



The Massachusetts earned sick time law approved by voters last November will take effect on July 1. Recently the Attorney General office announced a “safe harbor” provision delaying the compliance until January 1, 2016 for any employers with existing paid-time-off policies in existence as of May 1 who offered at least 30 hours of paid time off.

The law provides that employees who work for public or private employers having eleven or more employees may earn and use up to 40 hours of paid sick time per calendar year, while employees working for employers with less than eleven employees may earn and use up to 40 hours of unpaid sick time per calendar year. All of an employer’s employees shall be counted for the purpose of determining employer size, whether working in or outside of Massachusetts, and regardless their eligibility to accrue and use earned sick time.

Who is an employee?

This regulation defines an employee as any person who performs services for wage, remuneration, or other compensation for an employer. When calculating the number of employees to determine if your company sick time compliance is paid (over 11 employees) or unpaid (under 11 employees) include in your calculation full time, part-time, seasonal, and temporary employees. The definition also includes interns who must be treated as employees under Massachusetts state law.

What if my business is reduced below 11 employees?

Employers must provide notice 90 days in advance in writing to employees if earned sick time that is paid based on and employer’s size will be changing to unpaid time due to a change in size. When an employee has unused, earned paid sick time at the time that an employer converts from paid to unpaid sick time because of a reduction in size below 11 employees, the unused paid sick time shall remain paid sick time until exhausted, despite the fact that the employee will begin to accrue unpaid sick time.

How is sick time earned and when can it be used?

Under the law, employees can earn one hour of sick time for every 30 hours worked including overtime. Employees exempt from overtime requirements are assumed to work 40 hours in a work week unless their job specifies a lower number of work hours. Salaried part-time employees will accrue based on their schedule of work hours per week. Employees begin accruing sick hours on either the date of hire or July 1, 2015, whichever is later. Employees may begin to use sick time on the 90th calendar day after hire. After the 90 day period, employees may use earned sick time as it accrues.

What can sick time be used for?

Though the drafted regulations were not confirmed as finalized at the publication of this article, the language suggests that employees can only use earned sick time and miss work in order to:

1. Care for a physical or mental illness, injury or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care affecting the employee or the employee's child, spouse, parent or parent of a spouse;
2. Attend routine medical appointments of the employee or of the employee's child, spouse, parent or parent of a spouse;
3. Address the psychological, physical or legal effects of domestic violence on the employee or the employee's dependent child.

Earned sick time includes time necessary to travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

Documentation of use of earned sick time

If an employee uses sick time for more than 24 consecutively scheduled work hours, the employer may require a health care provider's written certification. If the absence was related to domestic violence, employers should consult the official regulations for acceptable certification of absence. Employers cannot delay the taking of or payment for earned sick time because they have not received the note.

Additional considerations

Earned paid sick time must be compensated at the same hourly rate paid to the employee when the sick time is used. If an employee does not use all of their sick time in a calendar year, the employee may carry over up to 40 hours of unused sick time to the next calendar year. Employees who carry over earned sick time, however, may only use up to 40 hours of sick time in a calendar year. Employers are not required to pay an employee for unused sick time at the end of the employee's employment.

If an employee misses work for a sick time eligible reason, but agrees with the employer to work the same number of hours or shifts in the same or next pay period, the employee will not have to use earned sick time for the missed time, and the employer will not have to pay for that missed time. Employers will be prohibited from requiring an employee to work additional hours to make up for missed time, or to find a replacement employee.

Employers are advised to review and update, as necessary, their sick time, vacation and/or paid time off policies. If you have any questions or concerns, please feel free to contact a member our team to assist you. In addition, the MA Attorney General's current draft of the regulations may be located at <http://www.mass.gov/ago>.

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