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Client Alert - Massachusetts' Mandatory Sick Time Law

Tuesday, November 18, 2014

Voters in Massachusetts recently approved the ballot measure requiring employers to provide sick time for all employees. In doing so, Massachusetts joined a small group of states with mandatory sick time laws.

What this means for employers is that they must provide sick leave for all employees beginning on July 1, 2015. Whether the leave must be paid or not is based upon the number of employees but all employers, regardless of size, must provide at least the mandated number of sick days.

For employers with 11 or more employees, the sick time must be paid; for employers with 10 or fewer employees, the sick time may be unpaid. Employers are well advised, therefore, to review their current leave policies, especially so-called "Paid Time Off" policies that combine various forms of leave, to address this new sick time requirement before its effective date.

The law's definition of "sick time," is broad. It covers employees who need time (1) to care for a child, spouse, parent, or parent of a spouse who is suffering from a physical or mental illness, injury or medical condition that requires homecare, professional medical diagnosis or care, or preventative medical care, or (2) to care for the employee's own physical or mental illness, injury or medical condition that requires homecare, professional medical diagnosis or care, or preventative medical care, or (3) to attend the employee's routine medical appointments or routine medical appointments for a child, spouse, parent, or parent of a spouse, or (4) address the psychological, physical or legal effects of domestic violence.

As of July 1, 2015, employers will be required to provide at least one hour of earned sick time for every 30 hours worked by an employee. Accruals will begin on the date of hire (or, for current employees, July 1, 2015), but employees are not entitled to use accrued sick time before the 90th calendar day after their hire date. The rate of pay required for paid sick leave is the rate the employee is earning at the time the leave is taken, rather than the rate that is in effect at the time



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of accrual, if they are different.

The amount of sick time earned in a calendar year is limited to 40 hours and employees may carry over up to 40 hours of unused earned sick time to the following calendar year. Employees are not allowed to use more than 40 hours of sick time during a single calendar year. Employers are not required to pay out unused earned sick time upon separation from employment, thus it will be important to differentiate sick time from accrued and unused vacation time, which must be paid out upon separation.

When the use of sick leave is foreseeable, employees are required to provide advance notice. And, when the use of leave exceeds 24 consecutively scheduled work hours, the employer may require that the employee provide medical certification; the documentation requirement is, however, fairly lenient in terms of format.

For employers that provide paid time off to employees under a paid time off, vacation or other paid leave policy that provides equivalent or higher allowances, they are not required to provide additional earned, paid sick time. It is, however, advisable to review these policies for compliance prior to July 1.

The Attorney General's Office will enforce the law and is also charged with developing regulations to address it. In addition to enforcement by the Attorney General, the law also established a private right of action for aggrieved employees. The private right of action provision allows the recovery of mandatory triple damages and attorneys' fees, similar to The Wage Law.

The new law contains fairly strict anti-retaliation language making it unlawful for an employer to interfere with an employee's use of earned sick time. It goes so far as to say that use of earned sick time may not be considered "as a negative factor in any employment action such as evaluation, promotion, disciplinary action or termination, or otherwise subjecting an employee to discipline for the use of earned sick time under this section." The anti-retaliation protections extend to other employees who "oppose practices" in violation of the law or support "the exercise of rights of another employee" under the law.

The Attorney General's Office will prepare a workplace poster advising employees about the new law. The poster must be posted in a conspicuous location with other, similar notices and postings.

This new law will certainly present challenges for employers, regardless of their historical policies, or lack thereof, dealing with sick leave. All should stay tuned as the new Attorney General develops and publishes the regulations required.

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This article is intended to serve as a summary of the issues outlined herein. While it may include some general guidance, it is not intended as, nor is it a substitute for, legal advice. The labor and employment attorneys at Sheehan Phinney Bass & Green would be pleased to assist with a review of your company's wage and hour practices to assure compliance with applicable laws.



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