

**HOUSE . . . . . No. 01398**

The Commonwealth of Massachusetts

PRESENTED BY:

*Kay Khan*

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 passage of the accompanying bill:

An Act establishing paid sick days.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Jay Kaufman</i>	<i>15th Middlesex</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>

<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Steven M. Walsh</i>	<i>11th Essex</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Carlo Basile</i>	<i>1st Suffolk</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Stephen R. Canessa</i>	<i>12th Bristol</i>
<i>Edward Coppinger</i>	<i>10th Suffolk</i>
<i>Sean Curran</i>	<i>9th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Brian Ashe</i>	<i>2nd Hampden</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Stephen Stat Smith</i>	<i>28th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

# HOUSE . . . . . No. 01398

By Ms. Kay Khan of Newton, petition (accompanied by bill, House, No. 01398) of Steven M. Walsh and others for legislation to require employers to grant a minimum number of paid sick leave days for all employees. Joint Committee on Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 1815 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.

2 SHORT TITLE

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

4 SECTION 2: PREAMBLE

5 The legislature, in order to promote the health and welfare of families and the public health of  
6 the Commonwealth, and to advance healthier, more productive and more equitable workplaces  
7 throughout the Commonwealth, hereby provides all employees shall be entitled to earn up to a  
8 minimum of 7 paid sick days per year, or the appropriate percentage thereof, and directs all

9 employers to allow employees to use up to 7 paid sick days per year who have earned such time  
10 as determined by this Act.

### 11 SECTION 3: FINDINGS

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

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

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

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

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

30 5) When parents are available to care for their children who become sick, the children's  
31 recovery is faster, more serious illnesses are prevented, and the children's overall mental and  
32 physical health is improved. Parents who cannot afford to miss work must send children with a  
33 contagious illness to childcare or school, contributing to the high rate of infections in child care  
34 centers and schools.

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

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

47 8) Allowing employees to earn 7 paid sick days per year is affordable for employers and good  
48 for business. Requiring all employers to provide paid sick days levels the playing field for  
49 employers so all those who want to provide this benefit can, without fear of being at a  
50 competitive disadvantage. Employers who provide paid sick days see greater retention and avoid  
51 the problems of "presenteeism" or employees coming to work sick. Studies have shown that

52 employers that offer paid sick days have higher productivity and morale, reduced absenteeism,  
53 and decreased turnover and training costs. Sick workers are less productive and spread their  
54 germs to about 20% of their co-workers. Paid sick days will save Massachusetts businesses  
55 about \$63.2 million annually in wages paid to workers who are too sick to be productive, and  
56 \$627.2 million in turnover costs.

#### 57 SECTION 4: PURPOSE AND CONSTRUCTION

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

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

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

#### 65 SECTION 5:

66 Chapter 149 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended  
67 by inserting after section 148B the following section:-

#### 68 Section 148C

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

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

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

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

78 “Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to  
79 2654 inclusive, as it may be amended.

80 “Health care provider”, a provider who \_\_\_

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

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

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

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

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

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

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

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

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

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

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

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



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

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

122 (e) Subject to the provisions of subparagraph (o), an employer may require certification of the  
123 qualifying illness, injury or health condition when a paid sick day leave period covers more than  
124 3 consecutive workdays. Any reasonable documentation signed by a health care provider  
125 involved in following or treating the illness, injury or health condition, and indicating the need  
126 for the amount of sick days taken, shall be deemed acceptable certification. The certification  
127 shall be issued at such time and in such manner the attorney general may by regulation require.  
128 The employer shall not delay the commencement of leave taken for purposes of subsection (c)  
129 or pay for this period on the basis that the employer has not yet received the certification.

130 Nothing in this act shall be construed to require an employee to provide as certification any  
131 information from a health care provider that would be in violation of section 1177 of the Social  
132 Security Act or the regulations promulgated pursuant to section 264(c) of the Health Insurance  
133 Portability and Accountability Act, 42 U.S.C. 1320d-2 note.

134 (f) If the necessity for paid sick days leave under this section is foreseeable, the employee shall  
135 provide the employer with not less than 7 days notice before the date the leave is to begin. If the  
136 necessity for leave is not foreseeable, the employee shall provide such notice as soon as is  
137 practicable after the employee is aware of the necessity of such leave.

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

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

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

156 (j) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief  
157 for this purpose. Violation of this section shall be subject to the penalties in section  
158 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 preserve  
160 records pertaining to this section and the requirements for keeping records under section 15 of  
161 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 or retaining  
163 paid sick day policies more generous than policies that comply with the requirements of this  
164 section and nothing in this section shall be construed to diminish the obligation of an employer to  
165 comply with any contract, collective bargaining agreement, or any employment benefit program  
166 or plan that provides greater paid sick day leave rights to employees than the rights established  
167 under this session.

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

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

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

181 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 general,  
193 shall develop and implement a multilingual outreach program to inform employees, parents, and  
194 persons who are under the care of a health care provider about the availability of paid sick days  
195 under this act. This program shall include the distribution of notices and other written materials  
196 in English and other languages to all child care and elder care providers, domestic violence  
197 shelters, schools, hospitals, community health centers, and other health care providers.

198 SECTION 7:

199 Section 150 of chapter 149 as so appearing is hereby further amended by inserting after the  
200 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 termination  
205 of such agreement; or the date that occurs 12 months after the promulgation of regulations by the  
206 attorney general.