

SENATE No. 02247

Senate, May 3, 2012 -- Recommended new draft from the Senate committee on Ways and Means for the Senate Bill clarifying parental rights to unpaid leave (Senate, No. 1863)

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to parental 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. Chapter 149 of the General Laws is hereby amended by striking out
2 section 105D, as appearing in the 2010 Official Edition, and inserting in place thereof the
3 following section:-

4 Section 105D. (a) For the purposes of this section, an “employer” shall be defined as in
5 subsection 5 of section 1 of chapter 151B.

6 (b) An employee who has completed the initial probationary period set by the terms of
7 employment, not to exceed 6 months, or, if there is no such probationary period, has been
8 employed by the same employer for at least 3 consecutive months as a full-time employee, shall
9 be entitled to 8 weeks of parental leave for the birth of a child of the employee or for the
10 adoption of a child under the age of 18 or for the adoption of a child under the age of 23 if the
11 child is mentally or physically disabled; provided, however, that any 2 employees of the same

12 employer shall only be entitled to 8 weeks of parental leave in aggregate for the birth or adoption
13 of the same child. The employee shall give at least 2 weeks' notice to the employer of the
14 anticipated date of departure and intention to return. The employee shall be restored to the
15 employee's previous, or a similar, position with the same status, pay, length of service credit and
16 seniority, wherever applicable, as of the date of the leave. An employee on parental leave for the
17 adoption of a child shall be entitled to the same benefits offered by the employer to an employee
18 on parental leave for the birth of a child. The parental leave may be with or without pay at the
19 discretion of the employer. If the employer agrees to provide parental leave for longer than 8
20 weeks, the employer shall not deny the employee the rights under this section unless the
21 employer clearly informs the employee in writing prior to the commencement of the parental
22 leave and prior to any subsequent extension of that leave, that taking longer than 8 weeks of
23 leave will result in the denial of reinstatement or loss of other rights and benefits.

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

30 (d) The parental leave shall not affect the employee's right to receive vacation time, sick
31 leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for
32 which the employee was eligible at the date of the leave and any other advantages or rights of
33 employment incidental to the employment position; provided, however, that the parental leave
34 shall not be included, when applicable, in the computation of the benefits, rights and advantages;

35 and provided further, that the employer need not provide for the cost of any benefits, plans or
36 programs during the parental leave unless the employer so provides for all employees on leave of
37 absence. Nothing in this section shall be construed to affect any bargaining agreement or
38 company policy which provides for greater or additional benefits than those required under this
39 section.

40 (e) Every employer shall post and keep posted in a conspicuous place or places upon its
41 premises a notice describing this section and the employer's policies related to this section.

42 SECTION 2. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby
43 amended by striking out subsection 11A and inserting in place thereof the following subsection:-

44 11A. For an employer, or its agent, to refuse to restore certain employees to employment
45 following an absence by reason of a parental leave taken in accordance with section 105D of
46 chapter 149 or to otherwise fail to comply with that section or for the commonwealth and any of
47 its boards, departments and commissions to deny vacation credit to any employee for the fiscal
48 year during which the employee is absent due to a parental leave taken in accordance with that
49 section or to impose any other penalty as a result of a parental leave of absence.