

SENATE No. 474

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 relative to establishing family and employment security through temporary disability insurance and family temporary disability insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patricia D. Jehlen	Second Middlesex
Martha M. Walz	8th Suffolk
Steven A. Tolman	Second Suffolk and Middlesex
Susan C. Fargo	Third Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01071 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO ESTABLISHING FAMILY AND EMPLOYMENT SECURITY THROUGH
TEMPORARY DISABILITY INSURANCE AND FAMILY TEMPORARY DISABILITY
INSURANCE.

*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 are amended by inserting after chapter 175J the following:-

2 CHAPTER 175K.

3 SECTION 1: DEFINITIONS

4 The following words and phrases as used in this chapter shall have the following meanings unless
5 the context clearly requires otherwise:

6 "Base period" has the same meaning as provided by section 1(a) of chapter 151A.

7 "Benefit year" has the same meaning as provided by section 1(c) of chapter 151A.

8 "Commission" means the massachusetts commission against discrimination, as established by
9 section 56 of chapter 6.

10 "Contributions" means the payments made by an employer to the family and employment
11 security trust fund and administrative account, as required by this chapter.

12 "Dependent" means an unemancipated child, as provided by section 29(c) of chapter 151A.

13 "Deputy director" means the deputy director of the massachusetts division of employment and
14 training, as established by section 3 of chapter 3.

15 "Disability benefits" means cash payments made to a covered employee pursuant to section 3 of
16 this chapter.

17 "Division" means the massachusetts division of employment and training, as established by
18 section 3 of chapter 3.

19 "Employee" has the same meaning as provided by section 1(h) of chapter 151A.

20 "Employer" has the same meaning as provided by section 1(i) of chapter 151A.

21 "Employment" has the same meaning as provided by section 1(k) of chapter 151A.

22 "Employment benefits" means all benefits provided or made available to employees by an
23 employer, including group life insurance, health insurance, disability insurance, sick leave, annual or
24 vacation leave, educational benefits, and pensions.

25 "Family member" means the spouse, son or daughter, parent, parent of spouse, sister, brother,
26 grandparent, grandchild, or a person living in the immediate household who is a relative of an individual
27 seeking leave or disability benefits under this chapter.

28 "Family temporary disability benefits" means disability benefits provided pursuant to section 3 of
29 this chapter to a covered employee who is on leave from or who has left his or her employment because
30 he or she is caring for a family member for one of the following reasons: (1) the birth of a son or daughter

31 of the employee, (2) the placement of a son or daughter with the employee for adoption or foster care, or
32 (3) a serious health condition of a family member of the employee.

33 “Family temporary disability leave” means leave taken by a covered employee from employment
34 to provide care for a family member for one of the following reasons: (1) the birth of a son or daughter of
35 the employee, (2) the placement of a son or daughter with the employee for adoption or foster care, or (3)
36 a serious health condition of a family member of the employee.

37 “Health care provider” means a person licensed to practice medicine, surgery, dentistry,
38 chiropractic, podiatry, or osteopathy, or any other person determined by the division to be capable of
39 providing health care services.

40 "Individual average weekly wage" has the same meaning as “average weekly wage” as defined in
41 section 1(w) of chapter 151A and shall be calculated using the base period earnings as defined by section
42 1(a) of chapter 151A.

43 “Serious health condition” means an illness, injury, impairment, or physical or mental condition
44 that involves either (1) inpatient care in a hospital, hospice, or residential medical facility; or (2)
45 continuing treatment by a health care provider.

46 “Son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child
47 of a person standing in loco parentis who is either (1) under 18 years of age, or (2) 18 years of age or
48 older and incapable of self-care because of a mental or physical disability.

49 "State average weekly wage" means the average weekly wage as determined by the division of
50 employment and training pursuant to section 29(a) of chapter 151A.

51 “Temporary disability benefits” means disability benefits provided pursuant to section 3 of this
52 chapter to a covered employee who is on a leave from or who has left his or her employment because of a

53 serious health condition of the employee that makes him or her unable to perform the functions of his or
54 her position.

55 “Temporary disability leave” means leave taken by a covered employee from employment
56 because of a serious health condition of the employee that makes him or her unable to perform the
57 functions of his or her position.

58 "Wages" means all remuneration as defined in section 1(s) of chapter 151A.

59 “Weekly benefit amount” means the amount of disability benefits paid to a covered employee on
60 a weekly basis, as provided by section 3, subsection 3, of this chapter.

61 SECTION 2: TEMPORARY DISABILITY LEAVE AND FAMILY TEMPORARY DISABILITY
62 LEAVE

63 Subsection 1. Eligibility for Temporary Disability Leave or Family Temporary Disability
64 Leave.

65 An employee is eligible for temporary disability leave or family temporary disability
66 leave if he or she has met the monetary eligibility requirements set forth in section 24(a) of chapter 151A.

67 Subsection 2. Length of Leave

68 The duration of temporary disability leave or family temporary disability leave shall be
69 limited to the following maximum amounts of time during any 12-month period: (a) 12 weeks on a full-
70 time basis; (b) the equivalent of 12 weeks on a full-time basis, where the employee takes leave on a part-
71 time basis; or (c) a combination of full-time and part-time leave as set forth in (a) and (b), provided that
72 such leave shall not exceed the equivalent of 12 weeks on a full-time basis.

73 Subsection 3. Timing of Leave.

74 In the case of family temporary disability leave taken because of (a) the birth of a son or
75 daughter of the employee, or (b) the placement of a son or daughter with the employee for adoption or
76 foster care, the entitlement to leave shall expire at the end of the 12-month period beginning on the date of
77 the birth or placement.

78 Subsection 4. Certification.

79 An employer may, at its option, require that a request for temporary disability leave or
80 family temporary disability leave be supported by a certification of the need for leave. The certification
81 shall be sufficient if it meets the criteria set forth in section 3, subsection 6, of this chapter.

82 Subsection 5. Reinstatement and Employment Benefits.

83 (a) An employee who has taken temporary disability leave or family temporary disability
84 leave pursuant to this section shall be restored to his or her previous position, or to a substantially similar
85 position, with the same status, pay, employment benefits, length of service credit, and seniority as of the
86 date of leave.

87 (b) An employer shall not be required to restore an employee who has taken temporary
88 disability leave or family temporary disability leave to the previous or to a substantially similar position if
89 other employees of equal length of service credit and status in the same or substantially similar positions
90 have been laid off due to economic conditions or other changes in operating conditions affecting
91 employment during the period of leave; provided, however, that the employee who has taken leave shall
92 retain any preferential consideration for another position to which he or she was entitled as of the date of
93 leave.

94 (c) Taking of temporary disability leave or family temporary disability leave shall not
95 affect an employee's right to receive accrued vacation time, sick leave, bonuses, advancement, seniority,

96 length of service credit, employment benefits, plans or programs for which he or she was eligible at the
97 date of his or her leave, and any other rights incident to his or her employment.

98 (d) During the duration of an employee's temporary disability leave or family temporary
99 disability leave, the employer shall continue to provide for and contribute to the employee's employment-
100 related health insurance benefits, if any, under the same terms and conditions as those existing prior to
101 leave.

102 (e) Nothing in this section or chapter shall be construed so as to affect any bargaining
103 agreement, company policy, or other federal, state, or municipal law which provides for greater or
104 additional rights to leave than those provided for by this section.

105 Subsection 6. Notice

106 (a) Where an employee intends to take family temporary disability leave because of the
107 birth of a son or daughter of the employee, or the placement of a son or daughter with the employee for
108 adoption or foster care, and where the need for leave is foreseeable, the employee shall notify the
109 employer of the intended leave at least 30 days prior to the date that the leave is to begin, except that if
110 the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide
111 such notice as is practicable.

112 (b) Where an employee intends to take temporary disability leave or family temporary
113 disability leave because of a serious health condition of the employee or of a family member of the
114 employee, and where the need for leave is foreseeable based on planned medical treatment, the employee
115 shall notify the employer of the intended leave at least 30 days prior to the date that the leave is to begin,
116 except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall
117 provide such notice as is practicable.

118 (c) The notice required under this subsection shall consist of the anticipated starting date
119 of the leave, the length of the leave, and the expected date of return.

120 (d) Where an employer fails to provide notice of the provisions of this chapter as
121 required under section 7 of this chapter, the employee's notice requirement shall be waived.

122 Subsection 7. Unlawful Practices.

123 (a) It shall be unlawful for any employer to retaliate by discharging, fining, suspending,
124 expelling, disciplining or in any other manner discriminating against an employee for exercising any right
125 to which such employee is entitled under this section or with the purpose of interfering with the exercise
126 of any right to which such employee is entitled under this section.

127 (b) It shall be unlawful for any employer to retaliate by discharging, fining, suspending,
128 expelling, disciplining or in any other manner discriminating against an employee who has filed a
129 complaint or instituted or caused to be instituted a proceeding under or related to this section, has testified
130 or is about to testify in an inquiry or proceeding, or has given or is about to give information connected to
131 any inquiry or proceeding relating to this section.

132 (c) Any negative change in the seniority, status, employment benefits, pay, or other
133 terms or conditions of employment of an employee who has been restored to a position pursuant to this
134 section that occurs within six months of such restoration, or of an employee who has participated in
135 proceedings or inquiries pursuant to this section within six months of the termination of proceedings shall
136 be presumed to be retaliation under this section.

137 Subsection 8. Administrative Enforcement.

138 The commission shall be responsible for the interpretation and enforcement of this
139 section and may promulgate rules and regulations pursuant thereto.

140 Subsection 9. Enforcement and Relief.

141 Enforcement of this section and relief for violations of this section shall be governed by
142 the procedures set forth in sections 5 through 9 of chapter 151B.

143 SECTION 3: TEMPORARY DISABILITY BENEFITS AND FAMILY TEMPORARY DISABILITY
144 BENEFITS

145 Subsection 1. Establishment of Temporary Disability Benefits and Family Temporary
146 Disability Benefits.

147 An otherwise eligible employee who is on leave from employment or who has left
148 employment because he or she is ineligible or is no longer eligible for a leave shall be entitled to receive
149 temporary disability benefits or family temporary disability benefits in the amount and manner provided
150 by this section and according to regulations promulgated by the division.

151 Subsection 2. Eligibility.

152 An employee is eligible to receive temporary disability benefits or family temporary
153 disability benefits if he or she has met the monetary eligibility requirements set forth in section 24(a) of
154 chapter 151A.

155 Subsection 3. Weekly Benefit Amount.

156 (a) The weekly benefit amount shall be equal to 66 percent of the individual's average
157 weekly wage, but not to exceed 57 ½ percent of the state average weekly wage, plus 25 dollars for each
158 dependent, provided that the total weekly benefit amount shall not exceed 75 percent of the individual's
159 average weekly wage.

160 (b) For an employee who takes leave on a part-time basis, the weekly benefit amount
161 shall be prorated.

162 Subsection 4. Duration of Disability Benefits.

163 (a) Temporary disability benefits: The duration of temporary disability benefits shall not
164 exceed 26 weeks during the benefit year unless the employee takes leave on a part-time basis, in which
165 case the duration of temporary disability benefits shall not exceed 52 calendar weeks and the total benefit
166 amount shall not exceed 26 times the weekly benefit amount.

167 (b) Family temporary disability benefits: The duration of family temporary disability
168 benefits shall not exceed 12 weeks during the benefit year unless the employee takes leave on a part-time
169 basis, in which case the duration of family temporary disability benefits shall not exceed 24 calendar
170 weeks and the total benefit amount shall not exceed 12 times the weekly benefit amount.

171 Subsection 5. Waiting Period

172 (a) No disability benefits shall be paid during the first seven consecutive days of any
173 claim for temporary disability benefits. This waiting period shall not apply to claims for family
174 temporary disability benefits.

175 (b) This subsection does not in any way prohibit an employee from utilizing, at his or her
176 option, accrued sick or vacation pay during the first seven consecutive days of his or her claim for
177 temporary disability benefits.

178 Subsection 6. Certification Required.

179 (a) An employee who makes a claim for temporary disability benefits shall provide a
180 certification issued by the health care provider of the employee. The certification shall be sufficient if it
181 states the date on which the serious health condition commenced, the probable duration of the condition,
182 the appropriate medical facts within the knowledge of the health care provider as required by the division,
183 and a statement that the employee is unable to perform the functions of his or her position.

184 (b) An employee who makes a claim for family temporary disability benefits because of
185 the serious health condition of a family member of the employee shall provide a certification issued by
186 the health care provider of the family member. The certification shall be sufficient if it states the date on
187 which the serious health condition commenced, the probable duration of the condition, the appropriate
188 medical facts within the knowledge of the health care provider as required by the division, a statement
189 that the employee is needed to care for the family member, and an estimate of the amount of time that the
190 employee is needed to care for the family member.

191 (c) An employee who makes a claim for family temporary disability benefits because of
192 the birth of a son or daughter of the employee shall provide either a birth certificate or a certification
193 issued by the health care provider of the son or daughter of the eligible employee. The certification shall
194 be sufficient if it states the date of the son or daughter's birth.

195 (d) An employee who makes a claim for family temporary disability benefits because of
196 the placement of a son or daughter with the employee for adoption or foster care shall provide a
197 certification issued by the health care provider of the son or daughter, an adoption or foster care agency
198 involved in the placement, or by other persons as determined by the division. The certification shall be
199 sufficient if it states the date of placement.

200 (e) An employee who makes a claim for family temporary disability benefits because of
201 the placement with the employee for adoption or foster care of a son or daughter 18 years of age or older
202 and incapable of self-care because of a mental or physical disability shall, in addition to the certification
203 required by paragraph (d) of this subsection, also provide a certification issued by the health care provider
204 of the son or daughter, or by other persons as determined by the division. The certification shall be
205 sufficient if it states the nature of the disability and fact that the son or daughter is incapable of self-care.

206 (f) Ineligibility In Certain Cases.

207 An individual shall not be eligible to receive disability benefits if the deputy director
208 finds that the individual, for the purpose of obtaining disability benefits, has willfully made a false
209 statement or representation, with actual knowledge of the falsity thereof, or has willfully withheld a
210 material fact concerning the facts required to be certified pursuant to this subsection.

211 Subsection 7. Wages and Other Forms of Wage Replacement.

212 (a) No individual may receive disability benefits under this section for a week in which
213 the individual receives an amount equal to or greater than the weekly benefit amount in the form of wages
214 or a wage replacement under any of the following: (i) any government program or law, including but not
215 limited to unemployment insurance, worker's compensation other than for permanent partial disability
216 incurred prior to the temporary disability claim, or under other state or federal temporary or permanent
217 disability benefits law, (ii) a permanent disability policy or program of an employer, (iii) a temporary
218 disability policy or program of an employer, or (iv) a paid sick, vacation, family, or medical leave policy
219 of an employer. For a week in which an individual receives wages or a wage replacement less than the
220 weekly benefit amount, the individual shall receive disability benefits equal to the difference between the
221 weekly benefit amount and the amount of wages or wage replacement received.

222 (b) Any wage replacement received under the programs or policies listed in paragraph
223 (a) of this subsection and resulting from the same birth, adoption, or serious health condition on which the
224 individual's claim for disability benefits is based shall be deducted from the total amount of disability
225 benefits for which the individual would otherwise be eligible; provided that this paragraph shall not apply
226 to wage replacement received as a result of a paid sick or vacation policy of an employer.

227 SECTION 4: PROVISION OF TEMPORARY DISABILITY BENEFITS AND FAMILY
228 TEMPORARY DISABILITY BENEFITS

229 Subsection 1. Provision for Payment of Disability Benefits.

230 An employer or an association of employers shall secure temporary disability benefits
231 and family temporary disability benefits for employees in any of the following ways:

232 (a) By depositing and maintaining with the treasurer of the commonwealth, the
233 contributions which the employer is required to pay according to the terms of this chapter and in the form
234 and manner determined by the division; or

235 (b) By insuring and keeping insured the payment of temporary disability benefits and
236 family temporary disability benefits with any stock, mutual, reciprocal or other insurer authorized to
237 transact the business of disability insurance in the commonwealth, provided that the policy is acceptable
238 to the division as satisfying the obligation to provide for the payment of disability benefits under this
239 chapter, that the benefits under the policy are at least as favorable as the disability benefits required by
240 this chapter and that the policy does not require contributions from any employee or class of employees;
241 or

242 (c) By a private plan or agreement which the employer may, by her or his sole act,
243 terminate at any time, provided that the plan or agreement is acceptable to the division as satisfying the
244 obligation to provide for the payment of disability benefits under this chapter, that the benefits under the
245 plan or agreement are at least as favorable as the disability benefits required by this chapter, and that the
246 policy does not require contributions from any employee or class of employees; or

247 (d) By any plan or agreement in existence by agreement or collective bargaining contract
248 between the employer or employers or an association of employers and an association of employees,
249 provided that the plan or agreement is acceptable to the division as satisfying the obligation to provide for
250 the payment of disability benefits under this chapter, that the benefits under the plan or agreement are at
251 least as favorable as the disability benefits required by this chapter, and that the plan or agreement does
252 not require contributions from any employee or of any class of employees.

253 (e) Nothing in this section or chapter shall be construed as to affect any bargaining
254 agreement, company policy, or other state or federal law which provides for greater or additional benefits
255 than those required under this chapter.

256 Subsection 2. Notice of Insurance.

257 If payment of disability benefits is provided in whole or in part pursuant to subsection
258 1(b), (c), or (d) of this section, the employer or insurer shall file with the division a notice of coverage and
259 statement of benefits provided.

260 Subsection 3. No Contribution Required by Employer with Private Plan.

261 Employers providing for the payment of disability benefits under subsection 1(b), (c), or
262 (d) of this section shall not be required to make contributions pursuant to subsection 1(a) of this section.

263 SECTION 5: FAMILY AND EMPLOYMENT SECURITY TRUST FUND AND ADMINISTRATIVE
264 ACCOUNT

265 Subsection 1. Establishment of the Family and Employment Security Trust Fund.

266 There is established in the treasury of the state, separate and apart from all public monies
267 or funds of the state, a family and employment security trust fund which shall be administered by the
268 deputy director exclusively for the purposes of this chapter. All payments pursuant to this part shall be
269 paid into the trust fund and all disability benefits payable under this chapter shall be paid from the trust
270 fund. The trust fund shall consist of:

271 (a) All contributions collected pursuant to this section, together with any interest thereon;

272 (b) Interest earned on any monies in the trust fund;

273 (c) Any property or securities acquired through the use of monies belonging to the trust
274 fund;

275 (d) All earnings of such property and securities;

276 (e) All monies transferred into the trust fund from the family and employment security
277 administrative account; and

278 (f) All other monies received for the trust fund from any source.

279 Subsection 2. Establishment of the Family and Employment Security Administrative
280 Account.

281 There is established in the treasury of the state, separate and apart from all public monies
282 or funds of the state, a family and employment security administrative account which shall be
283 administered by the deputy director exclusively for the purposes of this chapter. The administrative
284 account shall consist of:

285 (a) All contributions collected pursuant to this section, together with any interest thereon;

286 (b) All fines and penalties for the administrative account pursuant to this chapter;

287 (c) All monies collected by way of subrogation;

288 (d) Interest earned on any monies belonging to the administrative account;

289 (e) Any property or securities acquired through the use of monies belonging to the
290 administrative account;

291 (f) All earnings of such property and securities;

292 (g) All monies appropriated to the administrative account by the legislature; and

293 (h) All other monies received for the administrative account from any source.

294 Subsection 3. Management of the Fund.

295 The state treasurer shall be the treasurer and custodian of the family and employment
296 security trust fund and the family and employment security administrative account and shall administer
297 the trust fund and administrative account in accordance with the directions of the deputy director. All
298 monies in the trust fund and administrative account shall be held in trust for the purposes of this part only
299 and shall not be expended, released, appropriated, or otherwise disposed of for any other purpose.
300 Monies in the trust fund and administrative account may be deposited in any depository bank in which
301 general funds of the commonwealth may be deposited, but such monies shall not be commingled with
302 other commonwealth funds and shall be maintained in separate accounts on the books of the depository
303 bank. Such monies shall be secured by the depository bank to the same extent and in the same manner as
304 required by the general depository law of the commonwealth, and collateral pledged for this purpose shall
305 be kept separate and distinct from any other collateral pledged to secure other funds of the
306 commonwealth. The trust fund shall maintain an annualized amount of at least 140 percent of the
307 previous year's expenditure.

308 Subsection 4. Management of the Administrative Account.

309 The deputy director shall pay all expenses incurred in administering the provisions of this
310 chapter. In the event that the balance in the family and employment security trust fund shall at any time
311 be insufficient to pay disability benefits under this chapter, the governor, upon the deputy director's
312 request, shall cause such sums as may be required for the payment of such disability benefits to be
313 transferred from the family and employment security administrative account to the family and
314 employment security trust fund.

315 Subsection 5. Disbursements from the Fund.

316 Expenditures of monies in the family and employment security trust fund shall not be
317 subject to provisions of law requiring specific appropriations or other formal release by state officers of
318 money in their custody. All disability benefits shall be paid from the trust fund upon warrants drawn

319 upon the state treasurer by the comptroller of the commonwealth supported by vouchers approved by the
320 deputy director.

321 Subsection 6. Investment of Monies.

322 With the approval of the deputy director, the secretary of administration and finance may,
323 from time to time, invest such monies in the family and employment security trust fund as are in excess of
324 the amount deemed necessary for the payment of disability benefits for a reasonable future period. Such
325 monies may be invested in bonds of any political or municipal corporation or subdivision of the
326 commonwealth, or any of the outstanding bonds of the commonwealth, or invested in bonds or interest-
327 bearing notes or obligations of the commonwealth, or of the United States, or those for which the faith
328 and credit of the United States are pledged for the payment of principal and interest (or in federal land
329 bank bonds or joint stock farm bonds). The investments shall at all times be so made that all the assets of
330 the trust fund shall always be readily convertible into cash when needed for the payment of disability
331 benefits. The director of administration and finance shall dispose of securities or other properties
332 belonging to the trust fund only under the direction of the deputy director.

333 Subsection 7. Temporary Disability Benefits and Family Temporary Disability Benefits
334 To Be Paid from the Family and Employment Security Trust Fund; Recovery of Disability Benefits.

335 Temporary disability benefits and family temporary disability benefits shall be paid from
336 the family and employment security trust fund to eligible individuals. Disability benefits shall also be
337 paid from the trust fund to an employee who is entitled to receive such disability benefits but cannot
338 because of the bankruptcy of his or her employer or because the employer is not in compliance with this
339 chapter. Disability benefits paid from the trust fund to such employee may be recovered through
340 bankruptcy proceedings or from the noncomplying employer. The deputy director shall institute
341 administrative and legal action to effect recovery of such disability benefits.

342 Subsection 8. Amount of Employer Payments to the Family and Employment Security
343 Trust Fund and Administrative Account

344 For the purpose of accumulating funds for the payment of temporary disability benefits,
345 family temporary disability benefits, and administrative costs, each employer, with the exception of any
346 employer complying with section 4, subsection 1(b), (c), or (d), shall in the first year after the date the
347 employer becomes subject to this chapter, and each year thereafter, pay amounts as determined by the
348 deputy director. Each employer shall transmit all such payments to the trust fund or administrative
349 account in such manner, at such time, and under such conditions as shall be prescribed by regulations.

350 Subsection 9. Annual Establishment of Rates for Trust Fund Operations.

351 On or before October first of each year, the deputy director shall certify to the secretary
352 of administration and finance the estimated costs for the coming year of disability benefits and for
353 administrative services provided by the division. Said rates of employer contribution to both the trust
354 fund and the administrative account as established by this chapter shall be adjusted annually as consistent
355 with the needs of the operation of said trust fund and administrative account.

356 Subsection 10. Request for Wage and Employment Information.

357 An employer to whom the division has sent a request for wage and employment
358 information for an employee claiming temporary disability benefits or family temporary disability
359 benefits under this chapter shall complete and file such information within ten days from the date the
360 request was sent. If an employer does not respond within ten days, that employer may be held liable for
361 any and all related costs incurred by the commonwealth.

362 SECTION 6: CLAIMS AND APPEAL

363 Subsection 1. Filing of Claims, and Reports Thereon; Giving and Return of Notice.

364 (a) Claims for temporary disability benefits and family temporary disability benefits shall
365 be filed with the division and shall be handled under the procedures prescribed by sections 38 through 43
366 of chapter 151A and regulations promulgated thereunder.

367 (b) The division shall provide the same level of assistance to individuals filing claims for
368 disability benefits under this chapter as it provides to unemployment benefits claimants pursuant to
369 subsections 62A(a) through 62A(f) of chapter 151A.

370 SECTION 7: NOTICE

371 Subsection 1. Notice to Employees.

372 (a) Every employer subject to this chapter shall keep posted in a conspicuous place or
373 places on its premises a workplace notice prepared or approved by the division which shall set forth
374 excerpts from this chapter and other information the division deems necessary to explain the chapter.
375 Such workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese,
376 Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least
377 10,000 or one-half of one percent of all residents of the commonwealth. Each employer with five or more
378 employees whose primary language is not English shall post the workplace notice in that language, if
379 such notice is available from the division.

380 (b) Each employer shall issue to each employee, within 30 days from date of the
381 employee's first day of work, written information provided or approved by the division which explains
382 the availability of temporary disability leave, family temporary disability leave, temporary disability
383 benefits and family temporary disability benefits provided pursuant to this chapter.

384 (c) Each employer shall issue to each employee taking temporary disability leave or
385 family temporary disability leave, as soon as practicable, but not more than 30 days from the date that the
386 employee gives notice of leave, written information provided or approved by the division which shall

387 contain the name and mailing address of the employer; the identification number assigned to the employer
388 by the division; information describing the availability of temporary disability benefits and family
389 temporary disability benefits provided pursuant to this chapter; instructions on how to file a claim for
390 disability benefits; the address and telephone number of the regional office of the division which serves
391 the recipient; and the telephone number of the division. Delivery is made when an employer provides
392 such information to an employee in person or by mail to the employee's last known address.

393 (d) Any employer who fails to comply with the provisions of subsection 1(a) or 1(b) of
394 this section shall be punished by a fine of not less than 50 dollars nor more than 300 dollars. A
395 subsequent violation of this subsection by the same employer shall be punished by a fine of not less than
396 250 dollars nor more than 1,000 dollars. Where an employer fails to comply with this provision, an
397 employee shall be deemed to have provided notice of leave under section 2, subsection 5, of this chapter.
398 The employer shall have the burden of demonstrating compliance with subsections 1(a) and 1(b) of this
399 section.

400 (e) The waiting period under section 3, subsection 5, of this chapter for an employee who
401 did not receive the information required by subsection 1(c) of this section and who failed to file timely for
402 disability benefits, shall be the initial week that such employee would have been eligible to receive
403 temporary disability benefits or family temporary disability benefits. The employer shall have the burden
404 of demonstrating compliance with subsection 1(c) of this section.

405 SECTION 8: PURPOSE AND CONSTRUCTION

406 This act shall be liberally construed as remedial legislation to further its purpose of providing job-
407 protected temporary disability leave and family temporary disability leave, as well as temporary disability
408 benefits and family temporary disability benefits, to the employees of the commonwealth. All
409 presumptions shall be made in favor of the availability of leave and the payment of disability benefits
410 under this chapter.

411 **SECTION 2.** The General Laws are amended by inserting after paragraph 11A of section 4 of
412 chapter 151B the following:-

413 11B. (1) For an employer to discharge, fine, suspend, expel, discipline or in any other manner
414 discriminate against an employee (i) for exercising any right to which such employee is entitled under the
415 provisions of section 2, subsection 7, of chapter 152A, or (ii) with the purpose of interfering with the
416 exercise of any right to which such employee is entitled under section 2, subsection 7, of chapter 152A.

417 (2) For any employer to discharge, fine, suspend, expel, discipline or in any other
418 manner discriminate against an employee who has filed a complaint or instituted or caused to be instituted
419 a proceeding under or related to section 2, subsection 7, of chapter 152A, or who has testified or is about
420 to testify in an inquiry or proceeding, or who has given or is about to give information connected to any
421 inquiry or proceeding relating to section 2, subsection 7, of chapter 152A.

422 (3) For purposes of this subsection, any negative change in the seniority, status,
423 employment benefits, pay or other terms or conditions of employment of an employee who has been
424 restored to a position pursuant to section 2, subsection 7, of chapter 152A that occurs within six months
425 of such restoration, or of an employee who has participated in proceedings or inquiries pursuant to section
426 2, subsection 7, of chapter 152A within six months of the termination of proceedings shall be presumed to
427 be retaliation.