

## **Massachusetts Passes Mandatory Paid Sick Leave Law**

**November 10, 2014**

**By Barry A. Guryan and Jeffrey H. Ruzal**

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On Election Day this year, Massachusetts voters responded affirmatively, by a margin of 60 percent to 40 percent, to the Massachusetts Paid Sick Days Initiative. Under the new law, procedurally decided by ballot and not by the legislature, employees who work for employers having 11 or more employees will earn and can use up to 40 hours of paid sick time per calendar year, and employees working for smaller employers will earn the same number of annual unpaid sick leave hours. This law will apply to full-time, part-time, and temporary employees, and all such employees must be counted when determining whether employers employ 11 employees. The law will take effect on July 1, 2015.

The new law will apply to both public and private sector employees; however, it will not apply to employees employed by cities and towns unless it is accepted by vote or appropriation by each city or town.

### **What Types of Sick Leave Are Covered?**

Under the law, employees may use sick time as provided by the new law for the following reasons:

- if required to miss work in order to care for a physical or mental illness, or an injury or medical condition affecting the employee or the employee's child, spouse, parent, or parent of a spouse;
- to attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or,
- to address the effects of domestic violence on the employee or the employee's dependent child.

The new law will not supersede existing paid sick leave policies, contracts, or benefit plans that are equal to or more generous than the new law.

## **Will Employees Need to Provide Certification from a Doctor That They Are Sick?**

Employers will be permitted to require from their employees certification from a health care provider of the need for sick time if they are absent more than 24 consecutively scheduled work hours; however, employers cannot prohibit employees from taking sick time prior to receiving certification. Furthermore, the employer may not require that the certification explain the nature of the illness. If the sick leave is [taken to address the effects of domestic violence](#), documentation demonstrating the existence of domestic violence must be deemed as acceptable certification.

## **How Does Sick Leave Time Accrue and When Can Employees Start Using It?**

When the new law takes effect, employees will earn one hour of sick time for every 30 hours worked, and will begin accruing those hours on the date of hire, or on July 1, 2015, whichever is later. However, employees will not be able to begin using earned sick time until the ninetieth day after hire. With respect to employees eligible for paid sick leave (i.e., those employed by employers employing 11 or more employees), the sick time will be compensated at the same hourly wage rate earned by employees. Unlike earned benefits, such as vacation leave, employers will not have to pay employees for unused sick time at the end of their employment.

In addition, employees may carry-over up to 40 hours of unused sick time to the next calendar year, but they may not use more than 40 hours per calendar year. The law also provides that if an employee is out of work for a reason consistent with the sick leave qualifications and agrees with his or her employer to make up those missed hours of work in the future, the employee does not have to use his or her earned sick leave for those missed hours of work. Earned sick time must be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

## **Are There Notice or Recordkeeping Requirements?**

Multilingual notice of the new law will be prepared by the Attorney General. Employers will be required to post it conspicuously in the workplace and provide it to employees. The notice is not yet available.

The notice must include:

- information describing the rights to earned sick time;
- information about notices, documentation, and any other requirements placed on employees in order to exercise their rights to earned sick time;
- information describing the protections that an employee has in exercising rights;
- the name, address, telephone number, and website of the Attorney General's office where questions about the law can be answered; and
- information about filing an action under the act.

There are currently no recordkeeping requirements under the new law.

## How and to What Extent Will This New Law Be Enforced?

The new law also features an anti-retaliation provision that prohibits any employer from interfering with, restraining, or denying the exercise of any right under the law. This specifically prohibits employers from negatively relying on employees' use of sick leave when evaluating or making employment decisions, such as promotion, disciplinary action, or termination. The Attorney General will enforce the new law.

## What Massachusetts Employers Should Do Now

Because the new law will take effect on July 1, 2015, employers should start considering the following compliance measures:

- updating handbooks, policies, and payroll functions;
- training management on policies and procedures, and answering employees' questions about the requirements and practicalities of the new law; and
- educating payroll personnel or liaising with third-party payroll vendors on the requirements under the new law.

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For more information about this Advisory, please contact:

**Barry A. Guryan**  
Boston  
617-737-3538  
bguryan@ebglaw.com

**Jeffrey H. Ruzal**  
New York  
212-351-3762  
jruzal@ebglaw.com

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