's
87 right to receive accrued vacation time, sick leave, bonuses, advancement, seniority, length of
88 service credit, employment benefits, plans or programs for which the employee was eligible at
89 the date of the employee's leave, and any other rights incident to the employee's employment.

90 (h) During the duration of an employee's temporary disability or family care leave, the
91 employer shall continue to provide for and contribute to the employee's employment-related
92 health insurance benefits, if any, under the same terms and conditions as those existing prior to
93 leave, up to 12 weeks during any 12 month period

94 (i) Nothing in this section or chapter shall be construed so as to affect any bargaining
95 agreement, company policy, or other federal, state, or municipal law which provides for greater
96 or additional rights to leave than those provided for by this section.

97 (j) Where an employee intends to take family care leave because of the birth of a child of
98 the employee, or the placement of a child with the employee for adoption or foster care, and
99 where the need for leave is foreseeable, the employee shall notify the employer of the intended
100 leave at least 30 days prior to the date that the leave is to begin, except that if the date of the birth
101 or placement requires leave to begin in less than 30 days, the employee shall provide such notice
102 as is practicable.

103 (k) Where an employee intends to take temporary disability or family care leave because
104 of a serious health condition of the employee or of a family member of the employee, and where
105 the need for leave is foreseeable based on planned medical treatment, the employee shall notify
106 the employer of the intended leave at least 30 days prior to the date that the leave is to begin,
107 except that if the date of the treatment requires leave to begin in less than 30 days, the employee
108 shall provide such notice as is practicable.

109 (l) The notice required under this section shall consist of the anticipated starting date of
110 the leave, the length of the leave, and the expected date of return.

111 (m) Where an employer fails to provide notice of the provisions of this chapter as
112 required under section 7 of this chapter, the employee's notice requirement shall be waived.

113 (n) It shall be unlawful for any employer to retaliate by discharging, firing, suspending,
114 expelling, disciplining or in any other manner discriminating against an employee for exercising
115 any right to which such employee is entitled under this section or with the purpose of interfering
116 with the exercise of any right to which such employee is entitled under this section.

117 (o) It shall be unlawful for any employer to retaliate by discharging, firing, suspending,
118 expelling, disciplining or in any other manner discriminating against an employee who has filed
119 a complaint or instituted or caused to be instituted a proceeding under or related to this section,
120 has testified or is about to testify in an inquiry or proceeding, or has given or is about to give
121 information connected to any inquiry or proceeding relating to this section.

122 (p) Any negative change in the seniority, status, employment benefits, pay, or other
123 terms or conditions of employment of an employee who has been restored to a position pursuant
124 to this section that occurs within six months of such restoration, or of an employee who has
125 participated in proceedings or inquiries pursuant to this section within six months of the
126 termination of proceedings shall be presumed to be retaliation under this section.

127 (q) The commission shall be responsible for the interpretation and enforcement of this
128 section and may promulgate rules and regulations pursuant thereto.

129 (r) Enforcement of this section and relief for violations of this section shall be governed
130 by the procedures set forth in sections 5 through 9 of chapter 151B.

131 Section 3.

132 (a)(1) The weekly benefit amount shall be determined as follows, subject to paragraph (2)
133 of this section :

134 (i) For an eligible individual whose yearly earnings are not more than thirty (30%)
135 percent of the area median income, the weekly benefit amount shall be equal to ninety-five
136 (95%) percent of the eligible individual's weekly wage;

137 (ii) For an eligible individual whose yearly earnings are more than thirty (30%) percent
138 of but not more than fifty (50%) percent of the area median income, the weekly benefit amount
139 shall be equal to ninety (90%) percent of the eligible individual's weekly wage;

140 (iii) For an eligible individual whose yearly earnings are more than fifty (50%) percent of
141 but not more than eighty (80%) percent of the area median income, the weekly benefit amount
142 shall be equal to eighty-five (85%) percent of the eligible individual's weekly wage;

143 (iv) For an eligible individual whose yearly earnings are more than eighty (80%) percent
144 of the area median income, the weekly benefit amount shall be equal to sixty-six (66%) percent
145 of the eligible individual's weekly wage.

146 (2) The weekly benefit determined under paragraph (a)(1) of this subsection shall not
147 exceed one thousand ($1,000) dollars per week. Commencing January 1, 2018, the division shall
148 adjust annually the maximum weekly benefit amount to reflect changes in the United States
149 Bureau of Labor Statistics Consumer Price Index for the Boston-Cambridge-Quincy consolidated
150 metropolitan statistical area for all urban consumers, all goods, or its successor index.

151 (3) For an employee who takes leave on a part-time basis, the weekly benefit amount
152 shall be prorated.

153 (b) Temporary disability benefits: The duration of temporary disability benefits shall not
154 exceed 26 weeks during the benefit year unless the employee takes leave on a part-time basis, in
155 which case the duration of temporary disability benefits shall not exceed 52 calendar weeks and
156 the total benefit amount shall not exceed 26 times the weekly benefit amount.

157 (c) Family care benefits: The duration of family care benefits shall not exceed 12 weeks
158 during the benefit year unless the employee takes leave on a part-time basis, in which case the
159 duration of family care benefits shall not exceed 24 calendar weeks and the total benefit amount
160 shall not exceed 12 times the weekly benefit amount.

161 (d)(1) No temporary disability or family care benefits shall be paid during the first seven
162 consecutive days of any claim for such benefits.

163 (2) An employee may but shall not be required to utilize accrued sick or vacation pay
164 during the first seven consecutive days of his claim for temporary disability benefits.

165 (e)(1) An employee who makes a claim for temporary disability benefits shall provide a
166 certification issued by the health care provider of the employee. The certification shall be
167 sufficient if it states the date on which the serious health condition commenced, the probable
168 duration of the condition, the appropriate medical facts within the knowledge of the health care
169 provider as required by the division, and a statement that the employee is unable to perform the
170 functions of his position.

171 (2) An employee who makes a claim for family care benefits because of the serious
172 health condition of a family member of the employee shall provide a certification issued by the
173 health care provider of the family member. The certification shall be sufficient if it states the
174 date on which the serious health condition commenced, the probable duration of the condition,

175 the appropriate medical facts within the knowledge of the health care provider as required by the
176 division, a statement that the employee is needed to care for the family member, and an estimate
177 of the amount of time that the employee is needed to care for the family member.

178 (3) An employee who makes a claim for family care benefits because of the birth of a
179 child of the employee shall provide either a birth certificate or a certification issued by the health
180 care provider of the child of the eligible employee. The certification shall be sufficient if it states
181 the date of the child's birth.

182 (4) An employee who makes a claim for family care benefits because of the placement of
183 a child with the employee for adoption or foster care shall provide a certification issued by the
184 health care provider of the child, an adoption or foster care agency involved in the placement, or
185 by other persons as determined by the division. The certification shall be sufficient if it states the
186 date of placement.

187 (5) An employee who makes a claim for family care benefits because of the placement
188 with the employee for adoption or foster care of a child 18 years of age or older and incapable of
189 self-care because of a mental or physical disability shall, in addition to the certification required
190 by paragraph (4) of this subsection, also provide a certification issued by the health care provider
191 of the child, or by other persons as determined by the division. The certification shall be
192 sufficient if it states the nature of the disability and fact that the child is incapable of self-care.

193 (6) An individual shall not be eligible to receive disability benefits if the director finds
194 that the individual, for the purpose of obtaining disability benefits, has willfully made a false
195 statement or representation, with actual knowledge of the falsity thereof, or has willfully
196 withheld a material fact concerning the facts required to be certified pursuant to this subsection.

197 (7) Any medical or health information required under this section shall be treated as
198 confidential and not disclosed except with permission from the employee who provided it unless
199 disclosure is otherwise required by law.

200 (f)(1) No individual may receive benefits under this section for a week in which the
201 individual receives an amount equal to or greater than the weekly benefit amount in the form of
202 wages or a wage replacement under any of the following: (i) any government program or law,
203 including but not limited to unemployment insurance, worker's compensation other than for
204 permanent partial disability incurred prior to the temporary disability claim, or under other state
205 or federal temporary or permanent disability benefits law, (ii) a permanent disability policy or
206 program of an employer, (iii) a temporary disability policy or program of an employer, or (iv) a
207 paid sick, vacation, family, or medical leave policy of an employer. For a week in which an
208 individual receives wages or a wage replacement less than the weekly benefit amount, the
209 individual shall receive disability benefits equal to the difference between the weekly benefit
210 amount and the amount of wages or wage replacement received.

211 (2) Any wage replacement received under the programs or policies listed in paragraph
212 (a)(i) through (iv) of this subsection and resulting from the same birth, adoption, or serious
213 health condition on which the individual's claim for disability benefits is based shall be deducted
214 from the total amount of disability benefits for which the individual would otherwise be eligible.

215 (3) Nothing in this subsection shall be construed to allow an employer to compel an
216 employee to exhaust rights to any paid sick, vacation or personal time prior to receiving benefits
217 under this chapter.

218 (g) There shall be a division of family and medical leave within the executive office of
219 labor and workforce development which shall be administered by a director appointed by the
220 Governor.

221 (h) The division shall conduct a public education campaign to inform workers and
222 employers about the availability of temporary disability and family care leave and benefits, the
223 requirements for receiving such leave and benefits and how to apply for such leave and benefits.

224 Section 4.

225 (a) An employer or an association of employers shall secure temporary disability and
226 family care benefits for employees in any of the following ways:

227 (1) By depositing and maintaining with the treasurer of the commonwealth, the
228 contributions which the employer is required to pay according to the terms of this chapter and in
229 the form and manner determined by the division; or

230 (2) By insuring and keeping insured the payment of temporary disability and family care
231 benefits with any stock, mutual, reciprocal or other insurer authorized to transact the business of
232 disability insurance in the commonwealth, provided that the policy is acceptable to the division
233 as satisfying the obligation to provide for the payment of disability benefits under this chapter,
234 that the benefits under the policy are at least as favorable as the disability benefits required by
235 this chapter and that the policy does not require contributions from any employee or class of
236 employees; or

237 (3) By a private plan or agreement which the employer may, by her or his sole act,
238 terminate at any time, provided that the plan or agreement is acceptable to the division as

239 satisfying the obligation to provide for the payment of disability benefits under this chapter, that
240 the benefits under the plan or agreement are at least as favorable as the disability benefits
241 required by this chapter, and that the policy does not require contributions from any employee or
242 class of employees; or

243 (4) By any plan or agreement in existence by agreement or collective bargaining contract
244 between the employer or employers or an association of employers and an association of
245 employees, provided that the plan or agreement is acceptable to the division as satisfying the
246 obligation to provide for the payment of disability benefits under this chapter, that the benefits
247 under the plan or agreement are at least as favorable as the disability benefits required by this
248 chapter, and that the plan or agreement does not require contributions from any employee or of
249 any class of employees.

250 (5) Nothing in this section or chapter shall be construed as to affect any bargaining
251 agreement, company policy, or other state or federal law which provides for greater or additional
252 benefits than those required under this chapter.

253 (6) Nothing in this section or chapter shall be construed as prohibiting employees from
254 contributing to the additional cost attributable to providing benefits that are greater than those
255 required under this chapter.

256 (b) If payment of disability benefits is provided in whole or in part pursuant to paragraphs
257 (2), (3), or (4) of subsection (a) of this section, the employer or insurer shall file with the
258 division a notice of coverage and statement of benefits provided.

259 (c) Employers providing for the payment of disability benefits under paragraphs (2), (3)
260 or (4) of subsection (a) of this section shall not be required to make contributions pursuant to
261 paragraph (1) of subsection (a) of this section.

262 Section 5.

263 (a) There is established in the treasury of the state, separate and apart from all public
264 monies or funds of the state, a family and employment security trust fund which shall be
265 administered by the treasurer exclusively for the purposes of this chapter. All payments pursuant
266 to this part shall be paid into the trust fund and all disability benefits payable under this chapter
267 shall be paid from the trust fund. The trust fund shall consist of:

268 (1) All contributions collected pursuant to this section, together with any interest thereon;

269 (2) Interest earned on any monies in the trust fund;

270 (3) Any property or securities acquired through the use of monies belonging to the trust
271 fund;

272 (4) All earnings of such property and securities;

273 (5) All monies transferred into the trust fund from the family and employment security
274 administrative account; and

275 (6) All other monies received for the trust fund from any source.

276 (b) There is established in the treasury of the state, separate and apart from all public
277 monies or funds of the state, a family and employment security administrative account which

278 shall be administered by the director exclusively for the purposes of this chapter. The
279 administrative account shall consist of:

280 (1) All contributions collected pursuant to this section, together with any interest thereon;

281 (2) All fines and penalties for the administrative account pursuant to this chapter;

282 (3) All monies collected by way of subrogation;

283 (4) Interest earned on any monies belonging to the administrative account;

284 (5) Any property or securities acquired through the use of monies belonging to the
285 administrative account;

286 (6) All earnings of such property and securities;

287 (7) All monies appropriated to the administrative account by the legislature; and

288 (8) All other monies received for the administrative account from any source.

289 (c) The state treasurer shall be the treasurer and custodian of the family and employment
290 security trust fund and the family and employment security administrative account and shall
291 administer the trust fund and administrative account. All monies in the trust fund and
292 administrative account shall be held in trust for the purposes of this part only and shall not be
293 expended, released, appropriated, or otherwise disposed of for any other purpose. Monies in the
294 trust fund and administrative account may be deposited in any depository bank in which general
295 funds of the commonwealth may be deposited, but such monies shall not be commingled with
296 other commonwealth funds and shall be maintained in separate accounts on the books of the
297 depository bank. Such monies shall be secured by the depository bank to the same extent and in

298 the same manner as required by the general depository law of the commonwealth, and collateral
299 pledged for this purpose shall be kept separate and distinct from any other collateral pledged to
300 secure other funds of the commonwealth. The trust fund shall maintain an annualized amount of
301 at least 140 percent of the previous year's expenditure.

302 (d) The treasurer shall pay all expenses incurred in administering the provisions of this
303 chapter. In the event that the balance in the family and employment security trust fund shall at
304 any time be insufficient to pay disability benefits under this chapter, the governor, upon the
305 treasurer's request, shall cause such sums as may be required for the payment of such disability
306 benefits to be transferred from the family and employment security administrative account to the
307 family and employment security trust fund.

308 (e) Expenditures of monies in the family and employment security trust fund shall not be
309 subject to provisions of law requiring specific appropriations or other formal release by state
310 officers of money in their custody. All disability benefits shall be paid from the trust fund upon
311 warrants drawn upon the state treasurer by the comptroller of the commonwealth supported by
312 vouchers approved by the director.

313 (f) The treasurer of the Commonwealth may, from time to time, invest such monies in the
314 family and employment security trust fund as are in excess of the amount deemed necessary for
315 the payment of disability benefits for a reasonable future period. Such monies may be invested
316 in bonds of any political or municipal corporation or subdivision of the commonwealth, or any of
317 the outstanding bonds of the commonwealth, or invested in bonds or interest-bearing notes or
318 obligations of the commonwealth, or of the United States, or those for which the faith and credit
319 of the United States are pledged for the payment of principal and interest (or in federal land bank

320 bonds or joint stock farm bonds). The investments shall at all times be so made that all the assets
321 of the trust fund shall always be readily convertible into cash when needed for the payment of
322 disability benefits. The treasurer shall have the power to dispose of securities or other properties
323 belonging to the trust fund when needed for the payment of disability benefits.

324 (g) Temporary disability and family care benefits shall be paid from the family and
325 employment security trust fund to eligible individuals. Disability benefits shall also be paid from
326 the trust fund to an employee who is entitled to receive such disability benefits but cannot
327 because of the bankruptcy of his employer or because the employer is not in compliance with
328 this chapter. Disability benefits paid from the trust fund to such employee may be recovered
329 through bankruptcy proceedings or from the noncomplying employer. The treasurer shall
330 institute administrative and legal action to effect recovery of such disability benefits.

331 (h) For the purpose of accumulating funds for the payment of temporary disability and
332 family care benefits, and administrative costs, each employer, with the exception of any
333 employer complying with paragraph (a)(2), (3) or (4) of section 4, shall in the first year after the
334 date the employer becomes subject to this chapter, and each year thereafter, pay amounts as
335 determined by the treasurer. Each employer shall transmit all such payments to the trust fund or
336 administrative account in such manner, at such time, and under such conditions as shall be
337 prescribed by regulations.

338 (i) On or before October first of each year, the treasurer shall certify to the secretary of
339 the executive office of labor and workforce development the estimated costs for the coming year
340 of disability benefits and for administrative services provided by the division. Said rates of
341 employer contribution to both the trust fund and the administrative account as established by this

342 chapter shall be adjusted annually as consistent with the needs of the operation of said trust fund
343 and administrative account.

344 (j) An employer to whom the division has sent a request for wage and employment
345 information for an employee claiming temporary disability or family care benefits under this
346 chapter shall complete and file such information within ten days from the date the request was
347 sent. If an employer does not respond within ten days, that employer may be held liable for any
348 and all related costs incurred by the commonwealth.

349 Section 6. Claims for temporary disability and family care benefits shall be filed with the
350 division and shall be handled under the procedures prescribed by chapter 30A.

351 Section 7. (a) Every employer subject to this chapter shall keep posted in a conspicuous
352 place or places on its premises a workplace notice prepared or approved by the division which
353 shall set forth excerpts from this chapter and other information the division deems necessary to
354 explain the chapter. Such workplace notice shall be issued in English, Spanish, Chinese, Haitian
355 Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is
356 the primary language of at least 10,000 or one-half of one percent of all residents of the
357 commonwealth. Each employer with five or more employees whose primary language is not
358 English shall post the workplace notice in that language, if such notice is available from the
359 division.

360 (b) Each employer shall issue to each employee, within 30 days from date of the
361 employee's first day of work, written information provided or approved by the division which
362 explains the availability of temporary disability and family care leave, and temporary disability
363 and family care benefits provided pursuant to this chapter.

364 (c) Each employer shall issue to each employee taking temporary disability or family
365 care leave, as soon as practicable, but not more than 30 days from the date that the employee
366 gives notice of leave, written information provided or approved by the division which shall
367 contain the name and mailing address of the employer; the identification number assigned to the
368 employer by the division; information describing the availability of temporary disability and
369 family care benefits provided pursuant to this chapter; instructions on how to file a claim for
370 disability benefits; the address and telephone number of the regional office of the division which
371 serves the recipient; and the telephone number of the division. Delivery is made when an
372 employer provides such information to an employee in person or by mail to the employee's last
373 known address.

374 (d) Any employer who fails to comply with the provisions of subsection (a) or (b) of this
375 section shall be punished by a fine of not less than 50 dollars nor more than 300 dollars. A
376 subsequent violation of this subsection by the same employer shall be punished by a fine of not
377 less than 250 dollars nor more than 1,000 dollars. Where an employer fails to comply with this
378 provision, an employee shall be deemed to have provided notice of leave under section 2,
379 subsection (m), of this chapter. The employer shall have the burden of demonstrating
380 compliance with subsections (a) and (b) of this section.

381 (e) The waiting period under section 3, subsection (d), of this chapter for an employee
382 who did not receive the information required by subsection (c) of this section and who failed to
383 file timely for disability benefits, shall be the initial week that such employee would have been
384 eligible to receive temporary disability benefits or family care benefits. The employer shall have
385 the burden of demonstrating compliance with subsection (c) of this section.

386 Section 8. This act shall be liberally construed as remedial legislation to further its
387 purpose of providing job-protected temporary disability and family care leave, as well as
388 temporary disability and family care benefits, to the employees of the commonwealth. All
389 presumptions shall be made in favor of the availability of leave and the payment of disability
390 benefits under this chapter.

391 SECTION 2. The General Laws are amended by inserting after paragraph 11A of section
392 4 of chapter 151B the following:-

393 11B. (1) For an employer to discharge, fire, suspend, expel, discipline or in any other
394 manner discriminate against an employee (i) for exercising any right to which such employee is
395 entitled under the provisions of section 2, subsection 7, of this chapter, or (ii) with the purpose of
396 interfering with the exercise of any right to which such employee is entitled under section 2,
397 subsection 7, of this chapter.

398 (2) For any employer to discharge, fine, suspend, expel, discipline or in any other
399 manner discriminate against an employee who has filed a complaint or instituted or caused to be
400 instituted a proceeding under or related to section 2, subsection 7, of this chapter, or who has
401 testified or is about to testify in an inquiry or proceeding, or who has given or is about to give
402 information connected to any inquiry or proceeding relating to section 2, subsection 7, of this
403 chapter.

404 (3) For purposes of this subsection, any negative change in the seniority, status,
405 employment benefits, pay or other terms or conditions of employment of an employee who has
406 been restored to a position pursuant to section 2, subsection 7, of this chapter that occurs within
407 six months of such restoration, or of an employee who has participated in proceedings or

408 inquiries pursuant to section 2, subsection 7, of this chapter within six months of the termination
409 of proceedings shall be presumed to be retaliation.

410 SECTION 3. The General Laws are amended by inserting after subclause (Q) of section
411 2. (a)(2) of chapter 62 the following:-

412 (R) Amounts received by an individual for temporary disability or family care leave
413 under chapter 175K of the general laws.