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HRW Alert: Attorney General Issues Amended Safe Harbor and Poster Regarding the Massachusetts Earned Sick Leave Law

On June 10, 2015, the Attorney General's Office issued an amended safe harbor notice and poster regarding the new Massachusetts Earned Sick Time law, which goes into effect on July 1, 2015.

Under the amended safe harbor, employers with existing time off policies will be deemed to be in compliance with the new law for the remainder of the year if:

1. The policy provides fulltime employees with at least 30 hours of paid sick time during the calendar year 2015.

2. That paid time off can be used for all of the purposes permitted under the law. For example, if the policy states that time off can only be used for the employee's own illness, and not the illness of a child, the policy would not qualify for the safe harbor.

3. The paid time off is truly job protected – employees cannot be subject to a negative evaluation, discipline or other adverse job actions for taking the time.

4. Employees not previously covered by the policy (for example, new, part-time, temporary and per diem employees) accrue paid time off at the same rate as fulltime employees or, if the policy provides lump sum allocations, receive a prorated lump sum allocation.

5. Any of the 30 hours that are not used by the employee can be carried over into 2016.

If all of the above are true, the employer can wait until January 1, 2016 to update its policy.

The Attorney General also released a Notice of Employee Rights. Effective July 1, 2015, the Notice must be posted in a conspicuous location accessible to employees, and employers must also provide a copy to employees. The poster summarizes the key provisions of the law and regulations. It also contains some language that is not specifically set forth in statute or proposed regulations, but which is arguably consistent with the law's purposes including:

- The smallest amount of sick time that an employee can take is one hour. (The law itself states that earned sick time shall 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.)

- Sick time cannot be used as an excuse to be late for work without advance notice of a proper use. (This provision is not contained in either the law or regulations, but, in our view, is consistent with the intent of the law).

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- Use of sick time for other purposes is not allowed and may result in an employee being disciplined.

- Employees must notify their employer before they use sick time, except in an emergency. (The law itself merely requires employees to make a "good faith effort" to notify the employer if the use of earned sick time is foreseeable).

- Employers may require employees to use a reasonable notification system that the employer creates.

- If an employee is out of work for 3 consecutive days OR uses sick time within 2 weeks of leaving their job, an employer may require documentation from a medical provider. (The law itself merely permits employers to require certification if the employee is absent for "24 consecutively scheduled work hours.")

The amended safe harbor and poster address a number of the concerns that HRW lawyers and many other stakeholders raised with the Attorney General during the recent public hearings. Put simply, when the employer community spoke, the Attorney General's office listened.

The Attorney General's office has not yet issued the final regulations. It is anticipated that they will do so by June 19, 2015.

Our attorneys are available to assist employers with all aspects of compliance with the new earned sick time law.

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