

HOUSE No. 2172

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth I. Gordon

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 a paid family and medical leave insurance program.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Gerard Cassidy</i>	<i>9th Plymouth</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>

<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>William Driscoll</i>	<i>7th Norfolk</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>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</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>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Juana Matias</i>	<i>16th Essex</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Joan Meschino</i>	<i>3rd Plymouth</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>
<i>Brian Murray</i>	<i>10th Worcester</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>

<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Chynah Tyler</i>	<i>7th Suffolk</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Bud Williams</i>	<i>11th Hampden</i>

HOUSE No. 2172

By Mr. Gordon of Bedford, a petition (accompanied by bill, House, No. 2172) of Kenneth I. Gordon and others relative to establishing a paid family and medical leave insurance program. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act establishing a paid family and medical leave insurance program.

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: The General Laws are amended by inserting after chapter 175L the
2 following:-

3 CHAPTER 175M.

4 Section 1. – Definitions

5 The following words and phrases as used in this chapter shall have the following
6 meanings unless the context clearly requires otherwise:

7 (a) "Average weekly wage" has the same meaning as provided by section 1(w) of chapter
8 151A and shall be calculated using the base period earnings as defined by section 1(a) of chapter
9 151A.

10 (b) "Benefit year" has the same meaning as provided by section 1(c) of chapter 151A.

11 (c) "Child" means a biological, adopted, or foster child, stepchild or legal ward, a child to
12 whom the employee stands in loco parentis, or a person to whom the employee stood in loco
13 parentis when the person was a minor child.

14 (d) "Contributions" means the payments made by an employer, an employee, or a self-
15 employed person to the family and employment security trust fund and administrative account,
16 as required by this chapter.

17 (e) "Department" means the Massachusetts department of family and medical leave as
18 established under section 8 of this chapter.

19 (f) "Director" means the director of the Massachusetts department of family and medical
20 leave.

21 (g) "Employee" has the same meaning as provided by section 1(h) of chapter 151A,
22 provided that notwithstanding section 1(h) of chapter 151A or any other special or general law to
23 the contrary, Family Child Care Providers, as defined in section 17(a) of chapter 15D, shall be
24 deemed employees for purposes of this section.

25 (h) "Employer" has the same meaning as provided in subsection (i) of section 1 of
26 chapter 151A; provided, however, that for the purposes of this chapter, the department of early
27 education and care shall be deemed the employer of family child care providers, as defined in
28 subsection (a) of section 17 of chapter 15D, and the PCA quality home care workforce council
29 established in section 71 of chapter 118E shall be the employer of personal care attendants, as
30 defined in section 70 of said chapter 118E; provided that any employer not subject to this chapter
31 may become a covered employer under this chapter by notifying the department and completing
32 the procedure established by the department; and provided further, that a political subdivision or

33 its instrumentalities shall not be subject to this chapter unless it adopts this chapter under section
34 10.

35 (i) "Employment" has the same meaning as provided by section 1(k) of chapter 151A.

36 (j) "Employment benefits" means all benefits provided or made available to employees
37 by an employer, including, but not limited to, group life insurance, health insurance, disability
38 insurance, sick leave, annual or vacation leave, educational benefits, and pensions.

39 (k) "Family leave" means leave taken by an employee from employment to provide care
40 for a family member for one of the following reasons: (1) to bond with the employee's child
41 during the first 12 months after the child's birth or the first 12 months after the placement of the
42 child for adoption or foster care with the employee, (2) a serious health condition of a family
43 member; or (3) because of a qualifying exigency pursuant to the Family and Medical Leave Act,
44 29 U.S.C. 2612(a)(1)(e), arising out of the family member of the employee, as defined in this
45 chapter, being on active duty in the armed forces of the United States.

46 (l) "Family leave benefits" means wages paid pursuant to section 3 of this chapter and
47 provided in accordance with section 2 of this chapter to an employee who is on family leave
48 from employment.

49 (m) "Family member" means the spouse, domestic partner, child, parent, parent of a
50 spouse or domestic partner of the employee; a person who stood in loco parentis to the employee
51 when the employee was a minor child; or a grandchild, grandparent, or sibling of the employee.

52 (n) "Health care provider" means a person licensed to practice medicine, surgery,
53 dentistry, chiropractic, podiatry, or osteopathy, or any other person determined by the department
54 to be capable of providing health care services.

55 (o) "Medical leave" means leave taken by an employee from employment because of a
56 serious health condition of the employee.

57 (p) "Medical leave benefits" means wages paid pursuant to section 3 of this chapter and
58 provided in accordance with section 2 of this chapter to an employee who is on medical leave
59 from employment.

60 (q) "Premium" means the amount paid by the employer, the employee, or a self-
61 employed person into the family and employment security trust fund to receive family and
62 medical leave benefits.

63 (r) "Self-employed person" means a business owner whose state and federal income tax
64 returns for the two years preceding the business owner's first claim for family or medical leave
65 benefits identify and substantiate ownership of a bona fide business enterprise.

66 (s) "Serious health condition" means an illness, injury, impairment, or physical or mental
67 condition that involves either (1) inpatient care in a hospital, hospice, or residential medical
68 facility; or (2) continuing treatment by a health care provider.

69 (t) "State average weekly wage" means the average weekly wage in the Commonwealth
70 as determined under section 29(a) of chapter 151A and promulgated by the Commissioner of
71 Unemployment Assistance.

72 (u) "Wages" has the same meaning as provided by section 1(s) of chapter 151A.

73 (v) “Weekly benefit amount” means the amount of wages paid to an employee on a
74 weekly basis while on family or medical leave, as provided by section 3 of this chapter.

75 Section 2. – Eligibility for leave and benefits

76 (a) (1) An employee is eligible for family or medical leave if the employee meets the
77 financial eligibility requirements of Chapter 151A of the General Laws, provided all such
78 employment has been with an employer in the Commonwealth; and provided further that no
79 benefit shall be paid during the first twelve months of the effective date of this act, regardless of
80 the service time of any claimant.

81 (2) A participating self-employed person shall be eligible for family or medical leave
82 if the self-employed person has paid a premium for at least 2 consecutive quarters during the past
83 12 month base period prior to the claim and meets the eligibility requirements of subparagraph
84 (1) of subsection (a) of section 2 of this chapter.

85 (3) An individual who experiences a break in service of nine months or more in their
86 employment in the Commonwealth shall be eligible for leave and benefits under this chapter
87 after meeting the eligibility requirements of subparagraph (1) of subsection (a) of section 2 of
88 this chapter.

89 (b) (1) An employee or self-employed person is eligible for a maximum of 12 weeks
90 of family leave in a benefit year; provided, however, that eligibility for family leave taken
91 because of (i) the birth of a child of the employee, or (ii) the placement of a child with the
92 employee for adoption or foster care shall expire at the end of the 12-month period beginning on
93 the date of the birth or placement. An employee or self-employed person is eligible for medical
94 leave for a maximum of 26 weeks in a benefit year. An employee or self-employed person may

95 take an aggregate of no more than 26 weeks of family and medical leave under this chapter in the
96 same benefit year. (iii) Nothing in this Section shall prevent an employee or self-employed
97 person from taking a medical leave during pregnancy and recovery from childbirth if supported
98 by documentation by a health care provider, immediately followed by family leave, in which
99 case the seven-day waiting period for family leave will not be required.

100 (2) An employee may take leave under this chapter intermittently or on a reduced
101 leave schedule, provided that the employee and the employer agree to said intermittent or
102 reduced leave schedule. The employer shall engage in a timely, good faith, and interactive
103 process with the employee to determine a reasonable intermittent or reduced leave schedule. The
104 taking of leave intermittently or on a reduced leave schedule pursuant to this subsection shall not
105 result in a reduction in the total amount of leave to which the employee is entitled under
106 subsection (b)(1).

107 (c) While on family or medical leave, an employee or self-employed person shall
108 receive a weekly benefit amount, as provided in section 3 of this chapter, provided, however, that
109 no benefit shall be paid during the first twelve months after the effective date of the act.

110 (d) An employee who has taken family or medical leave shall be restored to the
111 employee's previous position, or to an equivalent position, with the same status, pay,
112 employment benefits, length of service credit, and seniority as of the date of leave. An employer
113 shall not be required to restore an employee who has taken family or medical leave to the
114 previous or to an equivalent position if other employees of equal length of service credit and
115 status in the same or equivalent positions have been laid off due to economic conditions or other
116 changes in operating conditions affecting employment during the period of leave; provided,

117 however, that the employee who has taken leave shall retain any preferential consideration for
118 another position to which the employee was entitled as of the date of leave.

119 (e) The taking of family or medical leave shall not affect an employee's right to
120 accrue vacation time, sick leave, bonuses, advancement, seniority, length of service credit or
121 other employment benefits, plans or programs. During the duration of an employee's family or
122 medical leave, the employer shall continue to provide for and contribute to the employee's
123 employment-related health insurance benefits, if any, under the same terms and conditions as
124 those existing prior to the employee's leave.

125 (f) Nothing in this chapter shall be construed so as to affect any bargaining
126 agreement, company policy, or other federal, state, or municipal law which provides for greater
127 or additional rights to leave than those provided for by this chapter.

128 (g) Nothing in this chapter shall be construed to allow an employer to compel an
129 employee to exhaust rights to any sick, vacation, or personal time prior to or while taking leave
130 under this chapter.

131 (h) Leave taken under this chapter shall run concurrently with leave taken under
132 either section 105D of chapter 149 of the general laws or under the Family Medical Leave Act,
133 29 U.S.C. sec. 2611, et. seq.

134 Section 3. – Schedule of Paid Benefits

135 (a) No family or medical leave benefits shall be paid during the first 7 consecutive
136 calendar days of such leave; provided, however, an employee may but shall not be required to
137 utilize accrued sick or vacation pay during the first 7 consecutive calendar days of such leave.

138 (b)(1) The weekly benefit amount for employees and self-employed persons on family or
139 medical leave shall be determined according to the following marginal structure:

140 (i) The portion of an employee's or self-employed person's average weekly wage that is
141 not more than 30% of the state average weekly wage shall be replaced at a rate of 90%.

142 (ii) The portion of an employee's or self-employed person's average weekly wage that is
143 more than 30% of the state average weekly wage shall be replaced at a rate of 33%.

144 (2) The maximum weekly benefit amount determined under paragraph (b) (1) of this
145 section shall not exceed six-hundred and fifty (\$650) dollars per week. Commencing January 1,
146 2018, the department shall adjust annually the maximum weekly benefit amount to reflect
147 changes in the United States Bureau of Labor Statistics Consumer Price Index for the Boston-
148 Cambridge-Quincy consolidated metropolitan statistical area for all urban consumers, all goods,
149 or its successor index.

150 (3) For an employee or self-employed person who takes leave on an intermittent or
151 reduced leave schedule, the weekly benefit amount shall be prorated.

152 (c) The weekly benefit amount shall be reduced by the amount of wages or wage
153 replacement an employee or self-employed person receives under any of the following while on
154 family or medical leave: (i) any government program or law, including but not limited to
155 worker's compensation other than for permanent partial disability incurred prior to the medical
156 leave claim, or under other state or federal temporary or permanent disability benefits law, or (ii)
157 a permanent disability policy or program of an employer, (iii) a temporary disability policy or
158 program of an employer, or (iv) a paid family, or medical leave policy of an employer.

159 Section 4. – Notice Requirements

160 (a) (1) Every employer shall keep posted in a conspicuous place or places on its premises
161 a workplace notice prepared or approved by the department which shall set forth excerpts from
162 this chapter and other information the department deems necessary to explain the chapter. Such
163 workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian,
164 Portuguese, Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary
165 language of at least 10,000 or one-half of one percent of all residents of the commonwealth.
166 Each employer with five or more employees whose primary language is not English shall post
167 the workplace notice in each such primary language of such employees, if such notice is
168 available from the department.

169 (2) Each employer shall issue to each employee, within 30 days from date of the
170 employee's first day of work, the following written information provided or approved by the
171 department: (i) an explanation of the availability of family and medical leave benefits provided
172 pursuant to this chapter; (ii) the name and mailing address of the employer; (iii) the identification
173 number assigned to the employer by the department; (iv) instructions on how to file a claim for
174 family and medical leave benefits; (v) the address and telephone number of the regional office of
175 the department which serves the employee, as well as the telephone number of the department;
176 and (vi) an explanation of the method through which the employer will provide family and
177 medical leave benefits under this chapter; provided that where an employer changes the method
178 of providing benefits, the employer shall notify the employee within 30 days of the change.
179 Delivery is made when an employer provides such information to an employee in person or by
180 mail to the employee's last known address.

181 (3) Any employer who fails to comply with the provisions of paragraphs (1) or (2) of this
182 subsection shall be punished by a fine of not less than 50 dollars or more than 300 dollars. A
183 subsequent violation of this subsection by the same employer shall be punished by a fine of not
184 less than 250 dollars or more than 1,000 dollars. The employer shall have the burden of
185 demonstrating compliance with this subsection.

186 (b) (1) Where the need for family or medical leave is foreseeable, the employee shall
187 notify the employer of the anticipated starting date of the leave, the anticipated length of the
188 leave, and the expected date of return at least 30 days prior to the date that the leave is to begin.
189 Where the need for leave is not foreseeable or if there are exigent circumstances, the employee
190 shall notify the employer as soon as practicable. (2) Where an employer fails to provide notice
191 of the provisions of this chapter as required under subsection (a) of this section, the employee's
192 notice requirement shall be waived.

193 Section 5. – Certification Requirements

194 (a) An employee or self-employed person shall provide certification supporting a request
195 for leave under this chapter as soon as practicable; provided, however, an employer shall not
196 delay the taking of family or medical leave or delay payment of benefits for the period in which
197 leave is taken for employees entitled to a weekly benefit under section 3, on the basis that the
198 employer has not yet received the certification.

199 (1) The certification for an employee or self-employed person taking medical leave shall
200 be sufficient if it states the date on which the serious health condition commenced, the probable
201 duration of the condition, and the appropriate medical facts within the knowledge of the health
202 care provider as required by the department.

203 (2) The certification for an employee or self-employed person taking family leave
204 because of the serious health condition of a family member of the employee or self-employed
205 person shall be sufficient if it states the date on which the serious health condition commenced,
206 the probable duration of the condition, the appropriate medical facts within the knowledge of the
207 health care provider as required by the department, a statement that the employee or self-
208 employed person is needed to care for the family member, and an estimate of the amount of time
209 that the employee or self-employed person is needed to care for the family member.

210 (3) Certification for an employee or self-employed person taking family leave because of
211 the birth of a child of the employee or self-employed person shall be sufficient if the employee or
212 self-employed person provides either the child's birth certificate or a document issued by the
213 health care provider of the child stating the child's birth date.

214 (4) Certification for an employee or self-employed person taking family leave because of
215 the placement of a child with the employee or self-employed person for adoption or foster care
216 shall be sufficient if the employee or self-employed person provides a document issued by the
217 health care provider of the child, an adoption or foster care agency involved in the placement, or
218 by other persons as determined by the department that confirms the placement and the date of
219 placement. To the extent that the status of the employee as an adoptive or foster parent changes
220 during the pending of benefits the employee is required to notify the employer who is required to
221 notify the Department of Children and Families. The Department of Children and Families may
222 confirm the status of the employee or self-employed person as adoptive or foster parent during
223 the pending of benefits.

224 (5) Certification for military exigency leave shall include, but not be limited to: (i) a copy
225 of the covered service member's active-duty orders or (ii) other documentation issued by the
226 military.

227 (b) Any medical or health information required under this section shall be treated as
228 confidential and not disclosed except with permission from the employee or self-employed
229 person who provided it unless disclosure is otherwise required by law. Nothing in this section
230 shall be construed to require an employee or self-employed person to provide as certification any
231 information from a health care provider that would be in violation of section 1177 of the Social
232 Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the
233 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2 note.

234 (c) An employee or self-employed person shall not be eligible to receive family or
235 medical leave benefits if the director finds that the employee or self-employed person, for the
236 purpose of obtaining these benefits, has willfully made a false statement or representation, with
237 actual knowledge of the falsity thereof, or has willfully withheld a material fact concerning the
238 facts required to be certified pursuant to this subsection.

239 Section 6 – Methods for Securing Benefits

240 (a) An employer or an association of employers shall secure family and medical leave
241 benefits for employees in one of the following ways:

242 (1) by making contributions, solely or jointly with employees, to the family and
243 employment security trust fund established in section 7 of this chapter in the form and manner
244 determined by the department consistent with section 7(h) of this chapter; or

245 (2) by a private plan or agreement, including but not limited to an insurance policy,
246 collective bargaining agreement, or company policy, that is acceptable to the department as
247 satisfying the obligation to provide for the payment of benefits at least as favorable as the
248 benefits required by this chapter. A private plan or agreement under this subsection may be
249 approved by the department if it finds that:

250 (i) all of the employees of the employer are to be covered under the provisions of such
251 plan; and

252 (ii) eligibility requirements for leave are no more restrictive than as provided in this
253 chapter for benefits payable by the trust fund established in section 7 of this chapter; and

254 (iii) the weekly benefits payable under such plan for any week of leave are at least equal
255 to the weekly benefit amount payable by the trust fund established in section 7 of this chapter;
256 and

257 (iv) no greater amount is required to be paid by employees toward the cost of family or
258 medical leave benefits than that prescribed by law as the amount of employee contribution to the
259 trust fund established in chapter 7 of this chapter for employers opting to provider coverage
260 under the trust fund

261 (b) Employers shall file annually with the department a notice of coverage and statement
262 of benefits provided. Where an employer changes the method of providing benefits, the
263 employer shall notify the department within 30 days of the change.

264 (c) Nothing in this section or chapter shall be construed as to affect any bargaining
265 agreement, company policy, or other state or federal law which provides for greater or additional
266 benefits than those required under this chapter.

267 (d) Nothing in this section or chapter shall be construed as prohibiting an employer from
268 requiring an employee to provide up to one-half of the contributions required by this section or
269 this chapter. The weekly benefit amount may be reduced by the amount of the employee's
270 contribution that accrued during the benefit period one half of the premium that accrued during
271 the benefit period.

272 (e) Nothing in this section or chapter shall be construed as prohibiting an employer from
273 contributing an amount that is greater than the amount that is contributed by the employee.

274 Section 7. – Establishment of the family and employment security trust fund and
275 administrative account

276 (a) There is established in the Office of the State Treasurer and Receiver General,
277 separate and apart from all public monies or funds of the state, a family and employment security
278 trust fund, hereinafter referred to as the “trust fund” which shall be administered by the state
279 treasurer exclusively for the purposes of this chapter. The trust fund shall consist of:

280 (1) All employer and employee contributions collected pursuant to section 6(a) (1) of this
281 chapter together with any interest earned thereon;

282 (2) Any property or securities acquired through the use of monies belonging to the trust
283 fund together with any earnings of such property and securities;

284 (3) All monies transferred into the trust fund from the family and employment security
285 administrative account; and

286 (4) All other monies received for the trust fund from any source.

287 (b) There is established in the Office of the State Treasurer and Receiver General,
288 separate and apart from all public monies or funds of the state, a family and employment security
289 administrative account, hereinafter referred to as the “administrative account”, which shall be
290 administered by the state treasurer exclusively for the purposes of this chapter. The
291 administrative account shall consist of:

292 (1) All contributions collected pursuant to this section, together with any interest thereon;

293 (2) All fines and penalties levied pursuant to this chapter;

294 (3) All monies collected by way of subrogation;

295 (4) Interest earned on any monies belonging to the administrative account;

296 (5) Any property or securities acquired through the use of monies belonging to the
297 administrative account together with all earnings of such property and securities;

298 (6) All monies appropriated to the administrative account by the legislature; and

299 (7) All other monies received for the administrative account from any source.

300 (c) The state treasurer shall be the treasurer and custodian of and administer the trust fund
301 and the administrative account. All monies in the trust fund and administrative account shall be
302 held in trust for the purposes of this chapter only and shall not be expended, released,
303 appropriated, or otherwise disposed of for any other purpose. Monies in the trust fund and

304 administrative account may be deposited in any depository bank in which general funds of the
305 commonwealth may be deposited, but such monies shall not be commingled with other
306 commonwealth funds and shall be maintained in separate accounts on the books of the
307 depository bank. Such monies shall be secured by the depository bank to the same extent and in
308 the same manner as required by the general depository law of the commonwealth, and collateral
309 pledged for this purpose shall be kept separate and distinct from any other collateral pledged to
310 secure other funds of the commonwealth. The trust fund shall maintain an annualized amount of
311 at least 140 percent of the previous year's expenditure.

312 (d) The state treasurer shall pay all expenses incurred in administering the provisions of
313 this chapter. In the event that the balance in the trust fund shall at any time be insufficient to pay
314 benefits under this chapter, the governor, upon the state treasurer's request, shall cause such sums
315 as may be required for the payment of such benefits to be transferred from the administrative
316 account to the trust fund.

317 (e) Expenditures of monies in the trust fund shall not be subject to provisions of law
318 requiring specific appropriations or other formal release by state officers of money in their
319 custody. All benefits shall be paid from the trust fund upon warrants drawn upon the state
320 treasurer by the comptroller of the commonwealth supported by vouchers approved by the
321 director.

322 (f) The state treasurer may, from time to time, invest such monies in the trust fund as are
323 in excess of the amount deemed necessary for the payment of benefits for a reasonable future
324 period. Such monies may be invested in bonds of any political or municipal corporation or sub-
325 department of the commonwealth, or any of the outstanding bonds of the commonwealth, or

326 invested in bonds or interest-bearing notes or obligations of the commonwealth, or of the United
327 States, or those for which the faith and credit of the United States are pledged for the payment of
328 principal and interest (or in federal land bank bonds or joint stock farm bonds). The investments
329 shall at all times be so made that all the assets of the trust fund shall always be readily
330 convertible into cash when needed for the payment of benefits. The state treasurer shall have the
331 power to dispose of securities or other properties belonging to the trust fund when needed for the
332 payment of benefits.

333 (g) Family and medical leave benefits shall be paid from the trust fund to employees
334 whose employer made contributions to the trust fund pursuant to section 6(a)(1) of this chapter.
335 Family and medical leave benefits shall also be paid from the trust fund to an employee whose
336 employer has not made contributions pursuant to section 6(a)(1), but who is entitled to receive
337 such benefits but cannot because of the bankruptcy of his employer or because the employer is
338 not in compliance with this chapter. Family and medical leave benefits paid from the trust fund
339 to such employee may be recovered through bankruptcy proceedings or from the noncomplying
340 employer. The state treasurer shall institute administrative and legal action to effect recovery of
341 such family and medical leave benefits.

342 (h) For the purpose of accumulating funds for the payment of family and medical leave
343 benefits, and administrative costs, employers, providing benefits in accordance with section
344 6(a)(1) of this chapter, shall, together with their employees, pay equal amounts as determined
345 by the state treasurer. Employers and their employees making such contributions under section
346 (6)(a)(1) shall transmit all such payments to the trust fund or administrative account in such
347 manner, at such time, and under such conditions as shall be prescribed by the state treasurer.

348 (i) On or before October first of each year, the state treasurer shall certify to the secretary
349 of the executive office of labor and workforce development the estimated costs for the coming
350 year of benefits and for administrative services provided by the department. Said rates of
351 employer contribution to both the trust fund as established by this chapter shall be adjusted
352 annually as consistent with the needs of the operation of said trust fund and administrative
353 account.

354 (j) An employer to whom the department has sent a request for wage and employment
355 information for an employee claiming family or medical leave benefits under this chapter shall
356 complete and file such information within 10 days from the date the request was sent. If an
357 employer does not respond within 10 days, that employer may be held liable for any and all
358 related costs incurred by the commonwealth.

359 Section 8. – Establishment of Department of Family and Medical Leave and
360 Enforcement

361 (a) There shall be a department of family and medical leave within the executive office of
362 labor and workforce development which shall be administered by a director appointed by the
363 Governor. Claims for family and medical leave benefits shall be filed with the department and
364 shall be handled under the procedures prescribed under sections 1, 10, 11, 12, 14, 15 and 16 of
365 chapter 30A of the general laws.

366 (b) The department shall conduct a public education campaign to inform workers and
367 employers about the availability of family and medical leave benefits, the requirements for
368 receiving such leave and benefits, how to apply for such leave and benefits, and all of the
369 employer's obligations under this chapter.

370 (c) The Fair Labor Department of the Office of the Attorney General shall be responsible
371 for the interpretation and enforcement of this chapter and may promulgate rules and regulations
372 pursuant thereto. Violations of this chapter, including the failure to provide benefits as required
373 in section 6, shall be subject to paragraphs (1), (2), (4), (6) and (7) of subsection (b) of section
374 27C and to section 150 of chapter 149 of the general laws.

375 (d) This act shall be liberally construed as remedial legislation to further its purpose of
376 providing job-protected family and medical leave, and family and medical leave benefits, to the
377 employees of the commonwealth. All presumptions shall be made in favor of the availability of
378 leave and the payment of family and medical leave benefits under this chapter.

379 Section 9. – Retaliation Protections

380 (a) It shall be unlawful for any employer to retaliate by discharging, firing, suspending,
381 expelling, disciplining or in any other manner discriminating against an employee for exercising
382 any right to which such employee is entitled under this section or with the purpose of interfering
383 with the exercise of any right to which such employee is entitled under this section.

384 (b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending,
385 expelling, disciplining or in any other manner discriminating against an employee who has filed
386 a complaint or instituted or caused to be instituted a proceeding under or related to this section,
387 has testified or is about to testify in an inquiry or proceeding, or has given or is about to give
388 information connected to any inquiry or proceeding relating to this section.

389 (c) Any negative change in the seniority, status, employment benefits, pay, or other
390 terms or conditions of employment of an employee who has been restored to a position pursuant
391 to this section that occurs within six months of such restoration, or of an employee who has

392 participated in proceedings or inquiries pursuant to this section within six months of the
393 termination of proceedings shall be presumed to be retaliation under this section.

394 Section 10. A city, town or authority may adopt this chapter upon a majority vote of the
395 local legislative body or the governing body. For the purposes of this section, a vote of the
396 legislative body shall take place in a city by a vote the city council subject to its charter, in a
397 town by a vote at a town meeting and for an authority by a vote of its governing body.

398 SECTION 2. Subsection (c) of section 46 of chapter 151A of the General Laws, as
399 amended by chapter 70 of the acts of 2016, is hereby further amended by striking out clause (3)
400 and inserting in place thereof the following clause:-

401 (3) to the heads of the departments of career services, transitional assistance, revenue,
402 veterans' services, family and medical leave, and the office of Medicaid and industrial accidents,
403 information necessary in the performance of their official duties;

404 SECTION 3. Section 150 of chapter 149 of the General Laws, as appearing in the 2014
405 Official Edition, is hereby amended by inserting after the word "151", in line 23, the following
406 words:- , or of chapter 175M.