

HOUSE No. 3276

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

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 adoption of the accompanying bill:

An Act to establish parental leave for public employees.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>

HOUSE No. 3276

By Mr. Cabral of New Bedford, a petition (accompanied by bill, House, No. 3276) of Antonio F. D. Cabral and others for legislation to establish paid parental leave for public employees. Public Service.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to establish parental leave for public employees.

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 32B the
2 following chapter:-

3 CHAPTER 32C

4 PAID PARENTAL LEAVE FOR PUBLIC EMPLOYEES

5 Section 1. Definitions. In this chapter—

6 (a) the term “base period” has the same meaning as provided by section 1(a) of
7 chapter 151A;

8 (b) the term “benefit year” has the same meaning as provided by section 1(c) of
9 chapter 151A;

10 (c) the term “child” has the same meaning as provided to “son or daughter” by the
11 Federal Family Medical Leave Act, 29 U.S.C. § 2611(12);

12 (d) the term “commission” means the Massachusetts commission against
13 discrimination, as established by section 56 of chapter 6;

14 (e) the term “employee” has the same meaning as provided by section 2(b) of chapter
15 32A and shall include the employees, as defined in section 2 of chapter 32B, of a county, city,
16 town or district which has adopted the provisions of this chapter pursuant to section 7 hereof;

17 (f) the term “employer” means the Commonwealth of Massachusetts or one of its
18 subdivisions;

19 (g) the term “employment” has the same meaning as provided by section 1(k) of
20 chapter 151A;

21 (h) the term “employment benefits” means all benefits provided or made available to
22 employees by an employer, including group life insurance, health insurance, disability insurance,
23 sick leave, annual or vacation leave, educational benefits, and pensions;

24 (i) the term “family and medical leave act” means the Federal Family and Medical
25 Leave Act of 1993, 29 U.S.C. § 2611;

26 (j) the term “parental leave” means leave taken by an employee from employment to
27 provide care for a child for one of the following reasons:

28 (1) The birth of the child, who is a biological child of the employee.

29 (2) The placement of the child with the employee for adoption or foster care.

30 (k) the term “individual average weekly wage” has the same meaning as “average
31 weekly wage” as defined in section 1(w) of chapter 151A and shall be calculated using the base
32 period earnings as defined by section 1(a) of chapter 151A;

33 (l) the term "average weekly wage" means the average weekly wage as determined
34 by the division of employment and training pursuant to section 29(a) of chapter 151A;

35 (m) the term "wage" means all remuneration as defined in section 1(s) of chapter
36 151A; and

37 (n) the term “weekly benefit amount” means the amount of parental leave benefits
38 paid to an employee on leave pursuant to this chapter on a weekly basis, as provided by section
39 3, subsection 3, of this chapter.

40 Section 2. Parental Leave Established.

41 (a) Eligibility for Parental Leave. An employee is eligible for parental leave if he has
42 met the monetary eligibility requirements set forth in section 24(a) of chapter 151A.

43 (b) Length of Leave.

44 (1) The duration of parental leave shall be limited to the following maximum
45 amounts of time during any 12-month period:

46 (i) 12 weeks on a full-time basis.

47 (ii) The equivalent of 12 weeks on a full-time basis, where the employee takes leave
48 on a part-time basis.

49 (iii) A combination of full-time and part-time leave as set forth in clauses (i) and (ii),
50 provided that such leave shall not exceed the equivalent of 12 weeks on a full-time basis.

51 (2) If 2 employees are eligible for leave as a result of the birth or placement of the
52 same child, the first of such employees may take any portion of leave for which a single
53 employee is eligible pursuant to this chapter and the second of such employees may take any
54 remaining portion of said leave not taken by the first employee.

55 (3) The entitlement to leave shall expire at the end of the 12-month period beginning
56 on the date of the birth or placement.

57 (c) Certification. An employer may, at its option, require that a request for parental
58 leave pursuant to this chapter be supported by a certification of birth or placement that meets the
59 criteria set forth in section 4.

60 (d) Reinstatement and Employment Benefits.

61 (1) An employee who takes parental leave pursuant to this section shall be restored to
62 the employee's previous position, or to a substantially similar position, with the same status, pay,
63 employment benefits, length of service credit, and seniority as of the date of leave.

64 (2) An employer shall not be required to restore an employee who has taken parental
65 leave to the previous or to a substantially similar position if other employees of equal length of
66 service credit and status in the same or substantially similar positions have been laid off due to
67 economic conditions or other changes in operating conditions affecting employment during the
68 period of leave; provided, however, that the employee who has taken leave shall retain any
69 preferential consideration for another position to which he was entitled as of the date of leave.

70 (3) Employers may require employees taking parental leave to use up to 2 weeks of
71 accrued vacation time prior to taking said leave. Other than said 2 weeks of vacation time,
72 taking parental leave shall not affect an employee's right to receive accrued vacation time, sick
73 leave, bonuses, advancement, seniority, length of service credit, employment benefits, plans or
74 programs for which the employee was eligible at the date of the employee's leave, and any other
75 rights incident to the employee's employment.

76 (4) During the duration of an employee's parental leave, the employer shall continue
77 to provide for and contribute to the employee's employment-related health insurance benefits, if
78 any, under the same terms and conditions as those existing prior to leave.

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

82 (e) Notice.

83 (1) Where an employee intends to take parental leave and where the need for leave is
84 foreseeable, the employee shall notify the employer of the intended leave at least 30 days prior to
85 the date that the leave is to begin, except that if the date of the birth or placement requires leave
86 to begin in less than 30 days, the employee shall provide such notice as is practicable.

87 (2) The notice required under this subsection shall consist of the anticipated starting
88 date of the leave, the length of the leave, and the expected date of return.

89 (f) Unlawful Practices.

90 (1) It shall be unlawful for any employer to retaliate by discharging, firing,
91 suspending, expelling, disciplining or in any other manner discriminating against an employee
92 for exercising any right to which such employee is entitled under this section or with the purpose
93 of interfering with the exercise of any right to which such employee is entitled under this section.

94 (2) It shall be unlawful for any employer to retaliate by discharging, firing,
95 suspending, expelling, disciplining or in any other manner discriminating against an employee
96 who has filed a complaint or instituted or caused to be instituted a proceeding under or related to
97 this section, has testified or is about to testify in an inquiry or proceeding, or has given or is
98 about to give information connected to any inquiry or proceeding relating to this section.

99 (3) Any negative change in the seniority, status, employment benefits, pay, or other
100 terms or conditions of employment of an employee who has been restored to a position pursuant
101 to this section that occurs within 6 months of such restoration, or of an employee who has
102 participated in proceedings or inquiries pursuant to this section within 6 months of the
103 termination of proceedings shall be presumed to be retaliation under this section.

104 (g) Administrative Enforcement. The commission shall be responsible for the
105 interpretation and enforcement of this section and may promulgate rules and regulations pursuant
106 thereto.

107 (h) Enforcement and Relief. Enforcement of this section and relief for violations of
108 this section shall be governed by the procedures set forth in sections 5 through 9 of chapter
109 151B.

110 Section 3. Parental Leave Benefits.

111 (a) Parental Leave Benefits. An otherwise eligible employee who is on parental leave
112 shall be entitled to receive parental leave benefits in the amount and manner provided by this
113 section and according to regulations promulgated by the division.

114 (b) Amount of Benefits. For an employee who takes leave on—

115 (1) a full-time basis, the weekly benefit amount shall be equal to 60 per cent of the
116 eligible individual's weekly wage up to a maximum of \$1,000 per week. On January 1, the
117 division shall adjust the maximum weekly benefit amount for that year to reflect changes in the
118 United States Bureau of Labor Statistics Consumer Price Index for the Boston-Cambridge-
119 Quincy consolidated metropolitan statistical area for all urban consumers, all goods, or its
120 successor index; and

121 (2) a part-time basis, the weekly benefit amount shall be prorated.

122 Section 4. Certification Required.

123 (a) An employee who makes a claim for parental leave benefits because of the birth
124 of a child of the employee shall provide either a birth certificate or a certification issued by the
125 health care provider of the child of the eligible employee. The certification shall be sufficient if it
126 states the date of the child's birth.

127 (b) An employee who makes a claim for parental leave benefits because of the
128 placement of a child with the employee for adoption or foster care shall provide a certification
129 issued by the health care provider of the child, an adoption or foster care agency involved in the
130 placement, or by other persons as determined by the division. The certification shall be
131 sufficient if it states the date of placement.

132 (c) An employee who makes a claim for parental leave because of the placement with
133 the employee for adoption or foster care of a child 18 years of age or older and incapable of self-
134 care because of a mental or physical disability shall, in addition to the certification required by
135 paragraph (b) of this subsection, also provide a certification issued by the health care provider of
136 the child, or by other persons as determined by the division. The certification shall be sufficient
137 if it states the nature of the disability and fact that the child is incapable of self-care.

138 (d) Ineligibility In Certain Cases. An individual shall not be eligible to receive
139 parental leave benefits if the appropriate public authority of the employer finds or the relevant
140 procedures established by a collective bargaining agreement to which the employee is a party
141 determines that the individual, for the purpose of obtaining parental leave benefits, has willfully
142 made a false statement or representation, with actual knowledge of the falsity thereof, or has
143 willfully withheld a material fact concerning the facts required to be certified pursuant to this
144 subsection.

145 Section 5. Wages and Other Forms of Wage Replacement.

146 (a) No individual may receive parental leave benefits under this section for a week in
147 which the individual receives an amount equal to or greater than the weekly benefit amount in
148 the form of wages or a wage replacement under any of the following:

149 (1) Any government program or law, including but not limited to unemployment
150 insurance, worker's compensation other than for permanent partial disability incurred prior to the
151 birth or placement of the child, or under other state or federal temporary or permanent disability
152 benefits law.

153 (2) A permanent disability policy or program of an employer.

154 (3) A temporary disability policy or program of an employer.

155 (4) A paid sick, vacation, family, or medical leave policy of an employer. For a week
156 in which an individual receives wages or a wage replacement less than the weekly benefit
157 amount, the individual shall receive parental leave benefits equal to the difference between the
158 weekly benefit amount and the amount of wages or wage replacement received.

159 (b) Any wage replacement received under the programs or policies listed in
160 subsection (a) and resulting from the same birth or adoption on which the individual's claim for
161 parental leave benefits is based shall be deducted from the total amount of parental leave benefits
162 for which the individual would otherwise be eligible; provided that this subsection shall not
163 apply to wage replacement received as a result of a paid sick or vacation policy of an employer.

164 Section 6. Massachusetts Division of Parental Leave. There shall be a division of
165 family and medical leave within the executive office of labor and workforce development which
166 shall be administered by a director appointed by the Governor. The division shall produce an
167 annual report detailing all parental leave benefits paid and shall make this report available online
168 no later than 60 days after the end of the commonwealth's fiscal year.

169 Section 7. Municipal Employees. Any county, city, town or district may adopt the
170 provisions of this chapter in order to extend parental leave benefits to its employees, in the
171 following manner: in a county, by a vote of the county commissioners; in a city having a Plan D
172 or a Plan E charter, by majority vote of the city council and approval by the manager; in any
173 other city, by majority vote of the city council and approval of the mayor; in a town, by vote of
174 the board of selectmen; in a regional school district, by vote of the regional district school

175 committee; and in all other districts, by vote of the registered voters of the district at a district
176 meeting or by vote of the district’s governing board.

177 SECTION 2. Section 4 of chapter 151B of the General Laws, as appearing in the 2014
178 Official Edition, is hereby amended by inserting after subsection 11A the following subsection:-

179 “11B. (1) For an employer to discharge, fire, suspend, expel, discipline or in any other
180 manner discriminate against an employee—

181 (i) for exercising any right to which such employee is entitled under the provisions of
182 chapter 32C; or

183 (ii) with the purpose of interfering with the exercise of any right to which such employee
184 is entitled under chapter 32C.

185 (2) For any employer to discharge, fine, suspend, expel, discipline or in any other
186 manner discriminate against an employee who has filed a complaint or instituted or caused to be
187 instituted a proceeding under or related to chapter 32C, or who has testified or is about to testify
188 in an inquiry or proceeding, or who has given or is about to give information connected to any
189 inquiry or proceeding relating to chapter 32C.

190 (3) For purposes of this subsection, any negative change in the seniority, status,
191 employment benefits, pay or other terms or conditions of employment of an employee who has
192 been restored to a position pursuant to chapter 32C that occurs within 6 months of such
193 restoration, or of an employee who has participated in proceedings or inquiries pursuant to
194 chapter 32C within 6 months of the termination of proceedings shall be presumed to be
195 retaliation.”.

196 SECTION 3. Paragraph (2) of subsection (a) of section 2 of chapter 62 of the General
197 Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after clause (Q)
198 the following clause:

199 “(R) Amounts received by an individual for parental leave under chapter 32C of the
200 General Laws.”.