

**AN ACT ESTABLISHING A FAMILY AND MEDICAL LEAVE
AND TEMPORARY DISABILITY INSURANCE PROGRAM**

**SECTION BY SECTION SUMMARY
(HB# 1718/SD# 1853)**

SECTION 1: Amends the General Laws by adding chapter 175K, with the following sections:

Section 1. Subsections (a) – (t) set forth the definitions for chapter 175K.

Section 2. Subsections (a) – (r) cover eligibility for leave, length of leave, timing of leave, certification, reinstatement and benefit rights, notice, unlawful practices, administration enforcement, and enforcement and relief.

(a) An employee who has at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave is eligible.

(b) The length of leave is 12 weeks: this is consistent with the federal Family and Medical Leave Act.

(c) An employee may take leave for the same reasons as under the federal Family and Medical Leave Act (the employee's own serious health condition that makes the employee unable to perform the functions of the employee's job, a family member's serious health condition, or a child's birth or placement for adoption or foster care). In the case of leave to care for a newborn, newly adopted, or new foster child, the entitlement to leave ends one year after the birth or placement for adoption or foster care.

(d) The employer may request certification of the reason for leave.

(e) An employee on leave is protected by retention rights to the same or similar position, with exceptions where there have been lay-offs or other changes in operating conditions affecting employment, for up to 12 weeks. The taking of leave does not affect benefit or seniority rights, and health care coverage continues during the leave. The rights of parents or legal guardians under section 17(i) of chapter 15D of the general laws and the rights of consumers or consumer surrogates under section 73(a) of chapter 118E of the general laws prohibit family childcare providers and PCAs from exercising any reinstatement rights during a period of leave.

(i) The provisions do not affect any greater rights secured as a result of collective bargaining or law.

(j) An employee must provide, where practicable, 30 days' notice. Notice is waived if the employer has failed to notify employees of this act's provisions.

(n) Unlawful practices such as retaliation and negative changes in seniority and benefits are enforced by the Massachusetts Commission Against Discrimination, using its existing procedures.

Section 3: Subsections (a) – (h) cover the calculation of benefit amounts, duration of benefits, waiting period, certification required, confidentiality, wages and other forms of wage replacement, the establishment of the Massachusetts division of family and medical leave with the EOLWD, public education and outreach.

(a) (1) The weekly benefit amount is based on the individual's average weekly wage in relation to area median income. Four tiers of benefits are established to provide a greater percentage of weekly earnings to the lowest wage earners.

For individuals whose yearly earnings are not more than 30% of AMI, the weekly benefit amount is 95% of the individual's weekly wage;

For individuals whose yearly earnings are more than 30% but less than 50% of AMI, the weekly benefit amount is 90% of the individual's weekly wage;

For individuals whose yearly earnings are more than 50% but less than 80% of AMI, the weekly benefit amount is 80% of the individual's weekly wage;

For individual's whose yearly earnings are more than 80% of AMI, the weekly benefit amount is 66% of the individual's weekly wage.

(a) (2) The weekly benefit is capped at \$1,000 per week, adjusted annually to reflect changes in the BLS CPI for the Boston-Cambridge-Quincy consolidated metropolitan statistical area for all urban consumers.

(b) Temporary disability benefits — paid when an employee is out of work because of the employee's own serious health condition that renders the employee unable to perform the functions of the employee's job — may be paid for up to 26 weeks (or up to 52 weeks on a part-time basis), after the waiting period.

(c) Family care benefits — paid when an employee is out of work to care for a family member with a serious health condition or for a newborn, newly adopted or new foster child — may be paid for up to 12 weeks (or up to 24 weeks on a part-time basis), after the waiting period.

(d)(1) Establishes a one week waiting period during which no benefits or wages are paid.

(e)(1) Certification of the reason for leave is required for payment of benefits, and individuals who provide false or fraudulent certification information become ineligible for benefits.

(e)(7) Unless otherwise required by law, any medical or health information required under this section shall be treated as confidential and not disclosed except with permission from the employee who provided it.

(f)(1) and (2) Individuals who receive, in any week, wages or other benefits that equal or exceed the weekly benefit amount are not eligible for these disability benefits. Other benefits received are deducted from the total amount of disability benefits; however, vacation or sick pay is not deducted from the total benefit amount to which an employee is entitled.

(f)(3) Employees cannot be compelled to exhaust rights to any paid sick, vacation or personal time

prior to receiving benefits under this chapter.

(g) Establishes the division of family and medical leave within the executive office of labor and workforce development.

(h) Charges the division with responsibility for public education and outreach concerning the law.

Section 4. Subsections (a) – (c) cover the provision for payment of benefits under the law, notice of insurance and responsibilities of employers who opt to privately insure.

This section describes the various ways in which employers can choose to provide benefits under this bill. Employers who provide equivalent benefits through other insurance programs, private plans, or other means are not required to make contributions to commonwealth's insurance program, if the program meets the division's approval and the terms are at least as favorable.

(a)(6) Nothing in this section or chapter prohibits employees from contributing an amount attributable to the provision of greater benefits provided under this chapter.

Section 5. Subsections (a) – (j) detail the mechanisms for establishing a Family and Employment Security Trust Fund for payments of benefits and a Family and Employment Security Administrative Account for the administration of this program.

Section 6: Claims And Appeal

All claims and appeals shall be processed under the current procedures of the Division of Employment and Training.

Section 7: Notice

This section spells out the employer's notice requirements and tracks, to a large extent, the notice requirements already in existence under the Commonwealth's unemployment law.

Section 8: Purpose And Construction

Like the unemployment law, this section provides for a liberal construction of this remedial law.

SECTION 2: This section amends General Laws, chapter 151B, section 4, by adding paragraph 11B, and places enforcement of unlawful practices under the jurisdiction of the Massachusetts commission against discrimination.

SECTION 3: This section amends General Laws, chapter 62, section 2.(a)(2) by adding subclause (R) to make amounts received by an individual under this Act exempt from state taxation.