SENATE DOCKET, NO. FILED ON: 1/13/2009

**SENATE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Karen E. Spilka**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act supporting strong families by providing paid family and medical leave, increasing tax deductions, and establishing a work-family council. .

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PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| Karen E. Spilka | Second Middlesex and Norfolk |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00114 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act supporting strong families by providing paid family and medical leave, increasing tax deductions, and establishing a work-family council.

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

*Whereas,* The deferred operation of this act would tend to defeat its purpose, which is forthwith to support strong families by providing paid family and medical leave, increasing tax deductions and establishing a work-family council, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

SECTION 1.   Chapter 23A of the General Laws is hereby amended by adding the following section:—

Section 62. (a) There shall be in the executive office of economic development a work-family council, in this section called the council. The council shall develop broadly shared understandings of critical work-family issues in the commonwealth, and shall promote through privately funded research, experimentation, and education both responsive public policies and innovative private sector practices.

(b) A member of the council shall be a person who has demonstrated leadership in seeking innovative, positive solutions to work-family problems. A member shall serve for a term of 2 years and may be reappointed for 1 or more terms.

(c) (1) The governor, the speaker of the house of representatives and the president of the senate each shall appoint members, 1 from each of the following categories:

(i) an employer or manager of a business representing a key sector of the commonwealth’s economy;

(ii) an official of a union representing public sector or private sector workers;

(iii) a member of the caucus of women legislators;

(iv) a member of a women’s professional association or other women’s organization;

(v) a member of low-income advocacy group or community-based service organization, including secular and faith-based institutions;

(vi) a member of an association representing employers; and

(vii) a representative of an organization which focus on Massachusetts tax policy

(2) The minority leaders of the senate and house of representatives shall each appoint 1 member.

(3) The head of each of the following agencies, departments and offices shall serve as ex-officio members of the council: department of business and technology; departments of labor and workforce development; office of children, youth and family services; department of elder affairs; office of health services; office of Medicaid: executive office of transportation; department of housing and community development; office of disabilities and community services; department of education; the human resources division; the information technology division, and the department of early education and care. The council shall appoint a chairperson from among the members.

(d) (1) The council shall meet at least 4 times per year. The council shall appoint an executive director who shall appoint such staff as needed. Staff may seek funds from public and private sources to support the work of the council. The council shall select a panel of academic advisers to provide information and guidance on council activities. An academic adviser shall not receive compensation from the council but may be reimbursed for customary expenses incident to the advisor’s service.

(2) The duties of the council shall include but not be limited to: holding hearings to identify major work-family issues in the commonwealth; identifying representatives of all groups with important stakes in resolving specific work-family issues and devising processes for bringing the groups together to promote mutual understanding as the basis for coordinated problem-solving; using dialogue and negotiation among stakeholders with differing interests in work-family conflicts to advance the potential for problem solving that supports both workplace productivity and family care; designing and supporting pilot projects as requested in workplaces; proposing public policy solutions to work-family issues; promoting successful policies and practices in both public and private sectors and creating a repository of best practices; collecting and maintaining data and information concerning work-family issues including but not limited to employer policies and practices; and providing public education on work-family issues as matters of public, as well as individual concern, and on the need for public policies and private workplace practices that support the wellbeing of both employers and families.

(3) The council shall report in writing to the secretaries of economic development and health and human services every 2 years during the council’s existence. The report shall specify: the groups actively involved in council meetings and projects; outcomes of research sponsored by the council; the adoption and results of public policy initiatives; the outcomes of experiments and pilot projects in workplaces; the experience with techniques of multi-stakeholder dialogue and negotiation; summaries of data and information collected on work-family issues; and the purposes and scope of public education projects undertaken.

SECTION 2.  Section 3 of chapter 62 of the General Laws is hereby amended by striking out, in line 75, as appearing in the 2004 Official Edition, the figure “$4,800” and inserting in place thereof the following figure:- $7,400.

SECTION 3.  Said section 3 of said chapter 62 is hereby further amended by striking out, in line 76, as so appearing, the figure “$9,600”and inserting in place thereof the following figure:- $12,300..

SECTION 4.  Subparagraph (8) of paragraph (a) of part B of said section 3 of said chapter 62 of the General Laws, as so appearing is hereby amended by adding the following sentence:-  If the taxpayer is a single person with adjusted gross income of not more than $45,000 or joint filers with adjusted gross income of not more than $75,000, the deduction available under this section shall be $4,300 if there is 1 dependent with respect to the taxpayer, or $8,600 if there are 2 or more such dependents with respect to the taxpayer.

SECTION 5. Chapter 29 of the General Laws is hereby amended by inserting after section 2NNN the following Section;-

Section 2OOO.There shall be established and set up on the books of the commonwealth a Strong Families Trust Fund. There shall be credited to said fund (a) all revenues collected pursuant to paragraph (e) of Section 52E of Chapter 149 and any income derived from the investment of amounts credited to said fund.   The contributions to the fund shall be reserved for the payment of wage replacement stipends for family and medical leave and for the administration of those payments and shall not be used for any other purpose.  The treasurer of the commonwealth shall be the fund's trustee and shall pay the wage replacement stipends required by subsection (c) of said Section 52E of Chapter149 and any administrative costs incurred by the department of workforce development for the operations of the paid family and medical leave program without further appropriation.  The department shall annually submit a detailed account of expenditures for administration of the program established by Section 52E of Chapter 149 to the treasurer for reimbursement of such expenditures.

SECTION 6.  Section 52D of chapter 149 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the word “section”, in line 1, 27 and 43, the following words:- and section 52E.

SECTION 7.  Said section 52D of said chapter 149, as so appearing, is hereby further amended by inserting after the word “section”, in lines 26 and 44, the following words:- or section 52E.

SECTION 8.  Said chapter 149 is hereby further amended by inserting after said section 52D, as so appearing, the following section:-

Section 52E.  (a) As used in this section, in addition to the terms defined in section 52D, the following terms shall have the following meanings:

            (1) “Department”, the department of workforce development.

            (2) “Director”, the director of the department of workforce development.

            (3) “Fund”, the Strong Families Trust Fund established by Chapter 29, Section 2OOO.

            (4)“Employee eligible for job protected leave” means an employee working in the commonwealth who has been employed:

(i) for at least 12 months by the employer with respect to whom leave is requested; and

(ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

The term "employee eligible for job protected leave" does not include any employee of an employer who is employed at a worksite at which such employer employs less than 6 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 6.

(5) “Employee eligible for wage replacement stipend” means an employee who is a resident of the commonwealth and who has been paid wages in an amount not less than $3000 from which fund deductions were withheld within any 12 month period and who at the time the leave begins has been employed in the commonwealth :

(i) for at least 12 weeks by the employer with respect to whom leave is requested; and

(ii) for at least 216 hours of service with such employer during the previous 12 week period.

(iii)  for purposes of this paragraph (a)(5) “Employer”, means  any individual, corporation, partnership or other entity, including any agent thereof, who engages the services, in the commonwealth, of an employee or employees for wages, remuneration, or other compensation.  (b) Except as this section otherwise provides, employees eligible for job protected leave shall be entitled to job protected family and medical leave, and all rights and protections provided under sections 101 to 105, inclusive, of the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2611 to 2615, inclusive. Amendments to the federal act shall not diminish an employee’s rights under this section.

(c)(1) The department shall determine eligibility of employees for wage replacement stipend under paragraph (a) and shall certify to the treasurer the amount of stipend to be paid from the Fund, to each employee eligible for wage replacement stipend.

(2) The treasurer of the commonwealth shall pay to an employee eligible for wage replacement stipend, who is a resident of the commonwealth, who is entitled to leave under section 102(a) and (b) of the federal act, 29 U.S.C. section 2612(a) and (b), and who takes such a leave, a stipend in the amount 80% of the employee’s wages or salary, but not more than $750 per week in calendar year 2008 and 2009.  In each year thereafter, the treasurer shall calculate an adjusted maximum benefit amount to account for inflation using the consumer price index for urban wage earners or a successor index..  The treasurer shall not pay the stipend for the first 5 business days of an employee’s leave in any calendar year; but these first 5 days of leave need not be taken consecutively for the employee to be eligible for a stipend under this section for subsequent days of leave, and an employee eligible for wage replacement stipend under this section shall receive an additional 5 days of paid leave, to total 12 weeks of paid leave.

(3) The treasurer shall also pay the stipend provided by subparagraph (2) to an employee eligible for wage replacement stipend, who is a resident of the commonwealth, and who takes a leave to which she would otherwise be entitled under section 102(a) and (b) of the federal act, 29 U.S.C. section 2612(a) and (b), but is not so entitled solely  because of the employer’s number of employees under section 101(2)(B)(ii) of the federal act, 29 U.S.C. section 2611(2)(B)(ii), or (2) because she has not been employed for the time required by section 101(2)(A) of the federal act, 29 U.S.C. section 2612(2)(A

 (d) The department, in consultation with the human resources division, shall administer this section, shall prescribe application forms for employees, and shall adopt regulations consistent with this section .  The department shall provide a draft of proposed regulations to the joint committees of children and families and persons with disabilities, on labor and workforce development, and on state administration and regulatory oversight, and to the work-family council not less than 90 days before adopting the regulations. The department’s regulations shall specify premiums paid by employees necessary in the department’s judgment to provide for the fund’s solvency, including all administrative costs incurred by the department in operating the program.  The premium paid by each employee shall be equal to a percentage of the employee’s wages paid for employment with any employer. The regulations shall ensure that payments from the Fund shall be made to eligible employees when due at the earliest time administratively feasible The regulations shall include eligibility requirements, the claims process, weekly stipend amounts, maximum stipends payable, notice and medical certification requirements, confidentiality provisions, the relationship between benefits under this section and other leave rights and benefits, and grievance rights.  In adopting regulations, the department shall maintain consistency with the rules adopted to implement the federal act to the extent such rules are not in conflict with this section.

(e) On or before October 31st of each year, the Treasurer, in consultation with the director, shall file with the house and senate committees on ways and means and the clerks of the house of representatives and the senate and the joint committees on children and families and labor and workforce development a report which contains a proposal of an adequate and proper average balance to be maintained in the Fund during the ensuing calendar year and a statement of the actual balance then projected to be deposited in the Fund during such year. Such report shall describe in detail the criteria employed by the Treasurer and the director in formulating such a proposal for an adequate and proper average balance and in developing such a projection relative to the actual balance, including but not limited to an explanation of the economic assumptions and projections related thereto, an analysis of the effect upon such balances of actual or proposed amendments to federal and state law relative to job protected family leave and paid family leave, both in terms of the amount of monies so deposited and in terms of such monies as a percentage of total wages paid. If the treasurer’s  proposal of an adequate and proper average balance for the ensuing calendar year exceeds the treasurer’s statement of the projected actual average balance for such year, then the report shall in addition include recommendations for such legislative actions as the treasurer deems appropriate to ensure that an adequate and proper average balance is maintained during such year, provided, that recommendations for legislative action, if any, shall be accompanied by drafts of legislation necessary to carry such recommendations into effect. On or before the fifteenth day of every month of the calendar year next following the submission of the report required by the first sentence hereof, the treasurer, in consultation with the director, is hereby further authorized and directed to file with the chairs of said committees an updated report detailing the most recently available statement of the actual balance of Fund together with a revised statement of the actual balance then projected to be deposited in the Fund during such year.

(f) The department of revenue shall collect premiums from employees in connection with income taxes collected under chapter 62, and all civil and criminal remedies that apply to such income taxes shall apply to premiums under this section.  The department of revenue shall deposit in the Fund all premiums received under this section, and shall provide other assistance requested by the department of workforce development and the Treasurer of the commonwealth in administering this section.

(g) A person who knowingly makes, or causes to be made, any false statement or misrepresentation of a material fact in connection with an application for paid leave benefits under this section shall be punished by imprisonment for not more than 6 months or by a fine of not more than $4,000, or by both such fine and such imprisonment. In addition, the criminal and civil remedies that apply to claims for unemployment compensation under chapter 151A shall apply to applications for stipends under this section.

(h) Any payment of unemployment compensation or workers compensation in connection with a leave under this section shall cause a reduction, in the same amount as the payment, in the stipend otherwise payable for that week under subsection (c), and an employee eligible to receive a stipend shall promptly report such a payment to the department.

(i) Nothing in this section shall interfere with any greater rights or benefits under a collective bargaining agreement or other employment agreement between the employer and the employee, or under any federal, state or municipal law.

 (j) As part of the posting required by subsection (g) of section 62A of chapter 151A, an employer shall post information prescribed by the department about applying for stipends under this section.  An employer shall also provide each of its employees, at the beginning of employment and whenever an employee requests leave under this section, the application form prescribed by the department under subsection (e).  An employer shall include the rights provided under this section in any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook.

(k) Leave taken under this section must be taken concurrently with any leave taken under the federal act.

(l)  Nothing in this section shall be construed to discourage employers from adopting or retaining leave policies more generous than policies that comply with this section.

(m)  The executive office of health and human services, in coordination with the department, shall develop and implement a multi-lingual outreach program to inform parents with newborn or adopted children and persons with serious medical conditions about the availability of paid leave under this section.  This program shall include the distribution of notices and other written materials in English and other languages to all hospitals, community health centers, and other health care providers.  The outreach information shall explain, in an easy to understand format, eligibility requirements, the claims process, weekly stipend amounts, maximum stipends payable, notice and medical certification requirements, reinstatement and nondiscrimination rights and confidentiality provisions.

(n)  Nothing in this section shall be construed to require a health care provider to disclose information in violation of section 1177 of the Social Security Act, 42 U.S.C. section 1320d-2.  If an employer possesses health information about an employee or an employee’s son or daughter, parent, spouse or elderly relative, such information shall be maintained on a separate form and in a separate file from other personnel information, be treated as a confidential medical record, and shall not be disclosed except to the affected employee or with the permission of the affected employee.

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

(p)  This act shall be liberally construed as remedial legislation to further its purpose of providing job-protected leave and wage replacement stipends to eligible employees.  All presumptions shall be made in favor of the availability of leave and payment of stipends under this section.

SECTION 9.  Item 1201-0100 The department shall allocate not less than $250,000 for purposes of an outreach program to increase participation in the earned income tax credit program.

SECTION 10.  Item 7002-0010 The department shall allocate not less than $200,000 to the work-family council.

SECTION 11.  Item 7002-0100 The department shall expend not less than $500,000 for the administration of the paid family leave program established in chapter 149 of the General Laws section 52E and implementation of an outreach program to inform parents with newborn or adopted children and persons with serious medical conditions about the availability of paid leave.

SECTION 12.  The department of workforce development shall commence paying stipends under section 6 180 days after the effective date of this act.

SECTION 13.  The work-family council established by section 1 of this act shall, on an on-going basis, analyze and review the operations of the paid family and medical leave program created in this act.  No later than 2 years after the effective date of this act, the council shall file with the clerks of the senate and house of representatives a comprehensive report on this program.  This report shall include, but not be limited to, analysis of the following: (1) the extent to which employees take paid leave under the program; (2) the extent to which employees have family or medical needs or obligations that they are unable to meet by taking paid leave under the program; (3) the effect of the program on private employers, including the effect on employee productivity, employer costs and cost savings, employee morale, and employee turnover rates; (4) the effect of the program on the competitiveness of the commonwealth’s economy; (5) the medical effects of the program on employees, family members of employees, and the broader population; (6) the ease or difficulty of administering paid leave for employees; (7) employee patterns for returning to work; (8) the cost of replacing workers on leave and training temporary workers; and (9) any proposed modifications to the program.

**Section 14:  Section 204 of chapter 6 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding after the words “twenty-three D” in line 47, the following:-**

**“advising the treasurer in the performance of duties required under section 2OOO of chapter 29 in administering the strong family trust fund to encourage employee involvement in the program”**