

An Act Clarifying Parental Rights to Unpaid Leave SD 934 and HD 1047

Lead Sponsors: Senator Patricia Jehlen and Rep. Marty Walsh

Problems with Current State Law

1. Under the Massachusetts Maternity Leave Act, G.L. c. 149, § 105D, companies with 6 or more employees must provide mothers with up to 8 weeks of unpaid job protected maternity leave for the birth or adoption of a child. Under a recent Supreme Judicial court decision, *Global NAPs, Inc. v. Awiszus*, 457 Mass. 489 (2010), the Court ruled that even though an employee asked for and received permission from her employer for 10 weeks maternity leave, the employee unknowingly lost her rights to job protection because her leave had been extended beyond the 8 weeks. She could not return to her job when she attempted to do so after her 10th week of leave.
2. The Massachusetts Commission Against Discrimination (MCAD), the state agency that implements the law, has warned that employers who do not provide comparable leave to fathers may be violating constitutional rights to equal protection under the law.

Solution: An Act Clarifying Parental Rights to Unpaid Leave

1. This bill addresses the unfairness in the recent *Global NAPs* decision by simply requiring employers to inform employees in writing prior to their leave if taking leave beyond the 8 weeks destroys their right to return to work.
2. This bill cures the constitutional defect in the current law by making it gender neutral and extends the statutory rights to fathers and all individuals who act *in loco parentis* (assume parental status and responsibility) without diminishing any protections that women require due to biological differences because they bear and nurse children.
3. This bill further clarifies other ambiguities in the statute concerning probationary periods, the coverage of part time workers with sufficient job attachment, and ensures equal treatment for parents with other similarly situated employees.

Please contact Heather.Mills@masenate.gov in Sen. Patricia Jehlen's office or Krista.Zalatores@mahouse.gov in Rep. Marty Walsh's office to cosponsor this bill.

For further information, please contact Greater Boston Legal Services, Elizabeth Toulan, etoulan@gbls.org, 617/603-1626, 508-397-7733.