



CLIENT ALERT: *EARNED SICK TIME FOR EMPLOYEES*

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Effective July 1, 2015, employers with eleven or more employees are required to provide up to 40 hours of paid sick time per calendar year to all employees who work in Massachusetts, whether compensated on a full-time, part-time or temporary basis. Employers with less than eleven employees are required to provide up to 40 hours of unpaid sick time.

Basis for Sick Time. Employees can use earned sick time:

- 1) to care for a physical or mental illness, injury or medical condition affecting the employee or the employee's child, spouse, parent, or parent of a spouse;
- 2) to attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or
- 3) to address the effects of domestic violence on the employee or the employee's dependent child.

When the use of earned sick time is foreseeable, employees shall make a good faith effort to give notice to the employer in advance of the use of the earned sick time.

Accrual of Sick Time. An employer shall provide a minimum of one hour of sick time for every 30 hours worked. Employees begin accruing earned sick time on the later of their date of hire or the effective date of the law; provided, however, that employees shall not be entitled to use accrued earned sick time until the 90th calendar day following commencement of employment.

Employees exempt from overtime requirements under the Fair Labor Standards Act shall be deemed to work 40 hours in each work week for purposes of earned sick time accrual, unless their normal work week is less than 40 hours in which case earned sick time shall accrue based on that normal work week.

Use of Sick Time. Earned sick time shall be used in the smaller of one hour increments or the smallest increment of time the employer's payroll system uses to account for absences or use of other time.

No Compensation for Unused Sick Time. An employer is not required to pay unused sick time if an employee is terminated.

Impact upon Existing Paid Time Off and Vacation Policies. If an employer provides paid time off or vacation time that can be used for the same purposes as sick time and which exceeds the sick time rights under the new law, then the employer need not provide additional sick time under the new law. However, any restrictions on the taking of such paid time off or vacation time may not be applied to the use of sick time, except to the extent authorized under the sick time law. Notably, accrued vacation time (including paid time off that can be used for any purpose) must be paid to an employee upon termination of employment.

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As a result, if an employer expands vacation or paid time off rights to some employees (e.g., part-timers) to satisfy the obligations under the new law, the employer would be obligating itself to pay those employees for accrued vacation/paid time off upon termination of employment, even though they would not be entitled to such payment under the sick time law.

Carry Over of Unused Leave. Employees may carry over up to 40 hours of unused earned sick time to the next calendar year, but an employee cannot use more than 40 hours in one calendar year.

Documentation of Basis for Sick Time. Employers may require certification of the basis for the sick time only when the earned sick time period covers more than 24 consecutively scheduled work hours.

Any reasonable documentation signed by a health care provider indicating the need for earned sick time taken shall be acceptable certification for leave on account of physical or mental illness, injury or medical condition, or on account of routine medical appointments. Acceptable documentation for leave on account of domestic violence shall be similar to that identified in the Massa-

chusetts Unemployment Insurance law. That documentation is similar to what is acceptable under the new Domestic Violence Leave Act.

An employer shall not require that the documentation explain the nature of the illness or details of the domestic violence.

Employers cannot delay the taking of sick time or withhold payment because they have not yet received the requested certification.

Prohibition on Requiring Make-up Hours. An employer may not require an employee to work additional hours to make up for the sick time used or require that the employee find a replacement to cover the hours during which the employee is using sick time.

However, if an employee is absent from work for a reason making the employee eligible to use earned sick time and, by agreement of the employer and employee, the employee works an equivalent number of additional hours during the same or next pay period as the hours absent, then the employee shall not be required to use accrued earned sick time, and the employer shall not be required to pay for the time the employee was absent.

Notice Posting Obligation. Once the Attorney General prepares a notice regarding sick time rights, employ-

ers must post the notice in a conspicuous location and provide copies to their employees.

Recordkeeping. The Attorney General shall prescribe regulations for the making, keeping and preservation of records pertaining to the law.

Remedies for Violation. The Attorney General shall enforce the sick time law and may obtain injunctive or declaratory relief or assess civil penalties. In addition, current or former employees may sue for any lost wages and benefits resulting from a violation of the law, as well as obtain injunctive relief, treble damages, and attorneys fees and costs.



For the full text of the new law, please visit <http://www.sec.state.ma.us/ele/ele14/pip144.htm>.