

SENATE No. 2605

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

SENATE, March 4, 2024.

The committee on Labor and Workforce Development, to whom was referred the petitions (accompanied by bill, Senate, No. 1197) of Jason M. Lewis, Rebecca L. Rausch, Jack Patrick Lewis, Michael D. Brady and other members of the General Court for legislation to improve the Massachusetts paid family medical leave law; (accompanied by bill, Senate, No. 1198) of Jason M. Lewis, Lydia Edwards, James B. Eldridge and Paul R. Feeney for legislation to amend the Massachusetts Paid Family Medical Leave law definitions of a covered business entity and a covered contract worker; (accompanied by bill, House, No. 1858) of Josh S. Cutler and others relative to the publication of hearing decisions by the Department of Family and Medical Leave; (accompanied by bill, House, No. 1859) of Josh S. Cutler and others relative to data reporting by the Department of Family and Medical Leave; (accompanied by bill, House, No. 1860) of Josh S. Cutler and others for legislation to include bone marrow and organ donation in the paid family and medical leave program; (accompanied by bill, House, No. 1888) of Kenneth I. Gordon and others relative to the Massachusetts Paid Family Medical Leave Law; (accompanied by bill, House, No. 1889) of Kenneth I. Gordon and others relative to the definitions of covered business entity and covered contract worker under the Massachusetts Paid Family Medical Leave Law; and (accompanied by bill, House, No. 1942) of Jeffrey N. Roy relative to unemployment benefits for replacement workers, report the accompanying bill (Senate, No. 2605).

For the committee,
Patricia D. Jehlen

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**In the One Hundred and Ninety-Third General Court
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An Act improving the Massachusetts paid family medical leave law.

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. The General Laws, as appearing in the 2022 edition are hereby amended by
2 adding, after Chapter 23M, the following new section:

3 Chapter 23N.

4 Section 1. (a) There is hereby established an advisory council on paid family and medical
5 leave in this chapter and in chapter one hundred and seventy-five M, called the advisory council,
6 with members to be appointed by the Governor. The voting membership of said council shall be
7 composed of nine members in total with four members representing employers and providers of
8 paid family and medical leave in the commonwealth, at least one of whom shall represent
9 manufacturing classifications, at least one of whom shall represent the retail industry, at least one
10 of whom shall represent contracting classifications, and one of whom shall represent the staffing
11 industry and four members representing employees, at least one of whom shall represent a
12 private sector union, one of whom shall represent a public sector union, one of whom shall
13 represent a community based organization, and one of whom shall have knowledge and

14 experience with the temporary disability insurance system”. The Governor shall also appoint one
15 member representing the public provided the public member has appropriate knowledge and
16 familiarity with paid family and medical leave law and practices in the workplace.

17 The Governor shall also appoint one member representing the temporary disability
18 insurance industry, 2 attorneys specializing in employment and/or labor law, with one having a
19 practice representing employees and one having a practice representing employers, and one
20 member who is self-employed, none of whom shall be voting members.

21 The secretary of labor and workforce development and the secretary of housing and
22 economic development shall be ex officio, nonvoting members. Any person appointed to fill a
23 vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the
24 unexpired portion of such term.

25 (b) In appointing initial members to the Advisory Council, the Governor shall appoint
26 one employer and one employee member for a period of two years, one from each group for a
27 period of three years, one from each group for a period of four years and one for each group for a
28 period of five years. The two public members shall be appointed for a period of three years.
29 After the initial appointment, each appointee shall be eligible to be reappointed for one term of
30 five years. Members shall be eligible for no more than an initial appointment and one
31 reappointment. In appointing council members, the Governor must seek to appoint members
32 reflecting the widest representational diversity possible consistent with the demographics of the
33 commonwealth.

34 Seven members shall constitute a quorum for purposes of holding a meeting and voting.
35 No formal action or position shall be taken by the council without the affirmative vote of at least

36 seven members. All members of the advisory council shall serve without compensation and at
37 the pleasure of the Governor. The advisory council shall meet no less than quarterly during each
38 calendar year.

39 Meetings of the advisory council shall be called by the chair or upon written petition by a
40 majority of voting members. Such meetings shall be subject to section 11A1/2 of chapter 30A.
41 The secretary of labor and workforce development or designee, the chair of the commonwealth
42 employment relations board, and the director of the department shall serve as ex-officio non-
43 voting members of the advisory council.

44 Extraordinary meetings of said advisory council may also be called by the chairman and
45 vice chairman, jointly or upon petition by a majority of voting members. Such meetings shall be
46 subject to the provisions of section 11 1/2 of chapter 30A. Said advisory council shall take no
47 action pursuant to its authority under this chapter or said chapter one hundred and seventy-five
48 unless a quorum of its voting members is present.

49 Meetings may be held more frequently at the joint request of the chair and vice chair of
50 the council, provided they give all members at least 30 days notice of any extraordinary meeting
51 and its purpose or of their intention to regularly hold meetings more frequently.

52 (c) The governor shall, from time to time, designate one of the council members as chair
53 of the advisory council. The chair shall serve for no more than 2 years, and the position shall
54 rotate among employee, employer, and public members. No member of the advisory council
55 shall be subject to chapter 31. Such appointees shall not succeed themselves as chairman or vice-
56 chairman.

57 Members shall receive their traveling and other necessary expenses incurred in the
58 performance of their duties.

59 Section 2. The advisory council shall appoint such personnel as are reasonable and
60 necessary for the proper discharge of its duties, subject to the approval of the secretary of labor
61 and workforce development. The staff of the advisory council shall be funded from
62 administrative cost monies collected for the Family and Employment Security Trust Fund in
63 accordance with the provisions of section 7 of said chapter one hundred and seventy-five M. The
64 advisory council may expend for personnel and office expenses funds appropriated to the
65 department for that purpose.

66 The director shall provide for the advisory council suitable meeting space and such
67 clerical and other administrative assistance as the director and the council may deem necessary.

68 Section 3. The advisory council shall monitor, recommend, give testimony, and report on
69 all aspects of the Paid Family and Medical Leave system, except for the adjudication of
70 particular claims or complaints. Its powers include the issuance of reports, recommendations for
71 legislation, policies and programs, the conducting of research, the collecting of data from public
72 and private sources, and powers granted under the provisions of chapter one hundred and
73 seventy-five M to oversee the operation and implementation of the law.

74 The advisory council shall report at least annually in writing by no later than 90 days
75 following the last day of the fiscal year of the commonwealth to the secretary of labor and
76 workforce development on the state of the Paid Family and Medical Leave system, and shall
77 cause a copy of such report to be filed with the clerks of the house and senate of the general court
78 who shall send copies of such report to the joint committee on labor and workforce development

79 and the house and senate committees on ways and means. The report shall include an evaluation
80 of the operations of the department, and of the experience and financial condition of the Family
81 and Employment Security Trust Fund, along with recommendations for improving the paid
82 family and medical leave system.

83 Said advisory council shall also review the annual operating budget of the department, as
84 prepared by the director and as submitted to the secretary of labor and workforce development.
85 Upon the affirmative vote of at least seven voting members, the advisory council may submit its
86 own recommendation for the total operating budget to the secretary of labor and workforce
87 development.

88 The agency shall cooperate fully with all reasonable written requests for information and
89 documentation from the advisory council requested in pursuit of its established duties.

90 No later than five years after the establishment of the advisory council, it shall make an
91 investigation and study as to the costs and benefits associated with the regulations implementing
92 the insurance options pursuant to Section 11, to ensure completeness of coverage and
93 competitiveness in pricing.

94 The advisory council may expend, for the legal, actuarial, research, clerical, and other
95 expenses involved in the completion of such investigations and studies, such sums as may be
96 appropriated therefor subject to the administrative oversight of the Executive Office of Labor
97 and Workforce Development.

98 Said council shall file the results of its investigations and studies, and its
99 recommendations, if any, together with any drafts of legislation necessary to carry its

100 recommendations into effect with the governor and with the clerks of the house and senate of the
101 general court at the end of each fiscal year.

102 Section 4. Upon the creation of formal appeal and review process into an appeals board
103 for resolving claims by the Department of Family and Medical Leave, the advisory council shall
104 serve as the nominating panel for the appointment of any members to the appeals board. Before
105 any submission of nominations for appointment or reappointment to the board of review by the
106 Governor, the advisory council shall review applications for such nominations and consider the
107 following factors:

108 (1) skills in fact-finding;

109 (2) demonstrated basic understanding of family and medical leave law and/or temporary
110 disability law; and

111 (3) a bachelor's degree, advanced degree or demonstrated writing ability as evidenced by
112 at least 4 years in positions in which writing skills are a major job responsibility.

113 Each review of an applicant shall be made based on the application, experience,
114 education and training of the applicant, writing samples, in-person interviews, and any other
115 information the panel may require. When the application is for reappointment, the panel shall
116 review, in addition to any other information, the performance since the candidate's appointment
117 including, but not limited to:

118 (1) three decisions written and selected by the applicant;

119 (2) where applicable, the total number of cases decided by the applicant heard by an
120 appellate body, and the number of those cases which were remanded for further proceedings;

121 (3) any decisions of an appellate body which specifically reference the candidate's
122 demeanor or temperament;

123 (4) at the discretion of the director, written complaints from organizations that appear
124 before the appeals process, to the director regarding the candidate's demeanor or temperament;
125 and

126 (5) evidence of any demonstrable bias against particular parties, organizations or
127 attorneys.

128 The advisory council shall rate the candidate as highly qualified, qualified or unqualified.

129 If appropriate or requested, any information regarding a candidate compiled by the state
130 advisory council or the director shall be forwarded to the governor prior to the Governor
131 selecting an applicant.

132 SECTION 2. Section 1 of chapter 175M of the General Laws, as appearing in the 2020
133 Official Edition, is hereby further amended by striking out, in line 26, the words "1099-MISC"
134 and inserting in place thereof the following words:- 1099-NEC, or successor form,

135 SECTION 3. Said section 1 of chapter 175M, as so appearing, is hereby further amended
136 by striking out, in line 30, the words "1099-MISC" and inserting in place thereof the following
137 words:- 1099-NEC, or successor form,

138 SECTION 4. Subsection (a) of section 4 of chapter 175M, as so appearing, is hereby
139 amended by inserting after the second paragraph the following paragraph:-

140 When an employee requests leave under this chapter, or when the employer acquires
141 knowledge that an employee's leave may be for a qualifying reason under this chapter, the

142 employer must notify the employee of the employee's eligibility to take paid leave under this
143 chapter within five business days, absent extenuating circumstances, by giving the employee the
144 appropriate leave certification form as designated by the department, in the primary language of
145 the employee.

146 SECTION 5. Said subsection (a) of Section 4 of chapter 175M, as so appearing, is hereby
147 amended by inserting after the third paragraph the following paragraph:-

148 When a covered contract worker requests leave under this chapter, or when the covered
149 business entity acquires knowledge that a covered contractor worker's leave may be for a
150 qualifying reason under this chapter, the covered business entity must notify the worker of the
151 worker's eligibility to take leave under this chapter within five business days, absent extenuating
152 circumstances, by giving the worker the appropriate leave certification form as designated by the
153 department, in their primary language.

154 SECTION 6. Subsection (b) of section 7 of chapter 175M of the General Laws, as so
155 appearing, is hereby amended by striking out the first sentence and inserting in place thereof the
156 following sentence:-

157 The costs of administering the department under this chapter shall be paid from the trust
158 fund and in each fiscal year shall not exceed 5 per cent of the amount remaining in the fund at
159 the end of the previous fiscal year; provided that, regardless of the trust fund balance at the end
160 of a fiscal year, in no fiscal year shall the amount available to the director for administering the
161 department decrease by more than 5 per cent from the previous year

162 SECTION 7. Subsection (e) of section 7 of chapter 175M of the General Laws, as so
163 appearing, is hereby amended by striking clause (vii) from the first sentence in the second
164 paragraph in its entirety and inserting the following clause at the end of clause (vi), on line 92:-

165 (vii) overall claimant demographics by age, gender, race and ethnicity, primary language
166 of applicant, geography, average weekly wage, occupation, employment type (full or part time or
167 self-employed), and the type of leave taken;

168 And by striking the word “and” after the semicolon at the end of clause (xii), at line 100;

169 And by striking clause (xiii) in its entirety and inserting at the end of clause (xii), at line
170 100, the following:-

171 (xiii) the number of cases remaining open at the close of such year; (xiv) the number of
172 businesses and total workforce headcount enrolled, and the number of businesses and total
173 workforce headcount covered by private plans; and (xv) the length of time between a covered
174 individual’s first day of leave and their first payment of benefits. Data in (ii) through (vi), (xi),
175 and (xv) shall be disaggregated by age, gender, race and ethnicity, primary language of applicant,
176 geography, average weekly wage, occupation, employment type, and the type of leave taken.
177 Data in (iii) and (vi) shall be further disaggregated by the relationship between the claimant and
178 family member. Data in (vi) shall be further disaggregated by year of birth or placement.

179 SECTION . Said subsection (e) of section 7 of chapter 175M, as so appearing, is hereby
180 further amended by inserting after the last sentence at the end of the second paragraph the
181 following sentence:-

182 . The report shall also include details on the annual public education campaign conducted
183 pursuant to subsection (f) of section 8 of this chapter, including, but not limited to, employer
184 outreach efforts and materials, multilingual outreach materials and evidence of multimedia
185 distribution.

186 SECTION 9. Said subsection (e) of section 7 of chapter 175M, as so appearing, is hereby
187 further amended by inserting after the end of the second paragraph the following paragraph:-

188 The department shall establish a publicly accessible online dashboard using updated
189 reporting information on the program. The information in the dashboard shall include: (i) total
190 number of claims filed; (ii) total number of eligible claims; (iii) total number of claims denied;
191 (iv) claimant demographics by age, gender, average weekly wage, occupation and the type of
192 leave taken; and (v) average weekly benefit amount paid for all claims and by category of leave.
193 The dashboard shall be updated no less than quarterly.

194 SECTION 10. Subsection (d) of section 8 of chapter 175M of the General Laws, as
195 appearing in the 2022 Official Edition, is hereby amended by inserting after the word
196 “defendant”, in line 50, the following sentence:-

197 . The department shall cause to be published all hearing decisions on their website,
198 provided, however, that the department shall refrain from including, or partially redact where
199 inclusion is necessary, any personal data identifiers, including, but not limited to, names, date of
200 birth, names of minor children and any protected medical information

201 SECTION 11. Subsection (f) of section 8 of chapter 175M, as so appearing, is hereby
202 amended by striking out, in line 60, the word “a” and inserting in place thereof the following
203 words:- an annual

204 SECTION 12. Notwithstanding any special or general law to the contrary, if an
205 employee, hired as a result of a covered individual taking leave under the provisions of chapter
206 175M of the general laws, is subsequently separated from that employment when the covered
207 individual is restored to that position, and is eligible for unemployment insurance benefits under
208 the provisions of chapter 151A of the general laws, those benefit charges shall not accrue to the
209 employer's experience rating but rather shall be charged to the solvency fund.

210 SECTION 13. Not later than June 1, 2025, the department of family and medical leave
211 shall report on the long-term financial stability of the Family and Employment Security Trust
212 Fund, and review of existing policies under section 7 of chapter 175M, including the requirement
213 that the trust fund shall maintain an annualized amount of not less than 140 per cent of the
214 previous fiscal year's expenditures.