

HOUSE No. 4797

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 18, 2022.

The committee on Labor and Workforce Development to whom was referred the joint petition (accompanied by bill, House No. 4557) of Jamie Zahlaway Belsito and Joan B. Lovely for legislation to establish a paid pregnancy loss leave program for employers to provide three days of paid leave to certain workers experiencing a pregnancy loss, reports recommending that the accompanying bill (House, No. 4797) ought to pass.

For the committee,

JOSH S. CUTLER.

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to paid pregnancy loss leave.

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 1 of Chapter 175M, of the General Laws, is hereby amended by
2 inserting the following definitions:-

3 “Assisted reproductive technology procedure”, as defined in 42 U.S.C. 263a-7.

4 “Paid pregnancy loss leave”, paid time-off that is compensated by an employer at the
5 employee’s regular rate of pay, and with the same employment benefits to which the employee is
6 entitled from such employer as a term of the employee’s employment, for the purposes described
7 in section 12(b); provided, however, that in no case shall the employee’s hourly compensation be
8 less than that provided under section 1 of chapter 151.

9 “Spouse”, a person who is married to the employee.

10 SECTION 2. Section 3 of said Chapter 175M, as so appearing, is hereby amended, in line
11 1, by inserting after the words “No family or medical leave benefits” the following text:-

12 except paid pregnancy loss leave

13 SECTION 3. Section 7 of Chapter 175M, of the General Laws, is hereby amended by
14 striking, in lines 100-101, the words, “and (xiii) the number of cases remaining open at the close
15 of such year.”, and inserting in place thereof the following:-

16 “(xiii) the percentage of such claims for paid pregnancy loss leave, and (xiv) the number
17 of cases remaining open at the close of such year.”

18 SECTION 4. Said Chapter 175M of the General Laws is hereby amended by adding the
19 following section:-

20 Section 12.

21 (a)(1) An employer shall grant to each employee employed by the employer 10 days of
22 paid pregnancy loss leave on the employee's first workday of each calendar year. The employee
23 shall use the paid pregnancy loss leave as needed during that calendar year for the purposes
24 described in subsection (b). The employee shall be compensated by the employer while
25 maintaining the same employment benefits to which the employee is entitled as a term of
26 employment by an employer to an employee as accrued when the employee uses other forms of
27 leave.

28 (2) Paid pregnancy loss leave granted pursuant to this section shall not carry over from 1
29 year to the next.

30 (3) Any employer with a paid pregnancy loss leave policy who makes available an
31 amount of paid pregnancy loss leave that is sufficient to meet the requirements of this section
32 and that is made available for all stated reasons and under all stated conditions that are the same
33 as the purposes and conditions outlined in subsection (b) shall not be required to grant an

34 employee additional paid pregnancy loss leave under this section if certified by the department as
35 having a compliant plan.

36 (4) Nothing in this section shall be construed as requiring financial or other
37 reimbursement to an employee from an employer upon the employee's termination, resignation,
38 retirement or other separation from employment for granted paid pregnancy loss leave that has
39 not been used.

40 (5) An employer may not require, as a condition of providing paid pregnancy loss leave
41 pursuant to this section, that the employee involved search for or find a replacement employee to
42 cover the hours during which the employee is using paid pregnancy loss leave.

43 (b) Paid pregnancy loss leave granted pursuant to this section may be used by an
44 employee for:

45 (1) An absence resulting from any of the following:

46 (i) a pregnancy loss;

47 (ii) an unsuccessful round of intrauterine insemination or of an assisted reproductive
48 technology procedure;

49 (iii) a failed adoption match or an adoption that is not finalized because it is contested by
50 another party;

51 (iv) a failed surrogacy arrangement; or

52 (v) a diagnosis or event that impacts pregnancy or fertility.

53 (2) An absence to care for a spouse or domestic partner who experiences a circumstance
54 described in paragraph (1).

55 (c) Paid pregnancy loss leave shall be provided upon the oral or written request of an
56 employee. The request shall include the expected duration of the period of the time and be
57 provided as soon as practicable after the employee is aware of the need for the period.

58 (d) Leave taken under this section shall be payable under section 3 of this chapter by the
59 department.

60 (e)(1) The executive office of labor and workforce development, in consultation with the
61 executive office for administration and finance, shall prepare and provide to employers notice of
62 this section in English and in other languages required under clause (iii) of subsection (d) of
63 section 62A of chapter 151A. Employers shall post this notice in a conspicuous location
64 accessible to employees in every establishment where employees with rights under this section
65 work and shall provide a copy to their employees; provided, however, that in cases where the
66 employer does not maintain a physical workplace, or an employee teleworks or performs work
67 through a web-based platform, notification shall be sent via electronic communication or a
68 conspicuous posting in the web-based platform.

69 (2) Any employer who willfully violates the posting requirements of this subsection shall
70 be subject to a civil fine in an amount not to exceed \$100 for each separate offense.

71 (f) Nothing in this section shall be construed to state or imply that the scope of the
72 activities prohibited by section 105 of the Family and Medical Leave Act of 1993, codified as 29
73 U.S.C. 2615, or the Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., is less than the scope of

74 the activities prohibited by this section or is otherwise altered by the activities prohibited by this
75 section.

76 (g) (1) It shall be unlawful for any employer to interfere with, restrain or deny an
77 employee's ability to take paid pregnancy loss leave, including, but not limited to, using an
78 employee's taking of paid pregnancy loss leave as a negative factor in any employment action,
79 such as an evaluation, promotion, disciplinary action or termination, or otherwise subjecting an
80 employee to discipline or taking any other adverse action against an employee for the use of paid
81 pregnancy loss leave.

82 (2) It shall be unlawful for any employer to take any adverse action against an employee
83 because the employee opposes practices believed to be in violation of this section, or because the
84 employee supports the exercise of rights of another employee under this section, including, but
85 not limited to: (i) filing an action, or instituting or causing to be instituted any proceeding under
86 or related to this section; (ii) providing or intending to provide any information in connection
87 with any inquiry or proceeding related to this section; or (iii) testifying or intending to testify in
88 any inquiry or proceeding related to this section.

89 (h) Nothing in this section shall be construed to: (i) discourage employers, including the
90 commonwealth, its departments or its instrumentalities from adopting or retaining job-protected
91 paid time off policies that are more generous than policies mandated in this section; (ii) diminish
92 or impair the obligation of an employer to comply with any contract, collective bargaining
93 agreement or any employment benefit program or plan in effect on the effective date of this
94 section that provides to employees greater job-protected paid time off rights than the rights
95 established under this section; (iii) require a municipality, district, political subdivision or its

96 instrumentalities to comply with this section without first adopting the policies through
97 procedures laid out in section 10 of this chapter; or (iv) pre-empt the power of a municipality,
98 district, political subdivision or its instrumentalities from adopting or retaining job-protected paid
99 time off policies consistent with or more generous than policies that comply with the
100 requirements of this section.

101 (i) The executive office of labor and workforce development, in consultation with the
102 executive office for administration and finance and the executive office of health and human
103 services, shall develop and implement a multilingual outreach program to inform employers,
104 employees and health care providers about the availability of paid pregnancy loss leave.

105 (j) The secretary for labor and workforce development, or any department or agency
106 thereof designated by the secretary, may promulgate regulations or other guidance necessary for
107 the implementation of this section.

108 SECTION 5. The executive office of labor and workforce development, in consultation
109 with the executive office for administration and finance, shall prepare and provide to employers
110 the notice described in paragraph (1) of subsection (f) of section 12 of chapter 175M of the
111 General Laws not later than 30 days after the effective date of this act.