

SENATE No. 2882

The Commonwealth of Massachusetts

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

SENATE, July 31, 2020.

The committee on Labor and Workforce Development, to whom was referred the petition (accompanied by bill, Senate, No. 2701) (subject to Joint Rule 12) of Jason M. Lewis, Nika C. Elugardo, Tram T. Nguyen, Michael J. Barrett and other members of the General Court for legislation relative to emergency paid sick time, reports recommending the accompanying bill (Senate, No. 2882).

For the committee,
Patricia D. Jehlen

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

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

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

12 partnerships maintained by the employer of either party, or in any state, county, city, town or
13 village in the United States.

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

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

26 “Employer”, any individual, corporation, partnership or other private or public entity,
27 including any agent thereof, who engages the services of an employee for wages, remuneration
28 or other compensation, and including a municipality, district, political subdivision or its
29 instrumentalities; except the United States government shall not be considered an employer;
30 provided, however, that an individual employer shall be determined by the Federal Employer
31 Identification Number; provided further, that the department of early education and care shall be
32 deemed the employer of family child care providers, as defined in subsection (a) of section 17 of
33 chapter 15D; provided further, that the PCA quality home care workforce council established in

34 section 71 of chapter 118E shall be the employer of personal care attendants, as defined in
35 section 70 of said chapter 118E, and the department of medical assistance shall be deemed the
36 employer of said personal care attendants for all other purposes under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

219 SECTION 4. The executive office of health and human services, in consultation with the
220 attorney general, shall develop and implement a multilingual outreach program to inform
221 employees, parents, and persons who are under the care of a health care provider about the
222 availability of emergency paid sick time under SECTION 3 of this act. This program shall
223 include the distribution of notices and other written materials in English and in other languages
224 to all child care and elder care providers, domestic violence shelters, schools, hospitals,
225 community health centers, and other health care providers.

226 SECTION 5. This Act shall take effect immediately.