

# HOUSE . . . . . No. 4640

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, June 20, 2018.

The committee on Ways and Means to whom were referred the petition (accompanied by bill, Senate, No. 1004) of Kenneth J. Donnelly, James R. Miceli, Jack Lewis, Sal N. DiDomenico and other members of the General Court for legislation to improve the Commonwealth's economy with a strong minimum wage and a strong tipped minimum wage, the petition (accompanied by bill, House, No. 1042) of RoseLee Vincent and others relative to the equality of Sunday pay for retail workers, the petition (accompanied by bill, House, No. 1544) of Bradley H. Jones, Jr., and others for legislation to establish an annual sales tax holiday, the petition (accompanied by bill, House, No. 1595) of James M. Murphy and Paul McMurtry for legislation to declare a sales tax holiday for the dates of August 18, 2018 and August 19, 2018, the petition (accompanied by bill, House, No. 2172) of Kenneth I. Gordon and others relative to establishing a paid family and medical leave insurance program, and the petition (accompanied by bill, House, No. 2365) of Daniel M. Donahue and others relative to the tipped minimum wage, reports recommending that the accompanying bill (House, No. 4640) ought to pass [Representatives Boldyga of Southwick and Campanale of Leicester dissent].

For the committee,

JEFFREY SÁNCHEZ.

**HOUSE . . . . . No. 4640**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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An Act relative to minimum wage, paid family medical leave and the sales tax holiday.

*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. Section 1 of chapter 23 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by inserting after the words “standards,” in line 11, the  
3 following words:- the department of family and medical leave.

4           SECTION 2. Section 25 of said chapter 23, as so appearing, is hereby amended by  
5 striking out, in line 16, the figure “17” and inserting in place thereof the following figure:- 18.

6           SECTION 3. Said section 25 of said chapter 23, as so appearing, is hereby further  
7 amended by inserting after the word “designee” in line 25, the following words:- ; the director of  
8 the department of family and medical leave, or a designee.

9           SECTION 4. Chapter 64H of the General Laws is hereby amended by inserting after  
10 section 6 the following section:-

11           Section 6A. (a) For the purposes of this section: (i) “annual sales tax holiday” shall mean  
12 a Saturday and Sunday occurring concurrently in August designated pursuant to subsection (b);

13 and (ii) “tangible personal property” shall have the same meaning as it does in section 1, except  
14 that it shall not include telecommunications, tobacco products subject to the excise imposed by  
15 chapter 64C, marijuana products subject to chapter 94G, alcoholic beverages, as defined in  
16 section 1 of chapter 138, gas, steam, electricity, motor vehicles, motorboats or a single item the  
17 price of which is more than \$2,500.

18 (b) The General Court shall, annually, not later than June 15, adopt a joint resolution  
19 designating a 2-day weekend in August of that year as the annual sales tax holiday. If the  
20 General Court fails to adopt the joint resolution required by this section, the commissioner of  
21 revenue shall not later than July 1, designate a 2-day weekend in August of that year as the  
22 annual sales tax holiday. The General Court or the commissioner of revenue shall, when  
23 choosing the sales tax holiday, take into consideration all religious or secular days of observation  
24 occurring during the month of August; and provided further, the commissioner shall designate  
25 such days so as to maximize the economic benefit to the commonwealth.

26 (c) During the annual sales tax holiday: (i) no tax shall be imposed upon a non-business  
27 sale at retail of tangible personal property; (ii) vendors shall not add to the sales price or collect  
28 from any non-business purchaser a tax upon a sale at retail of tangible personal property; (iii) the  
29 commissioner shall not require a vendor to collect and pay tax upon a sale at retail of tangible  
30 personal property; (iv) any excise erroneously or improperly collected by a vendor shall be  
31 remitted to the department of revenue; and (v) vendors shall continue to comply with all  
32 reporting requirements imposed by law or by regulation, including, but not limited to, the  
33 requirements for filing returns under chapter 62C.

34 (d)(1) The commissioner of revenue shall, annually, not later than December 31, certify  
35 to the comptroller the amount of revenue that the commonwealth would have received during the  
36 annual sales tax holiday if the annual sales tax holiday had not been in effect, as well as new  
37 revenue raised from personal and corporate income taxes and other sources, resulting from the  
38 annual sales tax holiday.

39 (2) The commissioner shall, annually, not later than December 31, issue a report,  
40 detailing, for each fund affected, the amounts that would have been deposited into each fund if  
41 the annual sales tax holiday had not been in effect.

42 (e) The commissioner shall promulgate any rules or regulations and shall issue  
43 instructions or forms necessary for the implementation of this section.

44 SECTION 5. Section 6 of chapter 136 of the General Laws, as appearing in the 2016  
45 Official Edition, is hereby amended by striking out the words “one and one-half”, in line 164,  
46 and inserting in place thereof the following words:- one and four-tenths.

47 SECTION 6. Said section 6 of said chapter 136 is hereby further amended by striking  
48 out the words “one and four-tenths”, inserted by section 5, and inserting in place thereof the  
49 following words:- one and three-tenths.

50 SECTION 7. Said section 6 of said chapter 136 is hereby further amended by striking  
51 out the words “one and three-tenths”, inserted by section 6, and inserting in place thereof the  
52 following words:- one and two-tenths.

53 SECTION 8. Said section 6 of said chapter 136 is hereby further amended by striking out  
54 the words “one and-two-tenths”, inserted by section 7, and inserting in place thereof the  
55 following words:- one and one-tenth.

56 SECTION 9. The second paragraph of clause (50) of said section 6 of said chapter 136 is  
57 hereby amended by striking out the first sentence.

58 SECTION 10. Said section 6 of said chapter 136, as appearing in the 2016 Official  
59 Edition, is hereby amended by striking out, in line 185, the words “one and one-half” and  
60 inserting in place thereof the following words:- one and four-tenths.

61 SECTION 11. Said section 6 of said chapter 136 is hereby further amended by striking  
62 out the words “one and four-tenths”, inserted by section 10, and inserting in place thereof the  
63 following words:- one and three-tenths.

64 SECTION 12. Said section 6 of said chapter 136 is hereby further amended by striking  
65 out the words “one and three-tenths”, inserted by section 11, and inserting in place thereof the  
66 following words:- one and two-tenths.

67 SECTION 13. Said section 6 of said chapter 136 is hereby further amended by striking  
68 out the words “one and two-tenths”, inserted by section 12, and inserting in place thereof the  
69 following words:- one and one-tenth.

70 SECTION 14. Clause (52) of said section 6 of said chapter 136, as appearing in the 2016  
71 Official Edition, is hereby amended by striking out the first sentence and inserting in place  
72 thereof the following sentence:-

73           The retail sale of alcoholic beverages not to be drunk on the premises on Sundays by  
74 retail establishments licensed under section 15 of chapter 138; provided, however, that  
75 notwithstanding this chapter, a municipality may prohibit the retail sale of alcoholic beverages  
76 on Sundays by licensees under section 15 by vote of the city council or board of selectmen; and  
77 provided further, that there shall be no such sales prior to the hour of 10:00 a.m. or on Christmas  
78 Day if Christmas occurs on a Sunday.

79           SECTION 15. The second paragraph of section 16 of said chapter 136, as appearing in  
80 the 2016 Official Edition, is hereby amended by striking out the first sentence and inserting in  
81 place thereof the following sentence:-

82           Any store or shop that qualifies for exemption under clause (25), (27) or (50) of section 6  
83 and employs more than 7 persons, including the proprietor, shall compensate all its employees,  
84 except bona fide executive, administrative or professional employees earning more than \$200 per  
85 week, at a rate specified under clause (50) of section 6 of this chapter for work performed on  
86 Memorial Day, July Fourth or Labor Day; provided, however, that no employee shall be required  
87 to perform such work, and an employee's refusal to work for any retail establishment on a  
88 holiday shall not be grounds for discrimination, dismissal, discharge, reduction in hours or any  
89 other penalty.

90           SECTION 16. The second paragraph of section 16 of said chapter 136, as appearing in  
91 the 2016 Official Edition, is hereby amended by striking out the first sentence and inserting in  
92 place thereof the following sentence:-

93           Any store or shop that qualifies for exemption under clause (25), (27) or (50) of section 6  
94 and employs more than 7 persons, including the proprietor, shall not require any employee to

95 perform such work, and an employee's refusal to work for any retail establishment on a holiday  
96 shall not be grounds for discrimination, dismissal, discharge, reduction in hours or any other  
97 penalty.

98 SECTION 17. Section 1 of chapter 151 of the General Laws, as so appearing, is hereby  
99 amended by striking out, in line 6, the figure "\$11.00" and inserting in place thereof the  
100 following figure:- \$12.00.

101 SECTION 18. Said section 1 of said chapter 151 is hereby further amended by striking  
102 out the figure "\$12.00", inserted by section 17, and inserting in place thereof the following  
103 figure:- \$12.75.

104 SECTION 19. Said section 1 of said chapter 151 is hereby further amended by striking  
105 out the figure "\$12.75", inserted by section 18, and inserting in place thereof the following  
106 figure:- \$13.50.

107 SECTION 20. Said section 1 of said chapter 151 is hereby further amended by striking  
108 out the figure "\$13.50", inserted by section 19, and inserting in place thereof the following  
109 figure:- \$14.25.

110 SECTION 21. Said section 1 of said chapter 151 is hereby further amended by striking  
111 out the figure "\$14.25", inserted by section 20, and inserting in place thereof the following  
112 figure:- \$15.00.

113 SECTION 22. Section 7 of said chapter 151, as appearing in the 2016 Official Edition, is  
114 hereby amended by striking out, in line 33, the figure "\$3.75" and inserting in place thereof the  
115 following figure:- \$4.35.

116 SECTION 23. Said section 7 of said chapter 151 is hereby further amended by striking  
117 out the figure “\$4.35”, inserted by section 22, and inserting in place thereof the following  
118 figure:- \$4.95.

119 SECTION 24. Said section 7 of said chapter 151 is hereby further amended by striking  
120 out the figure “\$4.95”, inserted by section 23, and inserting in place thereof the following  
121 figure:- \$5.55.

122 SECTION 25. Said section 7 of said chapter 151 is hereby further amended by striking  
123 out the figure “\$5.55”, inserted by section 24, and inserting in place thereof the following  
124 figure:- \$6.15.

125 SECTION 26. Said Section 7 of said chapter 151 is hereby further amended by striking  
126 out the figure “\$6.15”, inserted by section 25, and inserting in place thereof the following  
127 figure:- \$6.75.

128 SECTION 27. Said section 7 of said chapter 151, as appearing in the 2016 Official  
129 Edition, is hereby further amended by inserting after the words “section 1”, in line 36, the  
130 following words:- ; provided, however, that an employer shall pay the amount required by clause  
131 (2) at the completion of each shift worked by the employee.

132 SECTION 28. Section 46 of chapter 151A of the General Laws, as appearing in the 2016  
133 Official Edition, is hereby amended by inserting after the word “services”, in line 24, the  
134 following words:- , family and medical leave.

135 SECTION 29. The General Laws are hereby amended by inserting after chapter 175L  
136 the following chapter:-

137 CHAPTER 175M.

138 FAMILY AND MEDICAL LEAVE

139 Section 1. For the purposes of this chapter, the following words shall have the following  
140 meanings, unless the context clearly requires otherwise:-

141 “Average weekly wage”, shall have the same meaning as provided in subsection (w) of  
142 section 1 of chapter 151A; provided, however, that “average weekly wage” shall be calculated  
143 using earnings from the base period, as that term is defined in subsection (a) of said section 1 of  
144 said chapter 151A; and provided further, that in the case of a self-employed individual, “average  
145 weekly wage” shall mean one twenty-sixth of the total earnings of the self-employed individual  
146 from the 2 highest quarters of the 12 months preceding such individual’s application for benefits  
147 under this chapter.

148 “Benefit year”, the period of 52 consecutive weeks beginning on the Sunday immediately  
149 preceding the first day that job-protected leave under this chapter commences for the covered  
150 individual.

151 “Child”, a biological, adopted or foster child, a stepchild or legal ward, a child to whom  
152 the covered individual stands in loco parentis, or a person to whom the covered individual stood  
153 in loco parentis when the person was a minor child.

154 “Contributions”, the payments made by an employer, a covered business entity, an  
155 employee or a self-employed individual to the Family and Employment Security Trust Fund, as  
156 required by this chapter.

157 “Covered business entity”, a business or trade that contracts with self-employed  
158 individuals for services and is required to report the payment for services to such individuals on  
159 IRS Form 1099-MISC for more than 50 per cent of its workforce.

160 “Covered individual”, either: (i) an employee who meets the financial eligibility  
161 requirements of subsection (a) of section 24 of chapter 151A, provided that all such employment  
162 has been with an employer in the commonwealth; (ii) a self-employed individual who has: (A)  
163 elected coverage under subsection (j) of section 2 of this chapter and (B) reported earnings to the  
164 department of revenue from self-employment that meet the financial eligibility requirements of  
165 subsection (a) of section 24 of chapter 151A, as if the individual were an employee; or (iii) a  
166 former employee who has: (A) met the financial eligibility requirements of subsection (a) of  
167 section 24 of chapter 151A at the time of the former employee’s separation from employment,  
168 provided that all such employment has been with an employer in the commonwealth; and (B)  
169 been separated from employment for not more than 26 weeks at the start of the former  
170 employee’s family or medical leave.

171 “Covered servicemember”, either: (i) a member of the Armed Forces, as defined in  
172 section 7 of chapter 4, including a member of the National Guard or Reserves, who is (A)  
173 undergoing medical treatment, recuperation or therapy; (B) otherwise in outpatient status; or (C)  
174 is otherwise on the temporary disability retired list for a serious injury or illness that was  
175 incurred by the member in the line of duty on active duty in the Armed Forces, or a serious  
176 injury or illness that existed before the beginning of the member's active duty and was  
177 aggravated by service in the line of duty on active duty in the Armed Forces; or (ii) a former  
178 member of the Armed Forces, including a former member of the National Guard or Reserves,  
179 who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that

180 was incurred by the member in line of duty on active duty in the Armed Forces, or a serious  
181 injury or illness that existed before the beginning of the member's active duty and was  
182 aggravated by service in line of duty on active duty in the Armed Forces and manifested before  
183 or after the member was discharged or released from service.

184 “Department”, the department of family and medical leave established under section 8 of  
185 this chapter.

186 “Director”, the director of the department of family and medical leave.

187 “Domestic partner”, a person not less than 18 years of age who: (i) is dependent upon the  
188 covered individual for support as shown by either unilateral dependence or mutual  
189 interdependence that is evidenced by a nexus of factors including, but not limited to: (A)  
190 common ownership of real or personal property; (B) common householding; (C) children in  
191 common; (D) signs of intent to marry; (E) shared budgeting; and (F) the length of the personal  
192 relationship with the covered individual; or (ii) has registered as the domestic partner of the  
193 covered individual with any registry of domestic partnerships maintained by the employer of  
194 either party, or in any state, county, city, town or village in the United States.

195 “Employee”, shall have the same meaning as provided in clause (h) of section 1 of  
196 chapter 151A; provided, however, that notwithstanding said clause (h) or any other special or  
197 general law to the contrary, “employee” shall include a family child care provider, as defined in  
198 subsection (a) of section 17 of chapter 15D.

199 “Employer”, shall have the same meaning as provided in subsection (i) of section 1 of  
200 chapter 151A; provided, however, that an individual employer shall be determined by the  
201 Federal Employer Identification Number; provided further, that the department of early

202 education and care shall be deemed the employer of family child care providers, as defined in  
203 subsection (a) of section 17 of chapter 15D; provided further, that the PCA quality home care  
204 workforce council established in section 71 of chapter 118E shall be the employer of personal  
205 care attendants, as defined in section 70 of said chapter 118E; provided further, that any  
206 employer not subject to this chapter may become a covered employer under this chapter by  
207 notifying the department of family and medical leave and completing the procedure established  
208 by the department; and provided further, that a municipality, district, political subdivision or its  
209 instrumentalities shall not be subject to this chapter unless it adopts this chapter under section 10.

210 “Employment”, shall have the same meaning as provided by clause (k) of section 1 of  
211 chapter 151A.

212 “Employment benefits”, all benefits provided or made available to employees by an  
213 employer, including, but not limited to, group life insurance, health insurance, disability  
214 insurance, sick leave, annual or vacation leave, educational benefits and pensions.

215 “Family leave”, leave taken pursuant to paragraph (1) of subsection (a) and subsection (b)  
216 of section 2.

217 “Family leave benefits”, wage replacement paid pursuant to section 3 and provided in  
218 accordance with section 2 to a covered individual while the covered individual is on family  
219 leave.

220 “Family member”, the spouse, domestic partner, child, parent or parent of a spouse or  
221 domestic partner of the covered individual; a person who stood in loco parentis to the covered  
222 individual when the covered individual was a minor child; or a grandchild, grandparent or sibling  
223 of the covered individual.

224 “Health care provider”, an individual licensed to practice medicine, surgery, dentistry,  
225 chiropractic, podiatry, midwifery or osteopathy or any other individual determined by the  
226 department to be capable of providing health care services.

227 “Medical leave”, leave taken pursuant to paragraph (2) of subsection (a) of section 2.

228 “Medical leave benefits”, wage replacement paid pursuant to section 3 and provided in  
229 accordance with section 2 to a covered individual while the covered individual is on medical  
230 leave.

231 “Qualifying exigency”, a need arising out of a covered individual’s family member’s  
232 active duty service or notice of an impending call or order to active duty in the Armed Forces,  
233 including, but not limited to, providing for the care or other needs of the military member’s child  
234 or other family member, making financial or legal arrangements for the military member,  
235 attending counseling, attending military events or ceremonies, spending time with the military  
236 member during a rest and recuperation leave or following return from deployment or making  
237 arrangements following the death of the military member.

238 “Self-employed individual”, a sole proprietor, member of a limited liability company or  
239 limited liability partnership or an individual whose net profit or loss from a business must be  
240 reported to the department of revenue; provided, however, that such individual resides in the  
241 commonwealth.

242 “Serious health condition”, an illness, injury, impairment or physical or mental condition  
243 that involves (i) inpatient care in a hospital, hospice or residential medical facility; or (ii)  
244 continuing treatment by a health care provider.

245 “State average weekly wage”, the average weekly wage in the commonwealth as  
246 calculated under subsection (a) of section 29 of chapter 151A and determined by the  
247 commissioner of unemployment assistance.

248 “Trust fund”, the Family and Employment Security Trust Fund established under section  
249 7.

250 “Wages”, shall have the same meaning as provided in clause (s) of section 1 of chapter  
251 151A.

252 “Weekly benefit amount”, the amount of wage replacement paid to a covered individual  
253 on a weekly basis while the covered individual is on family or medical leave, as provided in  
254 section 3.

255 Section 2. (a)(1) Family leave shall be available to any covered individual for any of the  
256 following reasons: (i) to bond with the covered individual's child during the first 12 months after  
257 the child's birth or the first 12 months after the placement of the child for adoption or foster care  
258 with the covered individual; (ii) because of any qualifying exigency arising out of the fact that a  
259 family member is on active duty or has been notified of an impending call or order to active duty  
260 in the Armed Forces; or (iii) in order to care for a family member who is a covered  
261 servicemember.

262 (2) Medical leave shall be available to any covered individual with a serious health  
263 condition.

264 (b) Family leave shall be available to any covered individual to care for a family member  
265 with a serious health condition.

266 (c)(1) A covered individual shall not be eligible for more than 12 weeks of family leave  
267 in a benefit year; provided, however, that a covered individual taking family leave in order to  
268 care for a covered servicemember pursuant to clause (iii) of paragraph (1) of subsection (a) of  
269 this section shall not be eligible for more than 26 weeks of family leave in a benefit year. A  
270 covered individual shall not be eligible for medical leave for more than 20 weeks in a benefit  
271 year. A covered individual may not take more than 26 weeks, in the aggregate, of family and  
272 medical leave under this chapter in the same benefit year. Nothing in this section shall prevent a  
273 covered individual from taking a medical leave during pregnancy or recovery from childbirth if  
274 supported by documentation by a health care provider that is immediately followed by family  
275 leave, in which case the 7 day waiting period for family leave shall not be required.

276 (2)(A) Leave under clause (i) of paragraph (1) of subsection (a) shall not be taken by an  
277 employee intermittently or on a reduced leave schedule unless the employee and the employer of  
278 the employee agree otherwise. Leave under clause (iii) of paragraph (1) or paragraph (2) of  
279 subsection (a) or under subsection (b) of this section, may be taken intermittently or on a reduced  
280 leave schedule by an employee when medically necessary. Leave under clause (ii) of paragraph  
281 (1) of subsection (a) of this section may be taken intermittently or on a reduced leave schedule  
282 by an employee.

283 (B) Leave under paragraphs (1) or (2) of subsection (a), or under subsection (b) of this  
284 section may be taken intermittently or on a reduced leave schedule by a self-employed individual  
285 or former employee.

286 (C) The taking of leave intermittently or on a reduced leave schedule pursuant to this  
287 paragraph shall not result in a reduction in the total amount of leave to which the covered  
288 individual is entitled under this chapter.

289 (d) While on family or medical leave, a covered individual shall receive a weekly benefit  
290 amount, as provided in section 3.

291 (e) An employee who has taken family or medical leave shall be restored to the  
292 employee's previous position, or to an equivalent position, with the same status, pay,  
293 employment benefits, length of service credit and seniority as of the date of leave. An employer  
294 shall not be required to restore an employee who has taken family or medical leave to the  
295 previous or to an equivalent position if other employees of equal length of service credit and  
296 status in the same or equivalent positions have been laid off due to economic conditions or other  
297 changes in operating conditions affecting employment during the period of leave; provided,  
298 however, that the employee who has taken leave shall retain any preferential consideration for  
299 another position to which the employee was entitled as of the date of leave.

300 (f) The taking of family or medical leave shall not affect an employee's right to accrue  
301 vacation time, sick leave, bonuses, advancement, seniority, length of service credit or other  
302 employment benefits, plans or programs. During the duration of an employee's family or  
303 medical leave, the employer shall continue to provide for and contribute to the employee's  
304 employment-related health insurance benefits, if any, at the level and under the conditions  
305 coverage would have been provided if the employee had continued working continuously for the  
306 duration of such leave.

307 (g) Subsections (e) and (f) shall not apply to a self-employed individual taking family or  
308 medical leave under this chapter or a person who was a former employee who satisfies the  
309 conditions set forth in clause (iii) of the definition of “Covered individual” in section 1, when  
310 that person began taking family or medical leave under this chapter.

311 (h)(1) This chapter shall not: (i) obviate an employer’s obligations to comply with any  
312 company policy, law or collective bargaining agreement that provides for greater or additional  
313 rights to leave than those provided for by this chapter; (ii) in any way curtail the rights,  
314 privileges or remedies of any employee under any collective bargaining agreement or  
315 employment contract; or (iii) be construed to allow an employer to compel an employee to  
316 exhaust rights to any sick, vacation or personal time prior to or while taking leave under this  
317 chapter.

318 (2) An employer may require that payment made pursuant to this chapter be made  
319 concurrently or otherwise coordinated with payment made or leave allowed under the terms of  
320 disability or family care leave under a collective bargaining agreement or employer policy such  
321 that the employee will receive the greater of the various benefits that are available for the  
322 covered reason. Any leave provided under a collective bargaining agreement or employer policy  
323 that is used by the employee for a covered reason and paid at the same or higher rate than leave  
324 available under this chapter shall count against the allotment of leave available under the chapter.  
325 The employer shall give employees written notice of this requirement.

326 (i) Leave taken under this chapter shall run concurrently with leave taken under section  
327 105D of chapter 149 or under the Family and Medical Leave Act of 1993, codified at 29 U.S.C.  
328 section 2611, et seq. Employees who take leave under this chapter while ineligible for leave

329 under the Family and Medical Leave Act of 1993 shall be permitted to take leave under the  
330 Family and Medical Leave Act of 1993 in the same benefit year only to the extent they remain  
331 eligible for concurrent leaves under this chapter.

332 (j) A self-employed individual may elect coverage under this chapter and become a  
333 covered individual for an initial period of not less than 3 years by filing a notice of election in  
334 writing with the department and making contributions as required in section 6 to the Family and  
335 Employment Security Trust Fund established in section 7; provided, however, that a self-  
336 employed individual who elects coverage shall not be eligible for benefits until that individual  
337 has made such required contributions for at least 2 calendar quarters of the individual's last 4  
338 completed calendar quarters. The election shall become effective on the date of filing the notice.  
339 The department shall establish a process by which self-employed individuals elect coverage  
340 under this chapter.

341 Section 3. (a) No family or medical leave benefits shall be payable during the first 7  
342 calendar days of such leave; provided, however, that an employee may utilize accrued sick or  
343 vacation pay or other paid leave provided under an employer policy during the first 7 calendar  
344 days of such leave. Employees taking family or medical leave for which benefits are not payable  
345 under this subsection shall be entitled to the protections of subsections (e) and (f) of section 2  
346 and section 9.

347 (b)(1) The weekly benefit amount for employees and self-employed individuals on  
348 family or medical leave shall be determined as follows: (i) the portion of an employee's or self-  
349 employed individual's average weekly wage that is equal to or less than 50 per cent of the state  
350 average weekly wage shall be replaced at a rate of 80 per cent; and (ii) the portion of an

351 employee's or self-employed individual's average weekly wage that is more than 50 percent of  
352 the state average weekly wage shall be replaced at a rate of 50 per cent.

353 (2) The maximum weekly benefit amount calculated pursuant to paragraph (1) shall be  
354 not more than \$850.00 per week; provided, however, that annually, not later than October 1 of  
355 each year thereafter, the commissioner of unemployment assistance shall adjust the maximum  
356 weekly benefit amount to be 64 per cent of the state average weekly wage and the adjusted  
357 maximum weekly benefit amount shall take effect on January 1 of the year following such  
358 adjustment.

359 (3) For a covered individual who takes leave on an intermittent or reduced leave  
360 schedule, the weekly benefit amount shall be prorated as determined by the department.

361 (c) The weekly benefit amount shall be reduced by the amount of wages or wage  
362 replacement that a covered individual receives for that period under any of the following while  
363 on family or medical leave: (i) any government program or law, including but not limited to  
364 workers' compensation under chapter 152, other than for permanent partial disability incurred  
365 prior to the family or medical leave claim, or under other state or federal temporary or permanent  
366 disability benefits law, or (ii) a permanent disability policy or program of an employer.

367 The weekly benefit amount shall not be reduced by the amount of wage replacement that  
368 an employee receives while on family or medical leave under any of the following conditions,  
369 unless the aggregate amount an employee would receive would exceed the employee's average  
370 weekly wage: (i) a temporary disability policy or program of an employer; or (ii) a paid family,  
371 or medical leave policy of an employer. If an employer makes payments to an employee during  
372 any period of family or medical leave that are equal to or more than the amount required under

373 this section, the employer shall be reimbursed out of any benefits due or to become due from the  
374 trust fund established in section 7 for family or medical leave benefits for that employee  
375 covering the same period of time as the payments made by the employer.

376 Section 4. (a) Each employer and covered business entity shall post in a conspicuous  
377 place on each of its premises a workplace notice prepared or approved by the department  
378 providing notice of benefits available under this chapter. The workplace notice shall be issued in  
379 English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer,  
380 Russian and any other language that is the primary language of at least 10,000 or one-half of one  
381 percent of all residents of the commonwealth. The required workplace notice shall be in English  
382 and each language other than English which is the primary language of five or more employees  
383 or self-employed individuals of that workplace, if such notice is available from the department.

384 Each employer shall issue to each employee not more than 30 days from the beginning  
385 date of the employee's employment, the following written information provided or approved by  
386 the department in the employee's primary language: (i) an explanation of the availability of  
387 family and medical leave benefits provided under this chapter, including rights to reinstatement  
388 and continuation of health insurance; (ii) the employee's contribution amount and obligations  
389 under this chapter; (iii) the employer's contribution amount and obligations under this chapter;  
390 (iv) the name and mailing address of the employer; (v) the identification number assigned to the  
391 employer by the department; (vi) instructions on how to file a claim for family and medical leave  
392 benefits; (vii) the mailing address, email address and telephone number of the department; and  
393 (viii) any other information deemed necessary by the department. Delivery is made when an  
394 employee provides written acknowledgement of receipt of the information, or signs a statement  
395 indicating the employee's refusal to sign such acknowledgement.

396           Each covered business entity shall provide to each self-employed individual with whom it  
397 contracts, at the time such contract is made, the following written information provided or  
398 approved by the department in the self-employed individual's primary language: (i) an  
399 explanation of the availability of family and medical leave benefits provided under this chapter  
400 and the procedures established by the department for self-employed individuals to become  
401 covered individuals; (ii) the self-employed individual's contribution amount and obligations  
402 under this chapter if the self-employed individual were to become a covered individual; (iii) the  
403 covered business entity's contribution amount and obligations under this chapter; (iv) the name,  
404 mailing address and email address of the covered business entity; (v) the identification number  
405 assigned to the covered business entity by the department; (vi) instructions on how to file a claim  
406 for family and medical leave benefits; (vii) the address and telephone number of the department;  
407 and (viii) any other information deemed necessary by the department. Delivery is made when a  
408 self-employed individual provides written acknowledgement of receipt of the information, or  
409 signs a statement indicating the self-employed individual's refusal to sign such  
410 acknowledgement.

411           An employer or covered business entity that fails to comply with this subsection shall be  
412 issued, for a first violation, a civil penalty of \$50 per employee and per self-employed individual  
413 with whom it has contracted, and for each subsequent violation, a civil penalty of \$300 per  
414 employee or self-employed individual with whom it has contracted. The employer or covered  
415 business entity shall have the burden of demonstrating compliance with this subsection.

416           (b) The employee shall give not less than 30 days' notice to the employer of the  
417 anticipated starting date of the leave, the anticipated length of the leave and the expected date of  
418 return or shall provide notice as soon as practicable if the delay is for reasons beyond the

419 employee's control. If an employer fails to provide notice of this chapter as required under  
420 subsection (a), the employee's notice requirement shall be waived.

421           Section 5. (a)(1) Covered individuals shall file a benefit claim pursuant to regulations  
422 issued by the department. If a claim is filed more than 90 calendar days after the start of leave,  
423 the covered individual may receive reduced benefits. All claims shall include a certification  
424 supporting a request for leave under this chapter. The department shall establish good cause  
425 exemptions from the certification requirement deadline in the event that a serious health  
426 condition of the covered individual prevents the covered individual from providing the required  
427 certification within the 90 calendar days.

428           (2) Certification for a covered individual taking medical leave shall be sufficient if it  
429 states the date on which the serious health condition commenced, the probable duration of the  
430 condition and the appropriate medical facts within the knowledge of the health care provider as  
431 required by the department.

432           (3) Certification for a covered individual taking family leave because of the serious  
433 health condition of a family member of the covered individual shall be sufficient if it states the  
434 date on which the serious health condition commenced, the probable duration of the condition,  
435 the appropriate medical facts within the knowledge of the health care provider as required by the  
436 department, a statement that the covered individual is needed to care for the family member and  
437 an estimate of the amount of time that the covered individual is needed to care for the family  
438 member.

439           (4) Certification for a covered individual taking family leave because of the birth of a  
440 child of the covered individual shall be sufficient if the covered individual provides either the

441 child's birth certificate or a document issued by the health care provider of the child, or the  
442 health care provider of the person who gave birth, stating the child's birth date.

443 (5) Certification for a covered individual taking family leave because of the placement of  
444 a child with the covered individual for adoption or foster care shall be sufficient if the covered  
445 individual provides a document issued by the health care provider of the child, an adoption or  
446 foster care agency involved in the placement or by other individuals as determined by the  
447 department that confirms the placement and the date of placement. To the extent that the status  
448 of a covered individual as an adoptive or foster parent changes while an application for benefits  
449 is pending, or while the covered individual is receiving benefits, the covered individual is  
450 required to notify the department of such change in status in writing. The department of children  
451 and families may confirm in writing the status of the covered individual as an adoptive or foster  
452 parent while an application for benefits is pending or while a covered individual is receiving  
453 benefits.

454 (6) Certification for a covered individual taking family leave because of a qualifying  
455 exigency shall be sufficient if it includes (i) a copy of the family member's active-duty orders;  
456 (ii) other documentation issued by the Armed Forces; or (iii) other documentation permitted by  
457 the department.

458 (7) Certification for a covered individual taking family leave to care for a family member  
459 who is a covered servicemember shall be sufficient if it includes: (i) the date on which the  
460 serious health condition commenced; (ii) the probable duration of the condition; (iii) the  
461 appropriate medical facts within the knowledge of the health care provider as required by the  
462 department; (iv) a statement that the covered individual is needed to care for the family member;

463 (v) an estimate of the amount of time that the covered individual is needed to care for the family  
464 member; and (vi) an attestation by the covered individual that the health condition is connected  
465 to the covered servicemember's military service as required by this chapter.

466 (b) Any medical or health information required under this section shall be treated as  
467 confidential and not disclosed except with permission from the covered individual who provided  
468 it unless disclosure is otherwise required by law. Nothing in this section shall be construed to  
469 require a covered individual to provide as certification any information from a health care  
470 provider that would be in violation of section 1177 of the Social Security Act, codified as 42  
471 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance  
472 Portability and Accountability Act of 1996, Public Law 104-191.

473 (c) A covered individual shall not be eligible to receive family or medical leave benefits  
474 if the department finds, through a process it shall establish through regulations, that the covered  
475 individual, for the purpose of obtaining these benefits, has willfully made a false statement or  
476 representation, with actual knowledge of the falsity thereof, or has willfully withheld a material  
477 fact concerning the facts required to be certified pursuant to this section.

478 Section 6. (a) For each employee, an employer shall remit to the Family and Employment  
479 Security Trust Fund established under section 7 contributions in the form and manner determined  
480 by the department. The contribution rate set forth in this section shall be adjusted annually as  
481 specified in subsection (e) of section 7.

482 (b) A self-employed individual who is electing coverage under subsection (j) of section 2  
483 of this chapter shall be responsible for all contributions set forth in subsection (a) of this section  
484 on that individual's income from self-employment.

485 (c)(1) For medical leave, an employer shall not deduct more than 40 per cent of the  
486 contribution required for an employee by subsection (a) from that employee's wages and shall  
487 remit the full contribution required under subsection (a) to the trust fund.

488 (2) For family leave, an employer may deduct not more than 100 per cent of the  
489 contribution required for an employee by subsection (a) from that employee's wages, and shall  
490 remit the full contribution required under subsection (a) to the trust fund.

491 (d) Notwithstanding subsection (c), an employer employing less than 25 employees in the  
492 commonwealth is not required to pay the employer portion of premiums for family and medical  
493 leave. An employer or a covered business entity with a workforce that has more than 50 per cent  
494 self-employed individuals for whom the employer must report the payment for services to such  
495 individual on IRS Form 1099-MISC shall include those self-employed individuals as employees  
496 for purposes of this section.

497 (e)(1) A covered business entity shall not deduct more than 40 per cent of the  
498 contribution required under subsection (a) to the trust fund for the income paid to each self-  
499 employed individual with whom it contracts for services and for whom it must report payments  
500 for services to such an individual on IRS Form 1099-MISC.

501 (2) For family leave, a covered business entity may deduct not more than 100 per cent of  
502 the contribution required under subsection (a) to the trust fund for the income paid to each self-  
503 employed individual with whom it contracts for services and for whom it must report payments  
504 for services to such an individual on IRS Form 1099-MISC.

505 (f) Contributions to the trust fund under this section shall not be required for employees'  
506 wages above the contribution and benefit base limit established annually by the United States

507 Social Security Administration for purposes of the Old-Age, Survivors, and Disability Insurance  
508 program limits pursuant to 42 U.S.C. section 430.

509 Section 7. (a) There shall be a Family and Employment Security Trust Fund to be  
510 administered by the treasurer and receiver general exclusively for the purposes of this chapter.  
511 Any sums received under this section shall not be considered revenue of the commonwealth but  
512 shall be held in trust for the exclusive benefit of covered individuals eligible for benefits under  
513 this chapter, and for the administration of the department and shall not be expended, released,  
514 appropriated or otherwise disposed of for any other purpose and shall be expended by the  
515 director as required by this chapter to pay family and medical leave program benefits to covered  
516 individuals eligible to receive benefits, and to pay the administrative costs of the department. The  
517 trust fund shall consist of: (i) contributions collected pursuant to section 6 together with any  
518 interest earned thereon; (ii) property or securities acquired through the use of money belonging  
519 to the trust fund together with any earnings of such property and securities; (iii) fines and  
520 penalties collected under this chapter; and (iv) other money received from any source, including  
521 any grants, gifts, bequests or money authorized by the General Court or other party specifically  
522 designated to be credited to the trust fund. Money remaining in the fund at the end of a fiscal  
523 year shall not revert to the General Fund. Amounts credited to the trust fund shall not be  
524 expended for any purpose other than the payment of benefits to covered individuals eligible for  
525 benefits under this chapter, and for the administration of the department, and shall not be  
526 expended, released, appropriated, or otherwise disposed of for any other purpose. The trust fund  
527 shall maintain an annualized amount of not less than 140 per cent of the previous fiscal year's  
528 expenditure for benefits paid and for the administration of the department.

529 (b) The costs of administering the department under this chapter shall not exceed 5 per  
530 cent of the amount deposited under subsection (a) for each fiscal year following the initial year  
531 benefits have been paid under section 2. Monies in the trust fund may be deposited in any  
532 depository bank in which general funds of the commonwealth may be deposited, but such  
533 monies shall not be commingled with other commonwealth funds and shall be maintained in  
534 separate accounts on the books of the depository bank. Such monies shall be secured by the  
535 depository bank to the same extent and in the same manner as required by the general depository  
536 laws of the commonwealth, and collateral pledged for this purpose shall be kept separate and  
537 distinct from any other collateral pledged to secure other funds of the commonwealth.

538 (c) The director shall expend money from the trust fund to provide weekly benefits under  
539 section 3. Family and medical leave benefits shall be paid from the trust fund to covered  
540 individuals eligible for benefits. An employer's bankruptcy or noncompliance with this chapter  
541 shall not interfere with an employee's ability to collect family and medical leave benefits under  
542 this chapter. Family or medical leave benefits paid from the trust fund to such an employee may  
543 be recovered through bankruptcy proceedings or from the non-complying employer. The director  
544 shall institute administrative and legal action to recover family or medical leave benefits paid  
545 through the trust fund.

546 (d) To accumulate funds for the payment of family and medical leave benefits and  
547 administrative costs, employers, covered business entities and self-employed individuals shall,  
548 unless subject to provisions under section 11, make contributions as required under section 6 of  
549 this chapter, and transmit those contributions to the trust fund in the manner determined by the  
550 director.

551 (e) Annually, not later than October 1, the director shall fix the contribution rate set forth  
552 in subsection (a) of section 6 for the coming calendar year in the manner described in this  
553 subsection. The director shall first certify to the secretary of the executive office of labor and  
554 workforce development and publish, pursuant to section 6 of chapter 30A, the following  
555 information: (i) the total amount of benefits paid by the department during the previous fiscal  
556 year; (ii) the total amount remaining in the trust fund at the close of such fiscal year; (iii) the total  
557 amount equal to 140 per cent of the previous fiscal year's expenditure for benefits paid and for  
558 the administration of the department; (iv) the amount by which the total amount remaining in the  
559 trust fund at the close of the previous fiscal year is less than or greater than 140 per cent of the  
560 previous fiscal year's expenditure for benefits paid and for the administration of the department;  
561 and (v) the amount by which the contribution rate set forth in subsection (a) of section 6 shall be  
562 adjusted to ensure that the trust fund shall maintain or achieve an annualized amount of not less  
563 than 140 per cent of the previous fiscal year's expenditure for benefits paid and for the  
564 administration of the department. The contribution rate adjustment, if any, made as the result of  
565 the director's certification and report under this subsection shall supersede the rate previously set  
566 forth in subsection (a) of section 6, and shall become effective January 1 of the following  
567 calendar year.

568 Annually, not later than October 1, the director shall publish a report providing the  
569 following information concerning the family and medical leave program for the previous fiscal  
570 year: (i) total eligible claims; (ii) the percentage of such claims attributable to medical leave; (iii)  
571 the percentage of such claims attributable to family leave other than the birth, adoption or  
572 fostering of a child; (iv) the percentage of such claims attributable to family leave attributable to  
573 the birth, adoption or fostering of a child; (v) the percentage of such claims attributable to

574 military exigency leave; (vi) the percentage of such claims attributable to family leave for a  
575 covered service member; (vii) claimant demographics by age, gender, average weekly wage,  
576 occupation and the type of leave taken; (viii) the percentage of claims denied and the reasons  
577 therefore, including, but not limited to insufficient information and ineligibility and the reason  
578 therefore; (ix) average weekly benefit amount paid for all claims and by category of leaves; (x)  
579 changes in the gross benefits paid compared to previous fiscal years; (xi) processing times for  
580 initial claims processing, initial determinations and final decisions; (xii) average duration for  
581 cases completed; and (xiii) the number of cases remaining open at the close of such year.

582 (f) An employer, covered business entity or self-employed individual to whom the  
583 treasurer has sent a request for wage, earnings or employment information for an employee, or  
584 covered individual claiming family or medical leave benefits shall complete and file that  
585 information not later than 10 calendar days after the date the request was sent. If such employer,  
586 covered business entity or self-employed individual does not respond within those 10 calendar  
587 days, then such employer, covered business entity or self-employed individual may be held liable  
588 for any related costs incurred by the treasurer.

589 (g) The state treasurer may, from time to time, invest such monies in the trust fund as are  
590 in excess of the amount deemed necessary for the payment of benefits for a reasonable future  
591 period. Such monies may be invested in bonds of any political or municipal corporation or sub-  
592 department of the commonwealth, or any of the outstanding bonds of the commonwealth, or  
593 invested in bonds or interest-bearing notes or obligations of the commonwealth, or of the United  
594 States, or those for which the faith and credit of the United States are pledged for the payment of  
595 principal and interest, or in federal land bank bonds or joint stock farm bonds. The investments  
596 shall at all times be so made that all the assets of the trust fund shall always be readily

597 convertible into cash when needed for the payment of benefits. The state treasurer shall have the  
598 power to dispose of securities or other properties belonging to the trust fund when needed for the  
599 payment of benefits.

600 Section 8. (a) There shall be a department of family and medical leave within the  
601 executive office of labor and workforce development which shall be administered by a director  
602 appointed by the governor.

603 (b) The department shall pay medical leave benefits as specified by this chapter and  
604 family leave benefits to any covered individual for any of the following reasons: (i) to bond with  
605 the covered individual's child during the first 12 months after the child's birth or the first 12  
606 months after the placement of the child for adoption or foster care with the covered individual;  
607 (ii) because of any qualifying exigency arising out of the fact that a family member is on active  
608 duty or has been notified of an impending call or order to active duty in the Armed Forces; or  
609 (iii) in order to care for a family member who is a covered service member. The department, by  
610 regulation, shall set time standards for application processing which shall provide for notifying  
611 applicants of their eligibility or ineligibility for benefits under this chapter within 14 days of  
612 receiving an a claim under section 5 and shall pay benefits not less than 14 days after the  
613 eligibility determination unless that determination occurs more than 14 days before the onset of  
614 eligibility in which case benefits shall be paid as soon as eligibility begins. The department shall  
615 not require documentation of certification beyond the requirements established by this chapter.

616 (c) The department shall pay family leave benefits to any covered individual to care for a  
617 family member with a serious health condition as specified by this chapter. The department, by  
618 regulation, shall set time standards for application processing which shall provide for notifying

619 applicants within 14 days of their eligibility for benefits under this chapter and shall pay benefits  
620 not less than 14 days after the eligibility determination unless that determination occurs more  
621 than 14 days before the onset of eligibility in which case benefits shall be paid as soon as  
622 eligibility begins. The department shall not require documentation of certification beyond the  
623 requirements established by this chapter.

624 (d) The department shall notify the employer not more than 5 business days after a claim  
625 has been filed under section 5, and shall use information sharing and integration technology to  
626 facilitate the disclosure of relevant information or records with the written consent of the  
627 individual applying for benefits. The department shall establish by regulation a system for  
628 appeals, pursuant to chapter 30A, in the case of a denial of family or medical leave benefits. In  
629 establishing such system, the department shall provide for administrative review in an  
630 adjudicatory proceeding held pursuant to section 10 of chapter 30A and 801 CMR 1.02. Judicial  
631 review of any decision of the department rendered pursuant to administrative review under this  
632 subsection shall be commenced pursuant to the provisions of section 14 of chapter 30A, within  
633 30 days of the date of the receipt of the notice of such decision, except that such judicial review  
634 under this section shall be filed in the district court within the judicial district in which the  
635 covered individual lives, or is or was last employed, or in which the individual has a usual place  
636 of business, and in such proceeding, the department shall be made a defendant.

637 (e) Information contained in the files and records pertaining to an individual under this  
638 chapter are confidential and not open to public inspection, other than to public employees in the  
639 performance of their official duties; provided, however, that an individual or authorized  
640 representative of an individual may review the individual's records or receive specific

641 information from the records upon the presentation of the individual's signed and dated  
642 authorization, which shall remain in force and effect until revoked in writing by such individual.

643 (f) The department shall conduct a public education campaign to inform workers,  
644 employers, self-employed individuals and covered business entities about the availability of  
645 family and medical leave benefits, the requirements for receiving such benefits and family and  
646 medical leave, how to apply for such benefits and leave and all of the employer's and covered  
647 business entity's obligations under this chapter. The department shall prepare and disseminate  
648 model multilingual forms to be used by employers, covered business entities, employees and  
649 self-employed individuals in the languages required for the workplace notice under subsection  
650 (a) of section 4.

651 (g) The executive office of labor and workforce development shall be responsible for the  
652 enforcement of this chapter and shall promulgate rules and regulations pursuant thereto. An  
653 employer or covered business entity who fails or refuses to make contributions as required in  
654 section 6 shall be assessed 0.63 per cent of its total annual payroll for each year it so failed to  
655 comply, or fraction thereof, in addition to the total amount of benefits paid to covered individuals  
656 for whom it failed to make contributions. The rate of assessment imposed by this subsection  
657 shall be adjusted annually consistent with the provisions of subsection (a) of section 6 and  
658 subsection (e) of section 7.

659 (h) This act shall be liberally construed as remedial legislation to further its purpose of  
660 providing job-protected family and medical leave, and family and medical leave benefits. All  
661 presumptions shall be made in favor of the availability of leave and the payment of family and  
662 medical leave benefits under this chapter.

663           Section 9. (a) It shall be unlawful for any employer to retaliate by discharging, firing,  
664   suspending, expelling, disciplining, through the application of attendance policies or otherwise,  
665   threatening, or in any other manner discriminating against an employee for exercising any right  
666   to which such employee is entitled under this chapter or with the purpose of interfering with the  
667   exercise of any right to which such employee is entitled under this chapter.

668           (b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending,  
669   expelling, disciplining, through the application of attendance policies or otherwise, threatening or  
670   in any other manner discriminating against an employee who has filed a complaint or instituted  
671   or caused to be instituted a proceeding under or related to this section, has testified or is about to  
672   testify in an inquiry or proceeding or has given or is about to give information connected to any  
673   inquiry or proceeding relating to this section.

674           (c) Any negative change in the seniority, status, employment benefits, pay or other terms  
675   or conditions of employment of an employee which occurs any time during a leave taken by an  
676   employee under this chapter, or during the 6 month period following an employee's leave or  
677   restoration to a position pursuant to this section, or of an employee who has participated in  
678   proceedings or inquiries pursuant to this section within 6 months of the termination of  
679   proceedings shall be presumed to be retaliation under this section. Such presumption shall be  
680   rebutted only by clear and convincing evidence that such employer's action was not retaliation  
681   against the employee and that the employer had sufficient independent justification for taking  
682   such action, and would have in fact taken such action, in the same manner and at the same time  
683   the action was taken, regardless of the employee's use of leave, restoration to a position, or  
684   participation in proceedings or inquiries as described in this subsection. An employer found to  
685   have threatened, coerced or taken reprisal against any employee pursuant to this subsection shall

686 rescind any adverse alteration in the terms of employment for such employee and shall offer  
687 reinstatement to any terminated employee and shall also be liable in an action brought under  
688 subsection (d).

689 (d) An employee or former employee aggrieved by a violation of this section or  
690 subsections (e) and (f) of section 2 of this chapter may, not more than 3 years after the violation  
691 occurs, institute a civil action in the superior court. A party to the action shall be entitled to a jury  
692 trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs  
693 and shall be in addition to any legal or equitable relief provided in this section. The court may:  
694 (i) issue temporary restraining orders or preliminary or permanent injunctions to restrain  
695 continued violations of this section; (ii) reinstate the employee to the same position held before  
696 the violation or to an equivalent position; (iii) reinstate full fringe benefits and seniority rights to  
697 the employee; (iv) compensate the employee for 3 times the lost wages, benefits and other  
698 remuneration and the interest thereon; and (v) order payment by the employer of reasonable costs  
699 and attorneys' fees.

700 Section 10. A municipality, district, political subdivision or authority may adopt this  
701 chapter upon a majority vote of the local legislative body or the governing body. For the  
702 purposes of this section, a vote of the legislative body shall take place in a city by a vote of the  
703 city council subject to its charter, in a town by a vote at town meeting, for an authority by a vote  
704 of its governing body, in a district, by a vote of the district in a district meeting, and by any other  
705 political subdivision or instrumentality, by a vote of its legislative body in accordance with its  
706 charter or enabling act.

707           Section 11. (a)(1) Employers may apply to the department of family and medical leave  
708 for approval to meet their obligations under this chapter through a private plan. In order to be  
709 approved as meeting an employer’s obligations under this chapter, a private plan must confer all  
710 of the same rights, protections and benefits provided to employees under this chapter, including  
711 but not limited to: (i) providing family leave to a covered individual for the reasons defined in  
712 paragraph (1) of subsection (a) and subsection (b) of section 2 for the maximum number of  
713 weeks required in paragraph (1) of subsection (b) of this chapter, in a benefit year; (ii) providing  
714 medical leave to a covered individual for the reasons defined in paragraph (2) of subsection (a)  
715 of section 2 for the maximum number of weeks required in paragraph (2) of subsection (c) of  
716 section 2, in a benefit year; (iii) allowing covered individuals to take, in the aggregate, the  
717 maximum number of weeks of family and medical leave in a benefit year as required by  
718 paragraph (2) of subsection (c) of section 2; (iv) allowing family leave to be taken for all  
719 purposes specified in paragraph (1) of subsection (a) and subsection (b) of section 2; (v) allowing  
720 family leave under paragraph (1) of subsection (a) of section of 2 to be taken to care for any  
721 family member; (vi) allowing medical leave to be taken by a covered individual with any serious  
722 health condition; (vii) providing a wage replacement rate during all family and medical leave of  
723 at least the amount required by paragraph (1) of subsection (b) of section 3; (viii) providing a  
724 maximum weekly benefit during all family and medical leave of at least the amount specified in  
725 paragraph (2) of subsection (b) of section 3; (ix) allowing family or medical leave to be taken  
726 intermittently or on a reduced schedule as authorized by paragraph (A) of paragraph (2) of  
727 subsection (c) of section 2; (x) imposing no additional conditions or restriction on the use of  
728 family or medical leave beyond those explicitly authorized by this chapter or regulations issued  
729 pursuant to this chapter; (xi) allowing any employee covered under the private plan who is

730 eligible to take family or medical leave under this chapter to take family or medical leave under  
731 the private plan; and (xii) providing that the cost to employees covered by a private plan cannot  
732 be greater than the cost charged to employees under the state program.

733 (2) In order to be approved as meeting an employer's obligations under this chapter, a  
734 private plan must also comply with the following provisions: (i) if the private plan is in the form  
735 of self-insurance, the employer must furnish a bond running to the commonwealth, with some  
736 surety company authorized to transact business in the commonwealth as surety, in such form as  
737 may be approved by the department and in such amount as may be required by the department;  
738 (ii) the plan must provide for all eligible employees throughout their period of employment; and  
739 (iii) if the plan provides for insurance, the forms of the policy must be issued by an approved  
740 insurer.

741 (b) An employer may provide both family and medical leave coverage through an  
742 approved private plan or may provide medical leave coverage using an approved private plan and  
743 provide family leave coverage using the public plan or vice versa.

744 (c) The department may withdraw approval for a private plan granted under subsection  
745 (a) when terms or conditions of the plan have been violated. Causes for plan termination shall  
746 include, but are not limited to the following: (i) failure to pay benefits; (ii) failure to pay benefits  
747 timely and in a manner consistent with the public plan; (iii) failure to maintain an adequate  
748 security deposit; (iv) misuse of private plan trust funds; (v) failure to submit reports as required  
749 by regulations promulgated by the department; or (vi) failure to comply with this chapter or the  
750 regulations promulgated hereunder or both.

751 (d) An employee covered by a private plan approved under this section shall retain all  
752 applicable rights under subsections (e) and (f) of section 2 and under section 9.

753 (e) A denial of family or medical leave benefits by a private plan shall be subject to  
754 appeal before the department and district court as provided by subsection (d) of section 8.

755 SECTION 30. The department of family and medical leave shall: (i) immediately begin  
756 to establish the family and medical leave program under chapter 175M of the General Laws; (ii)  
757 not later than March 31, 2019, publish for public comment and hearing, pursuant to section 2 of  
758 chapter 30A of the General Laws, proposed regulations necessary to establish procedures for the  
759 collection of contributions, and for the filing and timely processing of claims for benefits, under  
760 chapter 175M of the General Laws; (iii) on July 1, 2019, commence the collection of  
761 contributions required under subsection (a) of section 6 of chapter 175M of the General Laws at  
762 an initial rate of 0.63 per cent of the employee's wages; (iv) on January 1, 2021, begin to pay  
763 leave benefits pursuant to section 8 of chapter 175M of the General Laws; (v) not later than  
764 October 1, 2021, begin annually fixing the contribution rate and publish the first annual report  
765 pursuant to subsection (e) of section 7 of chapter 175M of the General Laws; (vi) not later than  
766 October 1, 2021, make the initial annual adjustment to the maximum weekly benefit amount  
767 pursuant to paragraph (2) of subsection (b) of section 3; and (vi) not later than July 1, 2019,  
768 promulgate all regulations necessary to implement chapter 175M of the General Laws.

769 SECTION 31. Section 4 shall take effect July 1, 2019.

770 SECTION 32. Sections 6, 11, 18 and 23 shall take effect January 1, 2020.

771 SECTION 33. Sections 7, 12, 19, 24 and subsection (a) of section 2 of chapter 175M  
772 shall take effect January 1, 2021.

773 SECTION 34. Subsection (b) of section 2 of chapter 175M shall take effect July 1, 2021.

774 SECTION 35. Sections 8, 13, 20 and 25 shall take effect January 1, 2022.

775 SECTION 36. Sections 9, 14, 16, 21 and 26 shall take effect January 1, 2023.

776 SECTION 37. Except as otherwise specified, this act shall take effect January 1, 2019.