

July 6, 2015

Massachusetts Earned Sick Time Law Takes Effect July 1 Attorney General Issues Final, Relatively Employer-Friendly Regulations

As we reported in a [previous alert](#), the Massachusetts Earned Sick Time Law takes effect on July 1, 2015, with significant consequences for most employers with Massachusetts-based employees. In summary, the new law entitles employees who work primarily in Massachusetts (including full-time, part-time, temporary and seasonal employees) to accrue and use up to 40 hours of sick time per year. Employers with 11 or more employees (regardless of where those employees are based) are required to provide paid sick time, while smaller employers must provide unpaid sick time.

The Attorney General of Massachusetts recently released final regulations interpreting this new law, providing detailed guidance to employers as they work to bring their policies into compliance. Of note, these regulations introduce several limitations to the law's sick time entitlement that are protective of employers, representing a significant deviation from the proposed regulations. The most noteworthy provisions of the final regulations are as follows:

- **Safe harbor during transition year.** The final regulations provide a six-month safe harbor for certain employers who had a paid leave policy in effect on May 1, 2015. These employers will be deemed to be in compliance with the new law until January 1, 2016, as long as (i) full-time employees can earn and use at least 30 hours of paid leave in 2015 (which must be available for the purposes specified by the new law and must be available for carryover into the following year, if unused); and (ii) on or after July 1, 2015, any employees not covered by the policy accrue or be granted allotments of paid leave at the same rate or in the same amount as covered full-time employees.
- **Certain employers and employees not covered.** The final regulations newly note that, among other exempt groups, the law does not apply to (i) local public employers (in addition to cities and towns), unless the law is accepted by vote or appropriation of funds by the applicable governing body or (ii) college students who participate in a federal work study or similar financial aid/scholarship program or who provide student housing services in exchange for a reduction of education-related expenses.
- **Interaction with other forms of leave.** Although the proposed regulations stated that sick time must be in addition to leave granted under certain federal and state leave laws (such as the federal Family and Medical Leave Act), the final regulations state that sick time may run concurrently with any such leave. Employers may require employees to use their paid sick time when taking other forms of leave that would otherwise be unpaid.
- **Interaction with other policies.** As noted in the statute, an employer may substitute paid leave under its own paid leave policy for earned sick time, as long as that policy permits employees to earn and use sick time at (at least) the same rates and for the same purposes as specified under the new law. The final regulations explain that this type of substitution is permissible even if employees use all of their accrued leave for other purposes (such as vacation), as long as the employer's policy makes clear that additional sick time will not be provided in these circumstances.
- **Limitations on how sick time is paid.**
 - Hourly employees. The final regulations require hourly employees to be paid for sick time based on their regular hourly rate only, excluding overtime, holiday and premium pay, rather than their regular hourly rate plus any other benefits paid on an hourly basis, as stated in the proposed regulations.

- *Salaried employees.* Salaried employees must be paid for sick time based on their hourly rate for the previous pay period, but salaried employees who are exempt from federal overtime pay requirements will be assumed to work 40 hours per week (or the employee's normal work week, if less).
- *Employees with different hourly pay rates.* For employees who have different hourly pay rates from the same employer, the final regulations grant employers the option of paying sick time based on (i) the wages the employee would have been paid for the hours used for sick time; or (ii) a "blended" rate determined by calculating the average of all pay rates over the previous pay period or other period that the employer customarily uses to calculate a blended rate for similar purposes.
- **Limitations on how sick time is accrued and used.** The final regulations make clear that employees may have a maximum of 40 hours of sick time accrued at any time, including any carryover from the previous year. Sick time does not accrue during non-working hours, such as vacation time. Additionally, sick time may be accrued at a rate of one hour per every 30 hours worked or smaller equivalent increments (e.g., one minute per every 30 minutes worked). The smallest increment of sick time that an employee may use is one hour, and any time beyond one hour may be used in hourly increments or the smallest increment that the employer's payroll system uses to track other absences or use of other time. Of note for colleges and universities, for purposes of calculating accruals, adjunct faculty who are paid on a "per-course" basis will be deemed to work three hours for each "classroom hour" worked.
- **Flexibility in defining a benefit year.** The law entitles employees to accrue up to 40 hours of sick time per "benefit year." The final regulations allow employers to define a benefit year as a calendar year, fiscal year, or any other 12-month period that the employer chooses for a particular employee (including, for example, a year that runs from the anniversary of the employee's hire date).
- **Accounting for breaks in service.** The final regulations newly instruct on how employers should account for employees' breaks in service, as follows: (i) following a break of up to four months, an employee may use previously accrued sick time; (ii) following a break of between four and 12 months, an employee may use previously accrued sick time if it equals or exceeds 10 hours; and (iii) following a break of up to 12 months, an employee can start to accrue new sick time without restarting the 90-day vesting period that applies to new employees under the law.
- **Employer ability to require employee documentation.** The final regulations greatly expand the circumstances under which employers may require written documentation for employees' use of sick time, including when sick time exceeds 24 consecutively scheduled work hours, exceeds three consecutive days on which an employee is scheduled to work, occurs within two weeks before an employee's final day of employment (except with respect to temporary employees), or occurs after four (or three, for employees who are 17 or under) unforeseeable and undocumented absences within a three-month period. Additionally, health care providers may require written documentation from their employees who use sick time during a local, state or federally declared emergency. If an employee fails to provide required documentation, the employer may recoup any amount paid for the undocumented sick time from future pay, with notice to the employee. Employees who do not have health care coverage may provide a signed written statement in lieu of documentation from a medical provider. As noted below, the Attorney General has issued a model verification form for this purpose.
- **Good attendance rewards and holiday incentives permissible.** As noted in our [previous alert](#), an employer may not take an adverse action (such as discipline or discharge) against an employee for using earned sick time that is protected by the new law. However, the final regulations expressly protect an employer's ability to reward good attendance or pay extra compensation for holiday work, stating that an employee's inability to earn an attendance award or holiday incentive based on the use of sick time will not constitute an adverse action for purposes of the new law.

Employers must post a workplace notice that describes employees' rights under the Massachusetts Earned Sick Time Law, as well as provide a hard copy or electronic copy of the notice to employees or include the employer's applicable policy in an employee handbook. The Attorney General has issued model notices of employee rights, a sample policy, and a sample verification form, all of which are available to download on [the Attorney General's website](#).

All employers with employees in Massachusetts should determine whether they are subject to this new law, and if so, should ensure that they have compliant policies in place. If you have questions about the Massachusetts Earned Sick Time Law (including requests for a new policy or revisions to an existing policy), please contact your usual Ropes & Gray advisor or a member of our [labor and employment](#) practice group.