

HOUSE No. 3155

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph D. McKenna

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 to clarify the earned sick time statute.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|------------------------------|-----------------------|
| <i>Joseph D. McKenna</i> | <i>18th Worcester</i> |
| <i>Steven S. Howitt</i> | <i>4th Bristol</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> |
| <i>Kevin J. Kuros</i> | <i>8th Worcester</i> |

HOUSE No. 3155

By Mr. McKenna of Webster, a petition (accompanied by bill, House, No. 3155) of Joseph D. McKenna and others for legislation to further regulate earned sick time. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act to clarify the earned sick time statute.

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: in section 148C of chapter 149 in the General Laws, the definition of
2 “child” shall be amended by adding after the word “parent” in line 4 the following: “, who has
3 not yet reached the age of 19.”

4 SECTION 2: section 148C of chapter 149 in the General Laws shall be amended by
5 adding the following definitions in section (a):

6 “Straight time”, the hourly rate an hourly compensated employee is paid as part of their
7 base work week, not too include weekend or overtime premium pay.

8 SECTION 3: section 148C of chapter 149 in the General Laws shall be amended by
9 striking out the following definition:- ““Earned paid sick time”, in its entirety and inserting in
10 place thereof the following new definition:-

11 “Earned paid sick time’, the time off from work that is provided by an employer to an
12 employee as computed under subsection (d) that can be used for the purposes described in
13 subsection (c) and is compensated at the straight time) hourly rate of pay for said employee
14 regardless of whether such sick time is taken during holiday or weekend premium-pay periods;
15 provided, however, that this hourly rate shall not be less than the effective minimum wage under
16 section 1 of chapter 151. For those employees who are exempt from overtime requirements
17 under 29 U.S.C. section 213(a)(1) of the Fair Labor Standards Act, the ‘straight time’ rate of
18 compensation shall be determined by dividing by the number of hours in the employee’s normal
19 work week the employee’s regular weekly salary amount.

20 SECTION 3: section 148C of chapter 149 in the General Laws shall be amended by
21 inserting in subsection (d)(4) after the word “counted” the following: “, provided, however, that
22 employees whose payment is based solely on commission, or seasonal employees as defined in
23 M.G.L. Chapter 151A section 1(z) shall not be counted towards an employer’s count for total
24 number of employees.”

25 SECTION 4: section 148C of chapter 149 in the General Laws shall be amended by
26 striking the words “calendar day” in subsection (d)(1), and by inserting in place thereof the
27 following: work day, defined as 8 consecutive hours spent working unless otherwise defined by
28 the employer,”

29 Subsection (d)(1) shall be further amended by adding the word “work” between the
30 words “90” and “days” in the last line of said section.

31 SECTION 5: Subsection (d)(7) of Section 148C of M.G.L. Chapter 149 shall be amended
32 by striking the words “or the smallest increment that the employer’s payroll system uses to

33 account for absences or use other time.” and by inserting in place there of the following: “, or in
34 increments of 4 or 8 hours, or 50% or 100% of an employer’s normal shift if above 8 hours

35 Subsection (d)(7) of Section 148C of M.G.L. Chapter 149 shall be further amended by
36 adding after the word “separation”, the following “, whether such separation is a termination,
37 resignation, retirement, or separation from employment for any other reason.”

38 SECTION 6: section 148C of chapter 149 in the General Laws shall be amended by
39 inserting after section(d) (7) the following two sections:-

40 (d)(8) For purposes of determining the total employee count of a company, the chief
41 executive officer, the chief operating officer, the chief financial officer or treasurer, any family
42 member, any independent contractors, any freelancers, any interns, any temporary worker
43 working less than 20 weeks in a given year, any employees not residing in the Commonwealth,
44 any employees working less than 20 weeks a year in the Commonwealth, any employees
45 engaged in workshare, and any employee with a 5% ownership are exempt from the count of full
46 time employees.

47 (d)(9) Any overtime worked shall not be counted in an employee’s accrual of sick time,
48 and any work missed during an overtime period shall not qualify for earned sick time
49 compensation.

50 SECTION 7: Section (f) of section 148C of chapter 149 in the General Laws shall be
51 amended by adding after the word “certification” the third time it appears in the section the
52 following:

53 “, provided, however, that an employer shall receive such certification within a 7 day
54 period. Employers may maintain records of employees that do not provide such certification and
55 shall have an affirmative defense for terminating an employee who does not provide
56 certification for time missed . An employer is held harmless from treble damages,
57 unemployment insurance claims and punitive damages for terminating an employee that has a
58 documented pattern, over any four month period, of non-compliance with certification
59 requirements

60 Section (f) of section 148C of chapter 149 in the General Laws shall be further amended
61 by adding the following paragraph:-

62 SECTION 8: Subsection (g) of section 148C of chapter 149 in the General Laws shall be
63 amended by striking the section in its entirety and inserting in place thereof the following new
64 section:

65 (g) When the use of earned sick time is foreseeable, defined as an event that is known 3
66 work days in advance of taking time off, the employee shall provide notice of this need to the
67 employer in advance of the use any earned sick time in a manner designated by the employer
68 which shall not prohibit the establishment of a uniform e-mail or call-in procedure. Any
69 unforeseen circumstances should be reported during the same day or within 24 hours. . .
70 Employers shall have the ability to implement disciplinary or termination policies for intentional
71 and habitual violations of said call in or reporting procedure.

72 SECTION 9: Subsection (h) of section 148C of chapter 149 in the General Laws shall be
73 amended by adding at the end thereof the following new paragraph:-

74 “An employer may retain any attendance incentive policy, including those in collective
75 bargaining agreements. Should an employer determine that a regular attendance problem is
76 occurring, the employer may require the employee to provide an explanation for the absences or
77 require a notice by a medical practitioner relative to the employee’s absences. An employer may
78 document such habitual attendance problems, and take related disciplinary actions that may lead
79 to termination”

80 SECTION 10: section 148C of chapter 149 in the General Laws shall be amended by
81 adding avter subsection (o) the following four sections:-

82 (p) Notwithstanding any special or general law to the contrary, earned sick time shall not
83 be subject to treble damages. An employer shall not be assessed any penalty or liquidated
84 damages under this provision due to an isolated or an unintentional payroll error, or due to a
85 written notice error that is a clerical or inadvertent mistake regarding the accrual, or available use
86 of paid sick leave.

87 (q) The Office of the Attorney General, and the Executive Office of Labor and
88 Workforce Development shall engage in outreach efforts coordinated by the Office of the
89 Attorney General to communicate to businesses and individuals via website, RSS feeds, blogs,
90 newsletters, all by utilizing print and media network news outlets and other forms of
91 communication regarding the earned sick time law and the rules and responsibilities for
92 employers and employees. .

93 (r) There shall be a bi-annual report by the Office of the Attorney General in coordination
94 with the State Auditor regarding the costs and resources dedicated to educating the public in
95 addition to the costs and resources dedicated to the enforcement of this earned sick time law.

96 The bi-annual report shall also take into effect the amount of cost and resources expended by any
97 state offices or constitutional offices in compliance with this law. The report shall itemize the
98 number of cases that included earned sick time disputes, the nature of such disputes, and the
99 costs associated with any settlement and in separate calculation a cost associated with final court
100 verdicts.

101 (s) Notwithstanding any special law to the contrary, the Secretary of Labor and
102 Workforce Development shall send out an annual survey asking Massachusetts employers if the
103 Massachusetts paid sick leave law has changed their staffing levels, if they have chosen to move
104 staff and or their operations out of the state. The secretary shall post the report on the agency
105 website and report the finding to the House and Senate Committees on Ways and Means.