

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Jehlen

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 relative to establishing family and employment security through temporary disability insurance and family temporary disability insurance.

PETITION OF:

NAME:

Ms. Jehlen

DISTRICT/ADDRESS:

Second Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01071 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO ESTABLISHING FAMILY AND EMPLOYMENT SECURITY THROUGH
TEMPORARY DISABILITY INSURANCE AND FAMILY TEMPORARY DISABILITY
INSURANCE.

*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: The General Laws are amended by inserting after chapter 175J the following:-

2 CHAPTER 175K.

3 SECTION 1: DEFINITIONS

4 The following words and phrases as used in this chapter shall have the following meanings
5 unless the context clearly requires otherwise:

6 "Base period" has the same meaning as provided by section 1(a) of chapter 151A.

7 "Benefit year" has the same meaning as provided by section 1(c) of chapter 151A.

8 "Commission" means the massachusetts commission against discrimination, as established by
9 section 56 of chapter 6.

10 "Contributions" means the payments made by an employer to the family and employment
11 security trust fund and administrative account, as required by this chapter.

12 "Dependent" means an unemancipated child, as provided by section 29(c) of chapter 151A.

13 "Deputy director" means the deputy director of the massachusetts division of employment and
14 training, as established by section 3 of chapter 3.

15 "Disability benefits" means cash payments made to a covered employee pursuant to section 3 of
16 this chapter.

17 "Division" means the massachusetts division of employment and training, as established by
18 section 3 of chapter 3.

19 "Employee" has the same meaning as provided by section 1(h) of chapter 151A.

20 "Employer" has the same meaning as provided by section 1(i) of chapter 151A.

21 "Employment" has the same meaning as provided by section 1(k) of chapter 151A.

22 "Employment benefits" means all benefits provided or made available to employees by
23 an employer, including group life insurance, health insurance, disability insurance, sick leave, annual or
24 vacation leave, educational benefits, and pensions.

25 "Family member" means the spouse, son or daughter, parent, parent of spouse, sister,
26 brother, grandparent, grandchild, or a person living in the immediate household who is a relative of an
27 individual seeking leave or disability benefits under this chapter.

28 "Family temporary disability benefits" means disability benefits provided pursuant to
29 section 3 of this chapter to a covered employee who is on leave from or who has left his or her

30 employment because he or she is caring for a family member for one of the following reasons: (1) the
31 birth of a son or daughter of the employee, (2) the placement of a son or daughter with the employee
32 for adoption or foster care, or (3) a serious health condition of a family member of the employee.

33 "Family temporary disability leave" means leave taken by a covered employee from
34 employment to provide care for a family member for one of the following reasons: (1) the birth of a son
35 or daughter of the employee, (2) the placement of a son or daughter with the employee for adoption or
36 foster care, or (3) a serious health condition of a family member of the employee.

37 "Health care provider" means a person licensed to practice medicine, surgery, dentistry,
38 chiropractic, podiatry, or osteopathy, or any other person determined by the division to be capable of
39 providing health care services.

40 "Individual average weekly wage" has the same meaning as "average weekly wage" as
41 defined in section 1(w) of chapter 151A and shall be calculated using the base period earnings as
42 defined by section 1(a) of chapter 151A.

43 "Serious health condition" means an illness, injury, impairment, or physical or mental
44 condition that involves either (1) inpatient care in a hospital, hospice, or residential medical facility; or
45 (2) continuing treatment by a health care provider.

46 "Son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward,
47 or a child of a person standing in loco parentis who is either (1) under 18 years of age, or (2) 18 years of
48 age or older and incapable of self-care because of a mental or physical disability.

49 "State average weekly wage" means the average weekly wage as determined by the
50 division of employment and training pursuant to section 29(a) of chapter 151A.

51 “Temporary disability benefits” means disability benefits provided pursuant to section 3
52 of this chapter to a covered employee who is on a leave from or who has left his or her employment
53 because of a serious health condition of the employee that makes him or her unable to perform the
54 functions of his or her position.

55 “Temporary disability leave” means leave taken by a covered employee from
56 employment because of a serious health condition of the employee that makes him or her unable to
57 perform the functions of his or her position.

58 "Wages" means all remuneration as defined in section 1(s) of chapter 151A.

59 “Weekly benefit amount” means the amount of disability benefits paid to a covered
60 employee on a weekly basis, as provided by section 3, subsection 3, of this chapter.

61

62 SECTION 2: TEMPORARY DISABILITY LEAVE AND FAMILY TEMPORARY DISABILITY LEAVE

63 Subsection 1. Eligibility for Temporary Disability Leave or Family Temporary Disability
64 Leave.

65 An employee is eligible for temporary disability leave or family temporary disability
66 leave if he or she has met the monetary eligibility requirements set forth in section 24(a) of chapter
67 151A.

68 Subsection 2. Length of Leave

69 The duration of temporary disability leave or family temporary disability leave shall be
70 limited to the following maximum amounts of time during any 12-month period: (a) 12 weeks on a full-
71 time basis; (b) the equivalent of 12 weeks on a full-time basis, where the employee takes leave on a
72 part-time basis; or (c) a combination of full-time and part-time leave as set forth in (a) and (b), provided
73 that such leave shall not exceed the equivalent of 12 weeks on a full-time basis.

74 Subsection 3. Timing of Leave.

75 In the case of family temporary disability leave taken because of (a) the birth of a son or
76 daughter of the employee, or (b) the placement of a son or daughter with the employee for adoption or
77 foster care, the entitlement to leave shall expire at the end of the 12-month period beginning on the
78 date of the birth or placement.

79 Subsection 4. Certification.

80 An employer may, at its option, require that a request for temporary disability leave or
81 family temporary disability leave be supported by a certification of the need for leave. The certification
82 shall be sufficient if it meets the criteria set forth in section 3, subsection 6, of this chapter.

83 Subsection 5. Reinstatement and Employment Benefits.

84 (a) An employee who has taken temporary disability leave or family temporary
85 disability leave pursuant to this section shall be restored to his or her previous position, or to a
86 substantially similar position, with the same status, pay, employment benefits, length of service credit,
87 and seniority as of the date of leave.

88 (b) An employer shall not be required to restore an employee who has taken temporary
89 disability leave or family temporary disability leave to the previous or to a substantially similar position if
90 other employees of equal length of service credit and status in the same or substantially similar
91 positions have been laid off due to economic conditions or other changes in operating conditions
92 affecting employment during the period of leave; provided, however, that the employee who has taken
93 leave shall retain any preferential consideration for another position to which he or she was entitled as
94 of the date of leave.

95 (c) Taking of temporary disability leave or family temporary disability leave shall not
96 affect an employee's right to receive accrued vacation time, sick leave, bonuses, advancement, seniority,
97 length of service credit, employment benefits, plans or programs for which he or she was eligible at the
98 date of his or her leave, and any other rights incident to his or her employment.

99 (d) During the duration of an employee's temporary disability leave or family temporary
100 disability leave, the employer shall continue to provide for and contribute to the employee's
101 employment-related health insurance benefits, if any, under the same terms and conditions as those
102 existing prior to leave.

103 (e) Nothing in this section or chapter shall be construed so as to affect any bargaining
104 agreement, company policy, or other federal, state, or municipal law which provides for greater or
105 additional rights to leave than those provided for by this section.

106 Subsection 6. Notice

107 (a) Where an employee intends to take family temporary disability leave because of the
108 birth of a son or daughter of the employee, or the placement of a son or daughter with the employee for
109 adoption or foster care, and where the need for leave is foreseeable, the employee shall notify the
110 employer of the intended leave at least 30 days prior to the date that the leave is to begin, except that if
111 the date of the birth or placement requires leave to begin in less than 30 days, the employee shall
112 provide such notice as is practicable.

113 (b) Where an employee intends to take temporary disability leave or family temporary
114 disability leave because of a serious health condition of the employee or of a family member of the
115 employee, and where the need for leave is foreseeable based on planned medical treatment, the
116 employee shall notify the employer of the intended leave at least 30 days prior to the date that the
117 leave is to begin, except that if the date of the treatment requires leave to begin in less than 30 days,
118 the employee shall provide such notice as is practicable.

119 (c) The notice required under this subsection shall consist of the anticipated starting
120 date of the leave, the length of the leave, and the expected date of return.

121 (d) Where an employer fails to provide notice of the provisions of this chapter as
122 required under section 7 of this chapter, the employee's notice requirement shall be waived.

123 Subsection 7. Unlawful Practices.

124 (a) It shall be unlawful for any employer to retaliate by discharging, fining, suspending,
125 expelling, disciplining or in any other manner discriminating against an employee for exercising any right
126 to which such employee is entitled under this section or with the purpose of interfering with the
127 exercise of any right to which such employee is entitled under this section.

128 (b) It shall be unlawful for any employer to retaliate by discharging, fining, suspending,
129 expelling, disciplining or in any other manner discriminating against an employee who has filed a
130 complaint or instituted or caused to be instituted a proceeding under or related to this section, has
131 testified or is about to testify in an inquiry or proceeding, or has given or is about to give information
132 connected to any inquiry or proceeding relating to this section.

133 (c) Any negative change in the seniority, status, employment benefits, pay, or other
134 terms or conditions of employment of an employee who has been restored to a position pursuant to this
135 section that occurs within six months of such restoration, or of an employee who has participated in
136 proceedings or inquiries pursuant to this section within six months of the termination of proceedings
137 shall be presumed to be retaliation under this section.

138 Subsection 8. Administrative Enforcement.

139 The commission shall be responsible for the interpretation and enforcement of this
140 section and may promulgate rules and regulations pursuant thereto.

141 Subsection 9. Enforcement and Relief.

142 Enforcement of this section and relief for violations of this section shall be governed by
143 the procedures set forth in sections 5 through 9 of chapter 151B.

144 SECTION 3: TEMPORARY DISABILITY BENEFITS AND FAMILY TEMPORARY DISABILITY BENEFITS

145 Subsection 1. Establishment of Temporary Disability Benefits and Family Temporary
146 Disability Benefits.

147 An otherwise eligible employee who is on leave from employment or who has left
148 employment because he or she is ineligible or is no longer eligible for a leave shall be entitled to receive
149 temporary disability benefits or family temporary disability benefits in the amount and manner provided
150 by this section and according to regulations promulgated by the division.

151 Subsection 2. Eligibility.

152 An employee is eligible to receive temporary disability benefits or family temporary
153 disability benefits if he or she has met the monetary eligibility requirements set forth in section 24(a) of
154 chapter 151A.

155 Subsection 3. Weekly Benefit Amount.

156 (a) The weekly benefit amount shall be equal to 66 percent of the individual's average
157 weekly wage, but not to exceed 57 ½ percent of the state average weekly wage, plus 25 dollars for each
158 dependent, provided that the total weekly benefit amount shall not exceed 75 percent of the
159 individual's average weekly wage.

160 (b) For an employee who takes leave on a part-time basis, the weekly benefit amount
161 shall be prorated.

162 Subsection 4. Duration of Disability Benefits.

163 (a) Temporary disability benefits: The duration of temporary disability benefits shall not
164 exceed 26 weeks during the benefit year unless the employee takes leave on a part-time basis, in which

165 case the duration of temporary disability benefits shall not exceed 52 calendar weeks and the total
166 benefit amount shall not exceed 26 times the weekly benefit amount.

167 (b) Family temporary disability benefits: The duration of family temporary disability
168 benefits shall not exceed 12 weeks during the benefit year unless the employee takes leave on a part-
169 time basis, in which case the duration of family temporary disability benefits shall not exceed 24
170 calendar weeks and the total benefit amount shall not exceed 12 times the weekly benefit amount.

171 Subsection 5. Waiting Period

172 (a) No disability benefits shall be paid during the first seven consecutive days of any
173 claim for temporary disability benefits. This waiting period shall not apply to claims for family
174 temporary disability benefits.

175 (b) This subsection does not in any way prohibit an employee from utilizing, at his or
176 her option, accrued sick or vacation pay during the first seven consecutive days of his or her claim for
177 temporary disability benefits.

178 Subsection 6. Certification Required.

179 (a) An employee who makes a claim for temporary disability benefits shall provide a
180 certification issued by the health care provider of the employee. The certification shall be sufficient if it
181 states the date on which the serious health condition commenced, the probable duration of the
182 condition, the appropriate medical facts within the knowledge of the health care provider as required by
183 the division, and a statement that the employee is unable to perform the functions of his or her
184 position.

185 (b) An employee who makes a claim for family temporary disability benefits because of
186 the serious health condition of a family member of the employee shall provide a certification issued by

187 the health care provider of the family member. The certification shall be sufficient if it states the date
188 on which the serious health condition commenced, the probable duration of the condition, the
189 appropriate medical facts within the knowledge of the health care provider as required by the division, a
190 statement that the employee is needed to care for the family member, and an estimate of the amount
191 of time that the employee is needed to care for the family member.

192 (c) An employee who makes a claim for family temporary disability benefits because of
193 the birth of a son or daughter of the employee shall provide either a birth certificate or a certification
194 issued by the health care provider of the son or daughter of the eligible employee. The certification
195 shall be sufficient if it states the date of the son or daughter's birth.

196 (d) An employee who makes a claim for family temporary disability benefits because of
197 the placement of a son or daughter with the employee for adoption or foster care shall provide a
198 certification issued by the health care provider of the son or daughter, an adoption or foster care agency
199 involved in the placement, or by other persons as determined by the division. The certification shall be
200 sufficient if it states the date of placement.

201 (e) An employee who makes a claim for family temporary disability benefits because of
202 the placement with the employee for adoption or foster care of a son or daughter 18 years of age or
203 older and incapable of self-care because of a mental or physical disability shall, in addition to the
204 certification required by paragraph (d) of this subsection, also provide a certification issued by the
205 health care provider of the son or daughter, or by other persons as determined by the division. The
206 certification shall be sufficient if it states the nature of the disability and fact that the son or daughter is
207 incapable of self-care.

208 (f) Ineligibility In Certain Cases.

209 An individual shall not be eligible to receive disability benefits if the deputy director
210 finds that the individual, for the purpose of obtaining disability benefits, has willfully made a false
211 statement or representation, with actual knowledge of the falsity thereof, or has willfully withheld a
212 material fact concerning the facts required to be certified pursuant to this subsection.

213 Subsection 7. Wages and Other Forms of Wage Replacement.

214 (a) No individual may receive disability benefits under this section for a week in which
215 the individual receives an amount equal to or greater than the weekly benefit amount in the form of
216 wages or a wage replacement under any of the following: (i) any government program or law, including
217 but not limited to unemployment insurance, worker's compensation other than for permanent partial
218 disability incurred prior to the temporary disability claim, or under other state or federal temporary or
219 permanent disability benefits law, (ii) a permanent disability policy or program of an employer, (iii) a
220 temporary disability policy or program of an employer, or (iv) a paid sick, vacation, family, or medical
221 leave policy of an employer. For a week in which an individual receives wages or a wage replacement
222 less than the weekly benefit amount, the individual shall receive disability benefits equal to the
223 difference between the weekly benefit amount and the amount of wages or wage replacement
224 received.

225 (b) Any wage replacement received under the programs or policies listed in paragraph
226 (a) of this subsection and resulting from the same birth, adoption, or serious health condition on which
227 the individual's claim for disability benefits is based shall be deducted from the total amount of disability
228 benefits for which the individual would otherwise be eligible; provided that this paragraph shall not
229 apply to wage replacement received as a result of a paid sick or vacation policy of an employer.

230 SECTION 4: PROVISION OF TEMPORARY DISABILITY BENEFITS AND FAMILY TEMPORARY
231 DISABILITY BENEFITS

232 Subsection 1. Provision for Payment of Disability Benefits.

233 An employer or an association of employers shall secure temporary disability benefits
234 and family temporary disability benefits for employees in any of the following ways:

235 (a) By depositing and maintaining with the treasurer of the commonwealth, the
236 contributions which the employer is required to pay according to the terms of this chapter and in the
237 form and manner determined by the division; or

238 (b) By insuring and keeping insured the payment of temporary disability benefits and
239 family temporary disability benefits with any stock, mutual, reciprocal or other insurer authorized to
240 transact the business of disability insurance in the commonwealth, provided that the policy is
241 acceptable to the division as satisfying the obligation to provide for the payment of disability benefits
242 under this chapter, that the benefits under the policy are at least as favorable as the disability benefits
243 required by this chapter and that the policy does not require contributions from any employee or class
244 of employees; or

245 (c) By a private plan or agreement which the employer may, by her or his sole act,
246 terminate at any time, provided that the plan or agreement is acceptable to the division as satisfying the
247 obligation to provide for the payment of disability benefits under this chapter, that the benefits under
248 the plan or agreement are at least as favorable as the disability benefits required by this chapter, and
249 that the policy does not require contributions from any employee or class of employees; or

250 (d) By any plan or agreement in existence by agreement or collective bargaining
251 contract between the employer or employers or an association of employers and an association of
252 employees, provided that the plan or agreement is acceptable to the division as satisfying the obligation
253 to provide for the payment of disability benefits under this chapter, that the benefits under the plan or

254 agreement are at least as favorable as the disability benefits required by this chapter, and that the plan
255 or agreement does not require contributions from any employee or of any class of employees.

256 (e) Nothing in this section or chapter shall be construed as to affect any bargaining
257 agreement, company policy, or other state or federal law which provides for greater or additional
258 benefits than those required under this chapter.

259 Subsection 2. Notice of Insurance.

260 If payment of disability benefits is provided in whole or in part pursuant to subsection
261 1(b), (c), or (d) of this section, the employer or insurer shall file with the division a notice of coverage
262 and statement of benefits provided.

263 Subsection 3. No Contribution Required by Employer with Private Plan.

264 Employers providing for the payment of disability benefits under subsection 1(b), (c), or
265 (d) of this section shall not be required to make contributions pursuant to subsection 1(a) of this section.

266 SECTION 5: FAMILY AND EMPLOYMENT SECURITY TRUST FUND

267 AND ADMINISTRATIVE ACCOUNT

268 Subsection 1. Establishment of the Family and Employment Security Trust Fund.

269 There is established in the treasury of the state, separate and apart from all public
270 monies or funds of the state, a family and employment security trust fund which shall be administered
271 by the deputy director exclusively for the purposes of this chapter. All payments pursuant to this part
272 shall be paid into the trust fund and all disability benefits payable under this chapter shall be paid from
273 the trust fund. The trust fund shall consist of:

- 274 (a) All contributions collected pursuant to this section, together with any interest
275 thereon;
- 276 (b) Interest earned on any monies in the trust fund;
- 277 (c) Any property or securities acquired through the use of monies belonging to the trust
278 fund;
- 279 (d) All earnings of such property and securities;
- 280 (e) All monies transferred into the trust fund from the family and employment security
281 administrative account; and
- 282 (f) All other monies received for the trust fund from any source.

283 Subsection 2. Establishment of the Family and Employment Security Administrative
284 Account.

285 There is established in the treasury of the state, separate and apart from all public
286 monies or funds of the state, a family and employment security administrative account which shall be
287 administered by the deputy director exclusively for the purposes of this chapter. The administrative
288 account shall consist of:

- 289 (a) All contributions collected pursuant to this section, together with any interest
290 thereon;
- 291 (b) All fines and penalties for the administrative account pursuant to this chapter;
- 292 (c) All monies collected by way of subrogation;
- 293 (d) Interest earned on any monies belonging to the administrative account;

294 (e) Any property or securities acquired through the use of monies belonging to the
295 administrative account;

296 (f) All earnings of such property and securities;

297 (g) All monies appropriated to the administrative account by the legislature; and

298 (h) All other monies received for the administrative account from any source.

299 Subsection 3. Management of the Fund.

300 The state treasurer shall be the treasurer and custodian of the family and employment
301 security trust fund and the family and employment security administrative account and shall administer
302 the trust fund and administrative account in accordance with the directions of the deputy director. All
303 monies in the trust fund and administrative account shall be held in trust for the purposes of this part
304 only and shall not be expended, released, appropriated, or otherwise disposed of for any other purpose.
305 Monies in the trust fund and administrative account may be deposited in any depository bank in which
306 general funds of the commonwealth may be deposited, but such monies shall not be commingled with
307 other commonwealth funds and shall be maintained in separate accounts on the books of the
308 depository bank. Such monies shall be secured by the depository bank to the same extent and in the
309 same manner as required by the general depository law of the commonwealth, and collateral pledged
310 for this purpose shall be kept separate and distinct from any other collateral pledged to secure other
311 funds of the commonwealth. The trust fund shall maintain an annualized amount of at least 140
312 percent of the previous year's expenditure.

313 Subsection 4. Management of the Administrative Account.

314 The deputy director shall pay all expenses incurred in administering the provisions of
315 this chapter. In the event that the balance in the family and employment security trust fund shall at any

316 time be insufficient to pay disability benefits under this chapter, the governor, upon the deputy
317 director's request, shall cause such sums as may be required for the payment of such disability benefits
318 to be transferred from the family and employment security administrative account to the family and
319 employment security trust fund.

320 Subsection 5. Disbursements from the Fund.

321 Expenditures of monies in the family and employment security trust fund shall not be
322 subject to provisions of law requiring specific appropriations or other formal release by state officers of
323 money in their custody. All disability benefits shall be paid from the trust fund upon warrants drawn
324 upon the state treasurer by the comptroller of the commonwealth supported by vouchers approved by
325 the deputy director.

326 Subsection 6. Investment of Monies.

327 With the approval of the deputy director, the secretary of administration and finance
328 may, from time to time, invest such monies in the family and employment security trust fund as are in
329 excess of the amount deemed necessary for the payment of disability benefits for a reasonable future
330 period. Such monies may be invested in bonds of any political or municipal corporation or subdivision of
331 the commonwealth, or any of the outstanding bonds of the commonwealth, or invested in bonds or
332 interest-bearing notes or obligations of the commonwealth, or of the United States, or those for which
333 the faith and credit of the United States are pledged for the payment of principal and interest (or in
334 federal land bank bonds or joint stock farm bonds). The investments shall at all times be so made that
335 all the assets of the trust fund shall always be readily convertible into cash when needed for the
336 payment of disability benefits. The director of administration and finance shall dispose of securities or
337 other properties belonging to the trust fund only under the direction of the deputy director.

338 Subsection 7. Temporary Disability Benefits and Family Temporary Disability Benefits To
339 Be Paid from the Family and Employment Security Trust Fund; Recovery of Disability Benefits.

340 Temporary disability benefits and family temporary disability benefits shall be paid from
341 the family and employment security trust fund to eligible individuals. Disability benefits shall also be
342 paid from the trust fund to an employee who is entitled to receive such disability benefits but cannot
343 because of the bankruptcy of his or her employer or because the employer is not in compliance with this
344 chapter. Disability benefits paid from the trust fund to such employee may be recovered through
345 bankruptcy proceedings or from the noncomplying employer. The deputy director shall institute
346 administrative and legal action to effect recovery of such disability benefits.

347 Subsection 8. Amount of Employer Payments to the Family and Employment Security
348 Trust Fund and Administrative Account

349 For the purpose of accumulating funds for the payment of temporary disability benefits,
350 family temporary disability benefits, and administrative costs, each employer, with the exception of any
351 employer complying with section 4, subsection 1(b), (c), or (d), shall in the first year after the date the
352 employer becomes subject to this chapter, and each year thereafter, pay amounts as determined by the
353 deputy director. Each employer shall transmit all such payments to the trust fund or administrative
354 account in such manner, at such time, and under such conditions as shall be prescribed by regulations.

355 Subsection 9. Annual Establishment of Rates for Trust Fund Operations.

356 On or before October first of each year, the deputy director shall certify to the secretary
357 of administration and finance the estimated costs for the coming year of disability benefits and for
358 administrative services provided by the division. Said rates of employer contribution to both the trust

359 fund and the administrative account as established by this chapter shall be adjusted annually as
360 consistent with the needs of the operation of said trust fund and administrative account.

361 Subsection 10. Request for Wage and Employment Information.

362 An employer to whom the division has sent a request for wage and employment
363 information for an employee claiming temporary disability benefits or family temporary disability
364 benefits under this chapter shall complete and file such information within ten days from the date the
365 request was sent. If an employer does not respond within ten days, that employer may be held liable
366 for any and all related costs incurred by the commonwealth.

367 SECTION 6: CLAIMS AND APPEAL

368 Subsection 1. Filing of Claims, and Reports Thereon; Giving and Return of Notice.

369 (a) Claims for temporary disability benefits and family temporary disability benefits shall
370 be filed with the division and shall be handled under the procedures prescribed by sections 38 through
371 43 of chapter 151A and regulations promulgated thereunder.

372 (b) The division shall provide the same level of assistance to individuals filing claims for
373 disability benefits under this chapter as it provides to unemployment benefits claimants pursuant to
374 subsections 62A(a) through 62A(f) of chapter 151A.

375 SECTION 7: NOTICE

376 Subsection 1. Notice to Employees.

377 (a) Every employer subject to this chapter shall keep posted in a conspicuous place or
378 places on its premises a workplace notice prepared or approved by the division which shall set forth
379 excerpts from this chapter and other information the division deems necessary to explain the chapter.

380 Such workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese,
381 Vietnamese, Laotian, Khmer, Russian, and any other language that is the primary language of at least
382 10,000 or one-half of one percent of all residents of the commonwealth. Each employer with five or
383 more employees whose primary language is not English shall post the workplace notice in that language,
384 if such notice is available from the division.

385 (b) Each employer shall issue to each employee, within 30 days from date of the
386 employee's first day of work, written information provided or approved by the division which explains
387 the availability of temporary disability leave, family temporary disability leave, temporary disability
388 benefits and family temporary disability benefits provided pursuant to this chapter.

389 (c) Each employer shall issue to each employee taking temporary disability leave or
390 family temporary disability leave, as soon as practicable, but not more than 30 days from the date that
391 the employee gives notice of leave, written information provided or approved by the division which shall
392 contain the name and mailing address of the employer; the identification number assigned to the
393 employer by the division; information describing the availability of temporary disability benefits and
394 family temporary disability benefits provided pursuant to this chapter; instructions on how to file a claim
395 for disability benefits; the address and telephone number of the regional office of the division which
396 serves the recipient; and the telephone number of the division. Delivery is made when an employer
397 provides such information to an employee in person or by mail to the employee's last known address.

398 (d) Any employer who fails to comply with the provisions of subsection 1(a) or 1(b) of
399 this section shall be punished by a fine of not less than 50 dollars nor more than 300 dollars. A
400 subsequent violation of this subsection by the same employer shall be punished by a fine of not less
401 than 250 dollars nor more than 1,000 dollars. Where an employer fails to comply with this provision, an
402 employee shall be deemed to have provided notice of leave under section 2, subsection 5, of this

403 chapter. The employer shall have the burden of demonstrating compliance with subsections 1(a) and
404 1(b) of this section.

405 (e) The waiting period under section 3, subsection 5, of this chapter for an employee
406 who did not receive the information required by subsection 1(c) of this section and who failed to file
407 timely for disability benefits, shall be the initial week that such employee would have been eligible to
408 receive temporary disability benefits or family temporary disability benefits. The employer shall have
409 the burden of demonstrating compliance with subsection 1(c) of this section.

410 SECTION 8: PURPOSE AND CONSTRUCTION

411 This act shall be liberally construed as remedial legislation to further its purpose of providing
412 job-protected temporary disability leave and family temporary disability leave, as well as temporary
413 disability benefits and family temporary disability benefits, to the employees of the commonwealth. All
414 presumptions shall be made in favor of the availability of leave and the payment of disability benefits
415 under this chapter.

416 SECTION 2. The General Laws are amended by inserting after paragraph 11A of section 4 of
417 chapter 151B the following:-

418 11B. (1) For an employer to discharge, fine, suspend, expel, discipline or in any other manner
419 discriminate against an employee (i) for exercising any right to which such employee is entitled under
420 the provisions of section 2, subsection 7, of chapter 152A, or (ii) with the purpose of interfering with the
421 exercise of any right to which such employee is entitled under section 2, subsection 7, of chapter 152A.

422 (2) For any employer to discharge, fine, suspend, expel, discipline or in any other
423 manner discriminate against an employee who has filed a complaint or instituted or caused to be
424 instituted a proceeding under or related to section 2, subsection 7, of chapter 152A, or who has testified

425 or is about to testify in an inquiry or proceeding, or who has given or is about to give information
426 connected to any inquiry or proceeding relating to section 2, subsection 7, of chapter 152A.

427 (3) For purposes of this subsection, any negative change in the seniority, status,
428 employment benefits, pay or other terms or conditions of employment of an employee who has been
429 restored to a position pursuant to section 2, subsection 7, of chapter 152A that occurs within six months
430 of such restoration, or of an employee who has participated in proceedings or inquiries pursuant to
431 section 2, subsection 7, of chapter 152A within six months of the termination of proceedings shall be
432 presumed to be retaliation.