

HOUSE No. 4928

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 31, 2020.

The committee on Labor and Workforce Development to whom was referred the petition (accompanied by bill, House, No. 4700) of Paul J. Donato, Sean Garballey and others relative to emergency paid sick time, reports recommending that the accompanying bill (House, No. 4928) ought to pass.

For the committee,

STEPHAN HAY.

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

An Act relative to emergency paid sick time.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect the citizens of the Commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

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 As used in this section, the following words, unless the context clearly requires
3 otherwise, shall have the following meanings:-

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

7 “Domestic partner”, a person not less than 18 years of age who: (i) is dependent upon the
8 employee for support as shown by either unilateral dependence or mutual interdependence that is
9 evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or
10 personal property; (B) common householding; (C) children in common; (D) signs of intent to
11 marry; (E) shared budgeting; and (F) the length of the personal relationship with the employee;

12 or (ii) has registered as the domestic partner of the employee with any registry of domestic
13 partnerships maintained by the employer of either party, or in any state, county, city, town or
14 village in the United States.

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

20 “Employee”, any person who performs services for an employer for wage, remuneration,
21 or other compensation, including employees employed by a municipality, district, political
22 subdivision or its instrumentalities; provided, however, that notwithstanding any special or
23 general law to the contrary, “employee” shall include a family child care provider, as defined in
24 subsection (a) of section 17 of chapter 15D, and personal care attendant, as defined in section 70
25 of chapter 118E, and shall not include employees entitled to leave under the Families First
26 Coronavirus Response Act, H.R. 6201, P.L. No. 116-127.

27 “Employer”, any individual, corporation, partnership or other private or public entity,
28 including any agent thereof, who engages the services of an employee for wages, remuneration
29 or other compensation, and including a municipality, district, political subdivision or its
30 instrumentalities; except the United States government shall not be considered an employer;
31 provided, however, that an individual employer shall be determined by the Federal Employer
32 Identification Number; provided further, that the department of early education and care shall be
33 deemed the employer of family child care providers, as defined in subsection (a) of section 17 of

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

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

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

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

52 “Public Health Emergency”, means the state of emergency called by Executive Order
53 No. 591 dated March 10, 2020 concerning the health care crisis caused by the COVID-19 virus,
54 along with any subsequent states of emergency that may be declared by the Commonwealth

55 at any time due to health care concerns raised by the COVID-19 virus.

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

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

59 SECTION 2. There shall be established a fund to be known as the COVID Emergency
60 Paid Sick Leave Fund to be administered by the executive office of labor and workforce
61 development. The purpose of the Fund shall be for financial assistance to businesses not covered
62 by the Family First Coronavirus Response Act for extended emergency paid sick leave. There
63 shall be credited to the fund all amounts that are, by law, transferred or authorized to be
64 transferred thereto or directed to be deposited therein, and all amounts received as gifts, grants,
65 or contributions for the purposes of the Fund. Amounts credited to the Fund shall not be subject
66 to appropriation and any money remaining in the Fund at the end of a fiscal year shall not revert
67 back to the General Fund. On the effective date of this act, the comptroller shall transfer \$55
68 million from the General Fund to the COVID Emergency Paid Sick Leave Fund for the purposes
69 of carrying out this act.

70 SECTION 3. (a) (1) All employees who work in the commonwealth shall have the
71 following right to emergency paid sick time during a declared public health emergency, provided
72 such employees must be absent from work for the reasons set forth in subsection (b), and
73 provided further that such employees, including municipal employees, are not entitled to leave
74 under the Families First Coronavirus Response Act, H.R. 6201, P.L. No. 116-127, at the time
75 that they use such emergency paid sick time under this section. Employees who work 40 hours
76 or more per week shall be provided at least 80 hours of emergency paid sick time under this
77 section. Employees who work fewer than 40 hours in a week shall be provided emergency paid

78 sick time under this section in an amount equal to at least the amount of time the employee is
79 otherwise scheduled to work or works on average in a 14-day period, whichever is greater. In the
80 case of an employee whose schedule varies from week to week, the employer shall use the
81 following in place of such number to determine the amount of time worked on average in a 14-
82 day period: (i) Subject to clause (ii), a number equal to the average number of hours that the
83 employee was scheduled per day over the 6-month period ending on the date the public health
84 emergency was declared, including hours for which the employee took leave of any type; (ii) If
85 the employee did not work over such period, the reasonable expectation of the employee at the
86 time of hiring the average number of hours per day that the employee would normally be
87 scheduled to work.

88 (2) Unused emergency paid sick time for the purposes stated under subsection (b)(2),
89 (b)(3), (b)(4), or (b)(5) shall carry over to the next calendar year and shall remain available to the
90 employee until the public health emergency has been terminated by a declaration of the
91 governor of the commonwealth. If a public health emergency was declared before and remains
92 in effect on the effective date of this section, emergency paid sick time under this section shall be
93 provided to employees pursuant to this subsection (a) on the effective date of this section.

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

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

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

102 (2) Care of a family member who: (i) is self-isolating due to being diagnosed with a
103 communicable illness related to a public health emergency; (ii) is self-isolating due to
104 experiencing symptoms of a communicable illness related to a public health emergency; (iii)
105 needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness
106 related to a public health emergency; or (iv) is seeking preventive care concerning a
107 communicable illness related to a public health emergency;

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

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

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

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

124 (c) All employees employed by an employer in the commonwealth who must be absent
125 from work for the reasons set forth in subsection (b) of this section, and are unable to telework,
126 shall be eligible for emergency paid sick time regardless of the duration of such employment, or
127 any temporary or probationary status, and shall be paid at the same hourly rate as the employee
128 earns from the employee's employment at the time the employee uses the emergency paid sick
129 time; provided, however, that this hourly rate shall not be less than the effective minimum wage
130 under section 1 of chapter 151, and shall not exceed \$850 per week. Nothing in this section shall
131 be construed as requiring financial or other reimbursement to an employee from an employer
132 upon the employee's termination, resignation, retirement or other separation from employment
133 for emergency paid sick time provided under this section that has not been used.

134 (d) Employers who pay their employees for emergency paid sick time as required by this
135 section shall be reimbursed in full by the commonwealth by providing proof of such payments to
136 the department of revenue, but no employer shall be entitled to reimbursement under this section
137 for paid time off provided to employees for which the employer is entitled to receive a federal
138 payroll tax credit, to the extent permitted and not in conflict with federal law. The department of
139 revenue shall provide such reimbursements directly to employers within 10 business days by
140 direct deposit to the employer's bank account or by check to the employer.

141 (e) The commonwealth shall compensate employers as described in subsection (e) of this
142 section by drawing upon funds in the COVID Emergency Paid Sick Leave fund established
143 under SECTION 2 of this act, appropriated for such purpose by the general court.

144 (f) (1) Except as provided in subsection (a), all emergency paid sick time that the
145 employer must provide under this section shall be in addition to all job protected time off, paid
146 and unpaid, the employer must provide to employees under section 148C of this chapter; or
147 under any existing policy or program of the employer; or pursuant to a collectively bargained
148 agreement between the employer and a collective bargaining representative of an employee; or
149 under any federal law, to the extent permitted by that federal law. All emergency paid sick time
150 that the employer must provide under this section shall be in addition to, and shall not run
151 concurrent with, benefits provided pursuant to chapter 152.

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

155 (3) With respect to an employer that provides paid leave on the day before the effective
156 date of this section, the emergency paid sick time under this section shall be made available to
157 employees of the employer in addition to such paid leave; and the employer may not change such
158 paid leave on or after such effective date to avoid being subject to this section. An employer may
159 not require an employee to use other paid leave provided by the employer to the employee before
160 the employee uses the emergency paid sick time under this section, unless federal law requires
161 otherwise.

162 (g) The employee shall provide notice to the employer of the need for emergency paid
163 sick time as practicable only when the need is foreseeable and the employer's place of business
164 has not been closed. An employer may not require, as a condition of an employee's taking

165 emergency paid sick time, that the employee search for or find a replacement worker to cover the
166 hours during which the employee is using emergency paid sick time.

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

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

178 (j) It shall be unlawful for any employer to take any adverse action against an employee
179 because the employee opposes practices which the employee believes to be in violation of this
180 section, or because the employee supports the exercise of rights of another employee under this
181 section. Exercising rights under this section shall include but not be limited to filing an action,
182 or instituting or causing to be instituted any proceeding, under or related to this section;
183 providing or intending to provide any information in connection with any inquiry or proceeding
184 relating to any right provided under this section; or testifying or intending to testify in any
185 inquiry or proceeding relating to any right provided under this section.

186 (k) Nothing in this section shall be construed to discourage employers, including a
187 municipality, district, political subdivision or its instrumentalities, from adopting or retaining
188 job-protected paid time off policies more generous than policies that comply with the
189 requirements of this section and nothing in this section shall be construed to diminish or impair
190 the obligation of an employer to comply with any contract, collective bargaining agreement, or
191 any employment benefit program or plan in effect on the effective date of this section that
192 provides to employees greater job-protected paid time off rights than the rights established under
193 this section; and nothing in this section shall be construed to pre-empt the power of a
194 municipality, district, political subdivision or its instrumentalities, from adopting or retaining
195 job-protected paid time off policies more generous than policies that comply with the
196 requirements of this section.

197 (l) The attorney general shall enforce this section, and may obtain injunctive or
198 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),
199 (4), (6) and (7) of subsection (b) of section 27C and to section 150.

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

203 (n) The attorney general shall adopt emergency rules and regulations necessary to carry
204 out the purpose and provisions of this section.

205 (o) Notice of this section shall be prepared by the attorney general, in English and in
206 other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A.
207 Employers shall post this notice in a conspicuous location accessible to employees in every

208 establishment where employees with rights under this section work, and shall provide a copy to
209 their employees; provided, however, that in cases where the employer does not maintain a
210 physical workplace, or an employee teleworks or performs work through a web-based platform,
211 notification shall be sent via electronic communication or a conspicuous posting in the web-
212 based platform. This notice shall include the following information:

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

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

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

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

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

223 SECTION 4. The executive office of health and human services, in consultation with the
224 attorney general, shall develop and implement a multilingual outreach program to inform
225 employees, parents, and persons who are under the care of a health care provider about the
226 availability of emergency paid sick time under SECTION 3 of this act. This program shall
227 include the distribution of notices and other written materials in English and in other languages

228 to all child care and elder care providers, domestic violence shelters, schools, hospitals,
229 community health centers, and other health care providers.

230 SECTION 5. This Act shall take effect immediately.