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Massachusetts Voters Approve Earned Sick Time Ballot Question

Massachusetts voters yesterday approved Ballot Question 4, which amends the state's Wage Act to require all private sector employers to provide their Massachusetts employees with up to 40 hours of sick time per calendar year. The law will go into effect on July 1, 2015. The key elements of this new law are highlighted below.

Is the Sick Time Paid or Unpaid?

Under the new sick time law, employees who work for employers with 11 or more employees, including part-time, temporary and seasonal workers, will accrue paid sick time. Employees of employers with 10 or fewer employees will accrue unpaid sick time.

What Can Sick Time Be Used For?

An employee can use earned sick time to:

- care for a physical or mental illness, injury or medical condition affecting the employee or the employee's parent, child, spouse or spouse's parents that requires home care, professional medical diagnosis or care, or preventive medical care;
- attend routine medical appointments of the employee or a family member; and
- address the psychological, physical or legal effects of domestic violence on the employee or his or her dependent child.

How Much Sick Leave Must Employers Provide and How Does It Accrue?

Employers must provide employees one hour of earned sick time for every 30 hours worked beginning on the later of the employee's hire date or July 1, 2015. Employees are not eligible to use earned sick time until after 90 days of employment. At that point, the employee can use sick time as it accrues and in hourly increments or the smallest increment the employer's payroll system uses to account for absences, whichever is smaller. Where the need for sick time is foreseeable, employees must make a good faith effort to give the employer advance notice. The statute, however, does not indicate how much advance notice must be given.



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Employees can use up to 40 hours of earned sick time in a calendar year and can carry over to the next year up to 40 hours. Employers do not need to pay out unused sick time when the employment relationship ends. The law also does not require employers with existing paid leave policies to provide additional sick time as long as the existing policies provide for as much paid time off, usable for the same purposes and under the same conditions as provided for in the new statute.

Does the Law Contain Any Other Requirements?

An employer can require documentation from a healthcare provider of the need for sick time if the employee uses more than 24 consecutively scheduled work hours. The statute provides that "any reasonable documentation signed by a health care provider indicating the need for earned sick time" shall be acceptable. Moreover, an employer cannot delay leave or payment for leave because it has not received such documentation.

If both the employer and the employee consent, the employee can "make up" used sick time by working extra hours during the same or the next pay period. An employer cannot require an employee to do so, nor can the employer require the employee to find coverage during his or her leave. Employers need to exercise caution, however, in allowing nonexempt employees to "make up" time in subsequent pay periods. To the extent those employees work more than 40 hours in a subsequent pay period, they typically will be entitled to overtime pay under the federal Fair Labor Standards Act and Massachusetts law.

The law prohibits employers from interfering with or retaliating against an employee because of the employee's exercise of his or her sick time rights, for example, by considering the use of earned sick time as a negative factor when making employment decisions related to evaluations, promotions or terminations. It further prohibits retaliation against an employee based on his or her support of another employee's exercise of those rights.

What Are the Penalties for Noncompliance?

Violations of these requirements carry significant penalties. The Attorney General may seek injunctive or other equitable relief as well as civil and criminal penalties. Additionally, an employee may bring a private action against the employer in state court. If violations are found, the employee is entitled to treble damages as well as attorney fees and costs.

As always, being proactive is the best way to ensure compliance with this and all applicable leave laws. The Attorney General intends to publish a notice of the law, which employers will be required to post and distribute to all employees. Employers should consider training managers and human resources professionals to ensure compliance with these new requirements and should review existing policies to ensure that they comply with this and other state and federal leave laws.

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