

Client Alert: The New Massachusetts Sick Time Law

On November 4, 2014, Massachusetts voters answered “yes” to Question 4, approving a new law mandating that all Massachusetts employers provide their employees with up to 40 hours of earned sick time per year.

When does the sick leave law go into effect?

The law will go into effect on July 1, 2015, subject to certification by the Secretary of the Commonwealth and the Legislature.

What employers are subject to the law?

Employers are defined under this law as “any individual, corporation, partnership, or other public or private entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation.” All Massachusetts employers will be subject to this law when it goes into effect; the only current exceptions are the U.S. Government and Massachusetts cities and towns that have not specifically accepted it.

Which employees are eligible for the benefits of this law?

An employee is defined as “any person who performs services for an employer for wage, remuneration, or other compensation.” All employees who work in Massachusetts, whether they work on a full-time, part-time, or temporary basis, are covered.

What can earned sick time be used for?

An employee can use earned sick time for the following reasons:

1. To care for a child, parent, spouse, or parent of a spouse who is suffering from a physical or mental illness, injury, or medical condition that requires home, preventative or professional care;
2. To care for the employee’s own physical or mental illness, injury, or other medical condition that requires home, preventative or professional care;
3. To attend the employee’s routine medical appointment or the routine medical appointment of the employee’s child, parent, spouse, or parent of spouse; or
4. To address the psychological, physical, or legal effects of domestic violence as defined in the recently-enacted Massachusetts Domestic Violence Leave law. For more information on the Massachusetts Domestic Violence Leave law, click [here](#).

How much sick time can employees take under the new law?

Employees are entitled to earn and use up to 40 hours of sick leave per calendar year. Sick time is accrued at the rate of one hour for every thirty hours worked. For accrual purposes, exempt employees will be assumed to work 40 hours per week unless their normal work week is less than 40 hours, in which case earned sick time will accrue based on their normal work week.

Employees begin to accrue earned sick time on their date of hire or the date this law becomes effective, whichever is later, but they are not entitled to use their accrued earned sick time until the 90th calendar day following the start date of their employment. On and after the 90 day period, employees may use earned sick time as it accrues. Employers can also allow the accrual of earned sick time at a faster rate or allow for the use of earned sick time at an earlier date than the law requires.

Is earned sick time paid or unpaid?

Employees of an employer of eleven or more employees are entitled to earn and use up to 40 hours of paid sick time per calendar year. Employees of an employer with fewer than eleven employees are entitled to earn and use up to 40 hours of unpaid sick time in a calendar year. All employees performing work for compensation on a full-time, part-time, or temporary basis are counted when determining the number of employees an employer employs.

Sick time is compensated at the same hourly rate as the employee earns at the time the employee uses the paid sick time; provided, however, that the hourly rate may not be less than the minimum wage.

What if an employer has a PTO or other paid leave policy?

Employers who provide their employees paid time off under a sick time, paid time off (PTO), vacation, or other paid leave policy may continue to do so with no obligation to provide additional earned paid sick time as long as they make available an amount of paid time off sufficient to meet the accrual requirements that may be used for the same purposes and under the same conditions as earned paid sick time under this law.

What happens if an employer is subject to a collective bargaining agreement?

Employers must continue to comply with any contract, collective bargaining agreement, or employment benefit program or plan in effect on the effective date of this law that provides employees with greater earned sick time rights than those established in this law.

Does earned sick time need to be used in daily increments?

No. Earned sick time can be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

Can employees carry over their unused earned sick time at the end of the year?

Yes. Employees may carry over up to 40 hours of unused earned sick time to the following calendar year. Employees are not entitled, however, to use more than 40 hours of sick time in any one calendar year.

Are employers required to pay out unused earned sick time when the employee leaves the employer?

No. There is no requirement to pay out unused earned sick time.

Can employees be required to show documentation for their use of earned sick time?

Yes, but only for absences using earned sick time that covers more than 24 consecutive scheduled work hours. Any reasonable documentation signed by a health care provider indicating the need for earned sick time taken for personal illness, the illness of a family member, or a routine medical examination for either the employee or a family member must be deemed acceptable for this purpose. An employer may not require that the documentation describe the specific illness or other details about the reason for the sick leave. For earned sick time taken to address the effects of domestic violence, documentation deemed acceptable under the Domestic Violence Leave law shall be deemed acceptable. An employer may not require details about the domestic violence.

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

Can employees be required to find a replacement employee to cover their hours if they are going to use earned sick time?

No. An employer may not require that an employee search for or find a replacement to work the hours during which the employee is using earned sick time.

Can employees be required to give advance notice of their need to use sick leave?

If the use of earned sick time is foreseeable, employees are required to make a good faith effort to notify the employer in advance.

Can employees be required to make up time off taken as sick leave?

No. An employer may not require an employee to work additional hours to make up for hours taken as sick time under the new law. If there is mutual consent, however, an employer and employee can agree that, if an employee works (and is paid for) an equivalent number of additional hours or shifts during the same or the next period as the hours or shifts taken as sick time under the new law, the employee will not be required to use accrued sick time, and the employer will not be required to pay for the time that the employee was absent. Employers

should note, however, that if the hours are made up during a different week, the employee may be entitled to overtime pay during that week.

Can an employer consider an employee's use of earned sick time in making employment decisions, for example, when evaluating the employee's attendance?

The law provides that use of earned sick time may not be used as a negative factor in any employment action, such as evaluations, promotions, disciplinary actions, termination, or otherwise subjecting an employee to discipline for using earned sick time.

Are employers required to notify employees of their rights under the law?

The law requires that the Attorney General's office prepare a notice regarding the law in English and other languages. Employers will be required to post this notice in a conspicuous place accessible to employees in every location where employees with rights under this law work, and they will also be required to provide a copy to their employees. Employers may also wish to adopt written policies that explain to employees their rights under the law, and address how the new law intersects with the employer's existing time off policies.

What happens if an employer violates the law?

The new law will be enforced by the Attorney General's office, which is empowered to issue rules and regulations necessary to carry out its purposes. If an employee believes that an employer has violated the law, the employee can file a complaint with the Attorney General's office. Employees may also file suit in court in order to enforce their rights under the law. Employers can be subject to a range of penalties applicable to wage and hour violations, including treble damages and attorney fees.

The lawyers of Hirsch Roberts Weinstein LLP are here to provide information and compliance assistance to employers. For assistance, contact:

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