

Update on the Massachusetts Earned Sick Time Law: What Employers Need to Do by July 1, 2015

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The Massachusetts Earned Sick Time Law (the “ESTL”) becomes effective next month, imposing significant obligations on all employers to provide up to 40 hours of earned sick time to Massachusetts employees. By July 1, 2015, employers are required to provide employees with a notice of rights under the ESTL and ensure that paid time off (“PTO”) or sick time policies are in compliance with the law and regulations issued by the Massachusetts Attorney General (the “AG”).

Some employers may delay full compliance with the ESTL until January 1, 2016, if they have existing paid time off or sick leave policies that meet the requirements of the Safe Harbor provision of the regulations. On June 10, 2015, the AG issued substantial revisions to the previously issued Safe Harbor provision, expanding and clarifying the requirements employers must meet to qualify.

The AG has also released the Earned Sick Time Notice of Employee Rights (the “Notice of Employee Rights”) for employers to post in each workplace. The revised Safe Harbor provision and Notice of Employee Rights are [available here](#).

Final regulations concerning the ESTL are expected to be released by June 19, 2015.

The ESTL in a Nutshell

- All employees whose primary place of work is in Massachusetts are eligible to earn sick time. This includes full-time, part-time, temporary and seasonal employees, and certain interns. True independent contractors are not eligible.
- The law covers all employers, except the federal government and certain Massachusetts cities and towns. Employers located outside Massachusetts are covered by the law if they have any employees whose primary place of work is within the Commonwealth.
- Employers with 11 or more employees must provide paid sick time; those with 10 or fewer are must provide unpaid sick time but may opt to provide paid sick time.
- All of an employer’s employees are counted to determine the employer size, including employees working or living outside of Massachusetts.

- Sick time must accrue at a rate of not less than 1 hour for every 30 hours worked, including overtime hours, up to 40 hours in a calendar year. Employees begin accruing sick time on the first day of employment. Employees may use sick time when they have been employed for 90 days and must be permitted to use up to 40 hours of earned sick time per year.
- Employees may carry over up to 40 hours of unused, earned sick time into the next calendar year.
- Other PTO policies may be used to satisfy the employer's obligation to provide earned sick time, as long as the policies meet or exceed the requirements of the ESTL, including with respect to the accrual and use of PTO.
- Employees may use earned sick time to (a) care for a physical or mental illness, injury or medical condition of their own or of a family member; (b) attend a routine medical appointment of their own or of a family member; or (c) address the psychological, physical or legal effects of domestic violence.
- Employers may implement policies concerning the use of sick time, and notice and documentation required from employees, subject to specific requirements and limitations contained in the law and regulations.
- Calculation of pay for sick time will vary depending on whether the employee is paid on an hourly, salary, piece work rate, commission or other basis, and the pay for sick time may not be less than the minimum wage.
- Employers must retain records of employees' accrual and use of sick time for at least 3 years.
- Employers are prohibited from retaliating against employees for using sick time or exercising other rights under the ESTL. Retaliation may include any threat, discipline, discharge, demotion, suspension or reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under the law.

What Employers Should Do by July 1, 2015

- Review existing sick time and PTO policies to determine whether the employer qualifies for the Safe Harbor provision.
- Determine which employees are eligible to accrue sick time under the ESTL.
- Review whether changes to existing sick time and PTO policies will be necessary to comply with the ESTL, particularly as it applies to the accrual and use of sick time and the notice and documentation required of employees.
- Ensure that any new sick time or PTO policies, or necessary changes to existing policies, are ready to roll out by July 1.
- Post the Notice of Employee Rights in each workplace, in a location where employees are likely to see it, and provide a copy to each employee.
- Ensure that payroll and HR systems are prepared to calculate the accrual of, and pay for, earned sick time pursuant to the ESTL, and to maintain records of the use and accrual of earned sick time.
- Train managers on the ESTL and the employers' own PTO or sick time policies, particularly with respect to the types of notice and documentation that may be required of employees using earned sick time, and the anti-retaliation provisions of the law.