

The Commonwealth of Massachusetts

SENATE, December 20, 1991.

The committee on Commerce and Labor, to whom was referred the petition (accompanied by bill, Senate, No. 91) of Lois G. Pines for legislation to provide for family and medical leave; the petition (accompanied by bill, House, No. 1472) of Stephen M. Brewer relative to non-compensatory parental maternity leaves; the petition (accompanied by bill, House, No. 1478) of the Massachusetts AFL-CIO Council and John A. Businger relative to parenting leave; the petition (accompanied by bill, House, No. 1701) of Mary Jane Gibson, other members of the General Court for legislation to grant leaves of absence from employment for reasons relative to the birth, adoption or placement of a child; the petition (accompanied by bill, House, No. 1867) of Steven Angelo for legislation to further regulate leave of absence for adoptive parents; the petition (accompanied by bill, House, No. 2259) of John A. Businger and other members of the General Court for legislation to clarify the law relative to the granting of maternity leave for employees; the petition (accompanied by bill, House, No. 2598) of David P. Magnani, Mary Jane Gibson, John W. Olver and Kevin W. Fitzgerald for legislation to provide for parenting leave for fathers; the petition (accompanied by bill, House, No. 2972) of John C. Bradford, Mary Jeanette Murray, Peter Forman, Raymond A. Jordan, Jr., and Carol C. Cleven for legislation to encourage child care benefits for private industry employees; the petition (accompanied by bill, House, No. 3170) of Larry F. Giordano relative to providing for a system of health and accident payments to persons unable to work due to a sickness or accident; the petition (accompanied by bill, House, No. 3180) of Shannon P. O'Brien for legislation to regulate the granting of parenting leave under certain employment practices; the petition (accompanied by bill, House, No. 3531) of Thomas G. Palumbo for legislation to encourage child care benefits for private industry employees; and the petition (accompanied by bill, House, No. 4277) of David P. Magnani and

Brian P. Lees for legislation to clarify the law relative to the granting of maternity leave for employees, reports the accompanying bill, Senate, No. 1784.

For the committee,

LOIS G. PINES.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT TO PROVIDE FOR FAMILY AND MEDICAL 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 Chapter 149 of the General Laws is hereby amended by adding
2 the following section: —

3 Section 105E. (1) The following words shall have the following
4 meanings, unless the context requires or specifically prescribes a
5 different meaning: —

6 (a) "Child", a biological, adopted, or foster child, a stepchild
7 or legal ward either:

8 (i) under eighteen years of age; or

9 (ii) under twenty-three years of age and mentally or physically
10 disabled.

11 (b) "Employee", shall mean any person employed by an
12 employer; provided, however, that an employee shall not exclude
13 any person employed by his parents, spouse or child.

14 (c) (i) "Employer", a person engaging in any activity, enterprise
15 or business in the commonwealth employing at least six
16 individuals on a permanent basis.

17 (ii) "Employer", does not include the commonwealth, its
18 subdivisions, or any agencies, commissions or authorities of the
19 state.

20 (d) "Employment benefit", an insurance, leave or retirement
21 benefit which an employer makes available to an employee.

22 (e) "Family leave", leave taken by an employee to care for the
23 employee's child, spouse or parent, if the child, spouse or parent
24 has a serious health condition.

25 (f) "Health care provider," any person licensed under federal,
26 state, or local law to provide health care services.

27 (g) "Leave", family leave or maternity leave provided under this
28 section.

29 (h) "Maternity leave", leave provided by an employer to a
30 female employee because of the: —

31 (i) birth of the female employee's child; or

32 (ii) placement of a child with the female employee for adoption
33 or foster care.

34 (i) "Parent," a biological parent, foster parent, adoptive parent,
35 stepparent or legal guardian of an employee.

36 (j) "Serious health condition", a disabling physical or mental
37 illness, injury, impairment or condition involving any of the
38 following: —

39 (i) Inpatient care in a hospital, as defined in section fifty-two
40 of chapter one hundred and eleven, nursing home, as defined in
41 section seventy-one of chapter one hundred and eleven, or
42 hospice.

43 (ii) outpatient care that requires continuing treatment or
44 continuing supervision by a health care provider.

45 (k) "Spouse" an employee's legal husband or wife.

46 (2) (a) Subject to paragraph (c) of this subsection, a female
47 employee is entitled to four weeks of maternity leave in any
48 twenty-four month period of employment.

49 (b) In any twenty-four month period of employment an
50 employee is entitled to four weeks of family leave.

51 (c) The total leave an employee is entitled to take under this
52 section is limited to a total of four weeks in any twenty-four month
53 period.

54 (3) (a) This section only applies to employees who have worked
55 for the same employer for at least fifty-two weeks.

56 (b) Nothing in this section affects any bargaining agreement or
57 company policy which provides for greater or additional benefits
58 than those required under this section.

59 (c) The leave required to be provided in this section is in
60 addition to the leave required under section one hundred and
61 five D of this chapter, and nothing in this section limits the rights
62 of an employee granted under section one hundred and five D of
63 this chapter.

64 (d) Nothing in this section prohibits an employer from
65 providing employees with more generous rights to leave than those
66 rights provided to them under this section.

67 (e) This section does not limit or diminish an employee's rights
68 under chapter one hundred and fifty-two.

69 (4) This section does not entitle an employee to receive wages
70 or salary while taking family leave or medical leave.

71 (5) If any employee intends to take family leave because of the
72 planned medical treatment or supervision of a child, spouse or
73 parent, the employee shall do all of the following: —

74 (a) Make a reasonable effort to schedule the medical treatment
75 or supervision so that it does not unduly disrupt the employer's
76 operations, subject to the approval of the health care provider of
77 the child, spouse, or parent.

78 (b) If practicable, give the employer at least two weeks advance
79 notice of the medical treatment or supervision.

80 (6) (a) If an employee requests family leave, the employer may
81 require the employee to provide certification, as described in
82 paragraph (b) issued by the health care provider of the child
83 spouse, or parent.

84 (b) No employer may require certification stating more than the
85 following: —

86 (i) That the child, spouse, parent or employee has a serious
87 health condition.

88 (ii) The date of the serious health condition commenced and
89 its probable duration.

90 (iii) Within the knowledge of the health care provider, the
91 medical facts regarding the serious health condition.

92 (7) Any employee who takes leave under this section shall be
93 entitled, upon return from such leave, to be restored: —

94 (a) by the employer to the position of employment held by the
95 employee when the leave commenced; or

96 (b) to an equivalent position with equivalent employment
97 benefits, pay, and other terms and conditions of employment.

98 (8) The taking of leave under this section shall not result in the
99 loss of any employment benefit earned before the date on which
100 the leave commenced.

101 (9) Nothing in this section shall be construed to entitle any
102 restored employee to: —

103 (a) the accrual of any seniority or employment benefits during
104 any period of leave; or

105 (b) any right, benefit, or position of employment other than any
106 right, benefit, or position to which the employee would have been
107 entitle had the employee not taken the leave.

108 (10) (a) Subject to paragraph (b), during the period any
109 employee takes leave under this section, the employer shall offer
110 to maintain group health benefits under the conditions that
111 applied immediately before the leave began.

112 (b) During the leave period, the employer may require the
113 employee to make the contribution normally paid by the employee
114 for the group health benefits, plus any contribution normally
115 made by the employer on behalf of the employee.

116 (11) It shall be unlawful for any person to discharge or in any
117 other manner discriminate against any individual because such
118 individual: —

119 (a) has filed any charge, or has instituted or caused to be
120 instituted any proceeding, under or related to this section;

121 (b) has given, or is about to give, any information in connection
122 with any inquiry or proceeding relating to any right provided
123 under this section;

124 (c) has testified, or is about to testify in any inquiry or
125 proceeding relating to any right provided under this section.

126 (12) In the event an employee believes an employer has violated
127 subsection (11), such employee shall have available at law or
128 equity, the remedies provided under sections one hundred and
129 forty-eight to one hundred and fifty, inclusive, of chapter one
130 hundred and forty-nine. The department of labor and industries
131 may take any and all appropriate actions to enforce the provisions
132 of this section under the authority provided in said sections one
133 hundred and forty-eighth to one hundred and fifty, inclusive, of
134 said chapter one hundred and forty-nine.

135 (13) Each employer shall post, in one or more conspicuous
136 places where he or she customarily posts notices to employees,
137 a notice in a form approved by the department setting forth
138 employees rights under this section. Any employer who violates
139 this subsection shall be subject to a fine of not more than one
140 hundred dollars for each offense. Each day that any employer fails
141 to post the prescribed notice shall constitute a separate offense.

