

**SENATE . . . . . No. 1222**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Jason M. Lewis***

*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 relative to emergency paid sick time.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/4/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/4/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/4/2021</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/5/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/5/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/5/2021</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/5/2021</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>2/5/2021</i>
<i>Christopher Hendricks</i>	<i>11th Bristol</i>	<i>2/9/2021</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>2/11/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/16/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/17/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/23/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/23/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/23/2021</i>

<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/25/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/25/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/25/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/1/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>3/1/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>3/1/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/1/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/4/2021</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/8/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/8/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>3/8/2021</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/9/2021</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>3/12/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>3/18/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>4/2/2021</i>
<i>John Cronin</i>	<i>Worcester and Middlesex</i>	<i>4/13/2021</i>

**SENATE . . . . . No. 1222**

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By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1222) of Jason M. Lewis, Jack Patrick Lewis, James B. Eldridge, Adam G. Hinds and other members of the General Court for legislation relative to emergency paid sick time. Labor and Workforce Development.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 2701 OF 2019-2020.]

**The Commonwealth of Massachusetts**

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

An Act relative to emergency paid sick time.

*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. Chapter 149 of the General Laws as appearing in the 2018 Official Edition  
2 is hereby amended by inserting after Section 148D the following two sections:-

3           Section 148E (a) As used in this section, the following words, unless the context clearly  
4 requires otherwise, shall have the following meanings:-

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

8           “Domestic partner”, a person not less than 18 years of age who: (i) is dependent upon the  
9 employee for support as shown by either unilateral dependence or mutual interdependence that is

10 evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or  
11 personal property; (B) common householding; (C) children in common; (D) signs of intent to  
12 marry; (E) shared budgeting; and (F) the length of the personal relationship with the employee;  
13 or (ii) has registered as the domestic partner of the employee with any registry of domestic  
14 partnerships maintained by the employer of either party, or in any state, county, city, town or  
15 village in the United States.

16 “Emergency paid sick time”, means time that is compensated pursuant to subsection (d),  
17 and with the same benefits, including health care benefits, as the employee normally earns during  
18 hours worked and is provided by an employer to an employee for the purposes described in  
19 subsection (c), but in no case shall this hourly amount be less than that provided under section 1  
20 of chapter 151.

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

27 “Employer”, any individual, corporation, partnership or other private or public entity,  
28 including any agent thereof, who engages the services of an employee for wages, remuneration  
29 or other compensation, and including a municipality, district, political subdivision or its  
30 instrumentalities; except the United States government shall not be considered an employer;  
31 provided, however, that an individual employer shall be determined by the Federal Employer

32 Identification Number; provided further, that the department of early education and care shall be  
33 deemed the employer of family child care providers, as defined in subsection (a) of section 17 of  
34 chapter 15D; provided further, that the PCA quality home care workforce council established in  
35 section 71 of chapter 118E shall be the employer of personal care attendants, as defined in  
36 section 70 of said chapter 118E, and the department of medical assistance shall be deemed the  
37 employer of said personal care attendants for all other purposes under this section.

38 “Family member”, the spouse, domestic partner, child, parent or parent of a spouse or  
39 domestic partner of the employee; a grandchild, grandparent or sibling of the employee; an  
40 individual who resides regularly in the home of the employee, or a similar individual with whom  
41 the employee has a relationship that creates an expectation that the employee would care for the  
42 person if he or she were quarantined or self-quarantined; or any other individual related by blood  
43 or whose close association with the employee is the equivalent of a family relationship. For this  
44 purpose, “individual” does not include persons with whom the employee has no personal  
45 relationship.

46 “Health care provider”, the meaning given this term by the Family and Medical Leave  
47 Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as it may be amended and regulations  
48 promulgated under the act.

49 “Parent”, a biological, adoptive, foster or step-parent of an employee or of an employee’s  
50 spouse or domestic partner; a legal guardian of an employee; or other person who stood in loco  
51 parentis when the employee or employee’s spouse or domestic partner was a minor child.

52 “Spouse”, the meaning given this term by the marriage laws of the commonwealth.

53 “Telework”, the practice of working from home, making use of the Internet, email, or the  
54 telephone.

55 (b) (1) All employees who work in the commonwealth shall have the following right to  
56 emergency paid sick time during a declared state of emergency or disaster, provided such  
57 employees must be absent from work for the reasons set forth in subsection (c), and provided  
58 further that such employees are not entitled to leave under the Families First Coronavirus  
59 Response Act, H.R. 6201, P.L. No. 116-127, at the time that they use such emergency paid sick  
60 time under this section. Employees who work 40 hours or more per week shall be provided at  
61 least 80 hours of emergency paid sick time under this section. Employees who work fewer than  
62 40 hours in a week shall be provided emergency paid sick time under this section in an amount  
63 equal to at least the amount of time the employee is otherwise scheduled to work or works on  
64 average in a 14-day period.

65 (2) Unused emergency paid sick time shall carry over to the next calendar year and shall  
66 remain available to the employee until the state of emergency or disaster has been terminated by  
67 a declaration of the governor of the commonwealth. If a public health emergency was declared  
68 before and remains in effect on the effective date of this section, emergency paid sick time under  
69 this section shall be provided to employees pursuant to this subsection (b) on the effective date of  
70 this section.

71 (c) Emergency paid sick time shall be provided to an employee by an employer for the  
72 following absences, including the inability to telework, related to a public health emergency:

73 (1) An employee’s need to: (i) self-isolate and care for oneself because the individual is  
74 diagnosed with a communicable illness related to a public health emergency; (ii) self-isolate and

75 care for oneself because the individual is experiencing symptoms of a communicable illness  
76 related to a public health emergency; (iii) seek or obtain medical diagnosis, care, or treatment if  
77 experiencing symptoms of a communicable illness related to a public health emergency; or (iv)  
78 seek preventive care concerning a communicable illness related to a public health emergency;

79 (2) Care of a family member who: (i) is self-isolating due to being diagnosed with a  
80 communicable illness related to a public health emergency; (ii) is self-isolating due to  
81 experiencing symptoms of a communicable illness related to a public health emergency; (iii)  
82 needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness  
83 related to a public health emergency; or (iv) is seeking preventive care concerning a  
84 communicable illness related to a public health emergency;

85 (3) Determination by a local, state, or federal public official, a health authority having  
86 jurisdiction, the employee's employer, or a health care provider that the employee's presence on  
87 the job or in the community would jeopardize the health of others because of the employee's  
88 exposure to a contagious illness or exhibiting of symptoms, regardless of whether the employee  
89 has been diagnosed with a contagious illness;

90 (4) Care of a family member due to a determination by a local, state, or federal public  
91 official, a health authority having jurisdiction, the family member's employer, or a health care  
92 provider that the family member's presence on the job or in the community would jeopardize the  
93 health of others because of the family member's exposure to a contagious illness or exhibiting of  
94 symptoms, regardless of whether the family member has been diagnosed with a contagious  
95 illness; or

96 (5) An employee's inability to work or telework while subject to either: an individual or  
97 general local, state, or federal quarantine or isolation order, including a shelter-in-place order,  
98 related to a public health emergency; or closure of the employee's place of business by order of a  
99 local, state, or federal public official or health authority or at the discretion of the employer due  
100 to a public health emergency.

101 (d) All employees employed by an employer in the commonwealth who must be absent  
102 from work for the reasons set forth in subsection (c) of this section, and are unable to telework,  
103 shall be eligible for emergency paid sick time regardless of the duration of such employment, or  
104 any temporary or probationary status, and shall be paid at the same hourly rate as the employee  
105 earns from the employee's employment at the time the employee uses the emergency paid sick  
106 time; provided, however, that this hourly rate shall not be less than the effective minimum wage  
107 under section 1 of chapter 151, and shall not exceed \$850 per week; provided further that  
108 annually, not later than October 1 of each year, the commonwealth shall adjust the maximum  
109 weekly benefit amount under this section to be 64 per cent of the state average weekly wage and  
110 the adjusted maximum weekly benefit amount shall take effect on January 1 of the year  
111 following such adjustment. Nothing in this section shall be construed as requiring financial or  
112 other reimbursement to an employee from an employer upon the employee's termination,  
113 resignation, retirement or other separation from employment for emergency paid sick time  
114 provided under this section that has not been used.

115 (e) Employers who pay their employees for emergency paid sick time as required by this  
116 section shall be reimbursed in full by the commonwealth by providing proof of such payments to  
117 the department of revenue, but no employer shall be entitled to reimbursement under this section  
118 for paid time off provided to employees for which the employer is entitled to receive a federal



119 payroll tax credit, including federal payroll tax credits for an employee's use of paid sick time  
120 under the federal Families First Coronavirus Response Act, P.L. No. 116-127, to the extent  
121 permitted and not in conflict with federal law. The department of revenue shall provide such  
122 reimbursements directly to employers within 5 business days by direct deposit to the employer's  
123 bank account or by check to the employer.

124 (f) The commonwealth shall compensate employers as described in subsection (e) of this  
125 section by drawing upon funds in the commonwealth stabilization fund established under section  
126 2H of chapter 29 appropriated for such purpose by the general court.

127 (g) (1) Except as provided in subsection (b), all emergency paid sick time that the  
128 employer must provide under this section shall be in addition to all job protected time off, paid  
129 and unpaid, the employer must provide to employees under section 148C of this chapter; or  
130 under chapter 175M; or under any existing policy or program of the employer; or pursuant to a  
131 collectively bargained agreement between the employer and a collective bargaining  
132 representative of an employee; or under any federal law, to the extent permitted by that federal  
133 law. All emergency paid sick time that the employer must provide under this section shall be in  
134 addition to, and shall not run concurrent with, benefits provided pursuant to chapter 152.

135 (2) An employee may use emergency paid sick time on an intermittent basis and in the  
136 smaller of hourly increments or the smallest increment that the employer's payroll system uses to  
137 account for absences or use of other time.

138 (3) With respect to an employer that provides paid leave on the day before the effective  
139 date of this section, the emergency paid sick time under this section shall be made available to  
140 employees of the employer in addition to such paid leave; and the employer may not change such

141 paid leave on or after such effective date to avoid being subject to this section. An employer may  
142 not require an employee to use other paid leave provided by the employer to the employee before  
143 the employee uses the emergency paid sick time under this section, unless federal law requires  
144 otherwise.

145 (h) The employee shall provide notice to the employer of the need for emergency paid  
146 sick time as practicable only when the need is foreseeable and the employer's place of business  
147 has not been closed. An employer may not require, as a condition of an employee's taking  
148 emergency paid sick time, that the employee search for or find a replacement worker to cover the  
149 hours during which the employee is using emergency paid sick time.

150 (i) Documentation shall not be required for emergency paid sick time under this section.

151 (j) Any health information possessed by an employer regarding an employee or  
152 employee's family member must: (1) be maintained on a separate form and in a separate file  
153 from other personnel information; (2) be treated as confidential medical records; and (3) not be  
154 disclosed except to the affected employee or with the express permission of the affected  
155 employee.

156 (k) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise  
157 of, or the attempt to exercise, any right provided under or in connection with this section,  
158 including, but not limited to, by using the taking of emergency paid sick time under this section  
159 as a negative factor in any employment action such as evaluation, promotion, disciplinary action  
160 or termination, or otherwise subjecting an employee to discipline for the use of emergency paid  
161 sick time under this section.

162 (l) It shall be unlawful for any employer to take any adverse action against an employee  
163 because the employee opposes practices which the employee believes to be in violation of this  
164 section, or because the employee supports the exercise of rights of another employee under this  
165 section. Exercising rights under this section shall include but not be limited to filing an action,  
166 or instituting or causing to be instituted any proceeding, under or related to this section;  
167 providing or intending to provide any information in connection with any inquiry or proceeding  
168 relating to any right provided under this section; or testifying or intending to testify in any  
169 inquiry or proceeding relating to any right provided under this section.

170 (m) Nothing in this section shall be construed to discourage employers, including a  
171 municipality, district, political subdivision or its instrumentalities, from adopting or retaining  
172 job-protected paid time off policies more generous than policies that comply with the  
173 requirements of this section and nothing in this section shall be construed to diminish or impair  
174 the obligation of an employer to comply with any contract, collective bargaining agreement, or  
175 any employment benefit program or plan in effect on the effective date of this section that  
176 provides to employees greater job-protected paid time off rights than the rights established under  
177 this section; and nothing in this section shall be construed to pre-empt the power of a  
178 municipality, district, political subdivision or its instrumentalities, from adopting or retaining or  
179 job-protected paid time off policies more generous than policies that comply with the  
180 requirements of this section.

181 (n) The attorney general shall enforce this section, and may obtain injunctive or  
182 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),  
183 (4), (6) and (7) of subsection (b) of section 27C and to section 150.

184 (o) The attorney general shall prescribe by emergency regulation the employer's  
185 obligation to make, keep, and preserve records pertaining to this section consistent with the  
186 requirements of section 15 of chapter 151.

187 (p) The attorney general shall adopt emergency rules and regulations necessary to carry  
188 out the purpose and provisions of this section.

189 (q) Notice of this section shall be prepared by the attorney general, in English and in  
190 other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A.  
191 Employers shall post this notice in a conspicuous location accessible to employees in every  
192 establishment where employees with rights under this section work, and shall provide a copy to  
193 their employees; provided, however, that in cases where the employer does not maintain a  
194 physical workplace, or an employee teleworks or performs work through a web-based platform,  
195 notification shall be sent via electronic communication or a conspicuous posting in the web-  
196 based platform. This notice shall include the following information:

197 (1) information describing the rights to emergency paid sick time under this section;

198 (2) information about the notices, documentation and any other requirements placed on  
199 employees in order to exercise their rights to emergency paid sick time;

200 (3) information that describes the protections that an employee has in exercising rights  
201 under this section;

202 (4) the name, address, phone number, and website of the attorney general's office where  
203 questions about the rights and responsibilities under this section can be answered; and

204 (5) information about filing an action under this section.

205           Section 148F. The executive office of health and human services, in consultation with the  
206 attorney general, shall develop and implement a multilingual outreach program to inform  
207 employees, parents, and persons who are under the care of a health care provider about the  
208 availability of emergency paid sick time under section 148E. This program shall include the  
209 distribution of notices and other written materials in English and in other languages to all child  
210 care and elder care providers, domestic violence shelters, schools, hospitals, community health  
211 centers, and other health care providers.

212           SECTION 2. Section 150 of chapter 149 as appearing in the 2018 Official Edition is  
213 hereby amended by inserting at line 22 after the word “148C”, the following word:- , 148E.

214           SECTION 3. This Act shall take effect immediately.