

An Act Establishing Paid Sick Days

**Lead Sponsors: HB 1803 - Representative Kay Khan
SB 1073 - Senators Patricia Jehlen & Steven Tolman**

RECENT HEADLINES

“ONLY HALF OF WORKERS IN THE UNITED STATES EARN PAID SICK DAYS...MANY RISK LOSING THEIR JOBS SHOULD THEY TAKE ANY SICK TIME AT ALL”

Sniffling, Sneezing and Turning Cubicles Into Sick Bays, New York Times, December 26, 2006

“CAUGHT THE FLU, BUT NO SICK LEAVE: FOR THE POOREST EARNERS, PAID TIME OFF IS A CRUCIAL MISSING BENEFIT”

Headline, Washington Post, December 3, 2006.

If you work hard at your job, you should also be able to care for your family. Yet our work rules are not in sync with today's economy and prevent us from being both responsible workers and responsible family members.

47% of workers in Massachusetts lack a single guaranteed paid sick day. These workers lack the ability to stay home from work to get well, or to care for a sick child or relative without losing a day of pay.

- Employees who have no job-protected paid sick days must choose - leave a sick child home or lose a day's pay or even a job.
- Employers who provide no sick days encourage workers to come to work sick, lowering overall productivity and spreading contagious illnesses.
- Health care costs rise when employees don't take care of themselves and their families, forcing all health-care payers to pay more.
- Domestic violence survivors should not have to sacrifice their jobs because they must deal with the effects of domestic violence on themselves or their families.

SUPPORT THE PAID SICK DAYS ACT

KEY PROVISIONS:

- ✓ Employees may accrue up to 7 paid sick days per year, at a rate of 1 hour for every 30 hours worked.
- ✓ Allowable uses:
 - Illness, injury or health condition that requires staying home, or professional medical care,
 - Attending routine medical appointments
 - Absences for domestic violence victims
- ✓ Paid sick days may be used by employees for themselves or to care for their child, spouse, parent or parent of spouse.

THIS BILL IS DESIGNED TO BALANCE EMPLOYER AND EMPLOYEE NEEDS:

- Employers may require medical certification for any absence that exceeds 3 consecutive days..
- Employers will not be required to provide more than 7 paid sick days in any given year.
- Employees will not cash out unused days upon termination of employment or extended leave.

For more information, contact ACORN, Mimi Ramos, 617/436- 7100, voicescanbeheardmimi@yahoo.com; Greater Boston Legal Services, Ingrid Nava, 617/603-1684, inava@gbls.org, OR Monica Halas, 617/603-1666, mhalas@gbls.org; OR Mass. Law Reform Institute, Margaret Monsell, 617/357-0700 x304, mmonsell@mlri.org.

An Act Establishing Paid Sick Days

Eligible Employee

- ⊕ All Employees.

Covered Employer

- ⊕ All employers (public and private). (Employers who already offer a more generous benefit are not affected.)

Current Sick Day Policies:

- ⊕ An employer who already provides comparable or better paid leave will not have to modify its benefit plans.

Specifics of Paid Sick Days Act

- ⊕ 7 paid sick days a year
- ⊕ Employees may use leave intermittently and on a reduced work schedule basis.
- ⊕ Employees who take more than 3 consecutive days of leave may be required to obtain certification from a health care professional.

Paid Sick Days Can Be Used:

- ⊕ To care for employee's own illness, injury, health condition.
- ⊕ To care for physical or mental illness, injury, health condition of an employee's child, spouse, parent, or parent of spouse.
- ⊕ To attend a routine medical appointment for employee's self, or employee's child, spouse, parent, or parent of spouse.
- ⊕ To address the psychological, physical or legal effects of domestic violence

Accrual

- ⊕ Paid Sick Days shall accrue at the rate of one hour of pay for every 30 hours worked.
- ⊕ Unused sick days can be carried over at the end of a year but, unless an employer chooses to do so, will not accumulate to more than 7 paid sick days.
- ⊕ Unused days need not be reimbursed upon termination or resignation of an employee.

Employer Requirements:

- ⊕ Employers must post notice provisions of the Act.
- ⊕ Employers may not prevent, interfere with or deny the exercise of, or the attempt to exercise, rights to paid sick days.
- ⊕ Employers may not take adverse action against an employee for opposing employer practices that violate this act.

Confidentiality and Nondisclosure:

- ⊕ Nothing in the Act will be construed to require employees to supply health information to an employer in violation of other federal privacy laws.

Enforcement

- ⊕ Office of the Attorney General has enforcement authority (similar to authority under wage laws)
- ⊕ The Attorney General may make a complaint or seek an indictment, or an employee may bring a civil action, on her behalf or on behalf of others, in state court to recover damages or equitable relief.

AN ACT ESTABLISHING PAID SICK DAYS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

SHORT TITLE

This Act may be cited as the “Paid Sick Days Act”.

SECTION 2: PREAMBLE

The legislature, in order to advance healthier, more productive and more equitable workplaces throughout the Commonwealth, and to promote the health and welfare of families within the Commonwealth, hereby direct all employers to provide a minimum of 7 paid sick days per year, or the appropriate percentage thereof as determined by this Act, for all of their employees.

SECTION 3: FINDINGS

The Legislature of the Commonwealth of Massachusetts makes the following findings:

- 1) Nearly every worker in the Commonwealth is likely to need, during any given year, time-off to attend to their own illness or that of an immediate family member, or for routine medical care. Almost half of all private sector workers do not earn a single paid sick day per year. Low-income workers are significantly worse off. Over three quarters of the poorest families 76 percent lack any regular paid sick leave.
- 2) Little more than 20% of workers who earn paid sick days can use it to care for children or elder adult family members who may be ill.
- 3) When parents are available to care for their children who become sick, the children’s recovery is faster, more serious illnesses are prevented, and the children’s overall mental and physical health is improved. Parents who cannot afford to miss work must send children with a contagious illness to childcare or school, contributing to the high rate of infections in child care centers and schools.

4) The majority of elder-care is performed by working family members. About one in every four employees has provided informal care to an elderly family member or friend in the past year.

5) Preventive and routine medical care helps avoid illness and injury by detecting illnesses early and shortening the duration of illnesses. Providing employees time-off to attend to their own health care needs ensures that they will be healthier and more efficient employees in the long run. Routine medical care results in savings by detecting and treating illness and injury early and decreasing the need for emergency care. These savings benefit public and private payers of health insurance, including private businesses.

6) Public health is jeopardized as many workers who do not have paid sick days have the most frequent contact with the public such as workers in food services, nursing homes, child care centers, and retail clerks. The spread of contagious diseases such as the flu cannot be stopped without a universally adopted paid sick days policy.

7) Approximately 1.5 million women are assaulted, stalked or raped by an intimate partner each year; 31% of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives; and, on average, more than 3 women are murdered every day by their husbands or boyfriends. 96% of employed victims of domestic violence experience some kind of work-related problem due to violence; victims may need to take time off from work to participate in criminal and civil legal proceedings and to address the effects of domestic violence such as relocating their family and obtaining medical care. Providing paid sick days would mean important job security for domestic violence victims, as between a quarter to a half of all victims of domestic violence lose their jobs.

8) Providing 7 paid sick days per year to employees is affordable for employers and good for business. Requiring all employers to provide paid sick days levels the playing field for employers by taking this important benefit out of competition. Employers who provide paid sick days see greater retention and avoid the problems of “presenteeism” or employees coming to work sick. Studies have shown that costs from on-the-job productivity losses as a result of presenteeism exceed the costs of absenteeism, medical and disability benefits.

SECTION 4: PURPOSE AND CONSTRUCTION

- 1) The purpose of this Act is to ensure that all workers in the Commonwealth of Massachusetts can address their own health needs and the health needs of their families by requiring employers to provide a minimum of 7 paid sick days per year; and
- 2) To alleviate undue burden on public and private health care systems by enabling workers to seek early and routine medical care for themselves and their family members.
- 3) This Act is a remedial act which shall be liberally construed to further its purpose and all presumptions shall be made in favor of providing workers with paid sick days leave.

SECTION 5: Section 148 of chapter 149 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “agreement,” in line 54, the following words:-

and any paid sick days owed and due under section 148C.

SECTION 6: Said chapter 149 is hereby amended by inserting after section 148B the following section:-

Section 148C

(a) Definitions: As used in this section, the following terms shall have the following meanings:

“Child”, a biological, adopted, or foster child, stepchild, legal ward, or child of a parent standing in loco parentis who is under 18 years of age, or 18 years of age or older but incapable of earning wages because of a mental or physical incapacity.

“Employee”, any person who performs services for an employer for wage, remuneration, or other compensation.

“Employer”, any individual, corporation, partnership or other entity, including any agent thereof, who engages the services of an employee or employees for wages, remuneration or other compensation.

“Federal act”, the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654 inclusive, as it may be amended.

“Health care provider”, a provider who ___

(1)(i) is a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate); or who is **a registered nurse**, a licensed practical nurse; or

(ii) is any other person determined by the attorney general to be capable of providing health care services; and

(2) is not employed by an employer to whom the provider issues certifications under this section.

“Parent”, a biological, foster, stepparent or adoptive parent of an employee or an employee’s spouse, or other person who stood in loco parentis during the childhood of an employee or employee’s spouse.

“Seven Paid Sick Days”, the total number of paid sick hours computed by determining the number of hours in a regular work day and multiplying this number by seven.

“Sick day”, a portion of, or a regular workday when an employee is unable to report to work because of the reasons described in subsection (c).

“Spouse”, the meaning given such term by the marriage laws of the Commonwealth of Massachusetts.

(b) All employees who work in the Commonwealth who must be absent from work for the reasons set forth in subsection (c) shall be entitled to not less than 7 sick days with pay during a

12-month period, or to a pro rata number of paid days or hours under the provisions of subsection (d). The 12-month period for each employee shall be calculated from the date-of-hire or subsequent anniversary date.

(c) Paid sick days shall be provided to an employee by an employer for:

(1) care for the employee's child, spouse, parent, or parent of spouse who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care or preventative medical care, or that is covered under the federal act; or

(2) care for the employee's own physical or mental illness, injury, or medical condition that requires home care, or professional medical diagnosis or care or preventative medical care, or that is covered under the federal act; or

(3) an employee to attend a routine medical appointment for himself or herself or for a child, or, in the case of a spouse, parent, or parent of spouse otherwise in need of care; or

4) an employee to address the psychological, physical or legal effects of domestic violence as defined in subsection (g1/2) of section 1 of chapter 151A.

(d) Paid sick days leave shall accrue at the rate of one hour of pay for every 30 hours worked up to the maximum of 7 paid sick days. Paid sick days may be used as accrued, or be loaned by the employer, at its discretion, to the employee in advance of such accrual, provided that an employer shall not require an employee to reimburse it for any unearned sick days. Unless the employer and employee agree to designate otherwise, for periods of paid sick day leave that are less than a normal workday, the leave shall be counted on an hourly basis, or the smallest increment that the employer's payroll system uses to account for absences or use of leave.

(e) Subject to the provisions of subparagraph (o), an employer may require certification of the qualifying illness, injury or health condition when a paid sick day leave period covers more than 3 consecutive workdays. Any reasonable documentation signed by a health care provider involved in following or treating the illness, injury or health condition, and indicating the need

for the amount of sick days taken, shall be deemed acceptable certification. The certification shall be issued at such time and in such manner the attorney general may by regulation require. The employer shall not delay the commencement of leave taken for purposes of subsection (c) or pay for this period on the basis that the employer has not yet received the certification. Nothing in this act shall be construed to require an employee to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2 note.

(f) If the necessity for paid sick days leave under this section is foreseeable, the employee shall provide the employer with not less than 7 days notice before the date the leave is to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as soon as is practicable after the employee is aware of the necessity of such leave.

(g) Paid sick days shall carry over annually to the extent not used by the employee, provided that nothing in this section shall be construed to require an employer to allow accumulation of more than 7 paid sick days leave for an employee unless an employer agrees to do so.

(h) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under, or in connection with this section, including, but not limited to using the taking of paid sick days under this section as a negative factor in an employment action such as hiring, evaluation, promotion or a disciplinary action, or counting the paid sick days under a no-fault attendance policy.

(i) It shall be unlawful for any employer to take any adverse action against an employee because the employee 1) exercises rights or attempts to exercise rights under this section, 2) opposes practices which such employee believes to be in violation of this section, or 3) supports the exercise of rights of another under this section. Exercising rights under this section shall include but not be limited to filing an action, or instituting or causing to be instituted any proceeding under or related to this section; providing or about to provide any information in connection with any inquiry or proceeding relating to any right provided under this section; or testifying to about to testify in any inquiry or proceeding relating to any right provided under this section.

(j) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for this purpose. Violation of this section shall be subject to the penalties in section 27C(b)(1),(2),(4),(6),(7) and the provisions in section 150.

(k) The attorney general shall prescribe the employer's obligation to make, keep, and preserve records pertaining to this section and the requirements for keeping records under section 15 of chapter 151 shall apply to the records required under this section.

(l) Nothing in this section shall be construed to discourage employers from adopting or retaining paid sick day policies more generous than policies that comply with the requirements of this section and nothing in this section shall be construed to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid sick day leave rights to employees than the rights established under this session.

(m) Employers who have a paid time off leave policy providing paid leave in excess of 20 days per year shall not be required to modify such policy, if such policy offers an employee the option, at the employee's discretion, to take paid sick days that is at least equivalent to the paid sick days described in paragraphs (b), (c), and (f), or if the policy offers paid sick days leave in amounts equivalent to the amounts described in such paragraphs for the purposes that include the reasons described in subparagraph (b).

(n) The attorney general may adopt such rules and regulations as may be necessary to carry out the purpose and provisions of this act, including the manner in which an employee who does not have a health care provider shall provide certification..

(o) A notice of the provisions of this section shall be prepared by the attorney general, in English and other languages as required under section 62A(a)(iii) of chapter 151A. Each employer shall post this notice in a conspicuous location accessible to employees in every establishment where employees having rights under this section work. Such notice shall include the following information:

(i) information describing the rights to paid sick days leave under this act;

(ii) information about the notices, documentation and any other requirements placed on employees in order to exercise their rights to paid sick days;

(iii) information that describes the protections that an employee has in exercising rights under this act;

(iv) the name, address, and phone number of the relevant department of the attorney general's office where questions about the rights and responsibilities under the act can be answered; and

(v) information about filing of an action with the attorney general under this act.

SECTION 7: OUTREACH

The executive office of health and human services, in coordination with the attorney general, shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of paid sick days under this act. This program shall include the distribution of notices and other written materials in English and other languages to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

SECTION 8:

Section 150 of chapter 149 as so appearing is hereby further amended by inserting after the number "148B" in line 21, the following:-

148C.

SECTION 9: EFFECTIVE DATES

(a) This act shall take effect within 90 days of its passage.

(b) In the case of a collective bargaining agreement in effect on the effective date proscribed by subsection (a), this act shall take effect on the earlier of the date of the termination of such agreement; or the date that occurs 12 months after the promulgation of regulations by the attorney general.