

By Ms. Pines, petition (accompanied by bill, Senate, No. 89) of Lois G. Pines, Michael J. Barrett, William R. Keating and Robert M. Koczera for legislation to provide unpaid family leave and medical leave for employees. Commerce and Labor.

The Commonwealth of Massachusetts

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

AN ACT PROVIDING UNPAID FAMILY LEAVE AND MEDICAL LEAVE FOR EMPLOYEES.

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
10 physically 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,
15 enterprise or business in the commonwealth employing at least
16 fifty individuals on a permanent basis in nineteen hundred ninety-
17 three, thirty-five individuals on a permanent basis in nineteen
18 hundred ninety-four, fifteen individuals on a permanent basis in
19 nineteen hundred ninety-five.

20 (ii) "Employer," does not include the commonwealth, its
21 subdivisions, or any agencies, commissions or authorities of the
22 state.

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

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

27 (f) "Leave," family leave or medical leave provided under this
28 section.

29 (g) "Family leave," leave provided by an employer to an
30 employee because of the: —

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

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

34 (h) "Medical leave," leave taken by an employee to care for
35 the employee's child, spouse or parent, if the child, spouse or
36 parent has a serious health condition.

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

39 (j) "Serious health condition," a disabling physical or mental
40 illness, injury, impairment or condition involving any of the
41 following: —

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

46 (ii) Outpatient care that requires continuing treatment or
47 continuing supervision by a health care provider.

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

49 (2)(a) Subject to paragraph (c) of this subsection, an employee
50 is entitled to twelve weeks of family leave in any twenty-four
51 month period of employment.

52 (b) In any twenty-four month period of employment an
53 employee is entitled to twelve weeks of medical leave.

54 (c) The total leave an employee is entitled to take under this
55 section is limited to a total of twelve weeks in any twenty-four
56 month period.

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

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

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

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

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

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

74 (5) If any employee intends to take medical leave because of
75 the planned medical treatment or supervision of a child, spouse
76 or parent, the employee shall do the following: —

77 (a) Make a reasonable effort to schedule the medical
78 treatment or supervision so that it does not unduly disrupt the
79 employers' operations, subject to the approval of the health care
80 provider of the child, spouse, or parent.

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

83 (6)(a) If an employee requests medical leave, the employer may
84 require the employee to provide certification, as described in para-
85 graph (b) issued by the health care provider of the child, spouse,
86 or parent.

87 (b) No employer may require certification stating more than
88 the following: —

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

91 (ii) The date the serious health condition commenced and
92 its probable duration.

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

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

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

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

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

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

106 (a) the accrual of any seniority or employment benefits
107 during any period of leave; or

108 (b) any right, benefit, or position of employment other than
109 any right, benefit, or position to which the employee would have
110 been entitled had the employee not taken the leave.

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

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

119 (11) It shall be unlawful for any person to discharge or in any
120 other manner discriminate against any individual because such
121 individual:

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

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

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

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

138 (13) Each employer shall post, in one or more conspicuous
139 places where he or she customarily posts notices to employees,

140 a notice in a form approved by the department setting forth
141 employees' rights under this section. Any employer who violates
142 this subsection shall be subject to a fine of not more than one
143 hundred dollars for each offense. Each day that any employer fails
144 to post the prescribed notice shall constitute a separate offense.

