

SENATE No. 2701

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:	
Jason M. Lewis	Fifth Middlesex	
Nika C. Elugardo	15th Suffolk	4/21/2020
Tram T. Nguyen	18th Essex	4/21/2020
Michael J. Barrett	Third Middlesex	4/21/2020
Julian Cyr	Cape and Islands	4/22/2020
Lindsay N. Sabadosa	1st Hampshire	4/22/2020
Marc R. Pacheco	First Plymouth and Bristol	4/22/2020
Joanne M. Comerford	Hampshire, Franklin and Worcester	4/22/2020
Nick Collins	First Suffolk	4/22/2020
Jack Patrick Lewis	7th Middlesex	4/22/2020
Thomas M. Stanley	9th Middlesex	4/22/2020
Kenneth I. Gordon	21st Middlesex	4/22/2020
Patricia D. Jehlen	Second Middlesex	4/22/2020
Patrick M. O'Connor	Plymouth and Norfolk	4/22/2020
James B. Eldridge	Middlesex and Worcester	4/22/2020
John J. Lawn, Jr.	10th Middlesex	4/22/2020
Linda Dean Campbell	15th Essex	4/22/2020
David Henry Argosky LeBoeuf	17th Worcester	4/22/2020

<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>4/22/2020</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/22/2020</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>4/22/2020</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>4/22/2020</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>4/22/2020</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>4/22/2020</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>4/22/2020</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>4/22/2020</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>4/22/2020</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>4/22/2020</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>4/22/2020</i>
<i>James T. Welch</i>	<i>Hampden</i>	<i>4/22/2020</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>4/23/2020</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>4/23/2020</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>4/23/2020</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/23/2020</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>4/24/2020</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>4/24/2020</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>4/24/2020</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>4/24/2020</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>4/27/2020</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>4/27/2020</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>4/27/2020</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>4/28/2020</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>4/28/2020</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>4/29/2020</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>4/29/2020</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>4/29/2020</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>4/29/2020</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>5/1/2020</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>5/6/2020</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>5/6/2020</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>5/6/2020</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>	<i>5/7/2020</i>

SENATE No. 2701

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 2701) (subject to Joint Rule 12) of Jason M. Lewis, Nika C. Elugardo, Tram T. Nguyen, Michael J. Barrett and other members of the General Court for legislation relative to emergency paid sick time. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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.