



CLIENT UPDATE: “SICK TIME LAW” PASSES IN MASSACHUSETTS WHAT THE NEW BILL MEANS

On Tuesday, November 4, 2014, Massachusetts voters approved ballot question 4, which requires employers in the Commonwealth to provide their employees with paid and unpaid sick time, depending on the size of the business (“Sick Time Law” or the “law”). Passage of the bill,



which takes effect on July 1, 2015, makes Massachusetts the third jurisdiction in the U.S. to provide sick time benefits to public and private employees, preceded only by California and Connecticut. Proponents of the measure contend that the law will build a healthier and more productive Massachusetts work force by providing relief to the nearly one million Commonwealth employees that currently do not receive sick leave from their employers.

Here is how the Sick Time Law works. For every thirty (30) hours an employee works, he or she will earn and be credited 1 hour towards sick time leave. An employee may earn up to forty (40) hours of sick time leave to use per calendar year, which may include an employee’s unused sick time from a previous year¹. Employees will begin to accrue sick time hours upon the effective date of the law or, if hired after that date, on the date they are hired. An employee may not use his or her earned sick time, however, until ninety (90) calendar days have passed since the date he or she was hired. Thereafter, employees may use earned sick time in hourly increments or in the smallest increment the employer uses for purposes of payroll to account for absences or use of other time. Employees that work for employers that employ eleven (11) or more

¹ As stated in the text of the Sick Time Law, “employees who are exempt from overtime requirements under 29 U.S.C. section 213(a)(1) of the Federal Fair Labor Standards Act shall be assumed to work 40 hours in each work week for purposes of earned sick time accrual unless their normal work week is less than 40 hours, in which case earned sick time shall accrue based on that normal work week.”

employees will accrue paid sick time leave credits, which means that the employer must pay the employee when he or she uses accrued sick time credits. Employees that work for employers that employ ten (10) or less employees will accrue unpaid sick time leave credits, which means that the employer is not required to pay the employee when he or she uses accrued sick time credits. In order to determine the number of employees employed by a particular employer, full-time, part-time, and temporary employees are all counted. Employers are not obligated to pay an employee for unused sick time upon that employee's termination

Although the law provides different rights to employees depending on the size of the business for which they work, the law provides a common benefit to all employees, regardless of business size, in that the law prohibits employers from penalizing or retaliating against employees that use earned sick time (which qualifies as such under the Sick Time Law). This prohibition extends to all employees who have earned paid or unpaid sick time. Employers may not interfere with, restrain or deny employees the right to exercise the rights provided to them pursuant to the Sick Time Law, nor may employers take disciplinary action against such employees. Employers may not use the fact that an employee exercised his or her right to earned sick time under the law as a negative factor in evaluations or promotions.

If an employer violates the law, harsh penalties may be imposed. An employee who believes his or her rights have been violated may bring a civil action against the employer. A court may award an employee treble damages and attorneys' fees if the suit is successful. Further, in honoring its duty to enforce the Sick Time Law, the Massachusetts Attorney General may seek injunctive or declaratory relief from the courts on behalf of employees whose rights under the law have been violated, and may even go as far as to bring civil or criminal actions against employers that fail to comply with the law. In order to publicize the law, the Attorney General will soon issue a notice that employers will be required to post and make accessible to their employees.

The Sick Time Law broadly defines an employee as "any person who performs services for an employer for wage, remuneration, or other compensation. . ." and states that the provisions of the Sick Time Law apply to all employees who work in the Commonwealth. Reciprocally, the bill defines an employer as "an individual, corporation, partnership or other entity, including any agent thereof, who engages the services of any

employee for wages, remuneration or other compensation.” One exception to these definitions is that employees employed by cities and towns shall only be considered employees if the Sick Time Law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth. Also, the United States government is not considered an employer for purposes of the law.

The Sick Time Law also defines the phrase “sick time” in a somewhat more generous and expansive way than one would otherwise expect. Pursuant to the law, “sick time” not only includes an employee taking time off from work to attend to his or her own physical or mental ailments, injuries or medical conditions that require home care, professional medical diagnosis or care, or preventative medical care, but also includes an employee taking time off from work to attend to those similar needs of an employee’s child, spouse, parent or the parent of a spouse. Sick time also includes an employee taking time off from work to attend routine doctor appointments and to accompany an above-listed family member in attending a routine doctor appointment. Finally, sick time also includes an employee taking time off from work to address the psychological, physical or legal effects relating to domestic violence, whether for the employee or a dependent child of the employee.

Prudent employers should take time to review the law prior to its effective date to determine whether any of their policies concerning employee sick leave need to be revised. Employers that already provide sick time benefits to their employees in a fashion that is equivalent to, or even more generous than, the Sick Time Law need not alter their policies. Finally, the Sick Time Law does not prevent employers from providing sick leave benefits to their employees that are more generous than those mandated by the law.

As with most laws, especially those which seek to balance the equities between employees and employers, the seemingly protected group under the Sick Time Law – the employees – have a few responsibilities of their own. In addition to the temporal conditions described above governing when an employ begins to accrue and is allowed to use earned sick time, if asked, an employee must provide an employer with a certification from a health care provider when the employee uses sick time for a period lasting longer than twenty-four (24) consecutive work hours. Failure to provide the requested certification will be of little consequence, however, because the law prohibits employers from delaying an employee’s use of or payment for sick time

on the basis that the employee failed to provide requested certification. Also, in situations when the use of earned sick time is foreseeable, employees must make good faith efforts to notify their employers in advance.

It would be an understatement to say that the Sick Time Law adds a new water-cooler topic for Massachusetts employment law attorneys. It will be interesting to see how the Sick Time Law is used and interpreted over time, especially the provisions which prohibit employers from retaliating or penalizing their employees for exercising rights afforded to them pursuant to the law. Only time will tell whether the law, in its current state, lives up to its intended purpose while still striking a balance between the interests of employee and employer.

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