



Labor and Employment Client Advisory
November 2014

Mandatory Employment Benefits Expand:
Massachusetts Earned Sick Time Law Approved

On November 4, 2014, Massachusetts voters approved a ballot initiative providing for earned sick time for employees (the “Law”). The Law takes effect on July 1, 2015, and will require certain employers to provide up to 40 hours of earned sick time per year to their employees for a wide variety of covered reasons.

Which employers are currently subject to the Law? Is sick leave paid or unpaid?

Whether earned sick time is paid or unpaid depends on the type of employer:

Earned Paid Sick Time

- Private employers with at least eleven employees, which includes full-time, part-time and temporary employees.

Earned Unpaid Sick Time

- Private employers with less than eleven employees, which includes full-time, part-time and temporary employees.

Cities and Towns

- Cities and towns are only subject to the Law if: (1) the Law is accepted by vote of the city or town; or (2) there is an appropriation of money for purposes of the Law.

How is sick time earned?

- Earned sick time is earned as of the date of hire, or July 1, 2015, whichever is later.
- A minimum of one hour of sick time is earned for every thirty hours that an employee works. Nothing prevents employers from providing more generous sick time benefits, although existing collective bargaining



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agreements, policies, and handbooks should be reviewed to ensure that sick time is consistent with the minimum requirements of the new Law.

- Employees that are not subject to the overtime requirements of the Federal Fair Labor Standards Act (*i.e.*, “exempt” employees) are assumed to work forty hours per week. If the normal work week for these employees is less than forty hours, then sick time is earned based on the actual hours in the normal work week.

For what purposes can sick time earned under the Law be used?

The Law allows employees to utilize earned sick time for a wide variety of purposes that may represent an expansion of an employer’s permissible use of sick time under existing policies. Under the Law, employees may use sick time:

- For the employee to care for himself/herself or his/her child, spouse, parent, or parent of a spouse, who has a physical or mental illness, injury, or medical condition necessitating home care, professional medical diagnosis or care, or preventative medical care;
- For the employee to visit a routine medical appointment for himself/herself or his/her child, spouse, parent or parent of a spouse; and
- For the employee to address the psychological, physical or legal effects of domestic violence.

Are there restrictions on the use of earned sick time? Are employees required to provide notice?

- Although accrued from the date of hire, sick time earned under the Law cannot be used until ninety calendar days after the employment starts; thereafter, it can be used as it accrues. Keep in mind that sick time will not start to accrue under the Law until it takes effect on July 1, 2015.
- Employees covered by the Law can earn or use a maximum of forty hours of earned paid sick time or earned unpaid sick time (depending on the size and type of their employer – see above) in a calendar year. A maximum



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of forty hours of unused earned sick time can be carried to the following calendar year.

- Earned paid sick time is paid at the same hourly rate paid to regularly compensate the employee at the time he or she uses the earned paid sick time.
- When an employee separates from employment, the employer is not required to compensate the employee for unused earned sick time.
- An employee may be required to provide proper certification if the use of earned sick time exceeds 24 consecutively scheduled work hours.
 - If the use of earned sick time is for medical reasons, any reasonable documentation signed by a health care provider indicating the need for earned sick time taken shall be deemed acceptable certification.
 - An employer cannot require an explanation of the nature of the illness or details of the domestic violence. The content of the certification is also limited by federal law, including the Health Insurance Portability and Accountability Act (HIPAA).
- An employee must make a good faith effort to provide advance notice for using earned sick time when the absence from work would be foreseeable.

Are there additional employer obligations? How is the Law enforced? What are the potential penalties where an employer violates the Law?

- Employers cannot interfere with, restrain or deny the exercise or attempted exercise of rights under the Law. This prohibition includes considering the use of earned sick time as a negative factor in employment actions, such as a review, promotion, disciplinary action or termination. Retaliation for exercising rights provided under this Law or for supporting the exercise of said rights by another employee is prohibited.
- Employers must post a multilingual notice prepared by the Massachusetts Attorney General concerning the Law, and provide a copy to their employees.



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- The Law will be enforceable by the Massachusetts Attorney General and also through a private lawsuit by the employee (subject to treble (triple) damages and attorney fees).

Given the significant changes to sick time under the Law - including accrual, payment, usage, and documentation requirements - adjustments may need to be made in order to stay within compliance. Keep in mind that the Law must be coordinated with existing collective bargaining agreements, policies and handbooks, as well as the Family Medical Leave Act, Americans with Disabilities Act, and other such laws.

It is expected that the Massachusetts Attorney General will be issuing rules and regulations for the Law in 2015, including those involving new recordkeeping requirements. Other potential subjects for rules and regulations may include the way in which employer size is determined (for distinguishing between an employer's duty to provide paid or unpaid sick time) and to address how certification is provided by an employee without a health care provider.

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For questions about the Law, please contact Attorneys Kathryn M. Murphy, Thomas W. Colomb, Michael J. Maccaro, or Brandon H. Moss at (617) 479-5000, or the attorney assigned to your account. This Client Advisory was written by Attorney Brandon H. Moss. Murphy, Hesse, Toomey & Lehane, LLP maintains a full service labor and employment practice in the private and public sectors, with offices in Quincy, Boston, and Springfield, Massachusetts.

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