



Massachusetts AG Issues Proposed Regulations Concerning Earned Sick Time

Insights

4.30.15

On November 4, 2014, Massachusetts voters passed a ballot initiative requiring that all employees be entitled to earn and use up to 40 hours of earned sick time in a calendar year. There were significant ambiguities in the law (as discussed in our previous [alert](#)), but the law also enabled the Massachusetts Attorney General to “adopt rules and regulations necessary to carry out the purpose and provisions of this section.” On April 24, 2015, the Attorney General’s office published its proposed regulations implementing this law.

What’s On The Table

The proposed regulations do clarify some points of uncertainty in the law, summarized below:

The proposed regulations define an employee as “any person who performs services for an employer” for compensation, including “full time, part-time, seasonal, and temporary employees” as well as “interns who must be treated as employees under Massachusetts state law.” As set forth in the original statute, employers with 10 or fewer employees may provide unpaid earned sick time while employers with 11 or more employees must provide paid earned sick time. All employees, whether working in Massachusetts or elsewhere, must be counted for purposes of this paid / unpaid threshold

An employee is eligible to accrue and use earned sick time if Massachusetts is their “primary place of employment,” meaning that they spend more time working in Massachusetts than any other state. If so, all time worked must be counted toward the accrual of earned sick time, even if the work is done outside of Massachusetts.

For purposes of the law, a “calendar year” is “any consecutive 12-month period of time as determined by the employer. This could be a January-December calendar year, the tax year, the fiscal year, a contract year, or a work anniversary. Employers must inform employees of their choice of “calendar year” must apply the “calendar year” consistently and uniformly to all employees.

Employees paid on an hourly basis must earn their base rate wages and any other benefits paid or accrued on an hourly basis. If the employee earns different rates, then a weighted average “blended” rate from the previous pay period must be paid. Employees paid on commission must be paid the greater of their base wage or the effective minimum wage. Employees paid on a piece work, salary, fee, or any other basis must be paid the average hourly rate from the previous pay period.

Full time exempt employees who work at least 40 hours per week are deemed to be working for 40 hours per week for purposes of accruing earned sick time. Exempt employees who are regularly scheduled for fewer than 40 hours per week will accrue earned sick time based on their scheduled hours.

During the Transition Year (from July 1, 2015 until the beginning of the employer's next calendar year), any paid sick time provided under the employer's previous policy will be credited. So, if they employee has already taken 16 hours of sick time in between January and July of 2015, then the employer need only allow that employee to earn and use up to 24 hours of paid earned sick time during the remainder of the year.

While employers cannot require any documentation concerning the need for leave unless the employee has missed more than 24 consecutively scheduled hours, you may require employees to submit written verification that they have used earned sick time for allowable purposes after using any amount of sick time.

What's Still Missing

But the proposed regulations also raise new issues and questions that did not come up in the law itself. For example, the regulations state that earned sick time must be provided "in addition to" time off provided by the federal Family and Medical Leave Act (FMLA), the Massachusetts Parental Leave Act, the Massachusetts Domestic Violence Leave Act, and the Small Necessities Leave Act. This is a significant departure as these laws had previously allowed employers to require employees to use paid leave concurrently with their unpaid leave. As the proposed regulations stand currently, they could be interpreted to mean that earned sick time is provided ***above and beyond*** the leave provided by these other statutes.

The Attorney General has scheduled a number of "listening sessions" and public hearings through the month of June. It is not yet clear when final regulations will be published, but it might not be until after the law goes into effect on July 1, 2015.

Our Advice

You will need to update your sick time or other PTO policies to come into compliance no later than July 1, 2015. Employers should also be in touch with their outside payroll providers to ensure they have to capacity to track the accrual and use of earned sick time. Additionally, keep an eye out for the Attorney General's final regulations in the coming months.

To learn more and to participate in a question & answer forum on the subject, please join Fisher Phillips for a webinar at 10:00 a.m. on May 14, 2015 entitled, "[Paid Sick Leave in Massachusetts Update: Understanding the Proposed Regulations.](#)"

For more information, please contact any attorney in the Boston office of Fisher Phillips at 617.722.0044.

This Legal Alert provides an overview of specific proposed new regulations. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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