



Massachusetts Earned Sick Time Law Update: Attorney General Revises “Safe Harbor” Provision and Publishes Required Employee Rights Notice

The Massachusetts Attorney General’s Office (AGO) has released two important new documents for employers concerning the new Earned Sick Time law approved by voters last November.

The first is a revised “safe harbor” plan (amending the May 18 version that extended compliance with the law from July 1, 2015, to January 1, 2016) for employers with existing paid time off (PTO) policies. These revisions address the use of the safe harbor by employers that have some employees who do not currently receive a paid leave/sick benefit under the employer’s existing PTO policy. The second document is the notice employers must post concerning employees’ rights under the law.

Revised Safe Harbor Provision

Under the revised safe harbor provision, a current PTO policy in effect as of May 1, 2015, is compliant through the end of 2015 so long as:

- Full-time employees can earn and use at least 30 hours of PTO/sick leave during the 2015 calendar year. On and after July 1, 2015, part-timers and new employees accrue PTO/sick leave at the same rate as covered, full-time employees; or, if the employer provides "lump sum" PTO allocations, these employees receive a prorated lump sum PTO commensurate with full-time employees.
- The PTO/sick leave is afforded the same protections and may be used for the same purposes as provided under the law.
- Employers allow carryover of PTO/sick leave, if it is not used by the employee before January 1, 2016.

Employers have the ability to create a **separate** Earned Sick Time plan for employees who do not currently receive a paid leave or paid sick leave under the existing PTO policy. The following comes directly from the Revised Safe Harbor Regulations:

“Employers with a policy in existence on May 1, 2015, that provides paid time off or paid sick leave, shall be deemed in compliance with the Earned Sick Time law until January 1, 2016, provided;

1. Full time employees on the policy have the right to earn and use at least 30 hours of paid time off/sick leave during the calendar year 2015; and
2. On and after July 1, 2015, all employees not previously covered by the policy, including part-time employees, new employees, and per diem employees must either:
 - a) Accrue paid time off at the same rate of accrual as covered full-time employees; or
 - b) If the policy provides lump sum allocations, receive a prorated lump sum allocation based on the provision of lump sum paid time off/sick leave to covered full-time employees. Such lump sum allocations may:
 - i. where lump sums of paid time off are provided annually, be halved for employees who receive coverage as of July 1, 2015, and proportionately reduced for employees hired after July 1, 2015; and/or



- ii. be proportionate for part-time employees.
3. If an employee is not compensated on an hourly or salaried basis, the employee must accrue or receive lump sum allocations based on a reasonable approximation of hours worked.
4. 30 hours of paid time off/sick leave or such lesser amounts as are earned by employees under this section must be:
 - a) job protected leave subject to the law's non-retaliation provisions;
 - b) available for the allowed purposes of the leave under the law;
 - c) available to the employee after January 1, 2016, if unused during the Transition Year.
5. In all other respects, during this transition period, the employer may continue to administer paid time off under policies in place as of May 1, 2015.
6. On or before January 1, 2016, all employers operating under this safe harbor provision must adjust their policy providing paid time off to conform to the Earned Sick Time law. Employers with the option to utilize the safe harbor may also choose full compliance with the Earned Sick Time law and regulations beginning July 1, 2015, for some or all employees."

Required Notice of Employee Rights

The Earned Sick Time law requires that employers post a notice of employee rights under the law. The AGO has released the English-language version of this "Earned Sick Time Notice of Employee Rights." The statute requires that employers "shall post this notice in a conspicuous location accessible to employees in every establishment where employees with rights under this section work, and shall provide a copy to their employees."

Next Steps for Employers

1. Massachusetts employers with one or more employees are required to post the Earned Sick Time Notice of Employee Rights.
2. The notice is now available for downloading on the Attorney General's Earned Sick Time [website](#). Notices in other languages will be coming soon. We advise employers to post this notice as soon as possible and update it with the new All-in-One poster once finalized.
3. This has been a rare year in which the state has experienced multiple changes requiring employers to update their employment posters. Now that the notice for Earned Sick Time has been published, our Compliance Poster partner is producing a new All-in-One poster for our clients.
4. The HR Knowledge All-In-One poster satisfies the posting requirements for employers of all sizes. Displaying the posters educates your employees about their labor and employment rights and helps them better understand their requirements. Failure to post required federal and state labor law notices may result in both federal and state fines.
 - a. If you are a current full-service client of HR Knowledge, we will provide these updated All-in-One posters at no charge, except for shipping fees.
 - b. If you are not a full-service client and are interested in ordering new posters, please complete the order form on our website, which you can access [here](#).

Please Note: The Earned Sick Time Notice of Employee Rights requires a new All-In-One poster instead of the Peel-N-Post overlay. If you have already ordered a Peel-N-Post overlay for the Fair Employment Posting Requirement, we will cancel that order as you will need to order the full poster.



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