

Amendment #231 to H5150
EPST

Mr. Donato of Medford moves to amend the bill by adding the following section:

"SECTION XXXX. SECTION 1.

Chapter 149 of the General Laws as appearing in the 2018 Official Edition is hereby amended by inserting after Section 148D the following two sections:-

Section 148E (a) As used in this section, the following words, unless the context clearly requires otherwise, shall have the following meanings:-

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

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

“Emergency paid sick time”, means time that is compensated pursuant to subsection (d), and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in subsection (c), but in no case shall this hourly amount be less than that provided under section 1 of chapter 151.

“Employee”, any person who performs services for an employer for wage, remuneration, or other compensation, including employees employed by a municipality, district, political subdivision or its instrumentalities; provided, however, that notwithstanding any special or general law to the contrary, “employee” shall include a family child care provider, as defined in subsection (a) of section 17 of chapter 15D, and personal care attendant, as defined in section 70 of chapter 118E.

“Employer”, any individual, corporation, partnership or other private or public entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation, and including a municipality, district, political subdivision or its instrumentalities; except the United States government shall not be considered an employer; provided, however, that an individual employer shall be determined by the Federal Employer Identification Number; provided further, that the department of early education and care shall be deemed the employer of family child care providers, as defined in subsection (a) of section 17 of chapter 15D; provided further, that the PCA quality home care workforce council established in section 71 of chapter 118E shall be the employer of personal care attendants, as defined in section 70 of said chapter 118E, and the department of medical assistance shall be deemed the employer of said personal care attendants for all other purposes under this section.

“Family member”, the spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the employee; a grandchild, grandparent or sibling of the employee; an individual who resides regularly in the home of the employee, or a similar individual with whom the employee has a relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined; or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship. For this purpose, “individual” does not include persons with whom the employee has no personal relationship.

“Health care provider”, the meaning given this term by the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as it may be amended and regulations promulgated under the act.

“Parent”, a biological, adoptive, foster or step-parent of an employee or of an employee’s spouse or domestic partner; a legal guardian of an employee; or other person who stood in loco parentis when the employee or employee’s spouse or domestic partner was a minor child.

“Spouse”, the meaning given this term by the marriage laws of the commonwealth.

“Telework”, the practice of working from home, making use of the Internet, email, or the telephone.

(b) (1) All employees who work in the commonwealth shall have the following right to emergency paid sick time during a declared state of emergency or disaster, provided such employees must be absent from work for the reasons set forth in subsection (c), and provided further that such employees are not entitled to leave under

the Families First Coronavirus Response Act, H.R. 6201, P.L. No. 116-127, at the time that they use such emergency paid sick time under this section. Employees who work 40 hours or more per week shall be provided at least 80 hours of emergency paid sick time under this section. Employees who work fewer than 40 hours in a week shall be provided emergency paid sick time under this section in an amount equal to at least the amount of time the employee is otherwise scheduled to work or works on average in a 14-day period.

(2) Unused emergency paid sick time shall carry over to the next calendar year and shall remain available to the employee until the state of emergency or disaster has been terminated by a declaration of the governor of the commonwealth. If a public health emergency was declared before and remains in effect on the effective date of this section, emergency paid sick time under this section shall be provided to employees pursuant to this subsection (b) on the effective date of this section.

(c) Emergency paid sick time shall be provided to an employee by an employer for the following absences, including the inability to telework, related to a public health emergency:

(1) An employee's need to: (i) self-isolate and care for oneself because the individual is diagnosed with a communicable illness related to a public health emergency; (ii) self-isolate and care for oneself because the individual is experiencing symptoms of a communicable illness related to a public health emergency; (iii) seek or obtain medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness related to a public health emergency; or (iv) seek preventive care concerning a communicable illness related to a public health emergency;

(2) Care of a family member who: (i) is self-isolating due to being diagnosed with a communicable illness related to a public health emergency; (ii) is self-isolating due to experiencing symptoms of a communicable illness related to a public health emergency; (iii) needs medical diagnosis, care, or treatment if experiencing symptoms of a communicable illness related to a public health emergency; or (iv) is seeking preventive care concerning a communicable illness related to a public health emergency;

(3) Determination by a local, state, or federal public official, a health authority having jurisdiction, the employee's employer, or a health care provider that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to a contagious illness or exhibiting of symptoms, regardless of whether the employee has been diagnosed with a contagious illness;

(4) Care of a family member due to a determination by a local, state, or federal public official, a health authority having jurisdiction, the family member's employer, or a health care provider that the family member's presence on the job or in the community would jeopardize the health of others because of the family member's exposure to a contagious illness or exhibiting of symptoms, regardless of whether the family member has been diagnosed with a contagious illness; or

(5) An employee's inability to work or telework while subject to either: an individual or general local, state, or federal quarantine or isolation order, including a shelter-in-place order, related to a public health emergency; or closure of the employee's place of business by order of a local, state, or federal public official or health authority or at the discretion of the employer due to a public health emergency.

(d) All employees employed by an employer in the commonwealth who must be absent from work for the reasons set forth in subsection (c) of this section, and are unable to telework, shall be eligible for emergency paid sick time regardless of the duration of such employment, or any temporary or probationary status, and shall be paid at the same hourly rate as the employee earns from the employee's employment at the time the employee uses the emergency paid sick time; provided, however, that this hourly rate shall not be less than the effective minimum wage under section 1 of chapter 151, and shall not exceed \$850 per week; provided further that annually, not later than October 1 of each year, the commonwealth shall adjust the maximum weekly benefit amount under this section to be 64 per cent of the state average weekly wage and the adjusted maximum weekly benefit amount shall take effect on January 1 of the year following such adjustment. Nothing in this section shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for emergency paid sick time provided under this section that has not been used.

(e) Employers who pay their employees for emergency paid sick time as required by this section shall be reimbursed in full by the commonwealth by providing proof of such payments to the department of revenue, but no employer shall be entitled to reimbursement under this section for paid time off provided to employees for which the employer is entitled to receive a federal payroll tax credit, including federal payroll tax credits for an employee's use of paid sick time under the federal Families First Coronavirus Response Act, P.L. No. 116-127, to the extent permitted and not in conflict with federal law. The department of revenue shall provide such reimbursements directly to employers within 5 business days by direct deposit to the employer's bank account or by check to the employer.

(f) The commonwealth shall compensate employers as described in subsection (e) of this section by drawing upon funds in the commonwealth stabilization fund established under section 2H of chapter 29 appropriated for such purpose by the general court.

(g) (1) Except as provided in subsection (b), all emergency paid sick time that the employer must provide under this section shall be in addition to all job protected time off, paid and unpaid, the employer must provide to employees under section 148C of this chapter; or under chapter 175M; or under any existing policy or program of the employer; or pursuant to a collectively bargained agreement between the employer and a collective bargaining representative of an employee; or under any federal law, to the extent permitted by that federal law. All emergency paid sick time that the employer must provide under this section shall be in addition to, and shall not run concurrent with, benefits provided pursuant to chapter 152.

(2) An employee may use emergency paid sick time on an intermittent basis and in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

(3) With respect to an employer that provides paid leave on the day before the effective date of this section, the emergency paid sick time under this section shall be made available to employees of the employer in addition to such paid leave; and the employer may not change such paid leave on or after such effective date to avoid being subject to this section. An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the emergency paid sick time under this section, unless federal law requires otherwise.

(h) The employee shall provide notice to the employer of the need for emergency paid sick time as practicable only when the need is foreseeable and the employer's place of business has not been closed. An employer may not require, as a condition of an employee's taking emergency paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using emergency paid sick time.

(i) Documentation shall not be required for emergency paid sick time under this section.

(j) Any health information possessed by an employer regarding an employee or employee's family member must: (1) be maintained on a separate form and in a separate file from other personnel information; (2) be treated

as confidential medical records; and (3) not be disclosed except to the affected employee or with the express permission of the affected employee.

(k) 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, by using the taking of emergency paid sick time under this section as a negative factor in any employment action such as evaluation, promotion, disciplinary action or termination, or otherwise subjecting an employee to discipline for the use of emergency paid sick time under this section.

(l) It shall be unlawful for any employer to take any adverse action against an employee because the employee opposes practices which the employee believes to be in violation of this section, or because the employee supports the exercise of rights of another employee 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 intending to provide any information in connection with any inquiry or proceeding relating to any right provided under this section; or testifying or intending to testify in any inquiry or proceeding relating to any right provided under this section.

(m) Nothing in this section shall be construed to discourage employers, including a municipality, district, political subdivision or its instrumentalities, from adopting or retaining job-protected paid time off policies more generous than policies that comply with the requirements of this section and nothing in this section shall be construed to diminish or impair the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan in effect on the effective date of this section that provides to employees greater job-protected paid time off rights than the rights established under this section; and nothing in this section shall be construed to pre-empt the power of a municipality, district, political subdivision or its instrumentalities, from adopting or retaining or job-protected paid time off policies more generous than policies that comply with the requirements of this section.

(n) 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 paragraphs (1), (2), (4), (6) and (7) of subsection (b) of section 27C and to section 150.

(o) The attorney general shall prescribe by emergency regulation the employer's obligation to make, keep, and preserve records pertaining to this section consistent with the requirements of section 15 of chapter 151.

(p) The attorney general shall adopt emergency rules and regulations necessary to carry out the purpose and provisions of this section.

(q) Notice of this section shall be prepared by the attorney general, in English and in other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A. Employers shall post this notice in a conspicuous location accessible to employees in every establishment where employees with rights under this section work, and shall provide a copy to their employees; provided, however, that in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based platform. This notice shall include the following information:

- (1) information describing the rights to emergency paid sick time under this section;
- (2) information about the notices, documentation and any other requirements placed on employees in order to exercise their rights to emergency paid sick time;
- (3) information that describes the protections that an employee has in exercising rights under this section;
- (4) the name, address, phone number, and website of the attorney general's office where questions about the rights and responsibilities under this section can be answered; and
- (5) information about filing an action under this section.

Section 148F. The executive office of health and human services, in consultation 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 emergency paid sick time under section 148E. This program shall include the distribution of notices and other written materials in English and in other languages to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

SECTION 2. Section 150 of chapter 149 as appearing in the 2018 Official Edition is hereby amended by inserting at line 22 after the word "148C", the following word:- , 148E.

SECTION 3.

This Act shall take effect immediately.

Additional co-sponsor(s) added to Amendment #231 to H5150

EPST

REPRESENTATIVE:

Tami L. Gouveia
Elizabeth A. Malia
Nika C. Elugardo
Michael S. Day
Aaron Vega
Jonathan Hecht
Christine P. Barber
Christopher M. Markey
Lindsay N. Sabadosa
Natalie M. Blais
Angelo J. Puppolo, Jr.
Adrian C. Madaro
Edward F. Coppinger
David Paul Linsky
Steven Ultrino
Peter Capano
Christopher Hendricks
Joseph W. McGonagle, Jr.
Colleen M. Garry
Carmine Lawrence Gentile
Mindy Domb
Jack Patrick Lewis
Ruth B. Balser
Maria Duaine Robinson
Jay D. Livingstone
Tommy Vitolo
Michelle M. DuBois
Elizabeth A. Poirier
Harold P. Naughton, Jr.
Michael J. Soter
Marcos A. Devers
Brian W. Murray
Tram T. Nguyen
Alan Silvia
John Barrett, III
Daniel Cahill
James J. O'Day
Susannah M. Whipps
Jon Santiago
Paul McMurtry
Dylan A. Fernandes

James K. Hawkins

Kenneth I. Gordon

Carol A. Doherty

Paul W. Mark

John J. Mahoney

Daniel M. Donahue

Kate Lipper-Garabedian

David Henry Argosky LeBoeuf

David M. Rogers

Paul F. Tucker

Bud L. Williams

Frank A. Moran

Denise Provost

Sean Garballey

Patricia A. Haddad

Louis L. Kafka

Gerard J. Cassidy

James Arciero

Michelle L. Ciccolo

David Biele

Tackey Chan

José F. Tosado

RoseLee Vincent

Daniel R. Carey

Tricia Farley-Bouvier

Marjorie C. Decker

Andres X. Vargas

William C. Galvin

John J. Lawn, Jr.

Carole A. Fiola

Antonio F. D. Cabral

Jeffrey N. Roy

Kevin G. Honan

Carlos González

Carolyn C. Dykema

Natalie M. Higgins

Brian M. Ashe

Timothy R. Whelan

Kay Khan

Paul A. Schmid, III

Daniel J. Ryan

Mary S. Keefe

David T. Vieira

Liz Miranda

William M. Straus

Kathleen R. LaNatra

Mike Connolly

David K. Muradian, Jr.

John H. Rogers

Danielle W. Gregoire

Christina A. Minicucci

Chynah Tyler

Thomas M. Stanley

Rady Mom