

SENATE No. 1023

The Commonwealth of Massachusetts

PRESENTED BY:

Joan B. Lovely

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 establishing the Massachusetts pregnant workers fairness act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/23/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/2/2017</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>1/23/2017</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>	<i>1/25/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>1/25/2017</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/26/2017</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>1/26/2017</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/26/2017</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/27/2017</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/27/2017</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>1/27/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/27/2017</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/2/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>1/27/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/30/2017</i>
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	<i>1/30/2017</i>

<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>1/30/2017</i>
<i>Bradford R. Hill</i>	<i>4th Essex</i>	<i>1/31/2017</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>1/31/2017</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>1/31/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2017</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2017</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>2/1/2017</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>	<i>2/1/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/2/2017</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>2/2/2017</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/2/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/2/2017</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>2/2/2017</i>
<i>Donald F. Humason, Jr.</i>	<i>Second Hampden and Hampshire</i>	<i>2/2/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Jerald A. Parisella</i>	<i>6th Essex</i>	<i>2/2/2017</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/3/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/3/2017</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/3/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/3/2017</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>2/3/2017</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/3/2017</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/3/2017</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>	<i>2/3/2017</i>
<i>Kathleen O'Connor Ives</i>	<i>First Essex</i>	<i>2/3/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/3/2017</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	<i>2/3/2017</i>
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	<i>2/3/2017</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/3/2017</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/3/2017</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and</i>	<i>2/3/2017</i>

	<i>Middlesex</i>	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>2/3/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/21/2017</i>

SENATE No. 1023

By Ms. Lovely, a petition (accompanied by bill, Senate, No. 1023) of Joan B. Lovely, Michelle M. DuBois, Eric P. Lesser, Jack Lewis and other members of the General Court for legislation to establish the Massachusetts pregnant workers fairness act. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act establishing the Massachusetts pregnant workers fairness act.

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. Section 4 of chapter 151B of the General Laws is hereby amended by
2 striking out, in line 5, the word “or” and inserting, in line 6, after the words “ancestry of any
3 individual”, the following words:-

4 or pregnancy, or a related condition, including, but not limited to, the need to express
5 breast milk for a nursing child.

6 SECTION 2. Said section 4 is hereby amended by inserting after subsection 1D the
7 following subsection:-

8 1E. (a) For an employer to deny reasonable accommodations for any condition of an
9 employee related to pregnancy or related conditions if the employee so requests, unless the
10 employer can demonstrate that the accommodation would impose an undue hardship on the
11 employer’s program, enterprise, or business. It shall also be an unlawful practice under this
12 subsection to:

13 (1) take adverse action against an employee who requests or uses a reasonable
14 accommodation in terms, conditions or privileges of employment, including, but not limited to,
15 failing to reinstate the employee to her original job or to an equivalent position with equivalent
16 pay and accumulated seniority, retirement, fringe benefits and other applicable service credits
17 when her need for reasonable accommodations ceases;

18 (2) deny employment opportunities to an employee, if such denial is based on the need of
19 the employer to make reasonable accommodations to the known conditions related to the
20 pregnancy or related conditions of the employee;

21 (3) require an employee affected by pregnancy or related conditions to accept an
22 accommodation that such employee chooses not to accept, if such an accommodation is
23 unnecessary to enable the employee to perform the essential functions of her job;

24 (4) require an employee to take leave if another reasonable accommodation can be
25 provided to the known conditions related to the pregnancy or related conditions of an employee
26 without undue hardship to the employer;

27 (5) refuse to hire a person who is affected by pregnancy or a related condition, capable of
28 performing the essential functions of the position involved with reasonable accommodation,
29 unless the employer can demonstrate that the accommodation would impose an undue hardship
30 on the employer's program, enterprise or business.

31 (b) For the purposes of this subsection:

32 (1) The term "reasonable accommodations" may include, but not be limited to: more
33 frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay,

34 acquisition or modification of equipment, seating, temporary transfer to a less strenuous or
35 hazardous position, job restructuring, light duty, break time and private non-bathroom space for
36 expressing breast milk, assistance with manual labor, or modified work schedules; and provided
37 further, that no employer shall be required to discharge any employee, transfer any employee
38 with more seniority, or promote any employee who is not qualified to perform the job. An
39 employee not able to perform the essential functions, with or without reasonable accommodation
40 may be considered not “qualified”.

41 (2) The term “related conditions” shall include, but not be limited to, lactation or the need
42 to express breast milk for a nursing child.

43 (3) The term “undue hardship” shall mean an action requiring significant difficulty or
44 expense. The employer shall have the burden of proving undue hardship. In making a
45 determination of undue hardship, factors to be considered include:

46 (i) the nature and cost of the accommodation;

47 (ii) the overall financial resources of the employer; the overall size of the business of the
48 employer with respect to the number of employees, and the number, type, and location of its
49 facilities;

50 (iii) the effect on expenses and resources or the impact otherwise of such accommodation
51 upon the operation of the employer.

52 (d) The employer and employee shall engage in a timely, good faith, and interactive
53 process to determine effective reasonable accommodations to enable the employee to perform
54 the essential functions of the employee’s job. An employer may require that the documentation

55 about the need for reasonable accommodation come from an appropriate health care or
56 rehabilitation professional. An employee shall not be required to obtain documentation from an
57 appropriate health care or rehabilitation professional for the following accommodations: (1)
58 more frequent restroom, food, and water breaks; (2) seating; and (3) limits on lifting over 20
59 pounds.

60 The appropriate professional in any particular situation will depend on the issue related to
61 pregnancy or related condition and the type of functional limitation it imposes including
62 duration. Appropriate professionals include, but are not limited to, doctors (including
63 psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech
64 therapists, vocational rehabilitation specialists, midwives, lactation consultants, and licensed
65 mental health professionals. An employer may require documentation for any extension of the
66 accommodation beyond the originally agreed to accommodation. In requesting documentation,
67 employers should specify what types of information they are seeking regarding the
68 accommodation, its functional limitations, and the need for reasonable accommodation. The
69 individual can be asked to sign a limited release allowing the employer to submit a list of
70 specific questions to the health care or vocational professional.

71 (e) Written notice of the right to be free from discrimination in relation to pregnancy and
72 related conditions, including the right to reasonable accommodations for conditions related to
73 pregnancy or related conditions, pursuant to this subsection shall be distributed in a handbook or
74 other means to:

75 (1) new employees at the commencement of employment;

76 (2) existing employees within 120 days after the effective date of the law that added this
77 subsection;

78 (3) any employee who notifies the employer of her pregnancy within 10 days of such
79 notification.

80 (f) The commission shall develop courses of instruction and conduct ongoing public
81 education efforts as necessary to inform employers, employees, and employment agencies, about
82 their rights and responsibilities under this subsection.

83 (g) This subsection shall not be construed to preempt, limit, diminish or otherwise affect
84 any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish
85 the coverage for pregnancy or a condition related to pregnancy under section 105D of chapter
86 149, or any other special or general law.