

Massachusetts Voters Guarantee Sick Leave

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As we ring in the New Year, many employers take the opportunity to review their personnel policies to ensure that they are up to date. Leave laws often are at the forefront of new developments. Here in Massachusetts, voters recently approved a sick-leave ballot initiative, making Massachusetts the third state in the nation with mandatory paid sick-leave. The referendum is broad reaching in that it impacts all employers, whether large or small, and all employees, whether full or part-time, regular, temporary or seasonal.

The law, itself, is actually quite simple. Effective July 1, 2015, employers with 11 or more employees will have to provide their workers with one hour of paid sick time for every 30 hours they work, up to a maximum of 40 hours of leave per year. Employees can use the time when they are ill, injured or need to tend to a medical condition, to attend routine medical appointments or to address the effects of domestic violence. Employees also may take leave when they need to care for or attend the routine medical appointments of a spouse, child, parent or parent of a spouse or to address the effects of domestic violence on the employee's dependent child. Employers in Massachusetts with 10 or fewer workers will be required to let workers accrue and take unpaid sick time off in the same situations.

The law does, however, have some notable features. For example, employees shall begin accruing earned sick time on their date of hire or July 1, 2015, whichever is later, but employees shall not be entitled to use accrued earned sick time until the 90th calendar day following commencement of their employment. Thereafter, employees may use earned sick time as it accrues. This so-called 90-day waiting period appears only to apply to newly hired employees. While the law does not specifically say so, employers should assume that existing employees may begin to use their sick time as soon as it accrues.

This means that effective July 1, all employers, including those which operate very small businesses, will have to start diligently tracking employees' time worked in order to determine sick time accrual. Exempt employees are presumed to work 40 hours per week unless otherwise agreed.

In addition, employees will be allowed to carry over up to 40 hours of unused sick time to the next calendar year, but may not use more than 40 hours in a calendar year. Unlike vacation days, employers will not have to pay employees for unused sick time at the end of their employment.

Moreover, if an employee misses work for a reason eligible for earned sick time, but agrees with the employer to work the same number of hours or shifts in the same or next pay period, the employee will not have to use earned sick time for the missed time, and the employer will not have to pay the employee for that missed time. Employers are prohibited from requiring such an

employee to work additional hours to make up for missed time. However, employers that allow employees to make up the missed time in the *next pay period* must be careful not to run afoul of the overtime laws: a non-exempt employee who is "making up" missed time still must be paid at a rate of one and one half times their usual hourly rate for all hours worked in excess of 40 during any given week.

Employers may not require an employee to find a replacement employee in order to take accrued sick leave. They may, however, require a doctor's note for any employee who is absent due to illness for 24 or more consecutive hours.

The law additionally establishes certain recordkeeping requirements and requires employers to post a notice prepared by the attorney general regarding the law. The notice is not yet available, but employers should plan to obtain a copy prior to July 1, 2015.

Notwithstanding its relative simplicity, the law does leave some open questions. For example, does the 90-day waiting period apply to seasonal workers who resume their jobs each season or those who experience only a minor interruption in employment? What if there is a technical termination in connection with an asset sale or sale of a business, but no actual employment loss? Does the time off run concurrent with or in addition to the FMLA? How will the law interact with the new Domestic Violence Leave Act? We expect to see advisories on these and other related issues from the Attorney General's office in the coming months.

In the interim, we encourage employers to review their current time off policies well in advance of the July 1, 2015 effective date. Specifically, those who currently have more generous time off policies that comply with the law are not required to provide additional earned sick time. Likewise, employers should be mindful that the law prohibits employers from interfering with or retaliating against an employee for taking earned sick time -- creating another basis for an employee to assert a retaliation claim against an employer.

For questions about the information contained in this advisory or for assistance in navigating the new sick leave law, please contact your usual Goulston & Storrs attorney or a member of the Employment Group listed below.

UPDATE: The Massachusetts Attorney General issued a safe harbor for certain employers with qualifying paid time off policies in existence as of May 1, 2015. The safe harbor provides additional time through December 31, 2015 to comply with the new sick leave law.

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