The committee on Ways and Means to whom were referred the petition (accompanied by bill, Senate, No. 1004) of Kenneth J. Donnelly, James R. Miceli, Jack Lewis, Sal N. DiDomenico and other members of the General Court for legislation to improve the Commonwealth’s economy with a strong minimum wage and a strong tipped minimum wage, the petition (accompanied by bill, House, No. 1042) of RoseLee Vincent and others relative to the equality of Sunday pay for retail workers, the petition (accompanied by bill, House, No. 1544) of Bradley H. Jones, Jr., and others for legislation to establish an annual sales tax holiday, the petition (accompanied by bill, House, No. 1595) of James M. Murphy and Paul McMurtry for legislation to declare a sales tax holiday for the dates of August 18, 2018 and August 19, 2018, the petition (accompanied by bill, House, No. 2172) of Kenneth I. Gordon and others relative to establishing a paid family and medical leave insurance program, and the petition (accompanied by bill, House, No. 2365) of Daniel M. Donahue and others relative to the tipped minimum wage, reports recommending that the accompanying bill (House, No. 4640) ought to pass [Representatives Boldyga of Southwick and Campanale of Leicester dissent].

For the committee,

JEFFREY SÁNCHEZ.
An Act relative to minimum wage, paid family medical leave and the sales tax holiday.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 23 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words “standards,”, in line 11, the following words:- the department of family and medical leave.

SECTION 2. Section 25 of said chapter 23, as so appearing, is hereby amended by striking out, in line 16, the figure “17” and inserting in place thereof the following figure:- 18.

SECTION 3. Said section 25 of said chapter 23, as so appearing, is hereby further amended by inserting after the word “designee” in line 25, the following words:- ; the director of the department of family and medical leave, or a designee.

SECTION 4. Chapter 64H of the General Laws is hereby amended by inserting after section 6 the following section:-

Section 6A. (a) For the purposes of this section: (i) “annual sales tax holiday” shall mean a Saturday and Sunday occurring concurrently in August designated pursuant to subsection (b);
and (ii) “tangible personal property” shall have the same meaning as it does in section 1, except
that it shall not include telecommunications, tobacco products subject to the excise imposed by
chapter 64C, marijuana products subject to chapter 94G, alcoholic beverages, as defined in
section 1 of chapter 138, gas, steam, electricity, motor vehicles, motorboats or a single item the
price of which is more than $2,500.

(b) The General Court shall, annually, not later than June 15, adopt a joint resolution
designating a 2-day weekend in August of that year as the annual sales tax holiday. If the
General Court fails to adopt the joint resolution required by this section, the commissioner of
revenue shall not later than July 1, designate a 2-day weekend in August of that year as the
annual sales tax holiday. The General Court or the commissioner of revenue shall, when
choosing the sales tax holiday, take into consideration all religious or secular days of observation
occurring during the month of August; and provided further, the commissioner shall designate
such days so as to maximize the economic benefit to the commonwealth.

(c) During the annual sales tax holiday: (i) no tax shall be imposed upon a non-business
sale at retail of tangible personal property; (ii) vendors shall not add to the sales price or collect
from any non-business purchaser a tax upon a sale at retail of tangible personal property; (iii) the
commissioner shall not require a vendor to collect and pay tax upon a sale at retail of tangible
personal property; (iv) any excise erroneously or improperly collected by a vendor shall be
remitted to the department of revenue; and (v) vendors shall continue to comply with all
reporting requirements imposed by law or by regulation, including, but not limited to, the
requirements for filing returns under chapter 62C.
(d)(1) The commissioner of revenue shall, annually, not later than December 31, certify to the comptroller the amount of revenue that the commonwealth would have received during the annual sales tax holiday if the annual sales tax holiday had not been in effect, as well as new revenue raised from personal and corporate income taxes and other sources, resulting from the annual sales tax holiday.

(2) The commissioner shall, annually, not later than December 31, issue a report, detailing, for each fund affected, the amounts that would have been deposited into each fund if the annual sales tax holiday had not been in effect.

(e) The commissioner shall promulgate any rules or regulations and shall issue instructions or forms necessary for the implementation of this section.

SECTION 5. Section 6 of chapter 136 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the words “one and one-half”, in line 164, and inserting in place thereof the following words:- one and four-tenths.

SECTION 6. Said section 6 of said chapter 136 is hereby further amended by striking out the words “one and four-tenths”, inserted by section 5, and inserting in place thereof the following words:- one and three-tenths.

SECTION 7. Said section 6 of said chapter 136 is hereby further amended by striking out the words “one and three-tenths”, inserted by section 6, and inserting in place thereof the following words:- one and two-tenths.
SECTION 8. Said section 6 of said chapter 136 is hereby further amended by striking out the words “one and-two-tenths”, inserted by section 7, and inserting in place thereof the following words:- one and one-tenth.

SECTION 9. The second paragraph of clause (50) of said section 6 of said chapter 136 is hereby amended by striking out the first sentence.

SECTION 10. Said section 6 of said chapter 136, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 185, the words “one and one-half” and inserting in place thereof the following words:- one and four-tenths.

SECTION 11. Said section 6 of said chapter 136 is hereby further amended by striking out the words “one and four-tenths”, inserted by section 10, and inserting in place thereof the following words:- one and three-tenths.

SECTION 12. Said section 6 of said chapter 136 is hereby further amended by striking out the words “one and three-tenths”, inserted by section 11, and inserting in place thereof the following words:- one and two-tenths.

SECTION 13. Said section 6 of said chapter 136 is hereby further amended by striking out the words “one and two-tenths”, inserted by section 12, and inserting in place thereof the following words:- one and one-tenth.

SECTION 14. Clause (52) of said section 6 of said chapter 136, as appearing in the 2016 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-
The retail sale of alcoholic beverages not to be drunk on the premises on Sundays by retail establishments licensed under section 15 of chapter 138; provided, however, that notwithstanding this chapter, a municipality may prohibit the retail sale of alcoholic beverages on Sundays by licensees under section 15 by vote of the city council or board of selectmen; and provided further, that there shall be no such sales prior to the hour of 10:00 a.m. or on Christmas Day if Christmas occurs on a Sunday.

SECTION 15. The second paragraph of section 16 of said chapter 136, as appearing in the 2016 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

Any store or shop that qualifies for exemption under clause (25), (27) or (50) of section 6 and employs more than 7 persons, including the proprietor, shall compensate all its employees, except bona fide executive, administrative or professional employees earning more than $200 per week, at a rate specified under clause (50) of section 6 of this chapter for work performed on Memorial Day, July Fourth or Labor Day; provided, however, that no employee shall be required to perform such work, and an employee’s refusal to work for any retail establishment on a holiday shall not be grounds for discrimination, dismissal, discharge, reduction in hours or any other penalty.

SECTION 16. The second paragraph of section 16 of said chapter 136, as appearing in the 2016 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

Any store or shop that qualifies for exemption under clause (25), (27) or (50) of section 6 and employs more than 7 persons, including the proprietor, shall not require any employee to
perform such work, and an employee’s refusal to work for any retail establishment on a holiday shall not be grounds for discrimination, dismissal, discharge, reduction in hours or any other penalty.

SECTION 17. Section 1 of chapter 151 of the General Laws, as so appearing, is hereby amended by striking out, in line 6, the figure “$11.00” and inserting in place thereof the following figure:- $12.00.

SECTION 18. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “$12.00”, inserted by section 17, and inserting in place thereof the following figure:- $12.75.

SECTION 19. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “$12.75”, inserted by section 18, and inserting in place thereof the following figure:- $13.50.

SECTION 20. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “$13.50”, inserted by section 19, and inserting in place thereof the following figure:- $14.25.

SECTION 21. Said section 1 of said chapter 151 is hereby further amended by striking out the figure “$14.25”, inserted by section 20, and inserting in place thereof the following figure:- $15.00.

SECTION 22. Section 7 of said chapter 151, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 33, the figure “$3.75” and inserting in place thereof the following figure:- $4.35.
SECTION 23. Said section 7 of said chapter 151 is hereby further amended by striking out the figure “$4.35”, inserted by section 22, and inserting in place thereof the following figure:- $4.95.

SECTION 24. Said section 7 of said chapter 151 is hereby further amended by striking out the figure “$4.95”, inserted by section 23, and inserting in place thereof the following figure:- $5.55.

SECTION 25. Said section 7 of said chapter 151 is hereby further amended by striking out the figure “$5.55”, inserted by section 24, and inserting in place thereof the following figure:- $6.15.

SECTION 26. Said Section 7 of said chapter 151 is hereby further amended by striking out the figure “$6.15”, inserted by section 25, and inserting in place thereof the following figure:- $6.75.

SECTION 27. Said section 7 of said chapter 151, as appearing in the 2016 Official Edition, is hereby further amended by inserting after the words “section 1”, in line 36, the following words:- ; provided, however, that an employer shall pay the amount required by clause (2) at the completion of each shift worked by the employee.

SECTION 28. Section 46 of chapter 151A of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word “services”, in line 24, the following words:- , family and medical leave.

SECTION 29. The General Laws are hereby amended by inserting after chapter 175L the following chapter:-
For the purposes of this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

“Average weekly wage”, shall have the same meaning as provided in subsection (w) of section 1 of chapter 151A; provided, however, that “average weekly wage” shall be calculated using earnings from the base period, as that term is defined in subsection (a) of said section 1 of said chapter 151A; and provided further, that in the case of a self-employed individual, “average weekly wage” shall mean one twenty-sixth of the total earnings of the self-employed individual from the 2 highest quarters of the 12 months preceding such individual’s application for benefits under this chapter.

“Benefit year”, the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that job-protected leave under this chapter commences for the covered individual.

“Child”, a biological, adopted or foster child, a stepchild or legal ward, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor child.

“Contributions”, the payments made by an employer, a covered business entity, an employee or a self-employed individual to the Family and Employment Security Trust Fund, as required by this chapter.
“Covered business entity”, a business or trade that contracts with self-employed
individuals for services and is required to report the payment for services to such individuals on
IRS Form 1099-MISC for more than 50 per cent of its workforce.

“Covered individual”, either: (i) an employee who meets the financial eligibility
requirements of subsection (a) of section 24 of chapter 151A, provided that all such employment
has been with an employer in the commonwealth; (ii) a self-employed individual who has: (A)
elected coverage under subsection (j) of section 2 of this chapter and (B) reported earnings to the
department of revenue from self-employment that meet the financial eligibility requirements of
subsection (a) of section 24 of chapter 151A, as if the individual were an employee; or (iii) a
former employee who has: (A) met the financial eligibility requirements of subsection (a) of
section 24 of chapter 151A at the time of the former employee’s separation from employment,
provided that all such employment has been with an employer in the commonwealth; and (B)
been separated from employment for not more than 26 weeks at the start of the former
employee’s family or medical leave.

“Covered servicemember”, either: (i) a member of the Armed Forces, as defined in
section 7 of chapter 4, including a member of the National Guard or Reserves, who is (A)
undergoing medical treatment, recuperation or therapy; (B) otherwise in outpatient status; or (C)
is otherwise on the temporary disability retired list for a serious injury or illness that was
incurred by the member in the line of duty on active duty in the Armed Forces, or a serious
injury or illness that existed before the beginning of the member's active duty and was
aggravated by service in the line of duty on active duty in the Armed Forces; or (ii) a former
member of the Armed Forces, including a former member of the National Guard or Reserves,
who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that
was incurred by the member in line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces and manifested before or after the member was discharged or released from service.

“Department”, the department of family and medical leave established under section 8 of this chapter.

“Director”, the director of the department of family and medical leave.

“Domestic partner”, a person not less than 18 years of age who: (i) is dependent upon the covered individual for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or personal property; (B) common householding; (C) children in common; (D) signs of intent to marry; (E) shared budgeting; and (F) the length of the personal relationship with the covered individual; or (ii) has registered as the domestic partner of the covered individual with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town or village in the United States.

“Employee”, shall have the same meaning as provided in clause (h) of section 1 of chapter 151A; provided, however, that notwithstanding said clause (h) or any other special or general law to the contrary, “employee” shall include a family child care provider, as defined in subsection (a) of section 17 of chapter 15D.

“Employer”, shall have the same meaning as provided in subsection (i) of section 1 of chapter 151A; provided, however, that an individual employer shall be determined by the Federal Employer Identification Number; provided further, that the department of early
education and care shall be deemed the employer of family child care providers, as defined in
subsection (a) of section 17 of chapter 15D; provided further, that the PCA quality home care
workforce council established in section 71 of chapter 118E shall be the employer of personal
care attendants, as defined in section 70 of said chapter 118E; provided further, that any
employer not subject to this chapter may become a covered employer under this chapter by
notifying the department of family and medical leave and completing the procedure established
by the department; and provided further, that a municipality, district, political subdivision or its
instrumentalities shall not be subject to this chapter unless it adopts this chapter under section 10.

“Employment”, shall have the same meaning as provided by clause (k) of section 1 of
chapter 151A.

“Employment benefits”, all benefits provided or made available to employees by an
employer, including, but not limited to, group life insurance, health insurance, disability
insurance, sick leave, annual or vacation leave, educational benefits and pensions.

“Family leave”, leave taken pursuant to paragraph (1) of subsection (a) and subsection (b)
of section 2.

“Family leave benefits”, wage replacement paid pursuant to section 3 and provided in
accordance with section 2 to a covered individual while the covered individual is on family
leave.

“Family member”, the spouse, domestic partner, child, parent or parent of a spouse or
domestic partner of the covered individual; a person who stood in loco parentis to the covered
individual when the covered individual was a minor child; or a grandchild, grandparent or sibling
of the covered individual.
“Health care provider”, an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or any other individual determined by the department to be capable of providing health care services.

“Medical leave”, leave taken pursuant to paragraph (2) of subsection (a) of section 2.

“Medical leave benefits”, wage replacement paid pursuant to section 3 and provided in accordance with section 2 to a covered individual while the covered individual is on medical leave.

“Qualifying exigency”, a need arising out of a covered individual’s family member’s active duty service or notice of an impending call or order to active duty in the Armed Forces, including, but not limited to, providing for the care or other needs of the military member’s child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment or making arrangements following the death of the military member.

“Self-employed individual”, a sole proprietor, member of a limited liability company or limited liability partnership or an individual whose net profit or loss from a business must be reported to the department of revenue; provided, however, that such individual resides in the commonwealth.

“Serious health condition”, an illness, injury, impairment or physical or mental condition that involves (i) inpatient care in a hospital, hospice or residential medical facility; or (ii) continuing treatment by a health care provider.
“State average weekly wage”, the average weekly wage in the commonwealth as calculated under subsection (a) of section 29 of chapter 151A and determined by the commissioner of unemployment assistance.


“Wages”, shall have the same meaning as provided in clause (s) of section 1 of chapter 151A.

“Weekly benefit amount”, the amount of wage replacement paid to a covered individual on a weekly basis while the covered individual is on family or medical leave, as provided in section 3.

Section 2. (a)(1) Family leave shall be available to any covered individual for any of the following reasons: (i) to bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual; (ii) because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or (iii) in order to care for a family member who is a covered servicemember.

(2) Medical leave shall be available to any covered individual with a serious health condition.

(b) Family leave shall be available to any covered individual to care for a family member with a serious health condition.
(c)(1) A covered individual shall not be eligible for more than 12 weeks of family leave in a benefit year; provided, however, that a covered individual taking family leave in order to care for a covered servicemember pursuant to clause (iii) of paragraph (1) of subsection (a) of this section shall not be eligible for more than 26 weeks of family leave in a benefit year. A covered individual shall not be eligible for medical leave for more than 20 weeks in a benefit year. A covered individual may not take more than 26 weeks, in the aggregate, of family and medical leave under this chapter in the same benefit year. Nothing in this section shall prevent a covered individual from taking a medical leave during pregnancy or recovery from childbirth if supported by documentation by a health care provider that is immediately followed by family leave, in which case the 7 day waiting period for family leave shall not be required.

(2)(A) Leave under clause (i) of paragraph (1) of subsection (a) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Leave under clause (iii) of paragraph (1) or paragraph (2) of subsection (a) or under subsection (b) of this section, may be taken intermittently or on a reduced leave schedule by an employee when medically necessary. Leave under clause (ii) of paragraph (1) of subsection (a) of this section may be taken intermittently or on a reduced leave schedule by an employee.

(B) Leave under paragraphs (1) or (2) of subsection (a), or under subsection (b) of this section may be taken intermittently or on a reduced leave schedule by a self-employed individual or former employee.
(C) The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result in a reduction in the total amount of leave to which the covered individual is entitled under this chapter.

(d) While on family or medical leave, a covered individual shall receive a weekly benefit amount, as provided in section 3.

(e) An employee who has taken family or medical leave shall be restored to the employee’s previous position, or to an equivalent position, with the same status, pay, employment benefits, length of service credit and seniority as of the date of leave. An employer shall not be required to restore an employee who has taken family or medical leave to the previous or to an equivalent position if other employees of equal length of service credit and status in the same or equivalent 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 the employee was entitled as of the date of leave.

(f) The taking of family or medical leave shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs. During the duration of an employee’s family or medical leave, the employer shall continue to provide for and contribute to the employee’s employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave.
(g) Subsections (e) and (f) shall not apply to a self-employed individual taking family or medical leave under this chapter or a person who was a former employee who satisfies the conditions set forth in clause (iii) of the definition of “Covered individual” in section 1, when that person began taking family or medical leave under this chapter.

(h)(1) This chapter shall not: (i) obviate an employer’s obligations to comply with any company policy, law or collective bargaining agreement that provides for greater or additional rights to leave than those provided for by this chapter; (ii) in any way curtail the rights, privileges or remedies of any employee under any collective bargaining agreement or employment contract; or (iii) be construed to allow an employer to compel an employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave under this chapter.

(2) An employer may require that payment made pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy such that the employee will receive the greater of the various benefits that are available for the covered reason. Any leave provided under a collective bargaining agreement or employer policy that is used by the employee for a covered reason and paid at the same or higher rate than leave available under this chapter shall count against the allotment of leave available under the chapter. The employer shall give employees written notice of this requirement.

(i) Leave taken under this chapter shall run concurrently with leave taken under section 105D of chapter 149 or under the Family and Medical Leave Act of 1993, codified at 29 U.S.C. section 2611, et seq. Employees who take leave under this chapter while ineligible for leave
under the Family and Medical Leave Act of 1993 shall be permitted to take leave under the Family and Medical Leave Act of 1993 in the same benefit year only to the extent they remain eligible for concurrent leaves under this chapter.

(j) A self-employed individual may elect coverage under this chapter and become a covered individual for an initial period of not less than 3 years by filing a notice of election in writing with the department and making contributions as required in section 6 to the Family and Employment Security Trust Fund established in section 7; provided, however, that a self-employed individual who elects coverage shall not be eligible for benefits until that individual has made such required contributions for at least 2 calendar quarters of the individual’s last 4 completed calendar quarters. The election shall become effective on the date of filing the notice. The department shall establish a process by which self-employed individuals elect coverage under this chapter.

Section 3. (a) No family or medical leave benefits shall be payable during the first 7 calendar days of such leave; provided, however, that an employee may utilize accrued sick or vacation pay or other paid leave provided under an employer policy during the first 7 calendar days of such leave. Employees taking family or medical leave for which benefits are not payable under this subsection shall be entitled to the protections of subsections (e) and (f) of section 2 and section 9.

(b)(1) The weekly benefit amount for employees and self-employed individuals on family or medical leave shall be determined as follows: (i) the portion of an employee’s or self-employed individual’s average weekly wage that is equal to or less than 50 per cent of the state average weekly wage shall be replaced at a rate of 80 per cent; and (ii) the portion of an
employee’s or self-employed individual’s average weekly wage that is more than 50 percent of
the state average weekly wage shall be replaced at a rate of 50 per cent.

(2) The maximum weekly benefit amount calculated pursuant to paragraph (1) shall be
not more than $850.00 per week; provided, however, that annually, not later than October 1 of
each year thereafter, the commissioner of unemployment assistance shall adjust the maximum
weekly benefit amount to be 64 per cent of the state average weekly wage and the adjusted
maximum weekly benefit amount shall take effect on January 1 of the year following such
adjustment.

(3) For a covered individual who takes leave on an intermittent or reduced leave
schedule, the weekly benefit amount shall be prorated as determined by the department.

(c) The weekly benefit amount shall be reduced by the amount of wages or wage
replacement that a covered individual receives for that period under any of the following while
on family or medical leave: (i) any government program or law, including but not limited to
workers’ compensation under chapter 152, other than for permanent partial disability incurred
prior to the family or medical leave claim, or under other state or federal temporary or permanent
disability benefits law, or (ii) a permanent disability policy or program of an employer.

The weekly benefit amount shall not be reduced by the amount of wage replacement that
an employee receives while on family or medical leave under any of the following conditions,
unless the aggregate amount an employee would receive would exceed the employee’s average
weekly wage: (i) a temporary disability policy or program of an employer; or (ii) a paid family,
or medical leave policy of an employer. If an employer makes payments to an employee during
any period of family or medical leave that are equal to or more than the amount required under
this section, the employer shall be reimbursed out of any benefits due or to become due from the 
trust fund established in section 7 for family or medical leave benefits for that employee 
covering the same period of time as the payments made by the employer.

Section 4. (a) Each employer and covered business entity shall post in a conspicuous 
place on each of its premises a workplace notice prepared or approved by the department 
providing notice of benefits available under this chapter. The 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 or one-half of one 
percent of all residents of the commonwealth. The required workplace notice shall be in English 
and each language other than English which is the primary language of five or more employees 
or self-employed individuals of that workplace, if such notice is available from the department.

Each employer shall issue to each employee not more than 30 days from the beginning 
date of the employee’s employment, the following written information provided or approved by 
the department in the employee’s primary language: (i) an explanation of the availability of 
family and medical leave benefits provided under this chapter, including rights to reinstatement 
and continuation of health insurance; (ii) the employee’s contribution amount and obligations 
under this chapter; (iii) the employer's contribution amount and obligations under this chapter; 
(iv) the name and mailing address of the employer; (v) the identification number assigned to the 
employer by the department; (vi) instructions on how to file a claim for family and medical leave 
benefits; (vii) the mailing address, email address and telephone number of the department; and 
(viii) any other information deemed necessary by the department. Delivery is made when an 
employee provides written acknowledgement of receipt of the information, or signs a statement 
indicating the employee’s refusal to sign such acknowledgement.
Each covered business entity shall provide to each self-employed individual with whom it contracts, at the time such contract is made, the following written information provided or approved by the department in the self-employed individual’s primary language: (i) an explanation of the availability of family and medical leave benefits provided under this chapter and the procedures established by the department for self-employed individuals to become covered individuals; (ii) the self-employed individual’s contribution amount and obligations under this chapter if the self-employed individual were to become a covered individual; (iii) the covered business entity’s contribution amount and obligations under this chapter; (iv) the name, mailing address and email address of the covered business entity; (v) the identification number assigned to the covered business entity by the department; (vi) instructions on how to file a claim for family and medical leave benefits; (vii) the address and telephone number of the department; and (viii) any other information deemed necessary by the department. Delivery is made when a self-employed individual provides written acknowledgement of receipt of the information, or signs a statement indicating the self-employed individual’s refusal to sign such acknowledgement.

An employer or covered business entity that fails to comply with this subsection shall be issued, for a first violation, a civil penalty of $50 per employee and per self-employed individual with whom it has contracted, and for each subsequent violation, a civil penalty of $300 per employee or self-employed individual with whom it has contracted. The employer or covered business entity shall have the burden of demonstrating compliance with this subsection.

(b) The employee shall give not less than 30 days’ notice to the employer of the anticipated starting date of the leave, the anticipated length of the leave and the expected date of return or shall provide notice as soon as practicable if the delay is for reasons beyond the
employee’s control. If an employer fails to provide notice of this chapter as required under subsection (a), the employee’s notice requirement shall be waived.

Section 5. (a)(1) Covered individuals shall file a benefit claim pursuant to regulations issued by the department. If a claim is filed more than 90 calendar days after the start of leave, the covered individual may receive reduced benefits. All claims shall include a certification supporting a request for leave under this chapter. The department shall establish good cause exemptions from the certification requirement deadline in the event that a serious health condition of the covered individual prevents the covered individual from providing the required certification within the 90 calendar days.

(2) Certification for a covered individual taking medical leave shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition and the appropriate medical facts within the knowledge of the health care provider as required by the department.

(3) Certification for a covered individual taking family leave because of the serious health condition of a family member of the covered individual 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 department, a statement that the covered individual is needed to care for the family member and an estimate of the amount of time that the covered individual is needed to care for the family member.

(4) Certification for a covered individual taking family leave because of the birth of a child of the covered individual shall be sufficient if the covered individual provides either the
child’s birth certificate or a document issued by the health care provider of the child, or the health care provider of the person who gave birth, stating the child’s birth date.

(5) Certification for a covered individual taking family leave because of the placement of a child with the covered individual for adoption or foster care shall be sufficient if the covered individual provides a document issued by the health care provider of the child, an adoption or foster care agency involved in the placement or by other individuals as determined by the department that confirms the placement and the date of placement. To the extent that the status of a covered individual as an adoptive or foster parent changes while an application for benefits is pending, or while the covered individual is receiving benefits, the covered individual is required to notify the department of such change in status in writing. The department of children and families may confirm in writing the status of the covered individual as an adoptive or foster parent while an application for benefits is pending or while a covered individual is receiving benefits.

(6) Certification for a covered individual taking family leave because of a qualifying exigency shall be sufficient if it includes (i) a copy of the family member’s active-duty orders; (ii) other documentation issued by the Armed Forces; or (iii) other documentation permitted by the department.

(7) Certification for a covered individual taking family leave to care for a family member who is a covered servicemember shall be sufficient if it includes: (i) the date on which the serious health condition commenced; (ii) the probable duration of the condition; (iii) the appropriate medical facts within the knowledge of the health care provider as required by the department; (iv) a statement that the covered individual is needed to care for the family member;
(v) an estimate of the amount of time that the covered individual is needed to care for the family member; and (vi) an attestation by the covered individual that the health condition is connected to the covered servicemember’s military service as required by this chapter.

(b) Any medical or health information required under this section shall be treated as confidential and not disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section shall be construed to require a covered individual to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, codified as 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(c) A covered individual shall not be eligible to receive family or medical leave benefits if the department finds, through a process it shall establish through regulations, that the covered individual, for the purpose of obtaining these 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 section.

Section 6. (a) For each employee, an employer shall remit to the Family and Employment Security Trust Fund established under section 7 contributions in the form and manner determined by the department. The contribution rate set forth in this section shall be adjusted annually as specified in subsection (e) of section 7.

(b) A self-employed individual who is electing coverage under subsection (j) of section 2 of this chapter shall be responsible for all contributions set forth in subsection (a) of this section on that individual’s income from self-employment.
(c)(1) For medical leave, an employer shall not deduct more than 40 per cent of the contribution required for an employee by subsection (a) from that employee’s wages and shall remit the full contribution required under subsection (a) to the trust fund.

(2) For family leave, an employer may deduct not more than 100 per cent of the contribution required for an employee by subsection (a) from that employee’s wages, and shall remit the full contribution required under subsection (a) to the trust fund.

(d) Notwithstanding subsection (c), an employer employing less than 25 employees in the commonwealth is not required to pay the employer portion of premiums for family and medical leave. An employer or a covered business entity with a workforce that has more than 50 per cent self-employed individuals for whom the employer must report the payment for services to such individual on IRS Form 1099-MISC shall include those self-employed individuals as employees for purposes of this section.

(e)(1) A covered business entity shall not deduct more than 40 per cent of the contribution required under subsection (a) to the trust fund for the income paid to each self-employed individual with whom it contracts for services and for whom it must report payments for services to such an individual on IRS Form 1099-MISC.

(2) For family leave, a covered business entity may deduct not more than 100 per cent of the contribution required under subsection (a) to the trust fund for the income paid to each self-employed individual with whom it contracts for services and for whom it must report payments for services to such an individual on IRS Form 1099-MISC.

(f) Contributions to the trust fund under this section shall not be required for employees’ wages above the contribution and benefit base limit established annually by the United States
Social Security Administration for purposes of the Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. section 430.

Section 7. (a) There shall be a Family and Employment Security Trust Fund to be administered by the treasurer and receiver general exclusively for the purposes of this chapter. Any sums received under this section shall not be considered revenue of the commonwealth but shall be held in trust for the exclusive benefit of covered individuals eligible for benefits under this chapter, and for the administration of the department and shall not be expended, released, appropriated or otherwise disposed of for any other purpose and shall be expended by the director as required by this chapter to pay family and medical leave program benefits to covered individuals eligible to receive benefits, and to pay the administrative costs of the department. The trust fund shall consist of: (i) contributions collected pursuant to section 6 together with any interest earned thereon; (ii) property or securities acquired through the use of money belonging to the trust fund together with any earnings of such property and securities; (iii) fines and penalties collected under this chapter; and (iv) other money received from any source, including any grants, gifts, bequests or money authorized by the General Court or other party specifically designated to be credited to the trust fund. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund. Amounts credited to the trust fund shall not be expended for any purpose other than the payment of benefits to covered individuals eligible for benefits under this chapter, and for the administration of the department, and shall not be expended, released, appropriated, or otherwise disposed of for any other purpose. The trust fund shall maintain an annualized amount of not less than 140 per cent of the previous fiscal year's expenditure for benefits paid and for the administration of the department.
(b) The costs of administering the department under this chapter shall not exceed 5 per cent of the amount deposited under subsection (a) for each fiscal year following the initial year benefits have been paid under section 2. Monies in the trust fund may be deposited in any depository bank in which general funds of the commonwealth may be deposited, but such monies shall not be commingled with other commonwealth funds and shall be maintained in separate accounts on the books of the depository bank. Such monies shall be secured by the depository bank to the same extent and in the same manner as required by the general depository laws of the commonwealth, and collateral pledged for this purpose shall be kept separate and distinct from any other collateral pledged to secure other funds of the commonwealth.

(c) The director shall expend money from the trust fund to provide weekly benefits under section 3. Family and medical leave benefits shall be paid from the trust fund to covered individuals eligible for benefits. An employer’s bankruptcy or noncompliance with this chapter shall not interfere with an employee’s ability to collect family and medical leave benefits under this chapter. Family or medical leave benefits paid from the trust fund to such an employee may be recovered through bankruptcy proceedings or from the non-complying employer. The director shall institute administrative and legal action to recover family or medical leave benefits paid through the trust fund.

(d) To accumulate funds for the payment of family and medical leave benefits and administrative costs, employers, covered business entities and self-employed individuals shall, unless subject to provisions under section 11, make contributions as required under section 6 of this chapter, and transmit those contributions to the trust fund in the manner determined by the director.
Annually, not later than October 1, the director shall fix the contribution rate set forth in subsection (a) of section 6 for the coming calendar year in the manner described in this subsection. The director shall first certify to the secretary of the executive office of labor and workforce development and publish, pursuant to section 6 of chapter 30A, the following information: (i) the total amount of benefits paid by the department during the previous fiscal year; (ii) the total amount remaining in the trust fund at the close of such fiscal year; (iii) the total amount equal to 140 per cent of the previous fiscal year’s expenditure for benefits paid and for the administration of the department; (iv) the amount by which the total amount remaining in the trust fund at the close of the previous fiscal year is less than or greater than 140 per cent of the previous fiscal year’s expenditure for benefits paid and for the administration of the department; and (v) the amount by which the contribution rate set forth in subsection (a) of section 6 shall be adjusted to ensure that the trust fund shall maintain or achieve an annualized amount of not less than 140 per cent of the previous fiscal year’s expenditure for benefits paid and for the administration of the department. The contribution rate adjustment, if any, made as the result of the director’s certification and report under this subsection shall supersede the rate previously set forth in subsection (a) of section 6, and shall become effective January 1 of the following calendar year.

Annually, not later than October 1, the director shall publish a report providing the following information concerning the family and medical leave program for the previous fiscal year: (i) total eligible claims; (ii) the percentage of such claims attributable to medical leave; (iii) the percentage of such claims attributable to family leave other than the birth, adoption or fostering of a child; (iv) the percentage of such claims attributable to family leave attributable to the birth, adoption or fostering of a child; (v) the percentage of such claims attributable to
military exigency leave; (vi) the percentage of such claims attributable to family leave for a covered service member; (vii) claimant demographics by age, gender, average weekly wage, occupation and the type of leave taken; (viii) the percentage of claims denied and the reasons therefore, including, but not limited to insufficient information and ineligibility and the reason therefore; (ix) average weekly benefit amount paid for all claims and by category of leaves; (x) changes in the gross benefits paid compared to previous fiscal years; (xi) processing times for initial claims processing, initial determinations and final decisions; (xii) average duration for cases completed; and (xiii) the number of cases remaining open at the close of such year.

(f) An employer, covered business entity or self-employed individual to whom the treasurer has sent a request for wage, earnings or employment information for an employee, or covered individual claiming family or medical leave benefits shall complete and file that information not later than 10 calendar days after the date the request was sent. If such employer, covered business entity or self-employed individual does not respond within those 10 calendar days, then such employer, covered business entity or self-employed individual may be held liable for any related costs incurred by the treasurer.

(g) The state treasurer may, from time to time, invest such monies in the trust fund as are in excess of the amount deemed necessary for the payment of benefits for a reasonable future period. Such monies may be invested in bonds of any political or municipal corporation or sub-department of the commonwealth, or any of the outstanding bonds of the commonwealth, or invested in bonds or interest-bearing notes or obligations of the commonwealth, or of the United 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 fund shall always be readily
convertible into cash when needed for the payment of benefits. The state treasurer shall have the power to dispose of securities or other properties belonging to the trust fund when needed for the payment of benefits.

Section 8. (a) There shall be a department 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.

(b) The department shall pay medical leave benefits as specified by this chapter and family leave benefits to any covered individual for any of the following reasons: (i) to bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual; (ii) because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or (iii) in order to care for a family member who is a covered service member. The department, by regulation, shall set time standards for application processing which shall provide for notifying applicants of their eligibility or ineligibility for benefits under this chapter within 14 days of receiving an a claim under section 5 and shall pay benefits not less than 14 days after the eligibility determination unless that determination occurs more than 14 days before the onset of eligibility in which case benefits shall be paid as soon as eligibility begins. The department shall not require documentation of certification beyond the requirements established by this chapter.

(c) The department shall pay family leave benefits to any covered individual to care for a family member with a serious health condition as specified by this chapter. The department, by regulation, shall set time standards for application processing which shall provide for notifying
applicants within 14 days of their eligibility for benefits under this chapter and shall pay benefits not less than 14 days after the eligibility determination unless that determination occurs more than 14 days before the onset of eligibility in which case benefits shall be paid as soon as eligibility begins. The department shall not require documentation of certification beyond the requirements established by this chapter.

(d) The department shall notify the employer not more than 5 business days after a claim has been filed under section 5, and shall use information sharing and integration technology to facilitate the disclosure of relevant information or records with the written consent of the individual applying for benefits. The department shall establish by regulation a system for appeals, pursuant to chapter 30A, in the case of a denial of family or medical leave benefits. In establishing such system, the department shall provide for administrative review in an adjudicatory proceeding held pursuant to section 10 of chapter 30A and 801 CMR 1.02. Judicial review of any decision of the department rendered pursuant to administrative review under this subsection shall be commenced pursuant to the provisions of section 14 of chapter 30A, within 30 days of the date of the receipt of the notice of such decision, except that such judicial review under this section shall be filed in the district court within the judicial district in which the covered individual lives, or is or was last employed, or in which the individual has a usual place of business, and in such proceeding, the department shall be made a defendant.

(e) Information contained in the files and records pertaining to an individual under this chapter are confidential and not open to public inspection, other than to public employees in the performance of their official duties; provided, however, that an individual or authorized representative of an individual may review the individual’s records or receive specific
information from the records upon the presentation of the individual’s signed and dated
authorization, which shall remain in force and effect until revoked in writing by such individual.

(f) The department shall conduct a public education campaign to inform workers,
employers, self-employed individuals and covered business entities about the availability of
family and medical leave benefits, the requirements for receiving such benefits and family and
medical leave, how to apply for such benefits and leave and all of the employer’s and covered
business entity’s obligations under this chapter. The department shall prepare and disseminate
model multilingual forms to be used by employers, covered business entities, employees and
self-employed individuals in the languages required for the workplace notice under subsection
(a) of section 4.

(g) The executive office of labor and workforce development shall be responsible for the
enforcement of this chapter and shall promulgate rules and regulations pursuant thereto. An
employer or covered business entity who fails or refuses to make contributions as required in
section 6 shall be assessed 0.63 per cent of its total annual payroll for each year it so failed to
comply, or fraction thereof, in addition to the total amount of benefits paid to covered individuals
for whom it failed to make contributions. The rate of assessment imposed by this subsection
shall be adjusted annually consistent with the provisions of subsection (a) of section 6 and
subsection (e) of section 7.

(h) This act shall be liberally construed as remedial legislation to further its purpose of
providing job-protected family and medical leave, and family and medical leave benefits. All
presumptions shall be made in favor of the availability of leave and the payment of family and
medical leave benefits under this chapter.
Section 9. (a) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening, or in any other manner discriminating against an employee for exercising any right to which such employee is entitled under this chapter or with the purpose of interfering with the exercise of any right to which such employee is entitled under this chapter.

(b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee who has filed a complaint or instituted or caused to be instituted a proceeding under or related to this section, has testified or is about to testify in an inquiry or proceeding or has given or is about to give information connected to any inquiry or proceeding relating to this section.

(c) Any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of an employee which occurs any time during a leave taken by an employee under this chapter, or during the 6 month period following an employee’s leave or restoration to a position pursuant to this section, or of an employee who has participated in proceedings or inquiries pursuant to this section within 6 months of the termination of proceedings shall be presumed to be retaliation under this section. Such presumption shall be rebutted only by clear and convincing evidence that such employer’s action was not retaliation against the employee and that the employer had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of the employee’s use of leave, restoration to a position, or participation in proceedings or inquiries as described in this subsection. An employer found to have threatened, coerced or taken reprisal against any employee pursuant to this subsection shall
rescind any adverse alteration in the terms of employment for such employee and shall offer
reinstatement to any terminated employee and shall also be liable in an action brought under
subsection (d).

(d) An employee or former employee aggrieved by a violation of this section or
subsections (e) and (f) of section 2 of this chapter may, not more than 3 years after the violation
occurs, institute a civil action in the superior court. A party to the action shall be entitled to a jury
trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs
and shall be in addition to any legal or equitable relief provided in this section. The court may:
(i) issue temporary restraining orders or preliminary or permanent injunctions to restrain
continued violations of this section; (ii) reinstate the employee to the same position held before
the violation or to an equivalent position; (iii) reinstate full fringe benefits and seniority rights to
the employee; (iv) compensate the employee for 3 times the lost wages, benefits and other
remuneration and the interest thereon; and (v) order payment by the employer of reasonable costs
and attorneys' fees.

Section 10. A municipality, district, political subdivision or authority may adopt this
chapter upon a majority vote of the local legislative body or the governing body. For the
purposes of this section, a vote of the legislative body shall take place in a city by a vote of the
city council subject to its charter, in a town by a vote at town meeting, for an authority by a vote
of its governing body, in a district, by a vote of the district in a district meeting, and by any other
political subdivision or instrumentality, by a vote of its legislative body in accordance with its
charter or enabling act.
Section 11. (a)(1) Employers may apply to the department of family and medical leave for approval to meet their obligations under this chapter through a private plan. In order to be approved as meeting an employer’s obligations under this chapter, a private plan must confer all of the same rights, protections and benefits provided to employees under this chapter, including but not limited to: (i) providing family leave to a covered individual for the reasons defined in paragraph (1) of subsection (a) and subsection (b) of section 2 for the maximum number of weeks required in paragraph (1) of subsection (b) of this chapter, in a benefit year; (ii) providing medical leave to a covered individual for the reasons defined in paragraph (2) of subsection (a) of section 2 for the maximum number of weeks required in paragraph (2) of subsection (c) of section 2, in a benefit year; (iii) allowing covered individuals to take, in the aggregate, the maximum number of weeks of family and medical leave in a benefit year as required by paragraph (2) of subsection (c) of section 2; (iv) allowing family leave to be taken for all purposes specified in paragraph (1) of subsection (a) and subsection (b) of section 2; (v) allowing family leave under paragraph (1) of subsection (a) of section 2 to be taken to care for any family member; (vi) allowing medical leave to be taken by a covered individual with any serious health condition; (vii) providing a wage replacement rate during all family and medical leave of at least the amount required by paragraph (1) of subsection (b) of section 3; (viii) providing a maximum weekly benefit during all family and medical leave of at least the amount specified in paragraph (2) of subsection (b) of section 3; (ix) allowing family or medical leave to be taken intermittently or on a reduced schedule as authorized by paragraph (A) of paragraph (2) of subsection (c) of section 2; (x) imposing no additional conditions or restriction on the use of family or medical leave beyond those explicitly authorized by this chapter or regulations issued pursuant to this chapter; (xi) allowing any employee covered under the private plan who is
eligible to take family or medical leave under this chapter to take family or medical leave under
the private plan; and (xii) providing that the cost to employees covered by a private plan cannot
be greater than the cost charged to employees under the state program.

(2) In order to be approved as meeting an employer’s obligations under this chapter, a
private plan must also comply with the following provisions: (i) if the private plan is in the form
of self-insurance, the employer must furnish a bond running to the commonwealth, with some
surety company authorized to transact business in the commonwealth as surety, in such form as
may be approved by the department and in such amount as may be required by the department;
(ii) the plan must provide for all eligible employees throughout their period of employment; and
(iii) if the plan provides for insurance, the forms of the policy must be issued by an approved
insurer.

(b) An employer may provide both family and medical leave coverage through an
approved private plan or may provide medical leave coverage using an approved private plan and
provide family leave coverage using the public plan or vice versa.

(c) The department may withdraw approval for a private plan granted under subsection
(a) when terms or conditions of the plan have been violated. Causes for plan termination shall
include, but are not limited to the following: (i) failure to pay benefits; (ii) failure to pay benefits
timely and in a manner consistent with the public plan; (iii) failure to maintain an adequate
security deposit; (iv) misuse of private plan trust funds; (v) failure to submit reports as required
by regulations promulgated by the department; or (vi) failure to comply with this chapter or the
regulations promulgated hereunder or both.
(d) An employee covered by a private plan approved under this section shall retain all applicable rights under subsections (e) and (f) of section 2 and under section 9.

(e) A denial of family or medical leave benefits by a private plan shall be subject to appeal before the department and district court as provided by subsection (d) of section 8.

SECTION 30. The department of family and medical leave shall: (i) immediately begin to establish the family and medical leave program under chapter 175M of the General Laws; (ii) not later than March 31, 2019, publish for public comment and hearing, pursuant to section 2 of chapter 30A of the General Laws, proposed regulations necessary to establish procedures for the collection of contributions, and for the filing and timely processing of claims for benefits, under chapter 175M of the General Laws; (iii) on July 1, 2019, commence the collection of contributions required under subsection (a) of section 6 of chapter 175M of the General Laws at an initial rate of 0.63 per cent of the employee’s wages; (iv) on January 1, 2021, begin to pay leave benefits pursuant to section 8 of chapter 175M of the General Laws; (v) not later than October 1, 2021, begin annually fixing the contribution rate and publish the first annual report pursuant to subsection (e) of section 7 of chapter 175M of the General Laws; (vi) not later than October 1, 2021, make the initial annual adjustment to the maximum weekly benefit amount pursuant to paragraph (2) of subsection (b) of section 3; and (vi) not later than July 1, 2019, promulgate all regulations necessary to implement chapter 175M of the General Laws.

SECTION 31. Section 4 shall take effect July 1, 2019.

SECTION 32. Sections 6, 11, 18 and 23 shall take effect January 1, 2020.

SECTION 33. Sections 7, 12, 19, 24 and subsection (a) of section 2 of chapter 175M shall take effect January 1, 2021.
SECTION 34. Subsection (b) of section 2 of chapter 175M shall take effect July 1, 2021.

SECTION 35. Sections 8, 13, 20 and 25 shall take effect January 1, 2022.

SECTION 36. Sections 9, 14, 16, 21 and 26 shall take effect January 1, 2023.

SECTION 37. Except as otherwise specified, this act shall take effect January 1, 2019.