

HOUSE No. 3702

Sections 13 to 17, inclusive, and also sections 22 and 29 contained in the engrossed Bill financing a program for improvements to the Unemployment Insurance Trust Fund and providing relief to employers and workers in the Commonwealth (see House, No. 90, amended), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see House, No. 3703). April 1, 2021.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act providing for Massachusetts COVID-19 emergency paid sick leave.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide for COVID-19 emergency paid sick leave, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. For the purposes of sections 1 to 5, inclusive, the following terms shall,
2 unless the context clearly requires otherwise, have the following meanings:

3 “Child”, a biological, adopted or foster child, a stepchild or legal ward, a child to
4 whom the employee stands in loco parentis or a person to whom the employee stood in loco
5 parentis when the person was a minor child.

6 “COVID-19 emergency paid sick leave”, paid time-off that is compensated by
7 an employer, and with the same employment benefits to which the employee is entitled from
8 such employer as a term of the employee’s employment, for the purposes described in subsection

9 (b) of section 3; provided, however, that in no case shall the employee’s hourly compensation be
10 less than that provided under section 1 of chapter 151 of the General Laws.

11 “Domestic partner”, a person not less than 18 years of age who: (i) is dependent
12 upon the employee for support as shown by either unilateral dependence or mutual
13 interdependence that is evidenced by a nexus of factors including, but not limited to: (A)
14 common ownership of real or personal property; (B) common householding; (C) children in
15 common; (D) signs of intent to marry; (E) shared budgeting; and (F) the length of the personal
16 relationship with the employee; or (ii) has registered as the domestic partner of the employee
17 with any registry of domestic partnerships maintained by the employer of either party, or in any
18 state, county, city, town or village in the United States.

19 “Employee”, any person who performs services for an employer for wage,
20 remuneration or other compensation, including employees employed by the commonwealth, its
21 departments, sub-divisions, quasi-public agencies or a municipality, district, political subdivision
22 or its instrumentalities; provided, however, that notwithstanding any general or special law to the
23 contrary, “employee” shall include a family child care provider, as defined in subsection (a) of
24 section 17 of chapter 15D of the General Laws, and a personal care attendant, as defined in
25 section 70 of chapter 118E of the General Laws.

26 “Employer”, any individual, corporation, partnership or other private or public
27 entity, including any agent thereof, who engages the services of an employee for wages,
28 remuneration or other compensation, including, but not limited to, (i) the commonwealth, its
29 departments, sub-divisions or quasi-public agencies; or (ii) a municipality, district, political
30 subdivision or its instrumentalities; provided, however, that the United States government shall

31 not be considered an “employer”; provided further, that an individual employer shall be
32 determined by the federal employer identification number; provided further, that the department
33 of early education and care shall be deemed the employer of family child care providers, as
34 defined in subsection (a) of section 17 of chapter 15D of the General Laws; and provided further,
35 that the PCA quality home care workforce council established in section 71 of chapter 118E of
36 the General Laws shall be the employer of personal care attendants, as defined in section 70 of
37 said chapter 118E.

38 “Employment benefits”, all benefits provided or made available to employees by
39 an employer, including, but not limited to, group life insurance, health insurance, disability
40 insurance, sick leave, annual or vacation leave, educational benefits and pensions.

41 “Family member”, the spouse, domestic partner, child, parent or parent of a
42 spouse or domestic partner of the employee, a person who stood in loco parentis to the employee
43 when such employee was a minor child or a grandchild, grandparent or sibling of the employee
44 provided, however, that for the purposes of this definition, “person who stood in loco parentis”
45 shall not include a person with whom the employee has no personal relationship.

46 “Health care provider”, a health care professional licensed under chapter 112 of
47 the General Laws or any other person licensed under federal or any state law to provide medical
48 care or emergency medical services and authorized to provide such services in the
49 commonwealth.

50 “Parent”, a biological, adoptive, foster or step-parent of an employee or of an
51 employee’s spouse or domestic partner, a legal guardian of an employee or other person who

52 stood in loco parentis when the employee or employee's spouse or domestic partner was a minor
53 child.

54 "Spouse", a person who is married to the employee.

55 "Telework", a work flexibility arrangement under which an employee performs
56 the duties and responsibilities of such employee's position, and other authorized activities, from
57 an approved worksite other than the location from which the employee would otherwise work.

58 SECTION 2. There shall be established a fund known as the COVID-19 Emergency
59 Paid Sick Leave Fund to be administered by the executive office for administration and finance,
60 or any department or agency thereof designated by the executive office. The purpose of the fund
61 shall be to reimburse eligible employers for providing employees with COVID-19 emergency
62 paid sick leave. There shall be credited to the fund all amounts that are transferred or authorized
63 to be transferred thereto or directed to be deposited therein, and all amounts received as gifts,
64 grants or contributions for the purposes of the fund. Amounts credited to the fund shall not be
65 subject to appropriation. Any money remaining in the fund as of September 30, 2021 and not
66 subject to a filed employer reimbursement application under section 3, shall revert to the General
67 Fund; provided, however, that all money in the fund shall revert to the General Fund not later
68 than November 1, 2021.

69 SECTION 3. (a)(1) Notwithstanding any general or special law to the contrary, as a result
70 of the outbreak of the 2019 novel coronavirus, also known as COVID-19, as of the effective date
71 of this section, an employer shall provide, subject to section 4, COVID-19 emergency paid sick
72 leave to its employees pursuant to paragraph (3) who are absent from and are unable to work
73 pursuant to subsection (b).

74 (2) The executive office for administration and finance, or any department or
75 agency thereof designated by the executive office, shall reimburse an employer from the
76 COVID-19 Emergency Paid Sick Leave Fund, established in section 2, for the cost of providing
77 COVID-19 emergency paid sick leave to an employee; provided, however, that any qualified
78 sick leave wages paid by an employer that are eligible for the tax credit for paid sick and paid
79 family and medical leave under the federal Families First Coronavirus Response Act, P.L. 116-
80 127 or subsequent extensions, including the federal Consolidated Appropriations Act, 2021 and
81 the federal American Rescue Plan Act of 2021, shall not be eligible for reimbursement from said
82 COVID-19 Emergency Paid Sick Leave Fund.

83 (3) An employer shall provide the following amount of leave for an employee
84 who takes COVID-19 emergency paid sick leave:

85 (i) an employee who works 40 hours or more per week shall be provided 40
86 hours of COVID-19 emergency paid sick leave;

87 (ii) an employee who works less than 40 hours a week, but maintains a regular
88 schedule with consistent hours per week, shall be provided COVID-19 emergency paid sick
89 leave that is equal to the number of hours that such employee works per week, on average over a
90 14-day period of such regular schedule; or

91 (iii) for an employee whose schedule and weekly hours worked vary from week
92 to week, such employee shall be provided COVID-19 emergency paid sick leave that: (A) is
93 equal to the average number of hours that the employee was scheduled to work per week over
94 the 6-month period immediately preceding the date on which such employee takes the COVID-
95 19 emergency paid sick leave, including hours for which such employee took leave of any type;

96 or (B) if the employee did not work over such 6-month period, is equal to the reasonable
97 expectation of the employee at the time of hiring of the average number of hours per week that
98 the employee would normally be scheduled to work.

99 (4) An employee eligible for COVID-19 emergency paid sick leave shall be
100 eligible for leave that is compensated by the employer, while maintaining the same employment
101 benefits to which the employee is entitled as a term of employment by an employer to an
102 employee; provided, however, that no employee shall receive, and no employer shall be eligible
103 for reimbursement for such employee, COVID-19 emergency paid sick leave in excess of \$850
104 per week.

105 (5) An eligible employer who pays an employee for COVID-19 emergency paid
106 sick leave shall be reimbursed by the executive office for administration and finance, or any
107 department or agency thereof, in consultation with the department of revenue, from the COVID-
108 19 Emergency Paid Sick Leave Fund by submitting, in a form prescribed by the executive office
109 for administration and finance, or any department or agency thereof designated by the executive
110 office, an application as provided in paragraph (1) of subsection (e). The executive office, or any
111 department or agency thereof, shall provide such reimbursements directly to eligible employers
112 within 30 business days of the employer submitting the application.

113 (6) An employee's COVID-19 emergency paid sick leave shall terminate at the
114 beginning of the employee's next scheduled work shift immediately following the termination of
115 the need for COVID-19 emergency paid sick leave under subsection (b).

116 (b) An employer shall provide COVID-19 emergency paid sick leave to an
117 employee for the following reasons related to the outbreak of the 2019 novel coronavirus, also
118 known as COVID-19:

119 (1) An employee's need to: (i) self-isolate and care for oneself because of the
120 employee's COVID-19 diagnosis; (ii) seek or obtain medical diagnosis, care or treatment for
121 COVID-19 symptoms; or (iii) obtain immunization related to COVID-19 or the employee is
122 recovering from an injury, disability, illness or condition related to such immunization;

123 (2) An employee's need to care for a family member who: (i) is self-isolating
124 due to a COVID-19 diagnosis; or (ii) needs medical diagnosis, care or treatment for COVID-19
125 symptoms;

126 (3) A quarantine order, or other determination by a local, state or federal public
127 official, a health authority having jurisdiction, the employee's employer or a health care provider
128 that the employee's presence on the job or in the community would jeopardize the health of
129 others because of the employee's exposure to COVID-19 or exhibiting of symptoms, regardless
130 of whether the employee has been diagnosed with COVID-19;

131 (4) An employee's need to care for a family member due to a quarantine order,
132 or other determination by a local, state or federal public official, a health authority having
133 jurisdiction, the family member's employer or a health care provider that the family member's
134 presence on the job or in the community would jeopardize the health of others because of the
135 family member's exposure to COVID-19, regardless of whether the family member has been
136 diagnosed with COVID-19; or

137 (5) An employee's inability to telework because the employee has been
138 diagnosed with COVID-19 and the symptoms inhibit the ability of the employee to telework.

139 (c)(1) COVID-19 emergency paid sick leave provided by an employer may be
140 reduced by the amount of wages or wage replacement that an employee receives for that period
141 under any government program or law. COVID-19 emergency paid sick leave shall not be
142 reduced by and shall be in addition to all job protected time off, paid and unpaid, that the
143 employer is required provide to employees: (i) under section 148C of chapter 149 of the General
144 Laws; (ii) under any existing policy or program of the employer; (iii) pursuant to a collectively
145 bargained agreement between the employer and a collective bargaining representative of an
146 employee; or (iv) under federal law, to the extent permitted by that federal law; provided,
147 however, said COVID-19 emergency paid sick leave may be reduced if the aggregate amount an
148 employee would receive would exceed the employee's average weekly wage. An employer shall
149 not require an employee to use other paid leave provided by the employer to the employee before
150 the employee uses the COVID-19 emergency paid sick leave, unless federal law requires
151 otherwise.

152 (2) An employee may use COVID-19 emergency paid sick leave on an
153 intermittent basis and in hourly increments.

154 (d) The employee shall provide notice to the employer of the need for COVID-
155 19 emergency paid sick leave as soon as practicable or foreseeable. After the first workday an
156 employee receives COVID-19 emergency paid sick leave, an employer may require the
157 employee to follow reasonable notice procedures in order to continue receiving COVID-19
158 emergency paid sick leave. An employer shall not require, as a condition of an employee's

159 taking COVID-19 emergency paid sick leave, that the employee search for or find a replacement
160 worker to cover the hours during which the employee is using COVID-19 emergency paid sick
161 leave.

162 (e)(1) Applications for reimbursements from an eligible employer from the
163 COVID-19 Emergency Paid Sick Leave Fund shall be in a form prescribed by the executive
164 office for administration and finance, or any department or agency thereof designated by the
165 executive office, and shall include, but not be limited to, a copy of a written request for COVID-
166 19 emergency paid sick leave from the employee to the employer, in which the employee
167 provides: (i) the employee's name; (ii) the date or dates for which leave is requested and taken;
168 (iii) a statement of the COVID-19 related reason the employee is requesting leave and written
169 support for such reason; and (iv) a statement that the employee is unable to work, including by
170 means of telework, for such reason.

171 In the case of a leave request based on a quarantine order or self-quarantine
172 advice, the statement from the employee shall also include: (i) the name of the governmental
173 entity ordering quarantine or the name of the health care provider advising self-quarantine; and
174 (ii) if the person subject to quarantine or advised to self-quarantine is not the employee, that
175 person's name and relation to the employee.

176 (2) Health information related to COVID-19 emergency paid sick leave
177 possessed by an employer regarding an employee or employee's family member shall: (i) be
178 maintained on a separate form and in a separate file from other personnel information; (ii) be
179 treated as confidential medical records; (iii) not be disclosed except to the affected employee or

180 with the express permission of the affected employee; and (iv) be kept confidential in accordance
181 with any other state or federal law.

182 (f) It shall be unlawful for any employer to interfere with, restrain or deny an
183 employee's ability to take COVID-19 emergency paid sick leave, including, but not limited to,
184 using an employee's taking of COVID-19 emergency paid sick leave as a negative factor in any
185 employment action, such as an evaluation, promotion, disciplinary action or termination, or
186 otherwise subjecting an employee to discipline or taking any other adverse action against an
187 employee for the use of COVID-19 emergency paid sick leave.

188 (g) It shall be unlawful for any employer to take any adverse action against an
189 employee because the employee opposes practices believed to be in violation of this section, or
190 because the employee supports the exercise of rights of another employee under this section,
191 including, but not limited to: (i) filing an action, or instituting or causing to be instituted any
192 proceeding under or related to this section; (ii) providing or intending to provide any information
193 in connection with any inquiry or proceeding related to this section; or (iii) testifying or
194 intending to testify in any inquiry or proceeding related to this section.

195 (h) Nothing in this section shall be construed to: (i) discourage employers,
196 including the commonwealth, its departments, sub-divisions or quasi-public agencies or a
197 municipality, district, political subdivision or its instrumentalities from adopting or retaining job-
198 protected paid time off policies that are more generous than policies set out in this section; (ii)
199 diminish or impair the obligation of an employer to comply with any contract, collective
200 bargaining agreement or any employment benefit program or plan in effect on the effective date
201 of this section that provides to employees greater job-protected paid time off rights than the

202 rights established under this section; or (iii) pre-empt the power of a municipality, district,
203 political subdivision or its instrumentalities from adopting or retaining job-protected paid time
204 off policies more generous than policies that comply with the requirements of this section.

205 Any employer with a separate COVID-19 sick leave policy who makes available
206 an amount of COVID-19 sick leave sufficient to meet the requirements of sections 2 to 4,
207 inclusive, that may be used for the same purposes and under the same conditions as COVID-19
208 emergency paid sick leave under said sections 2 to 4, inclusive, shall not be required to provide
209 additional COVID-19 emergency paid sick leave under said sections 2 to 4, inclusive.

210 (i) Not later than 7 days after the effective date of this section, the executive
211 office of labor and workforce development, in consultation with the executive office for
212 administration and finance, shall prepare and provide to employers notice of this section in
213 English and in other languages required under clause (iii) of subsection (d) of section 62A of
214 chapter 151A of the General Laws. Employers shall post this notice in a conspicuous location
215 accessible to employees in every establishment where employees with rights under this section
216 work and shall provide a copy to their employees; provided, however, that in cases where the
217 employer does not maintain a physical workplace, or an employee teleworks or performs work
218 through a web-based platform, notification shall be sent via electronic communication or a
219 conspicuous posting in the web-based platform.

220 (j) The executive office of labor and workforce development, in consultation
221 with the executive office for administration and finance and the executive office of health and
222 human services, shall develop and implement a multilingual outreach program to inform

223 employers, employees and health care providers about the availability of COVID-19 emergency
224 paid sick leave.

225 (k) The executive office for administration and finance, or any department or
226 agency thereof designated by the executive office, shall issue a report on the COVID-19
227 emergency paid sick leave program. The report shall include, but not be limited to: (i) aggregate
228 information on the number of employees who were provided COVID-19 emergency paid sick
229 leave; (ii) the reason employees received COVID-19 emergency paid sick leave; (iii) the average
230 amount paid to employees who were provided COVID-19 emergency paid sick leave; (iv) the
231 average length of COVID-19 emergency paid sick leave; (v) the employers who received
232 reimbursements from the COVID-19 Emergency Paid Sick Leave Fund established in section 2;
233 (vi) the average amount of each reimbursement of the employer; and (vii) the total amount of
234 reimbursements received by each employer. The report shall not include any identifying
235 information of an individual employee. The report shall be filed with the clerks of the house of
236 representatives and the senate and the joint committee on labor and workforce development not
237 later than January 1, 2022.

238 SECTION 4. COVID-19 emergency paid sick leave shall be available to an employee
239 under section 3 until: (i) money in the COVID-19 Emergency Paid Sick Leave Fund established
240 in section 2 is no longer available; (ii) notification from the executive office for administration
241 and finance, or any department or agency thereof designated by the executive office, to
242 employers that it reasonably anticipates funds will no longer be available for reimbursement; or
243 (iii) September 30, 2021, whichever first occurs.

244 SECTION 5. The executive office for administration and finance, or any department or
245 agency thereof designated by the executive office, may promulgate regulations necessary for the
246 implementation of sections 1 to 4, inclusive.

247 SECTION 6. Not later than 10 days after the effective date of this act, the secretary of
248 administration and finance shall direct the comptroller to transfer \$75,000,000 from federal funds
249 received by the commonwealth in response to the public health emergency caused by COVID-
250 19, if any, available and consistent with federal funding requirements to the COVID-19
251 Emergency Paid Sick Leave Fund established in section 2; provided, however, that if the
252 secretary of administration and finance certifies to the comptroller that no such funds are
253 available, the comptroller shall transfer \$75,000,000 from the General Fund to the COVID-19
254 Emergency Paid Sick Leave Fund.

255 SECTION 7. Sections 1 to 5, inclusive, shall take effect 10 days after the effective date
256 of this act.