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## **MASSACHUSETTS EMPLOYEES ENTITLED TO EARN SICK TIME EFFECTIVE JULY 1, 2015**

### *What You Need to Know*

All Massachusetts employers with 11 or more employees must provide employees with up to 40 hours of paid sick time per calendar year. Employers with fewer than 11 employees must provide employees with up to 40 hours of unpaid sick time per calendar year. Employers who fail to comply with the law are subject to liability for lost wages, mandatory treble damages, attorney's fees, and costs under the Massachusetts Wage Act.

Effective July 1, 2015, Massachusetts employers will be required to provide sick time (either paid or unpaid) to all employees. This is the result of the Massachusetts voters' overwhelming approval of Question No. 4 on the November 4<sup>th</sup> ballot. Massachusetts joins only two other states, California and Connecticut, in mandating paid sick time.

### **Employees Entitled to up to 40 hours of Sick Time**

For each 30 hours worked, an employee will earn one hour of sick time. Exempt employees (those who are not overtime eligible) will be assumed to work 40 hours a week, unless their normal work week is less than 40 hours, in which case earned sick time shall accrue based upon the employee's normal work week. An employee's rate of earning will be capped at 40 hours of earned sick time per calendar year. Employees may carry forward earned but unused sick time from one calendar year to the next, but may not use more than 40 hours of sick time in any single calendar year. The law sets forth the minimum requirements, and employers may elect to permit employees to accrue sick time at a faster rate.

Covered employees are all employees, full-time, part-time and temporary, with some limited exceptions applicable to federal and municipal employees. Newly hired employees will begin to earn sick time (whether paid or unpaid) upon their hire, but may not begin to use earned sick time until their 90<sup>th</sup> day of employment (calendar, not business, days).

The use by an employee of earned sick time shall be the *smaller* of one hour increments or the smallest increment that the employer's payroll system uses to account for absences or the use of other time.

### **Paid vs. Unpaid Sick Time**

All Massachusetts employers must provide up to 40 hours of sick time to their employees. However, only employers with 11 or more employees must provide paid sick time. The sick time must be paid at the same hourly rate the employee earns.

Unlike earned but unused vacation time, employers are not required to pay out unused earned sick time upon an employee's termination of employment.

## **Use of Sick Time**

Earned sick time (both paid and unpaid) may be used by an employee to:

- (i) care for the employee's immediate family member (child, spouse, parent, or parent-in-law) who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; or
- (ii) care for the employee's own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; or
- (iii) attend to the employee's routine medical appointment or that of the employee's immediate family member (child, spouse, parent or parent-in-law); or
- (iv) address the psychological, physical, or legal effects of domestic violence (as defined in the newly enacted Chapter 151A, section 1, subsection g ½).

## **Notice of Need for Sick Time and Certification**

Employees must make a good faith effort to provide advance notice of the need to take earned sick time when the use of such time is foreseeable.

Employers may require certification of the need to take earned sick time when the use of earned sick time covers more than 24 consecutively scheduled work hours. Any "reasonable documentation" signed by a health care provider (as defined in the Family and Medical Leave Act) indicating the need for earned sick time taken shall be deemed acceptable certification for absences under (i) through (iii) above, and for absences under (iv), documentation deemed acceptable under the newly enacted Chapter 151A, section 1, subsection g ½ shall suffice. An employer may not require that certification documentation explain the nature of the illness or the details of the domestic violence.

Importantly, an employer may not delay the taking of earned sick time or delay pay for the period in which earned sick time was taken (for those employees entitled to paid sick time), on the basis that the employer has not yet received the certification.

Where an employee has used sick time, the employer and employee may *mutually* agree to permit the employee to work an equivalent number of hours or shifts in the same pay period or the next pay period as the number of hours or shifts not worked due to the reasons described. In those circumstances, the employee is not required to use earned sick time and the employer is not required to pay the employee for that sick time (for those employers required to provide paid sick time). However, no employer may require an employee to either make up for the employee's use of earned sick time by working additional hours or find a replacement employee to cover the hours during which the employee is using earned sick time.

## **Notice to Employees**

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Employers must provide notice to employees of their rights under this new law. The Attorney General is required to prepare a form of notice regarding the new law, which employers are required to post in a conspicuous location accessible to all employees. The notice will include (i) information describing rights to earned sick time; (ii) information about notices, documentation and other requirements imposed on employees in order to exercise their rights under the law; (iii) information that describes employee protections under the law; (iv) the name and address and contact information for the Attorney General's office where questions concerning the law can be answered; and (v) information about filing an action under the law.

### **No Adverse Action**

Employers may not use the fact that an employee has used earned sick time "as a negative factor in any employment action" (such as an evaluation, promotion, discipline, or termination). Nor may employers retaliate against employees who oppose practices the employee believes to be in violation of the new law or support another employee's exercise of rights under the new law.

### **Existing Policies**

Employers required to provide *paid* sick time to employees under the new law, who have existing policies (vacation, PTO or other paid leave policy) that provide employees with paid time off and make available an amount of paid time off sufficient to meet the accrual requirements of the new law, are *not* required to provide additional earned paid sick time, so long as paid time off under the existing policies may be used for the same purposes and under the same conditions as earned paid sick time under the new law.

### **Enforcement and Penalties for Violation**

The new law will be enforced by the Attorney General, who may seek injunctive relief as well as significant criminal or civil penalties. The new law states that the Attorney General may adopt rules and regulations to carry out the purpose of the new law.

In addition, employees claiming violations of the new law have a private right of action and may seek mandatory treble (triple) damages and attorneys' fees for alleged violations.

*This client advisory was written by Beth O'Neal. If you wish to inquire further about our employment counseling and litigation practices, please contact Beth or your attorney at Conn Kavanaugh Rosenthal Peisch & Ford, LLP.*

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