

SENATE No. 1016

The Commonwealth of Massachusetts

PRESENTED BY:

Donald F. Humason, Jr.

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 clarify the earned sick time.

PETITION OF:

NAME:

Donald F. Humason, Jr.

DISTRICT/ADDRESS:

Second Hampden and Hampshire

SENATE No. 1016

By Mr. Humason, a petition (accompanied by bill, Senate, No. 1016) of Donald F. Humason, Jr. for legislation to clarify the earned sick time. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act to clarify the earned sick time.

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: Section 148C of chapter 149 shall be amended in subsection (a) in the
2 definition of “child” by adding the following sentence after the term “parenthood.”:-

3 “A child shall be defined as no older than 18 years.”

4 SECTION 2: Section 1 shall by be further amended by striking out the following
5 definition:- ““Earned paid sick time”, the time off from work that is provided by an employer to
6 an employee as computed under subsection (d) that can be used for the purposes described in
7 subsection (c) and is compensated at the same hourly rate as the employee earns from the
8 employee’s employment at the time the employee uses the paid sick time; provided, however,
9 that this hourly rate shall not be less than the effective minimum wage under section 1 of chapter
10 151. ” . ” and inserting in place thereof the following new definition:-

11 “Earned paid sick time’, the time off from work that is provided by an employer to an
12 employee as computed under subsection (d) that can be used for the purposes described in

13 subsection (d) and is compensated at the regular (“straight time”) hourly rate of pay, provided,
14 however, that this hourly rate shall not be less than the effective minimum wage under section 1
15 of chapter 151. For those employees who are exempt from overtime requirements under 29
16 U.S.C. section 213(a)(1) of the Fair Labor Standards Act, the rate of compensation shall be
17 determined by dividing by 40 the employee’s regular weekly salary amount, unless the normal
18 work week is less than 40 hours, in which case the employee’s weekly salary amount shall be
19 divided by the number of hours in the employee’s normal work week. Paid sick time shall be
20 paid at the regular rate of pay regardless of when it is used, and not subject to overtime or time
21 and half rates. An employee may opt-into for additional hours of work at a rate of regular pay at
22 the employer’s discretion. An employee who chooses to work additional hour or shifts during the
23 same or following pay period, in lieu of hours or shifts missed, shall not use accrued paid sick
24 leave”

25 SECTION 3: Section 1 shall be further amended by inserting after the phrase
26 “Amendments to the Constitution of the Commonwealth” thereof the following definitions: -

27 ““Commission Based” shall be defined by any employee, whose payment is based on
28 commission, and shall not be counted in the employers count for total number of employees.”

29 “Seasonal Employee” shall be defined as referenced in Section 1 and 24 of Chapter
30 151A, and not counted for the total number of employees.

31 “Break in Service”: An employer may establish a break in service policy that states that
32 any termination of an employee’s employment by an employer, whether voluntary or
33 involuntary, shall be construed as a break in service. Should an employee be rehired by the
34 employer following a break in service, the employee shall begin to accrue leave upon hire and

35 shall not be entitled to any unused hours of paid sick leave that had been accrued prior to the
36 service workers' break in service. If an employee separates from an employer and is rehired by
37 the employer after one year from the date of separation, the sick days are deemed used."

38 "90 day period": A day within the 90 day period is defined as one full workday as
39 defined by the employer or 8 hours.'"

40 SECTION 4: Subsection (d)(7) of Section 1 shall be further amended by striking out the
41 following sentence: - "Earned sick time shall be used in the smaller of hourly increments or the
42 smallest increment that the employer's payroll system uses to account for absences or use of
43 other time." and inserting the following phrase:-

44 "At the discretion of the employer, earned sick time shall be used in increments of 4 or 8
45 hours, or 50% or 100% of an employer's normal shift if above 8 hours. Provided further in the
46 aggregate an employee would only be compensated up to 40 hours."

47 SECTION 5: Section 1 shall be further amended by inserting after subsection (d)(7) the
48 following sections:-

49 "(d)(8) For an employer to provide earned paid sick time, an employer must have 11 or
50 more employees for 20 weeks per year. For purposes of determining the total employee count,
51 the chief executive officer, the chief operating officer, the chief financial officer or treasurer, any
52 family member, any independent contractors, any freelancers, any interns, any temporary worker
53 working less than 20 weeks in a given year, any employees not residing in the Commonwealth,
54 any employees working less than 20 weeks a year in the Commonwealth, any employees
55 engaged in workshare, and any employee with a 5% ownership are exempt for the purposes of
56 counting.

57 (d)(9) Any overtime shall not be counted in the accrual. An employee may not accrue or
58 use more than 40 hours of paid or earned sick time in a calendar or fiscal year as determined by
59 the employer, unless the employer chooses to offer greater leave benefits.

60 (d)(10) At the discretion of the employer, an employee may be required to use their sick
61 leave or be paid for the leave prior to the end of any calendar year or benefit year.

62 (d)(11) An employer is not required to provide compensation to an employee for accrued,
63 unused paid sick days upon termination, resignation, retirement, or other separation from
64 employment.

65 SECTION 6: Subsection (e) of Section 1 shall be further amended by striking the
66 following phrase:- “or the next pay period”

67 SECTION 7: Subsection (f) shall be amended in Section 1 by striking out the phrase “24
68 consecutively scheduled work hours.” and replacing it with the following phrase:-

69 “12 consecutively scheduled work hours. An employer may require an employee to
70 submit documentation from a certificated medical professional for any absence within 24 hours
71 of returning to work. An employer may maintain records of employees that do not provide the
72 certification or refuses to provide certification. An employer has an affirmative defense for
73 terminating an employee that does not provide certification. An employer is held harmless from
74 treble damages, unemployment insurance claims and punitive damages for terminating an
75 employee that has a documented pattern, over any four month period, of non-compliance with
76 certification requirements.”

77 SECTION 8: Said subsection (f) of Section 1 shall be further by adding the following
78 paragraph:-

79 “(f)(1) An employer may withhold holiday pay if an employee is scheduled to work on a
80 holiday or receiving holiday wages and calls out sick on the day of the holiday, the day prior to a
81 holiday or the day immediately following a holiday. An employer may establish a policy that
82 prohibits holiday pay unless the employee provides documentation by a certified medical
83 professional within 24 hours of returning to work. The employer may document employee calls
84 out during holidays and may be subject to disciplinary action or termination”

85 SECTION 9: Subsection (g) Section 1 shall be further amended after the striking “When
86 the use of earned sick time if foreseeable, the employee shall make a good faith effort to provide
87 notice of this need to the employer in advance of the use of the earned sick time” and replacing it
88 with the following new section:-

89 “(g) When the use of earned sick time is foreseeable, the employee shall provide notice of
90 this need to the employer in advance of the use any earned sick time in the manner designated by
91 the employer. When the use of earned sick time is unforeseeable, the employee shall provide
92 notice of this need to he employer as soon as possible before or after the scheduled start of a
93 work in the manner designated by the employer. Any unforeseen circumstances should be
94 reported during the same day or within 24 hours. Employers are permitted to ask any employee,
95 when they are taking leave. A foreseeable event shall be considered 3 workdays in advance of
96 taking time office. Employers are permitted to create a uniform call-in procedures for use of sick
97 time. Employee violation of said call in or reporting procedure are subject to disciplinary action
98 and termination.”

99 SECTION 9: Subsection (h) in section 1 shall be further amended after the term
100 “section.” by inserting the following new paragraph:-

101 “An employer may retain any attendance incentive policy, including those in collective
102 bargaining agreements. The employer shall not be subject to treble, punitive, or liquidated
103 damages. When an employer determines a regular attendance problem is occurring, the
104 employer may require the employee to provide an explanation for the absences or require a
105 notice by a medical practitioner relative to the employee’s absences. An employer may
106 document, and take disciplinary actions that may lead to termination”

107 SECTION 10: Subsection (k) in section 1 shall be amended by striking the following
108 phrase:- “(k) Employers required to provide earned paid sick time who provide their employees
109 paid time off under a paid time off , vacation or other paid leave policy who make available an
110 amount of paid time off sufficient to meet the accrual requirements of this section that may be
111 used for the same purposes and under the same conditions as earned paid sick time under this
112 section are not required by this section to provide additional earned paid sick time ” and inserting
113 the following new phrase:-

114 “Employers required to provide earned paid sick time who provides their employees paid
115 time off under a paid time off, vacation or other paid leave policy or under a collective
116 bargaining agreement who provide, advance or makes available an amount of earned or paid as
117 defined in shall retain the accrual and conditions for which an employee may use the leave.”

118 SECTION 11: The bill shall be amended after subsection (o) by inserting the following
119 six sections:-

120 “(p) Notwithstanding any special or general law to the contrary, earned sick time shall
121 not be subject to treble damages. An employer shall not be assessed any penalty or liquidated
122 damages under this provision due to an isolated, or unintentional payroll error, or written notice
123 error that is a clerical, or an inadvertent mistake regarding the accrual, or available use of paid
124 sick leave.

125 (q) The Office of the Attorney General, members of the great and general court and the
126 Executive Office of Labor and Workforce Development shall engage in outreach efforts
127 coordinated by the Office of the Attorney General to communicate to businesses and individuals
128 via website, RSS feeds, blogs, newsletters, all and other forms of communication regarding the
129 earned sick time law, the rules and responsibilities for employers and employees. In particular
130 the Office of the Attorney General must include utilize all print and media network news outlets
131 throughout the Commonwealth regarding the law, and risks and responsibilities, and
132 requirements for employers and employees.

133 (r) There shall be a fiscal impact statement made by the state Office of the Attorney
134 General regarding the costs associated with analyzing, promulgating, and educating
135 Massachusetts businesses and individuals regarding the new law. The cost associated with this
136 should also itemize the cost associated for businesses to analyze, operationalize and possible risk
137 cost associated with legal cost associated with non-compliance.

138 (s) There shall be a an bi-annual report by the Office of the Attorney General in
139 coordination with the State Auditor and the State Inspector General shall publish a report on the
140 costs and resources dedicated to educating the public in addition to the costs and resources
141 dedicated to the enforcement of said law. The annual report shall also take into effect the

142 amount of cost and resources granted by any other state offices or constitutional offices. The
143 report shall itemize the number of cases that included earned sick time disputes, the nature of the
144 case and cost associated with any settlement and in separate calculation a cost associated with
145 final court verdicts. The annual report shall also item by case and in the aggregate the total
146 number costs for treble damages.

147 (t) The office of administration and finance shall compile an annual statewide collective
148 bargaining agreement list that shall itemize the bargaining units total number of members,
149 bargaining agreement total cost for the agreement, and shall also itemize for each collective
150 bargaining agreement the total cost associated with healthcare insurance and associated
151 healthcare cost in addition to an itemized accounting of the collective bargaining units cost
152 associated with earned sick time. The report shall be due each year on January 1. The first
153 report will be due by July 29, 2015.”

154 (u) Notwithstanding any special law to the contrary, the Secretary of Labor and
155 Workforce development shall send out an annual survey asking Massachusetts employers if the
156 Massachusetts paid sick leave law has changed their staffing levels, if they have chosen to move
157 staff and or their operations out of the state. The secretary shall post the report on his website and
158 report the finding to the Ways and Means.

159 SECTION 12: The bills is further amended by striking out section 4 and inserting the
160 following:-

161 “SECTION 4: This act shall take effect on January 1, 2016, provided that in the case of
162 employees covered by a collective bargaining agreement in effect on January 1, 2015, this Act
163 shall apply on the date of the termination of such agreement .

164 At the discretion of the employer, an employee may only use or be compensated for a
165 total of 40 earned sick time hours during the transition year.