

Massachusetts Paid Sick Time Law: What Does This Mean For Me?

In November, Massachusetts voters approved a ballot initiative that requires employers to provide sick time for all employees. Under this new law taking effect July 1, 2015, all employers in Massachusetts must allow employees to accrue and use up to 40 hours of sick time per calendar year.

For employers with 11 or more employees, the sick time must be paid time off. For smaller employers, the sick time can be unpaid. In determining the number of employees who are employed by an employer, the law states that “all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted.” Both full-time and part-time employees (including temporary employees) must be allowed to accrue and use sick time.

This new law applies to both public and private employers. However, employees of a particular city or town are covered only if, as required by the state constitution, the proposed law is adopted by local or state legislative vote or by appropriation by the state of sufficient funds to pay for the benefit.

It is possible that the Attorney General will issue regulations or other guidance prior to the July 1, 2015 effective date, which may shed new or different light on a number of the issues discussed below. In the meantime, however, employers will likely want to consider the following aspects of the new law.

How Sick Time Accrues

Under this new law, employees will earn one hour of sick time for every 30 hours worked. Accrual will begin on July 1, 2015 (or the employee’s hire date if the employee is hired later). Employees must be permitted to use sick time beginning 90 days after hire.

In addition, employees must be allowed to carry over up to 40 hours of unused sick time to the next calendar year. However, employers may limit employees from using more than 40 hours in a given year.

Purposes for Use of Sick Time

Employees must be permitted to use the statutorily guaranteed earned sick time for the following reasons:

1. 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.
2. To attend routine medical appointments of the employee or the employee’s child, spouse, parent or spouse’s parent.
3. To address the psychological, physical or legal effects of domestic violence on the employee or the employee’s dependent child.

Procedures for Use of Sick Time

Employers must allow employees to use sick time provided under the new law in increments of the smaller of (i) one hour or (ii) the smallest increment that the employer’s payroll system uses to account for absences or use of other time. In many instances, this will mean one hour. However, for instance, if you are an employer that accounts for time in quarter-hour intervals, your employees will be able to account for sick time taken in the same quarter-hour intervals for which time worked is accounted.

Employers can require certification of the need for sick time only when the employee uses more than 24 consecutive hours of sick time (that is, when the employee’s period of absence covers more than 24

consecutive scheduled work hours). In addition, employers are not permitted to delay the taking or payment of sick time because of an employee's failure to provide certification.

If an employee misses work for a reason eligible for earned sick time, she can agree with her employer to make up the time missed by working the same number of hours or shifts missed in the same or the next pay period. In this case, the employee does not have to use earned sick time for the missed time and the employer does not have to pay for the missed time. However, employers cannot *require* employees to work additional hours or to find a replacement employee as a condition of taking otherwise permitted sick leave.

An employer may not use the taking of earned sick time under the statute as a negative factor in any employment action, such as an evaluation, promotion or disciplinary action.

Interaction with Existing Policies: What This Means for You

Employers with policies at least as generous as those listed above do not have to add additional sick time and do not have to change existing policies. However, even an employer with generous sick leave may have to adjust its policies under the new law. It is important for *all* employers to review their policies to ensure employees covered by the law can take at least 40 hours' worth of sick time each calendar year for all three reasons listed above. Employers are likely to provide sick time for illnesses and medical appointments, but care should be taken to ensure that at least 40 hours of time off under the existing policy may be used to address the effects of domestic violence, including legal effects, each calendar year. For instance, at least 40 hours of sick time must be available to employees in order to obtain a restraining order or to file a police report. Furthermore, to the extent that sick time accruals must be tracked for classes of employees not currently eligible for sick time benefits, HR and payroll systems may have to be modified.

Employers who provide their employees paid time off under a PTO, vacation or other paid leave policy with time sufficient to meet the accrual requirements of this new law are not required to provide additional earned paid sick time. However, again, it is important that any paid time off policies allow at least 40 hours of this benefit to be used for all of the purposes listed above, for each calendar year.

Finally, the sick time law does not override an employer's obligations under any contract or benefit plan with more generous provisions than those provided for by this law.

The new law will be enforced by the Attorney General of Massachusetts using the same enforcement procedures applicable to other state wage laws.

A Few Possible Surprises

Note that the law does not distinguish between regularly scheduled and casual or per diem employees. So, absent contrary guidance from the Attorney General, employers with 11 or more employees may need to provide paid sick time to casual or per diem employees, who often do not receive this benefit. Because the new law prohibits employers taking an adverse action against an employee for using sick time protected by the statute, employers may need to reassess their employee evaluation forms, as well as "no-fault" attendance policies which impose penalties for the first 40 hours of sick time. Even perfect attendance bonuses may need to be reconsidered.

If you have questions about the Massachusetts paid sick time law, please contact your usual Ropes & Gray advisor or a member of our [executive compensation & employee benefits](#) or [labor & employment](#) practice groups.