

HOUSE No. 3134**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 to establish paid family leave.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/20/2017</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	
<i>José F. Tosado</i>	<i>9th Hampden</i>	
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>Mike Connolly</i>	<i>26th Middlesex</i>	
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	
<i>Natalie Higgins</i>	<i>4th Worcester</i>	

HOUSE No. 3134

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 3134) of Antonio F. D. Cabral and others for legislation to further regulate paid family leave. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to establish 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 SECTION 1. The General Laws are amended by inserting after chapter 175J the
2 following chapter:-

3 CHAPTER 175K

4 PAID FAMILY LEAVE ACT

5 Section 1. Short Title. This chapter shall be known and may be cited as the
6 “Massachusetts Paid Family Leave Act”.

7 Section 2. Definitions. In this chapter—

8 (a) the term “base period” has the same meaning as provided by section 1(a) of
9 chapter 151A;

(b) the term “benefit year” has the same meaning as provided by section 1(c) of chapter 151A;

(c) the term “child” has the same meaning as provided by the federal Family Medical Leave Act;

(d) the term “commission” means the Massachusetts commission against discrimination, as established by section 56 of chapter 6;

(e) the term “contributions” means the payments made to the family and employment security trust fund and administrative account, as required by this chapter;

(f) the term “dependent” means an unemancipated child, as provided by section 29(c) of chapter 151A;

(g) the term “director” means the director of the Massachusetts family and medical leave program;

(h) the term “disability benefits” means cash payments made to a covered employee pursuant to section 3 of this chapter;

(i) the term “division” means the Massachusetts division of family and medical leave as established by subsection 8 of section 3 of this chapter;

(j) the term “employee” has the same meaning as provided by section 1(h) of chapter 151A;

(k) the term “employer” has the same meaning as provided by section 1(i) of chapter 151A;

(l) the term “employment” has the same meaning as provided by section 1(k) of chapter 151A;

(m) the term “employment benefits” means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits, and pensions;

(n) the term “family and medical leave act” means the Federal Family and Medical Leave Act of 1993, 29 U.S.C. § 2611;

(o) the term “family member” means the spouse, child, parent, parent of spouse, grandparent, or grandchild of an individual seeking leave or disability benefits under this chapter;

(p) the term “family temporary disability benefits” means disability benefits provided pursuant to section 3 of this chapter to a covered employee who is on leave from or who has left his employment because he is caring for a family member by reason of—

(1) the birth of a child of the employee;

(2) the placement of a child with the employee for adoption or foster care; or

(3) a serious health condition of a family member of the employee;

(q) the term “family temporary disability leave” means leave taken by a covered employee from employment to provide care for a family member by reason of—

(1) the birth of a child of the employee;

(2) the placement of a child with the employee for adoption or foster care; or

(3) a serious health condition of a family member of the employee;

(r) the term “health care provider” means a person licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, or osteopathy, or any other person determined by the division to be capable of providing health care services;

(s) the term “individual average weekly wage” has the same meaning as “average weekly wage” as defined in section 1(w) of chapter 151A and shall be calculated using the base period earnings as defined by section 1(a) of chapter 151A;

(t) the term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either—

(1) inpatient care in a hospital, hospice, or residential medical facility; or

(2) continuing treatment by a health care provider;

(u) the term “state average weekly wage” means the average weekly wage as determined by the division of employment and training pursuant to section 29(a) of chapter 151A;

(v) the term “temporary disability benefits” means disability benefits provided pursuant to section 3 of this chapter to a covered employee who is on a leave from or who has left his employment because of a serious health condition of the employee that makes him or her unable to perform the functions of his position;

(w) the term “temporary disability leave” means leave taken by a covered employee from employment because of a serious health condition of the employee that makes him or her unable to perform the functions of his position;

(x) the term “wages” means all remuneration as defined in section 1(s) of chapter 151A; and

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

Section 3. Temporary Disability Leave and Family Temporary Disability Leave.

(a) Types of Eligibility.

(1) Eligibility for Temporary Disability Leave. Beginning on the effective date of this Act, and for one year thereafter, an employee is eligible for temporary disability leave if the employee has accrued at least 1,250 hours of service for any employer in the Commonwealth and has been employed for nine months, whichever occurs later, starting from the effective date of this act. No benefit shall be paid during the first nine months of the effective date of this act, regardless of the service time of any claimant. Beginning on the one-year anniversary of the effective date of this Act, and for one year thereafter, an employee is eligible for temporary disability leave if he has met the monetary eligibility requirements set forth in section 24(a) of chapter 151A.

(2) Eligibility for Family Temporary Disability Leave. Beginning on the effective date of this Act, and for one year thereafter, an employee is eligible for temporary disability leave or family care leave if the employee has accrued at least 1,250 hours of service for any employer in the Commonwealth and has been employed for nine months, whichever occurs later, starting from the effective date of this act. No benefit shall be paid during the first nine months of the effective date of this act, regardless of the service time of any claimant. Beginning on the one-year anniversary of the effective date of this Act, and for one year thereafter, an employee is

eligible for temporary disability leave or family care leave if he has met the monetary eligibility requirements set forth in section 24(a) of chapter 151A.

(b) Length and Timing of Leave.

(1) Length. The duration of temporary disability leave or family temporary disability leave shall be limited to any of the following maximum amounts of time during any 12-month period:

(i) 12 weeks on a full-time basis.

(ii) The equivalent of 12 weeks on a full-time basis, where the employee takes leave on a part-time basis.

(iii) A combination of full-time and part-time leave as set forth in clauses (i) and (ii); provided that such leave shall not exceed the equivalent of 12 weeks on a full-time basis.

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

(c) Certification. An employer may require that a request for temporary disability leave or family temporary disability leave be supported by a certification of the need for leave. The certification shall be sufficient if it meets the criteria set forth in section 7.

(d) Reinstatement and Employment Benefits.

(1) An employer shall restore an employee who has taken temporary disability leave or family temporary disability leave pursuant to this chapter to the employee's previous position, or to a substantially similar position with the same status, pay, employment benefits, length of service credit, and seniority as of the date of leave.

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

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

(4) Employers may require employees taking family temporary disability leave to use up to 2 weeks of accrued vacation time prior to taking said leave.

(5) During the duration of an employee's temporary disability leave or family temporary disability leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, under the same terms and conditions as those existing prior to leave.

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

Section 4. Notice Requirements.

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

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

(c) The notice required under this subsection shall consist of the anticipated starting date of the leave, the length of the leave, and the expected date of return.

(d) Where an employer fails to provide notice of the provisions of this chapter as required under section 17, the employee's notice requirement shall be waived.

Section 5. Unlawful Practices.

154 (a) It shall be unlawful for any employer to retaliate by discharging, firing,
155 suspending, expelling, disciplining or in any other manner discriminating against an employee—

156 (1) for exercising any right to which such employee is entitled under this section or
157 with the purpose of interfering with the exercise of any right to which such employee is entitled
158 under this section; or

159 (2) who has filed a complaint or instituted or caused to be instituted a proceeding
160 under or related to this section, has testified or is about to testify in an inquiry or proceeding, or
161 has given or is about to give information connected to any inquiry or proceeding relating to this
162 section.

163 (b) Any negative change in the seniority, status, employment benefits, pay, or other
164 terms or conditions of employment of an employee who has been restored to a position pursuant
165 to this section that occurs within 6 months of such restoration, or of an employee who has
166 participated in proceedings or inquiries pursuant to this section within 6 months of the
167 termination of proceedings shall be presumed to be retaliation under this section.

168 (c) Administrative Enforcement. The commission shall be responsible for the
169 interpretation and enforcement of this section and may promulgate rules and regulations to carry
170 out the provisions of this chapter.

171 (d) Enforcement and Relief. Enforcement of this section and relief for violations of
172 this section shall be governed by the procedures set forth in sections 5 through 9 of chapter
173 151B.

(e) Establishment Temporary Disability Benefits and Family Temporary Disability Benefits.

(1) An otherwise eligible employee who is on leave from employment or who has left employment because said employee is ineligible or is no longer eligible for a leave shall be entitled to receive temporary disability benefits or family temporary disability benefits in the amount and manner provided by this section and according to regulations promulgated by the division.

(2) Eligibility.

(i) An employee is eligible to receive temporary disability benefits if he has met the monetary eligibility requirements set forth in section 24(a) of chapter 151A.

(ii) An employee is eligible to receive family temporary disability benefits if he has met the monetary eligibility requirements set forth in section 24(a) of chapter 151A and is employed by an employer who employs at least eleven employees, as defined by subsection (d)(4) of section 148 of chapter 149.

Section 6. Amount and Duration of Disability Benefits.

(a) Weekly Benefits. For an employee who takes leave—

(1) on a full-time basis, the weekly benefit amount shall be equal to 60 per cent of the eligible individual's weekly wage up to a maximum of \$1,000 per week. Commencing January 1, 2018, the division shall adjust annually the maximum weekly benefit amount to reflect changes in the United States Bureau of Labor Statistics Consumer Price Index for the Boston-

194 Cambridge-Quincy consolidated metropolitan statistical area for all urban consumers, all goods,
195 or its successor index; and

196 (2) on a part-time basis, the weekly benefit amount shall be prorated.

197 (b) Duration of Disability Benefits.

198 (1) Temporary Disability Benefits. The duration of temporary disability benefits shall
199 not exceed 26 weeks during the benefit year.

200 (2) Family Temporary Disability Benefits. The duration of family temporary
201 disability benefits shall not exceed 12 weeks during the benefit year.

202 (c) Waiting Period.

203 (1) No disability benefits shall be paid during the first 7 consecutive days of any
204 claim for temporary disability benefits. This waiting period shall not apply to claims for family
205 temporary disability benefits.

206 (2) This section does not in any way prohibit an employee from utilizing, at the
207 employee's option, accrued sick or vacation pay during the first 7 consecutive days of the
208 employee's claim for temporary disability benefits.

209 Section 7. Certification Requirements.

210 (a) If required by an employer, pursuant to section 3(c), an employee who makes a
211 claim for temporary disability benefits shall provide a certification issued by the employee's
212 health care provider. The certification shall be sufficient if it states the date on which the serious
213 health condition commenced, the probable duration of the condition, the appropriate medical

facts within the knowledge of the health care provider as required by the division, and a statement that the employee is unable to perform the functions of his position.

(b) If required by an employer, pursuant to section 3(c), an employee who makes a claim for family temporary disability benefits because of—

(1) the serious health condition of a family member of the employee shall provide a certification issued by the family member's health care provider. The certification shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider as required by the division, a statement that the employee is needed to care for the family member, and an estimate of the amount of time that the employee is needed to care for the family member;

(2) the birth of a child of the employee shall provide either a birth certificate or a certification issued by the health care provider of the child of the eligible employee. The certification shall be sufficient if it states the date of the child's birth;

(3) the placement of a child with the employee for adoption or foster care shall provide a certification issued by the health care provider of the child, an adoption or foster care agency involved in the placement, or by other persons as determined by the division. The certification shall be sufficient if it states the date of placement; and

(4) the placement with the employee for adoption or foster care of a child 18 years of age or older and incapable of self-care because of a mental or physical disability shall, in addition to the certification required by paragraph (3), also provide a certification issued by the health care provider of the child, or by other persons as determined by the division. The

certification shall be sufficient if it states the nature of the disability and fact that the child is incapable of self-care.

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

Section 8. Wages and Other Forms of Wage Replacement.

(a) No individual may receive disability benefits under this section for a week in which the individual receives an amount equal to or greater than the weekly benefit amount in the form of wages or a wage replacement under—

(1) any government program or law, including but not limited to unemployment insurance, worker's compensation other than for permanent partial disability incurred prior to the temporary disability claim, or under other state or federal temporary or permanent disability benefits law;

(2) a permanent disability policy or program of an employer;

(3) a temporary disability policy or program of an employer; or

(4) a paid sick, vacation, family, or medical leave policy of an employer. For a week in which an individual receives wages or a wage replacement less than the weekly benefit amount, the individual shall receive disability benefits equal to the difference between the weekly benefit amount and the amount of wages or wage replacement received.

(b) Any wage replacement received under the programs or policies listed in subsection (a) and resulting from the same birth, adoption, or serious health condition on which the individual's claim for disability benefits is based shall be deducted from the total amount of disability benefits for which the individual would otherwise be eligible; provided that this paragraph shall not apply to wage replacement received as a result of a paid sick or vacation policy of an employer.

Section 9. Massachusetts Division of Family and Medical Leave.

There shall be a division of family and medical leave within the executive office of labor and workforce development which shall be administered by a director appointed by the governor. The division shall produce an annual report detailing all funds earned or received and all costs and benefits paid and shall make this report available on line no later than 60 days after the end of the commonwealth's fiscal year.

Section 10. Provision of Temporary Disability Benefits and Family Temporary Disability Benefits.

(a) Provision for Payment of Disability Benefits. An employer or an association of employers shall secure temporary disability benefits and family temporary disability benefits for employees by—

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

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

(3) a private plan or agreement which the employer may, by her or his sole act, terminate at any time, provided that the plan or agreement is acceptable to the division as satisfying the obligation to provide for the payment of disability benefits under this chapter, that the benefits under the plan or agreement are at least as favorable as the disability benefits required by this chapter, and that the policy does not require contributions from any employee or class of employees; or

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

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

(c) No Contribution Required by Employer with Private Plan. Employers providing for the payment of disability benefits under subsections (2), (3) or (4) of subsection (a), shall not be required to make contributions pursuant to subsection (a)(1). Employees of employers providing for the payment of disability benefits under paragraphs (2), (3) or (4) of subsection (a), shall not be required to make contributions pursuant to subsection (a)(1).

(d) Employee Reimbursement for Temporary Disability Benefits. An employer who employs 10 or fewer employees, as defined by subsection d(4) of subsection 148 of chapter 149 and who provides for the payment of disability benefits under this section, may seek reimbursement from its employees for up to 50 percent of the cost of the portion of said plans or agreements which provide temporary disability benefits, as required by this chapter. Said reimbursement shall be prorated for each employee to equal the percentage of the employer's total compensation payments to all employees that is represented by said employee's total compensation received from that employer.

(e) Employee Reimbursement of Family and Medical Leave Benefits. Employers providing for the payment of disability benefits under section, may seek reimbursement for that portion of the cost of said plans or agreements which provide family temporary disability benefits, as required by this chapter, from that employer's employees. Said reimbursement shall be prorated for each employee to equal the percentage of the employer's total compensation

payments to all employees that is represented by said employee's total compensation received from that employer.

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

Section 11. Temporary Disability Trust Fund and Family and Medical Leave Trust Fund and Administrative Accounts.

(a) Establishment of the Temporary Disability Trust Fund. There is established in the treasury of the state, separate and apart from all public monies or funds of the state, a temporary disability trust fund which shall be administered by the deputy director exclusively for the purposes of this chapter. All payments pursuant to this part shall be paid into the trust fund and all disability benefits payable under this chapter shall be paid from the trust fund. The trust fund shall consist of—

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

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

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

(4) all earnings of such property and securities;

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

339 (6) all other monies received for the trust fund from any source.

340 (b) Establishment of the Temporary Disability Administrative Account. There is
341 established in the treasury of the state, separate and apart from all public monies or funds of the
342 state, a temporary disability administrative account which shall be administered by the deputy
343 director exclusively for the purposes of this chapter. The administrative account shall consist
344 of—

345 (1) all contributions collected pursuant to this section, together with any interest
346 thereon;

347 (2) all fines and penalties for the administrative account pursuant to this chapter;

348 (3) all monies collected by way of subrogation;

349 (4) interest earned on any monies belonging to the administrative account;

350 (5) any property or securities acquired through the use of monies belonging to the
351 administrative account;

352 (6) all earnings of such property and securities;

353 (7) all monies appropriated to the administrative account by the legislature; and

354 (8) all other monies received for the administrative account from any source.

355 (c) Establishment of the Family and Medical Leave Trust Fund. There is established
356 in the treasury of the state, separate and apart from all public monies or funds of the state, a
357 family and medical leave trust fund which shall be administered by the deputy director
358 exclusively for the purposes of this chapter. All payments pursuant to this part shall be paid into

359 the trust fund and all disability benefits payable under this chapter shall be paid from the trust
360 fund. The trust fund shall consist of—

361 (1) all contributions collected pursuant to this section, together with any interest
362 thereon;

363 (2) interest earned on any monies in the trust fund;

364 (3) any property or securities acquired through the use of monies belonging to the
365 trust fund;

366 (4) all earnings of such property and securities; all monies transferred into the trust
367 fund from the temporary disability administrative account; and all other monies received for the
368 trust fund from any source.

369 (d) Establishment of the Family and Medical Leave Administrative Account. There is
370 established in the treasury of the state, separate and apart from all public monies or funds of the
371 state, a family and medical leave administrative account which shall be administered by the
372 deputy director exclusively for the purposes of this chapter. The administrative account shall
373 consist of—

374 (1) all contributions collected pursuant to this section, together with any interest
375 thereon;

376 (2) all fines and penalties for the administrative account pursuant to this chapter;

377 (3) all monies collected by way of subrogation;

378 (4) interest earned on any monies belonging to the administrative account;

379 (5) any property or securities acquired through the use of monies belonging to the
380 administrative account;

381 (6) all earnings of such property and securities

382 (7) all monies appropriated to the administrative account by the legislature; and

383 (8) all other monies received for the administrative account from any source.

384 (e) Management of the Funds. The state treasurer shall be the treasurer and custodian
385 of the temporary disability trust fund and the family and medical leave trust fund and the
386 temporary disability administrative account and the family and medical leave administrative
387 account and shall administer the trust funds and administrative accounts in accordance with the
388 directions of the deputy director. All monies in the trust funds and administrative accounts shall
389 be held in trust for the purposes of this part only and shall not be expended, released,
390 appropriated, or otherwise disposed of for any other purpose. Monies in the trust funds and
391 administrative accounts may be deposited in any depository bank in which general funds of the
392 commonwealth may be deposited, but such monies shall not be commingled with other
393 commonwealth funds and shall be maintained in separate accounts on the books of the
394 depository bank. Such monies shall be secured by the depository bank to the same extent and in
395 the same manner as required by the general depository law of the commonwealth, and collateral
396 pledged for this purpose shall be kept separate and distinct from any other collateral pledged to
397 secure other funds of the commonwealth. The trust funds shall maintain an annualized amount of
398 at least 140 per cent of the previous year's expenditure.

399 (f) Management of the Administrative Accounts. The deputy director shall pay all
400 expenses incurred in administering the provisions of this chapter. In the event that the balance in

401 the temporary disability trust fund shall at any time be insufficient to pay disability benefits
402 under this chapter, the governor, upon the deputy director's request, shall cause such sums as
403 may be required for the payment of such disability benefits to be transferred from the temporary
404 disability administrative account to the temporary disability trust fund. In the event that the
405 balance in the family and medical leave trust fund shall at any time be insufficient to pay
406 disability benefits under this chapter, the governor, upon the deputy director's request, shall
407 cause such sums as may be required for the payment of such disability benefits to be transferred
408 from the family and medical leave administrative account to the family and medical leave trust
409 fund.

410 (g) Disbursements from the Funds. Expenditures of monies in the temporary
411 disability trust fund and the family and medical leave trust fund shall not be subject to provisions
412 of law requiring specific appropriations or other formal release by state officers of money in their
413 custody. All disability benefits shall be paid from the trust funds upon warrants drawn upon the
414 state treasurer by the comptroller of the commonwealth supported by vouchers approved by the
415 deputy director.

416 (h) Investment of Monies. With the approval of the deputy director, the secretary of
417 administration and finance may, from time to time, invest such monies in the temporary
418 disability trust fund and the family and medical leave trust fund as are in excess of the amount
419 deemed necessary for the payment of disability benefits for a reasonable future period, subject to
420 clause (i). Such monies may be invested in bonds of any political or municipal corporation or
421 subdivision of the commonwealth, or any of the outstanding bonds of the commonwealth, or
422 invested in bonds or interest-bearing notes or obligations of the commonwealth, or of the United
423 States, or those for which the faith and credit of the United States are pledged for the payment of

principal and interest (or in federal land bank bonds or joint stock farm bonds). The investments shall at all times be so made that all the assets of the trust funds shall always be readily convertible into cash when needed for the payment of disability benefits. The director of administration and finance shall dispose of securities or other properties belonging to the trust funds only under the direction of the deputy director.

(i) Federal Funds. To the extent allowed by federal law, federal funds received by the commonwealth for the specific purpose of maintaining or supporting paid family leave shall be used solely to reduce the rate of contributions required of employees pursuant to section 13.

Section 12. Disability Benefits to Be Paid from the Trust Funds; Recovery of Disability Benefits.

Temporary disability benefits shall be paid from the temporary disability trust fund to eligible individuals. Disability benefits shall also be paid from the trust fund to an employee who is entitled to receive such disability benefits but cannot because of the bankruptcy of his employer or because the employer is not in compliance with this chapter. Disability benefits paid from the trust fund to such employee may be recovered through bankruptcy proceedings or from the noncomplying employer. The deputy director shall institute administrative and legal action to effect recovery of such disability benefits.

Family temporary disability benefits shall be paid from the family and medical leave trust fund to eligible individuals. Disability benefits shall also be paid from the trust fund to an employee who is entitled to receive such disability benefits but cannot because of the bankruptcy of his employer or because the employer is not in compliance with this chapter. Disability benefits paid from the trust fund to such employee may be recovered through bankruptcy

proceedings or from the noncomplying employer. The deputy director shall institute administrative and legal action to effect recovery of such disability benefits.

Section 13. Amount of Employer Payments to the Temporary Disability Trust Fund and Administrative Account.

For the purpose of accumulating funds for the payment of temporary disability benefits and administrative costs, each employer, with the exception of any employer complying with subsections (a)(2), (a)(3) or (a)(4) of section 10, shall in the first year after the date the employer becomes subject to this chapter, and each year thereafter, pay amounts as determined by the deputy director. Each employer shall transmit all such payments to the trust fund or administrative account in such manner, at such time, and under such conditions as shall be prescribed by regulations.

Section 14. Amount of Employee Payments to the Family and Medical Leave Trust Fund and Administrative Account.

For the purpose of accumulating funds for the payment of family temporary disability benefits and administrative costs, each employee, with the exception of an employee employed by any employer complying with subsections (a)(2), (a)(3) or (a)(4) of section 10, shall in the first year after the date the employee becomes subject to this chapter, and each year thereafter, pay amounts as determined by the deputy director. Each employer shall transmit all such payments to the trust fund or administrative account in such manner, at such time, and under such conditions as shall be prescribed by regulations.

Section 15. Annual Establishment of Rates for Trust Fund Operations.

(a) On or before October first of each year, the deputy director shall certify to the secretary of administration and finance the estimated costs for the coming year of temporary disability benefits and for related administrative services provided by the division. Said rates of employer contribution to both the temporary disability trust fund and the temporary disability administrative account as established by this chapter shall be adjusted annually as consistent with the needs of the operation of said trust fund and administrative account.

(b) On or before October first of each year, the deputy director shall certify to the secretary of administration and finance the estimated costs for the coming year of family temporary disability benefits and for related administrative services provided by the division. Said rates of employee contribution to both the family and medical leave trust fund and the family and medical leave administrative account as established by this chapter shall be adjusted annually as consistent with the needs of the operation of said trust fund and administrative account.

Section 16. Request for Wage and Employment Information.

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

Section 17. Claims And Appeal

(a) Filing of Claims. Claims for temporary disability benefits and family temporary disability benefits shall be filed with the division and shall be handled under the procedures prescribed by chapter 30A.

(b) Notice Required.

(1) Every employer subject to this chapter shall keep posted in a conspicuous place or places on its premises a workplace notice prepared or approved by the division which shall set forth excerpts from this chapter and other information the division deems necessary to explain the chapter. Such workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least 10,000 residents of the commonwealth or 0.5 per cent of all residents of the commonwealth. Each employer with 5 or more employees whose primary language is not English shall post the workplace notice in that language, if such notice is available from the division.

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

(3) Each employer shall issue to each employee taking temporary disability leave or family temporary disability leave, as soon as practicable, but not more than 30 days from the date that the employee gives notice of leave, written information provided or approved by the division which shall contain the name and mailing address of the employer; the identification number

assigned to the employer by the division; information describing the availability of temporary disability benefits and family temporary disability benefits provided pursuant to this chapter; instructions on how to file a claim for disability benefits; the address and telephone number of the regional office of the division which serves the recipient; and the telephone number of the division. Delivery is made when an employer provides such information to an employee in person or by mail to the employee's last known address.

(c) Failure to Comply.

(1) Fines. Any employer who fails to comply with the provisions of paragraphs (1) or (2) of subsection (b) shall be punished by a fine of not less than \$50 nor more than \$300. A subsequent violation of this subsection by the same employer shall be punished by a fine of not less than \$250 nor more than \$1,000. Where an employer fails to comply with this provision, an employee shall be deemed to have provided notice of leave under section 3(c) of this chapter. The employer shall have the burden of demonstrating compliance with subsections paragraphs (1) or (2) of subsection (b).

(2) Waiting Period. The waiting period under section 6(c)(1) for an employee who did not receive the information required by subsection (b)(3) and who failed to file timely for disability benefits, shall be the initial week that such employee would have been eligible to receive temporary disability benefits or family temporary disability benefits. The employer shall have the burden of demonstrating compliance with subsection (b)(3).

Section 18. Purpose and Construction. This act shall be liberally construed as remedial legislation to further its purpose of providing job-protected temporary disability leave and family temporary disability leave, as well as temporary disability benefits and family temporary

disability benefits, to the employees of the commonwealth. All presumptions shall be made in favor of the availability of leave and the payment of disability benefits under this chapter.

SECTION 2. Section 4 of chapter 151B of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after subsection 11A the following subsection:-

“11B. (1) For an employer to discharge, fire, suspend, expel, discipline or in any other manner discriminate against an employee—

(i) for exercising any right to which such employee is entitled under the provisions of chapter 175K; or

(ii) with the purpose of interfering with the exercise of any right to which such employee is entitled under chapter 175K.

(2) For any employer to discharge, fine, suspend, expel, discipline or in any other manner discriminate against an employee who has filed a complaint or instituted or caused to be instituted a proceeding under or related to section 5 of chapter 175K, or who has testified or is about to testify in an inquiry or proceeding, or who has given or is about to give information connected to any inquiry or proceeding relating to said section.

(3) For purposes of this subsection, any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of an employee who has been restored to a position pursuant to section 5 of chapter 175K that occurs within 6 months of such restoration, or of an employee who has participated in proceedings or inquiries pursuant to said section within 6 months of the termination of proceedings shall be presumed to be retaliation.”.

552 SECTION 3. Paragraph (2) of subsection (a) of section 2 of chapter 62 of the General
553 Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after clause (Q)
554 the following clause:-

555 “(R) Amounts received by an individual for temporary disability leave or family
556 temporary disability leave under chapter 175K of the General Laws.”.