

HOUSE No. 1769

The Commonwealth of Massachusetts

PRESENTED BY:

Ellen Story and Joan B. Lovely

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 the Massachusetts pregnant workers fairness act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>

<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>James T. Welch</i>	<i>Hampden</i>

HOUSE No. 1769

By Representative Story of Amherst and Senator Lovely, a joint petition (accompanied by bill, House, No. 1769) of Ellen Story and others relative to pregnancy, childbirth, or a related condition protection of employees and job applicants. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act establishing the Massachusetts pregnant workers fairness act.

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 4 of chapter 151B of the General Laws is hereby amended by
2 striking out, in line 5, the word “or” and inserting, in line 6, after the words “ancestry of any
3 individual”, the following words:-

4 or pregnancy, childbirth, or a related condition, including, but not limited to, the need to
5 express breast milk for a nursing child.

6 SECTION 2. Said section 4 is hereby amended by inserting after subsection 1D the
7 following subsection:-

8 1E. (a) For an employer to deny reasonable accommodations for any condition of a job
9 applicant or employee related to pregnancy, childbirth, or related conditions if the employee or
10 applicant so requests, unless the employer can demonstrate that the accommodation would
11 impose an undue hardship on the employer’s program, enterprise, or business. It shall also be an
12 unlawful practice under this subsection to:

13 (1) take adverse action against an employee who requests or uses an accommodation in
14 terms, conditions or privileges of employment, including, but not limited to, failing to reinstate
15 the employee to her original job or to an equivalent position with equivalent pay and
16 accumulated seniority, retirement, fringe benefits and other applicable service credits when her
17 need for reasonable accommodations ceases;

18 (2) deny employment opportunities to a job applicant or employee, if such denial is based
19 on the need of the employer to make reasonable accommodations to the known conditions
20 related to the pregnancy, childbirth, or related conditions of the applicant or employee;

21 (3) require a job applicant or employee affected by pregnancy, childbirth, or related
22 conditions to accept an accommodation that such applicant or employee chooses not to accept;

23 (4) require an employee to take leave if another reasonable accommodation can be
24 provided to the known conditions related to the pregnancy, childbirth, or related conditions of an
25 employee without undue hardship to the employer;

26 (5) make pre-employment inquiry of any condition of a job applicant related to
27 pregnancy, childbirth, or a related condition.

28 (b) For the purposes of this subsection:

29 (1) The term “reasonable accommodations” shall include, but not be limited to: more
30 frequent or longer breaks, time off to recover from childbirth, acquisition or modification of
31 equipment, seating, temporary transfer to a less strenuous or hazardous position, job
32 restructuring, light duty, break time and private non-bathroom space for expressing breast milk,
33 assistance with manual labor, or modified work schedules; provided, that no employer shall be

34 required by this subsection to create additional employment that the employer would not
35 otherwise have created, unless the employer does so or would do so for other classes of
36 employees who need accommodation, nor shall the employer be required to discharge any
37 employee, transfer any employee with more seniority, or promote any employee who is not
38 qualified to perform the job, unless the employer does so or would do so to accommodate other
39 classes of employees who need it.

40 (2) The term “related conditions” shall include, but not be limited to, lactation or the need
41 to express breast milk for a nursing child.

42 (3) The term “undue hardship”, shall mean an action requiring significant difficulty or
43 expense. The employer shall have the burden of proving undue hardship. In making a
44 determination of undue hardship, factors to be considered include:

45 (i) the nature and cost of the accommodation;

46 (ii) the overall financial resources of the employer; the overall size of the business of the
47 employer with respect to the number of employees, and the number, type, and location of its
48 facilities;

49 (iii) the effect on expenses and resources or the impact otherwise of such accommodation
50 upon the operation of the employer.

51 (c) The fact that the employer provides or would be required to provide a similar
52 accommodation to other classes of employees who need it shall create a rebuttable presumption
53 that the accommodation does not impose an undue hardship on the employer.

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55 (d) The employer shall engage in a timely, good faith, and interactive process with the
56 employee to determine effective reasonable accommodations.

57 (e) Written notice of the right to be free from discrimination in relation to pregnancy,
58 childbirth, and related conditions, including the right to reasonable accommodations for
59 conditions related to pregnancy, childbirth, or related conditions, pursuant to this subsection
60 must be conspicuously posted at an employer's place of business in an area accessible to
61 employees. Such notice must also be provided to:

62 (1) new employees at the commencement of employment;

63 (2) existing employees within 120 days after the effective date of the law that added this
64 subsection;

65 (3) any employee who notifies the employer of her pregnancy within 10 days of such
66 notification.

67 (f) The commission shall develop courses of instruction and conduct ongoing public
68 education efforts as necessary to inform employers, employees, employment agencies, and job
69 applicants about their rights and responsibilities under this subsection.

70 (g) This subsection shall not be construed to preempt, limit, diminish or otherwise affect
71 any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish
72 the coverage for pregnancy, childbirth, or a condition related to pregnancy or childbirth under
73 section 105D of chapter 149, or any other special or general law.