



Massachusetts Releases Proposed Regulations for Earned Sick Leave

The Massachusetts Attorney General's Office (AGO) has issued proposed regulations for the new Earned Sick Time law approved by voters last November. Effective July 1, 2015, Massachusetts employers must allow employees to take time off from work to address their health and safety needs or, in some cases, to care for sick family members, without losing pay. You can view the proposed regulations [here](#).

What Sick Time Can Be Used for

- Employees will be able to use accrued sick time for the following reasons:
 - To care for a physical or mental illness, injury, or medical condition affecting the employee or the employee's child, spouse, parent, or spouse's parent;
 - To attend routine medical appointments for themselves or for their child, spouse, parent, or spouse's parent; or
 - To address the effects of domestic violence on the employee or the employee's child
- Employees will be able to use accrued sick time intermittently in the smallest increment that the employer's payroll system uses to account for absences.

Leave Accrual and Carryover

Under the new law:

- Sick leave begins to accrue on an employee's first day of work, and can be used after a 90-day vesting period, regardless of the number of days actually worked during the vesting period. Employees who have worked for the employer for at least 90 days as of July 1, 2015, are fully vested and may use sick leave as it accrues.
- Employees accrue at least one (1) hour of sick leave per thirty (30) hours worked. For accrual purposes, exempt employees will be deemed to work forty (40) hours per week unless their job specifies a lower number of hours per week, such as a salaried part-time employee.
- Time accrues in one (1) hour increments.
- Maximum accrual required is forty (40) hours per calendar year.
- Employers are not required to offer employees a payout of unused earned sick leave at the end of the calendar year; however, if an employer elects to do so, they must also provide the employee with at least 16 hours of sick leave at the beginning of the new calendar year.
- An employee may carry over up to forty (40) hours of unused sick time to the next calendar year, but employers may limit an employee's use of sick time to forty (40) hours in a calendar year.
- Employers are not required to pay employees for any accrued but unused paid sick time at the time of termination.
- Employers may require certification of the need for sick time if an employee uses more than twenty-four (24) consecutive hours of sick time. However the certification is only to verify the need for leave; employers may not require documentation to explain the nature of any illness or the details of any domestic violence.

Paid Time Off (PTO) Banks

The proposed regulations also permit employers to satisfy the sick leave requirements through existing paid time off (PTO) plans as long as those plans are at least as generous as the sick leave law and satisfy certain criteria:



- accrues at a rate of no less than one (1) hour of PTO for every thirty (30) hours of work;
- pays at the employee's same hourly rate;
- is accessible on the same basis, meaning time may be taken for the authorized uses under the law;
- comes with the same notice requirements to employees;
- provides the same job protections; and
- applies to all employees regardless of status (full-time, part-time, or temporary)

Notice of Need for Leave

The employer may require up to seven (7) days advance notice if the reason for earned sick leave is pre-scheduled or foreseeable. If an employer requires such notice, it must create and maintain a written policy that contains procedures for the employee to provide notice. If an absence is unforeseeable, the employee must notify the employer as soon as is practicable.

Employers Who Must Provide Sick Leave

Under this new law, an employer must provide paid sick leave if it has eleven (11) or more employees (including both part-time and full-time); an employer with ten (10) or fewer employees must also adhere to the requirements of the law, but the time can be unpaid time off.

Determining Employer Size

Employers who employed eleven (11) or more employees on the payroll during twenty (20) or more weeks (whether consecutive or not) over either the current or preceding calendar year OR maintained eleven (11) or more employees on the payroll during sixteen (16) consecutive weeks over the current or preceding calendar year must provide *paid* sick leave.

Interactions with FMLA, MPLA, DVLA, and SNLA

It is still unclear how this new sick leave will interact with the Family and Medical Leave Act (FMLA), the Massachusetts Parental Leave Act (MPLA), the Massachusetts Domestic Violence Leave Act (DVLA), and the Small Necessities Leave Act (SNLA). The draft regulations state that sick leave is "in addition to" the time off provided by those other laws. The FMLA specifically permits employers to require employees to use other accrued time off concurrently with FMLA leave. We hope the final regulations will make these interactions clearer.

Recordkeeping and Posting Requirements

Employers must keep and maintain complete records of every employee's accrual and use of sick leave, consistent with the recordkeeping requirements set forth in G.L. c. 151, §15. Employers must also post a notice of the Earned Sick Time law and the enacted regulations, in a conspicuous location. The Attorney General will prepare this notice.

Additional Clarifications of the Law

- The regulations clarify that the law applies to any employer of Massachusetts employees regardless of where the employer is headquartered. Massachusetts will be considered the employee's primary place of employment if they spend more time working in Massachusetts than in any other state.



- Employers will need to closely examine their policies to make sure they comply with the law. For example, the law prohibits employers from interfering with an employee's use of the sick leave. Therefore, holiday pay policies requiring employees to work their regularly scheduled hours before and after a holiday will violate the law.
- An employer must permit employees to accrue and use an aggregate of forty (40) hours of sick leave in 2015. Example: if an employer adopts a January 1 to December 31 method of tracking accrual and the employee has used 16 hours of paid sick leave in 2015 before July 1, 2015, the employer must allow the employee to use up to 24 hours of earned paid sick leave in the remainder of the year. The employee can carry over into 2016 any unused, earned paid sick leave accrued beyond 24 hours.
- Any paid leave previously provided will be credited. If an employer must provide paid sick leave as of July 1, 2015, employees who took unpaid sick leave earlier in the calendar year shall still be entitled to accrue and use up to 40 hours of earned paid sick leave during the remainder of 2015.

Next Steps for Employers

- You must comply with these changes by July 1, 2015.
- You should update your employee handbooks with this new policy:
 - If you have not previously offered sick time to employees, you will be required to do so and should create a new policy to comply with these provisions.
 - If you already provide sick time, review your current policies to make sure they comply with the provisions of the new law.
- You are prohibited from taking adverse action (e.g., disciplinary warnings or negative performance evaluations) against your employees for using accrued sick time.
- If you are one of our full-service clients, we will work with you to review your current PTO policies to ensure they are compliant with these new proposed regulations.
- The AGO is currently seeking public comment on the proposed regulations and has scheduled a series of public hearings for this purpose. (The schedule and location of public hearings can be found [here](#).) We encourage you to attend a session and raise any concerns you may have. Our hope is that many of the inconsistencies and ambiguity in the proposed regulations will be addressed and flushed out prior to the final regulations being published.

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