

EMPLOYMENT LAW UPDATE

Massachusetts Mandatory Sick Time

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Massachusetts Mandatory Sick Time Law

- Current State of Law
- Paid Leave
 - Vacation
 - Sick
- Your Policies

Massachusetts Mandatory Sick Time Law

- Ballot Measure - Voter Approved
 - 59.4% in favor
- MA in minority

Massachusetts Mandatory Sick Time Law

- Effective Date: July 1, 2015
- Regulations
 - the draft was issued
 - public hearings and comment
 - Final regulations – 6/19

Massachusetts Mandatory Sick Time Law

- July 1 – All Employers Must Provide Sick Leave
- Regs: For Employees with a “**primary place of work**” in MA.
- Paid or Unpaid – Based on # of Employees
- 11 or more – must be paid
- 10 or fewer – may be unpaid
- Regs: (1) All full time, part time, seasonal and temporary
- (2) Employer size:
 - (a) all Employees, wherever located count;
 - (b) Count all EEs on payroll during each pay period and divide by # of pay periods, during preceding year;
 - (c) Staffing agency EEs count;
 - (d) Inside or outside MA.

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“Sick Time”

- (1) care for employee’s physical or mental illness, injury or medical condition that requires homecare, professional medical diagnosis or care, or preventative medical care.
- (2) 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.

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“Sick Time” – continued.

- (3) attend employee’s own routine medical appointments or the routine medical appointments of a child, spouse, parent, or parent of a spouse.
- (4) address the psychological, physical or legal effects of domestic violence.
- (5) Regs: travel to and from appointments, pharmacy or other location related to purpose for which leave was taken.

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Amount of Sick Time

- At least 1 hour earned for every 30 hours worked (not just paid)
 - exempt employees
- Maximum accrual – 40 hours
 - use – 40 hours
 - rollover – 40 hours

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Amount of Sick Time

- Accruals begin on date of hire for new employees
- Current Employees – July 1, 2015
- Regs: transition year rules:
 - for existing Employees no more than 40 hours of paid leave in 2015.
 - Paid leave taken prior to July 1 is credited.

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Use of Sick Time

- Employees cannot use accrued sick time until 90 days (calendar) after hire (first day of work).
- Pay – at the rate in effect at the time the leave is taken and on payroll cycle
- Employees allowed to carry over up to 40 hours from one year to the next
- Notice – Regs say Employer may adopt a written policy for Employee to provide notice of absences
 - emergencies
 - Notice system

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Use of Sick Time - continued

- Employees cannot use more than 40 hours of sick leave per calendar year
- Smallest increment = 1 hour, Beyond 1 hour, smallest increment used for other reasons
- Employers are not required to pay out accrued and unused sick time at separation
 - becomes more important to differentiate sick from vacation
 - PTO policies?
 - Designate each category
- Cannot be used as an excuse to be late for work unless it is “sick leave”

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Paid Time Off Policies

- For employers that have a PTO policy that provides the same or higher allowances, there is no need to provide additional earned, paid sick leave.
- Regulations – PTO policy meets standard if:
 - a) accrue at rate of 1 hour of PTO for every 30 hours of work
 - b) be paid at same hourly rate
 - c) able to be used for sick time
 - d) come with the same notice requirements
 - e) have job protections - no retaliation for use

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- Regulations
 - Record keeping requirement
 - Establish a “sick leave year” and inform Employees in writing (not in Final Regs.)
 - Breaks in Service – up to 1 year.
 - up to 4 months – all time accrued
 - 4 – 12 months – if bank equals or exceeds 10 hours
 - up to 12 months – retain vesting days

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Notice?

- If foreseeable, employees required to provide advance notice
 - Written Policy – up to 7 days advance
 - Unforeseeable – reasonable notice
 - Multiday absence – notice of expected duration
- Employer may require employee to use a reasonable notice system

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Documentation - Proof

- Employer may require documentation if:
 - (a) exceeds 24 consecutive hours
 - (b) Exceeds 3 consecutive days
 - (c) Occurs within 2 weeks of final scheduled work day
 - (d) 4 unforeseeable and undocumented absences in 3 month period

- Documentation?
 - AG Form

- If Employee does not provide:
 - Recoup from future pay
 - Deny future use (but no more).

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Safe Harbor – Delay for Some

- Policy as of 5/1/15
- FT right to earn/use 30 hours of PAID time in 2015
- After 7/1, employees not covered must be covered
- Job protected
- Available for “sick leave” use
- Provide for rollover to 2016

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Interaction with Other Laws

- FMLA, Parental Leave, Domestic Violence Leave, SNLA
- Employer may require or employee may choose - CONCURRENT

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Anti-Retaliation

- strict language
- unlawful to interfere with employee's use of earned sick time
- 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”

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Enforcement

- Attorney General
- Private action – triple damages and attorneys' fees
- Poster

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Questions?

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