

**SENATE . . . . . No. 01863**

The Commonwealth of Massachusetts

PRESENTED BY:

***Patricia D. Jehlen***

*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 passage of the accompanying bill:

An Act clarifying parental rights to unpaid leave .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

# SENATE . . . . . No. 01863

By Ms. Jehlen, petition (accompanied by bill, Senate, No. 1863) of Story, Spilka, Smizik and other members of the General Court for legislation to clarify parental rights for unpaid leave [Joint Committee on Labor and Workforce Development].

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Eleven  
\_\_\_\_\_

An Act clarifying parental rights to unpaid leave .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 105D of chapter 149 of the General Laws is amended by striking  
2 out section 105D and inserting in place thereof the following section:-

3           Section 105D. (a) Any full-time or part-time employee who has completed the initial  
4 probationary period, not to exceed six months or, if there is no such probationary period, has  
5 been employed by the same employer for at least three consecutive months as an employee,  
6 shall be entitled to eight weeks of parental leave for the birth of the child of the employee, for the  
7 purpose of giving birth or adopting a child, or for the birth, placement or arrival of a child under  
8 the age of eighteen, or a child under the age of twenty-three if the child is mentally or physically  
9 disabled, into the employee’s household whom the employee intends to adopt or for whom the  
10 employee will serve as in loco parentis. The employee shall give at least two weeks’ notice to  
11 the employer of the anticipated date of departure and intention to return, as soon as both possible

12 and practicable taking into account the facts and circumstances of the individual's situation. The  
13 employee shall be restored to the employee's previous, or a similar, position with the same  
14 status, pay, length of service credit and seniority, wherever applicable, as of the date of the leave.  
15 At the discretion of the employer, said parental leave may be with or without pay. If the  
16 employer agrees to provide parenting leave for a period of time that exceeds eight weeks, the  
17 employer may not deny the employee the rights under this section unless the employer clearly  
18 informs the employee in writing prior to the commencement of the parenting leave and prior to  
19 any subsequent extension of said leave that taking more than eight weeks of leave will result in  
20 the denial of reinstatement or other rights and benefits.

21 (b) Such employer shall not be required to restore an employee on parental leave to the  
22 employee's previous or a similar position if other employees of equal length of service credit  
23 and status in the same or similar position have been laid off due to economic conditions or other  
24 changes in operating conditions affecting employment during the period of such parental leave;  
25 provided, however, that such employee on parental leave shall retain any preferential  
26 consideration for another position to which the employee may be entitled as of the date of her  
27 leave.

28 (c) Such parental leave shall not affect the employee's right to receive vacation time,  
29 sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs  
30 for which the employee was eligible at the date of the leave, and any other advantages or rights  
31 of her employment incident to the employee's position; provided, however, that such parental  
32 leave shall not be included, when applicable, in the computation of such benefits, rights, and  
33 advantages; and provided, further, that the employer need not provide for the cost of any  
34 benefits, plans, or programs during the period of parental leave unless such employer so provides

35 for other similarly situated employees on leave of absence. Nothing in this section shall be  
36 construed to affect any bargaining agreement or company policy which provides for greater or  
37 additional benefits than those required under this section.

38 (d) A notice of this provision shall be posted in every establishment in which  
39 employees are employed.

40 (e) For the purposes of this section, an “employer” shall be defined as in subsection 5  
41 of section one of chapter one hundred and fifty-one B.

42 (f) For the purposes of this section, a “part time employee” shall be defined as an  
43 employee who has been employed for at least 625 hours of service during the 6 month period  
44 immediately preceding the leave.

45 (g) This section shall be construed liberally for the accomplishment of its purpose  
46 which is to afford employees eight weeks parenting leave and the Massachusetts Commission  
47 Against Discrimination shall have the authority to promulgate regulations to effectuate these  
48 remedial purposes.

49 SECTION 2. Section 4 of chapter 151B is hereby amended by striking out paragraph  
50 11A and inserting in place thereof the following paragraph:

51 11A. For an employer, by itself or its agent, to refuse to restore certain employees to  
52 employment following their absence by reason of a parental leave taken in accordance with  
53 section one hundred and five D of chapter one hundred and forty-nine or to otherwise fail to  
54 comply with the provisions of said section, or for the commonwealth and any of its boards,  
55 departments and commissions to deny vacation credit to any employee for the fiscal year during

56 which said employee is absent due to a parental leave taken in accordance with said section or to  
57 impose any other penalty as a result of a parental leave of absence.