

SENATE No. 930

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 establishing paid sick days..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Patricia D. Jehlen</i>	
<i>Susan C. Fargo</i>	
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Katherine M. Clark</i>	<i>Middlesex and Essex</i>
<i>Michael F. Rush</i>	<i>Suffolk and Norfolk</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Sonia Chang-Diaz</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Kenneth J. Donnelly</i>	
<i>James B. Eldridge</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Mark C. Montigny</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>

<i>Stanley C. Rosenberg</i>	<i>Hampshire and Franklin</i>
<i>Karen E. Spilka</i>	
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>

SENATE No. 930

By Ms. Jehlen , a petition (accompanied by bill, Senate, No. 930) of Patricia D. Jehlen, Susan C. Fargo, Marty Walz, Denise Andrews and other members of the General Court for legislation to establish paid sick days. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 688 OF 2009-2010.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act establishing paid sick days..

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. SHORT TITLE

2 This Act may be cited as the “Paid Sick Days Act”.

3 SECTION 2: PREAMBLE

4 The legislature, in order to promote the health and welfare of families and the public
5 health of the Commonwealth, and to advance healthier, more productive and more equitable
6 workplaces throughout the Commonwealth, hereby provides all employees shall be entitled to
7 earn up to a minimum of 7 paid sick days per year, or the appropriate percentage thereof, and
8 directs all employers to allow employees to use up to 7 paid sick days per year who have earned
9 such time as determined by this Act.

10 SECTION 3: FINDINGS

11 The Legislature of the Commonwealth of Massachusetts makes the following findings:

12 1) Preventive and routine medical care helps avoid illness and injury by detecting
13 illnesses early and shortening the duration of illnesses. Providing employees time off to attend to
14 their own health care needs ensures that they will be healthier and more efficient employees in
15 the long run. Routine medical care results in savings by detecting and treating illness and injury
16 early and decreasing the need for emergency care. These savings benefit public and private
17 payers of health insurance, including private businesses.

18 2) Public health is jeopardized as many workers who do not have paid sick days have the
19 most frequent contact with the public, such as workers in food services, nursing homes, child
20 care centers, and retail clerks. The spread of contagious diseases such as the flu cannot be
21 stopped without a universally adopted paid sick days policy.

22 3) Nearly every worker in the Commonwealth is likely to need, during any given
23 year, time off to attend to their own illness or that of an immediate family member, or for routine
24 medical care. Almost half of all private sector workers do not earn a single paid sick day per
25 year. Low-income workers are significantly worse off. Over three quarters of the poorest
26 families (76 percent) lack any regular paid sick leave.

27 4) Little more than 20% of workers who earn paid sick days can use it to care for
28 children or elder adult family members who may be ill.

29 5) When parents are available to care for their children who become sick, the children's
30 recovery is faster, more serious illnesses are prevented, and the children's overall mental and

31 physical health is improved. Parents who cannot afford to miss work must send children with a
32 contagious illness to childcare or school, contributing to the high rate of infections in child care
33 centers and schools.

34 6) The majority of elder-care is performed by working family members. About one in
35 every four employees has provided informal care to an elderly family member or friend in the
36 past year.

37 7) Approximately 1.5 million women are assaulted, stalked or raped by an intimate
38 partner each year; 31% of American women report being physically or sexually abused by a
39 husband or boyfriend at some point in their lives; and, on average, more than 3 women are
40 murdered every day by their husbands or boyfriends. 96% of employed victims of domestic
41 violence experience some kind of work-related problem due to violence; victims may need to
42 take time off from work to participate in criminal and civil legal proceedings and to address the
43 effects of domestic violence such as relocating their family and obtaining medical care.
44 Providing paid sick days would mean important job security for domestic violence victims, as
45 between a quarter to a half of all victims of domestic violence lose their jobs.

46 8) Allowing employees to earn 7 paid sick days per year is affordable for employers
47 and good for business. Requiring all employers to provide paid sick days levels the playing
48 field for employers so all those who want to provide this benefit can, without fear of being at a
49 competitive disadvantage. Employers who provide paid sick days see greater retention and avoid
50 the problems of “presenteeism” or employees coming to work sick. Studies have shown that
51 employers that offer paid sick days have higher productivity and morale, reduced absenteeism,
52 and decreased turnover and training costs. Sick workers are less productive and spread their

53 germs to about 20% of their co-workers. Paid sick days will save Massachusetts businesses
54 about \$63.2 million annually in wages paid to workers who are too sick to be productive, and
55 \$627.2 million in turnover costs.

56 SECTION 4: PURPOSE AND CONSTRUCTION

57 1) The purpose of this Act is to ensure that all workers in the Commonwealth of
58 Massachusetts can address their own health needs and the health needs of their families by
59 requiring employers to provide a minimum of 7 earned paid sick days per year; and

60 2) To alleviate undue burden on public and private health care systems by enabling
61 workers to seek early and routine medical care for themselves and their family members.

62 3) This Act is a remedial act which shall be liberally construed to further its purpose
63 and all presumptions shall be made in favor of providing workers with paid sick days leave.

64 SECTION 5: Chapter 149 of the General Laws, as appearing in the 2008 Official
65 Edition, is hereby amended by inserting after section 148B the following section:-

66 Section 148C

67 (a) Definitions: As used in this section, the following terms shall have the following
68 meanings:

69 "Child", a biological, adopted, or foster child, stepchild, legal ward, or child of a
70 parent standing in loco parentis who is under 18 years of age, or 18 years of age or older but
71 incapable of earning wages because of a mental or physical incapacity.

72 “Employee”, any person who performs services for an employer for wage, remuneration,
73 or other compensation.

74 “Employer”, any individual, corporation, partnership or other entity, including any agent
75 thereof, who engages the services of an employee or employees for wages, remuneration or other
76 compensation.

77 “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to
78 2654 inclusive, as it may be amended.

79 “Health care provider”, a provider who ___

80 (1)(i) is permitted, pursuant to written policy of each individual institution
81 providing health care services, to provide a patient with written notice of his/her illness or
82 condition resulting in absence from work, for the patient to provide his/her employer; or

83 (ii) is any other person determined by the attorney general to be capable of
84 providing health care services; and

85 (2) is not employed by an employer to whom the provider issues certifications
86 under this section.

87 “Parent”, a biological, foster, stepparent or adoptive parent of an employee or an
88 employee’s spouse, or other person who stood in loco parentis during the childhood of an
89 employee or employee’s spouse.

90 “Seven Paid Sick Days”, the total number of paid sick hours computed by determining
91 the number of hours in a regular work day and multiplying this number by seven.

92 “Sick day”, a portion of, or a regular workday when an employee is unable to report to
93 work because of the reasons described in subsection (c).

94 “Spouse”, the meaning given such term by the marriage laws of the
95 Commonwealth of Massachusetts.

96 (b) All employees who work in the Commonwealth who must be absent from work for
97 the reasons set forth in subsection (c) shall be entitled to not less than 7 sick days with pay
98 during a 12-month period, or to a pro rata number of paid days or hours under the provisions of
99 subsection (d). The 12-month period for each employee shall be calculated from the date-of-hire
100 or subsequent anniversary date.

101 (c) Paid sick days shall be provided to an employee by an employer for:

102 (1) care for the employee’s child, spouse, parent, or parent of spouse who is suffering
103 from a physical or mental illness, injury, or medical condition that requires home care,
104 professional medical diagnosis or care or preventative medical care, or that is covered under the
105 federal act; or

106 (2) care for the employee’s own physical or mental illness, injury, or medical condition
107 that requires home care, or professional medical diagnosis or care or preventative medical care,
108 or that is covered under the federal act; or

109 (3) an employee to attend a routine medical appointment for himself or herself or for a
110 child, or, in the case of a spouse, parent, or parent of spouse otherwise in need of care; or

111 (4) an employee to address the psychological, physical or legal effects of domestic
112 violence as defined in subsection (g1/2) of section 1 of chapter 151A.

113 (d) Paid sick days leave shall accrue at the rate of one hour of pay for every 30 hours
114 worked up to the maximum of 7 paid sick days. Paid sick days may be used as accrued, or be
115 loaned by the employer, at its discretion, to the employee in advance of such accrual, provided
116 that an employer shall not require an employee to reimburse it for any unearned sick days the
117 employee is allowed to use. Unless the employer and employee agree to designate otherwise, for
118 periods of paid sick day leave that are less than a normal workday, the leave shall be counted on
119 an hourly basis, or the smallest increment that the employer's payroll system uses to account for
120 absences or use of leave.

121 (e) Subject to the provisions of subparagraph (o), an employer may require
122 certification of the qualifying illness, injury or health condition when a paid sick day leave
123 period covers more than 3 consecutive workdays. Any reasonable documentation signed by a
124 health care provider involved in following or treating the illness, injury or health condition, and
125 indicating the need for the amount of sick days taken, shall be deemed acceptable certification.
126 The certification shall be issued at such time and in such manner the attorney general may by
127 regulation require. The employer shall not delay the commencement of leave taken for purposes
128 of subsection (c) or pay for this period on the basis that the employer has not yet received the
129 certification. Nothing in this act shall be construed to require an employee to provide as
130 certification any information from a health care provider that would be in violation of section
131 1177 of the Social Security Act or the regulations promulgated pursuant to section 264(c) of the
132 Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2 note.

133 (f) If the necessity for paid sick days leave under this section is foreseeable, the
134 employee shall provide the employer with not less than 7 days notice before the date the leave is

135 to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as
136 soon as is practicable after the employee is aware of the necessity of such leave.

137 (g) Paid sick days shall carry over annually to the extent not used by the employee,
138 provided that nothing in this section shall be construed to require an employer to allow use of
139 more than 7 paid sick days leave in any given year for an employee unless an employer agrees to
140 do so. Employers shall not be required to pay out unused sick days upon the separation of the
141 employee from the employer.

142 (h) It shall be unlawful for any employer to interfere with, restrain, or deny the
143 exercise of, or the attempt to exercise, any right provided under, or in connection with this
144 section, including, but not limited to using the taking of paid sick days under this section as a
145 negative factor in an employment action such as hiring, evaluation, promotion or a disciplinary
146 action, or counting the paid sick days under a no-fault attendance policy.

147 (i) It shall be unlawful for any employer to take any adverse action against an
148 employee because the employee 1) exercises rights or attempts to exercise rights under this
149 section, 2) opposes practices which such employee believes to be in violation of this section, or
150 3) supports the exercise of rights of another under this section. Exercising rights under this
151 section shall include but not be limited to filing an action, or instituting or causing to be
152 instituted any proceeding under or related to this section; providing or about to provide any
153 information in connection with any inquiry or proceeding relating to any right provided under
154 this section; or testifying to about to testify in any inquiry or proceeding relating to any right
155 provided under this section.

156 (j) The attorney general shall enforce this section, and may obtain injunctive or
157 declaratory relief for this purpose. Violation of this section shall be subject to the penalties in
158 section 27C(b)(1),(2),(4),(6),(7) and the provisions in section 150.

159 (k) The attorney general shall prescribe the employer's obligation to make, keep, and
160 preserve records pertaining to this section and the requirements for keeping records under section
161 15 of chapter 151 shall apply to the records required under this section.

162 (l) Nothing in this section shall be construed to discourage employers from adopting
163 or retaining paid sick day policies more generous than policies that comply with the requirements
164 of this section and nothing in this section shall be construed to diminish the obligation of an
165 employer to comply with any contract, collective bargaining agreement, or any employment
166 benefit program or plan that provides greater paid sick day leave rights to employees than the
167 rights established under this session.

168 (m) Employers who have a paid time off leave policy providing paid leave in excess
169 of 20 days per year shall not be required to modify such policy, if such policy offers an employee
170 the option, at the employee's discretion, to take paid sick days that is at least equivalent to the
171 paid sick days described in paragraphs (b), (c), and (f), or if the policy offers paid sick days leave
172 in amounts equivalent to the amounts described in such paragraphs for the purposes that include
173 the reasons described in subparagraph (b).

174 (n) The attorney general may adopt such rules and regulations as may be necessary to
175 carry out the purpose and provisions of this act, including the manner in which an employee who
176 does not have a health care provider shall provide certification.

177 (o) A notice of the provisions of this section shall be prepared by the attorney
178 general, in English and other languages as required under section 62A(a)(iii) of chapter 151A.
179 Each employer shall post this notice in a conspicuous location accessible to employees in every
180 establishment where employees having rights under this section work and provide a copy to each
181 such employee. Such notice shall include the following information:

182 (i) information describing the rights to paid sick days leave under this act;

183 (ii) information about the notices, documentation and any other requirements placed on
184 employees in order to exercise their rights to paid sick days;

185 (iii) information that describes the protections that an employee has in exercising rights
186 under this act;

187 (iv) the name, address, and phone number of the relevant department of the attorney
188 general's office where questions about the rights and responsibilities under the act can be
189 answered; and

190 (v) information about filing of an action with the attorney general under this act.

191 SECTION 6: OUTREACH

192 The executive office of health and human services, in coordination with the attorney
193 general, shall develop and implement a multilingual outreach program to inform employees,
194 parents, and persons who are under the care of a health care provider about the availability of
195 paid sick days under this act. This program shall include the distribution of notices and other
196 written materials in English and other languages to all child care and elder care providers,

197 domestic violence shelters, schools, hospitals, community health centers, and other health care
198 providers.

199 SECTION 7: Section 150 of chapter 149 as so appearing is hereby further amended by
200 inserting after the number “148B” in line 21, the following:-148C.

201 SECTION 8: EFFECTIVE DATES

202 (a) This act shall take effect within 90 days of its passage.

203 (b) In the case of a collective bargaining agreement in effect on the effective date

204 proscribed by subsection (a), this act shall take effect on the earlier of the date of the

205 termination of such agreement; or the date that occurs 12 months after the promulgation of

206 regulations by the attorney general.