

HOUSE No. 4700

The Commonwealth of Massachusetts

PRESENTED BY:

Paul J. Donato and Sean Garballey

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 relative to emergency paid sick time.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul J. Donato</i>	<i>35th Middlesex</i>	<i>4/17/2020</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>4/22/2020</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>4/17/2020</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>4/22/2020</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>4/22/2020</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>4/22/2020</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>4/22/2020</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>4/22/2020</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>4/22/2020</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>4/22/2020</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>4/22/2020</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>4/22/2020</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>4/22/2020</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/22/2020</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>4/22/2020</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>4/22/2020</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>4/22/2020</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>4/22/2020</i>

<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>4/22/2020</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>	<i>4/22/2020</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>4/22/2020</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>4/22/2020</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	<i>4/22/2020</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>4/22/2020</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>4/22/2020</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>	<i>4/22/2020</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>4/22/2020</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>4/22/2020</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>4/22/2020</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>4/22/2020</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>4/22/2020</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>4/22/2020</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>4/22/2020</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>4/22/2020</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>4/22/2020</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>4/22/2020</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>4/22/2020</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>4/22/2020</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>4/22/2020</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>4/22/2020</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>4/22/2020</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>4/22/2020</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>4/22/2020</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>4/22/2020</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>4/22/2020</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>4/22/2020</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>4/22/2020</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>4/22/2020</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>4/22/2020</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>4/23/2020</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>4/23/2020</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>4/23/2020</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>4/23/2020</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>4/23/2020</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>4/23/2020</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>4/23/2020</i>
<i>David Biele</i>	<i>4th Suffolk</i>	<i>4/23/2020</i>

<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>4/23/2020</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>4/23/2020</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>4/23/2020</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	<i>4/23/2020</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>4/23/2020</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>4/24/2020</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>4/24/2020</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>4/24/2020</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>4/24/2020</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>4/24/2020</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>4/24/2020</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>4/24/2020</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>4/24/2020</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>4/24/2020</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>	<i>4/24/2020</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>4/24/2020</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>4/24/2020</i>
<i>John C. Velis</i>	<i>4th Hampden</i>	<i>4/24/2020</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>4/24/2020</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>4/27/2020</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>4/27/2020</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>4/27/2020</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>4/28/2020</i>

HOUSE No. 4700

By Messrs. Donato of Medford and Garballey of Arlington, a petition (subject to Joint Rule 12) of Paul J. Donato, Sean Garballey and others relative to emergency paid sick time. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to emergency paid 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.

2 Chapter 149 of the General Laws as appearing in the 2018 Official Edition is hereby
3 amended by inserting after Section 148D the following two sections:-

4 Section 148E (a) As used in this section, the following words, unless the context clearly
5 requires otherwise, shall have the following meanings:-

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

9 “Domestic partner”, a person not less than 18 years of age who: (i) is dependent upon the
10 employee for support as shown by either unilateral dependence or mutual interdependence that is
11 evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or

12 personal property; (B) common householding; (C) children in common; (D) signs of intent to
13 marry; (E) shared budgeting; and (F) the length of the personal relationship with the employee;
14 or (ii) has registered as the domestic partner of the employee with any registry of domestic
15 partnerships maintained by the employer of either party, or in any state, county, city, town or
16 village in the United States.

17 “Emergency paid sick time”, means time that is compensated pursuant to subsection (d),
18 and with the same benefits, including health care benefits, as the employee normally earns during
19 hours worked and is provided by an employer to an employee for the purposes described in
20 subsection (c), but in no case shall this hourly amount be less than that provided under section 1
21 of chapter 151.

22 “Employee”, any person who performs services for an employer for wage, remuneration,
23 or other compensation, including employees employed by a municipality, district, political
24 subdivision or its instrumentalities; provided, however, that notwithstanding any special or
25 general law to the contrary, “employee” shall include a family child care provider, as defined in
26 subsection (a) of section 17 of chapter 15D, and personal care attendant, as defined in section 70
27 of chapter 118E.

28 “Employer”, any individual, corporation, partnership or other private or public entity,
29 including any agent thereof, who engages the services of an employee for wages, remuneration
30 or other compensation, and including a municipality, district, political subdivision or its
31 instrumentalities; except the United States government shall not be considered an employer;
32 provided, however, that an individual employer shall be determined by the Federal Employer
33 Identification Number; provided further, that the department of early education and care shall be

34 deemed the employer of family child care providers, as defined in subsection (a) of section 17 of
35 chapter 15D; provided further, that the PCA quality home care workforce council established in
36 section 71 of chapter 118E shall be the employer of personal care attendants, as defined in
37 section 70 of said chapter 118E, and the department of medical assistance shall be deemed the
38 employer of said personal care attendants for all other purposes under this section.

39 “Family member”, the spouse, domestic partner, child, parent or parent of a spouse or
40 domestic partner of the employee; a grandchild, grandparent or sibling of the employee; an
41 individual who resides regularly in the home of the employee, or a similar individual with whom
42 the employee has a relationship that creates an expectation that the employee would care for the
43 person if he or she were quarantined or self-quarantined; or any other individual related by blood
44 or whose close association with the employee is the equivalent of a family relationship. For this
45 purpose, “individual” does not include persons with whom the employee has no personal
46 relationship.

47 “Health care provider”, the meaning given this term by the Family and Medical Leave
48 Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as it may be amended and regulations
49 promulgated under the act.

50 “Parent”, a biological, adoptive, foster or step-parent of an employee or of an employee’s
51 spouse or domestic partner; a legal guardian of an employee; or other person who stood in loco
52 parentis when the employee or employee’s spouse or domestic partner was a minor child.

53 “Spouse”, the meaning given this term by the marriage laws of the commonwealth.

54 “Telework”, the practice of working from home, making use of the Internet, email, or the
55 telephone.

56 (b) (1) All employees who work in the commonwealth shall have the following right to
57 emergency paid sick time during a declared state of emergency or disaster, provided such
58 employees must be absent from work for the reasons set forth in subsection (c), and provided
59 further that such employees are not entitled to leave under the Families First Coronavirus
60 Response Act, H.R. 6201, P.L. No. 116-127, at the time that they use such emergency paid sick
61 time under this section. Employees who work 40 hours or more per week shall be provided at
62 least 80 hours of emergency paid sick time under this section. Employees who work fewer than
63 40 hours in a week shall be provided emergency paid sick time under this section in an amount
64 equal to at least the amount of time the employee is otherwise scheduled to work or works on
65 average in a 14-day period.

66 (2) Unused emergency paid sick time shall carry over to the next calendar year and shall
67 remain available to the employee until the state of emergency or disaster has been terminated by
68 a declaration of the governor of the commonwealth. If a public health emergency was declared
69 before and remains in effect on the effective date of this section, emergency paid sick time under
70 this section shall be provided to employees pursuant to this subsection (b) on the effective date of
71 this section.

72 (c) Emergency paid sick time shall be provided to an employee by an employer for the
73 following absences, including the inability to telework, related to a public health emergency:

74 (1) An employee's need to: (i) self-isolate and care for oneself because the individual is
75 diagnosed with a communicable illness related to a public health emergency; (ii) self-isolate and
76 care for oneself because the individual is experiencing symptoms of a communicable illness
77 related to a public health emergency; (iii) seek or obtain medical diagnosis, care, or treatment if

78 experiencing symptoms of a communicable illness related to a public health emergency; or (iv)
79 seek preventive care concerning a communicable illness related to a public health emergency;

80 (2) Care of a family member who: (i) is self-isolating due to being diagnosed with a
81 communicable illness related to a public health emergency; (ii) is self-isolating due to
82 experiencing symptoms of a communicable illness related to a public health emergency; (iii)
83 needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness
84 related to a public health emergency; or (iv) is seeking preventive care concerning a
85 communicable illness related to a public health emergency;

86 (3) Determination by a local, state, or federal public official, a health authority having
87 jurisdiction, the employee's employer, or a health care provider that the employee's presence on
88 the job or in the community would jeopardize the health of others because of the employee's
89 exposure to a contagious illness or exhibiting of symptoms, regardless of whether the employee
90 has been diagnosed with a contagious illness;

91 (4) Care of a family member due to a determination by a local, state, or federal public
92 official, a health authority having jurisdiction, the family member's employer, or a health care
93 provider that the family member's presence on the job or in the community would jeopardize the
94 health of others because of the family member's exposure to a contagious illness or exhibiting of
95 symptoms, regardless of whether the family member has been diagnosed with a contagious
96 illness; or

97 (5) An employee's inability to work or telework while subject to either: an individual or
98 general local, state, or federal quarantine or isolation order, including a shelter-in-place order,
99 related to a public health emergency; or closure of the employee's place of business by order of a

100 local, state, or federal public official or health authority or at the discretion of the employer due
101 to a public health emergency.

102 (d) All employees employed by an employer in the commonwealth who must be absent
103 from work for the reasons set forth in subsection (c) of this section, and are unable to telework,
104 shall be eligible for emergency paid sick time regardless of the duration of such employment, or
105 any temporary or probationary status, and shall be paid at the same hourly rate as the employee
106 earns from the employee's employment at the time the employee uses the emergency paid sick
107 time; provided, however, that this hourly rate shall not be less than the effective minimum wage
108 under section 1 of chapter 151, and shall not exceed \$850 per week; provided further that
109 annually, not later than October 1 of each year, the commonwealth shall adjust the maximum
110 weekly benefit amount under this section to be 64 per cent of the state average weekly wage and
111 the adjusted maximum weekly benefit amount shall take effect on January 1 of the year
112 following such adjustment. Nothing in this section shall be construed as requiring financial or
113 other reimbursement to an employee from an employer upon the employee's termination,
114 resignation, retirement or other separation from employment for emergency paid sick time
115 provided under this section that has not been used.

116 (e) Employers who pay their employees for emergency paid sick time as required by this
117 section shall be reimbursed in full by the commonwealth by providing proof of such payments to
118 the department of revenue, but no employer shall be entitled to reimbursement under this section
119 for paid time off provided to employees for which the employer is entitled to receive a federal
120 payroll tax credit, including federal payroll tax credits for an employee's use of paid sick time
121 under the federal Families First Coronavirus Response Act, P.L. No. 116-127, to the extent
122 permitted and not in conflict with federal law. The department of revenue shall provide such

123 reimbursements directly to employers within 5 business days by direct deposit to the employer's
124 bank account or by check to the employer.

125 (f) The commonwealth shall compensate employers as described in subsection (e) of this
126 section by drawing upon funds in the commonwealth stabilization fund established under section
127 2H of chapter 29 appropriated for such purpose by the general court.

128 (g) (1) Except as provided in subsection (b), all emergency paid sick time that the
129 employer must provide under this section shall be in addition to all job protected time off, paid
130 and unpaid, the employer must provide to employees under section 148C of this chapter; or
131 under chapter 175M; or under any existing policy or program of the employer; or pursuant to a
132 collectively bargained agreement between the employer and a collective bargaining
133 representative of an employee; or under any federal law, to the extent permitted by that federal
134 law. All emergency paid sick time that the employer must provide under this section shall be in
135 addition to, and shall not run concurrent with, benefits provided pursuant to chapter 152.

136 (2) An employee may use emergency paid sick time on an intermittent basis and in the
137 smaller of hourly increments or the smallest increment that the employer's payroll system uses to
138 account for absences or use of other time.

139 (3) With respect to an employer that provides paid leave on the day before the effective
140 date of this section, the emergency paid sick time under this section shall be made available to
141 employees of the employer in addition to such paid leave; and the employer may not change such
142 paid leave on or after such effective date to avoid being subject to this section. An employer may
143 not require an employee to use other paid leave provided by the employer to the employee before

144 the employee uses the emergency paid sick time under this section, unless federal law requires
145 otherwise.

146 (h) The employee shall provide notice to the employer of the need for emergency paid
147 sick time as practicable only when the need is foreseeable and the employer's place of business
148 has not been closed. An employer may not require, as a condition of an employee's taking
149 emergency paid sick time, that the employee search for or find a replacement worker to cover the
150 hours during which the employee is using emergency paid sick time.

151 (i) Documentation shall not be required for emergency paid sick time under this section.

152 (j) Any health information possessed by an employer regarding an employee or
153 employee's family member must: (1) be maintained on a separate form and in a separate file
154 from other personnel information; (2) be treated as confidential medical records; and (3) not be
155 disclosed except to the affected employee or with the express permission of the affected
156 employee.

157 (k) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise
158 of, or the attempt to exercise, any right provided under or in connection with this section,
159 including, but not limited to, by using the taking of emergency paid sick time under this section
160 as a negative factor in any employment action such as evaluation, promotion, disciplinary action
161 or termination, or otherwise subjecting an employee to discipline for the use of emergency paid
162 sick time under this section.

163 (l) It shall be unlawful for any employer to take any adverse action against an employee
164 because the employee opposes practices which the employee believes to be in violation of this
165 section, or because the employee supports the exercise of rights of another employee under this

166 section. Exercising rights under this section shall include but not be limited to filing an action,
167 or instituting or causing to be instituted any proceeding, under or related to this section;
168 providing or intending to provide any information in connection with any inquiry or proceeding
169 relating to any right provided under this section; or testifying or intending to testify in any
170 inquiry or proceeding relating to any right provided under this section.

171 (m) Nothing in this section shall be construed to discourage employers, including a
172 municipality, district, political subdivision or its instrumentalities, from adopting or retaining
173 job-protected paid time off policies more generous than policies that comply with the
174 requirements of this section and nothing in this section shall be construed to diminish or impair
175 the obligation of an employer to comply with any contract, collective bargaining agreement, or
176 any employment benefit program or plan in effect on the effective date of this section that
177 provides to employees greater job-protected paid time off rights than the rights established under
178 this section; and nothing in this section shall be construed to pre-empt the power of a
179 municipality, district, political subdivision or its instrumentalities, from adopting or retaining or
180 job-protected paid time off policies more generous than policies that comply with the
181 requirements of this section.

182 (n) The attorney general shall enforce this section, and may obtain injunctive or
183 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),
184 (4), (6) and (7) of subsection (b) of section 27C and to section 150.

185 (o) The attorney general shall prescribe by emergency regulation the employer's
186 obligation to make, keep, and preserve records pertaining to this section consistent with the
187 requirements of section 15 of chapter 151.

188 (p) The attorney general shall adopt emergency rules and regulations necessary to carry
189 out the purpose and provisions of this section.

190 (q) Notice of this section shall be prepared by the attorney general, in English and in
191 other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A.
192 Employers shall post this notice in a conspicuous location accessible to employees in every
193 establishment where employees with rights under this section work, and shall provide a copy to
194 their employees; provided, however, that in cases where the employer does not maintain a
195 physical workplace, or an employee teleworks or performs work through a web-based platform,
196 notification shall be sent via electronic communication or a conspicuous posting in the web-
197 based platform. This notice shall include the following information:

198 (1) information describing the rights to emergency paid sick time under
199 this section;

200 (2) information about the notices, documentation and any other
201 requirements placed on employees in order to exercise their rights to emergency paid sick time;

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

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

207 (5) information about filing an action under this section.

208 Section 148F. The executive office of health and human services, in consultation with
209 the attorney general, shall develop and implement a multilingual outreach program to inform
210 employees, parents, and persons who are under the care of a health care provider about the
211 availability of emergency paid sick time under section 148E. This program shall include the
212 distribution of notices and other written materials in English and in other languages to all child
213 care and elder care providers, domestic violence shelters, schools, hospitals, community health
214 centers, and other health care providers.

215 SECTION 2. Section 150 of chapter 149 as appearing in the 2018 Official Edition is
216 hereby amended by inserting at line 22 after the word “148C”, the following word:- , 148E.

217 SECTION 3.

218 This Act shall take effect immediately.