

# CAIN HIBBARD

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## CLIENT ALERT

May 18, 2015

### **Attorney General Issues Proposed Regulations to New Sick Leave Law**

Under Massachusetts' new sick leave law, signed into law on November 4, 2014, employees are entitled to forty hours of sick time per calendar year, with one hour of sick time accruing for every thirty hours worked. [See Client Alert: [New Law Mandates Employers Provide Sick Leave](#).] Employers with eleven or more employees must provide paid sick time. Employers with fewer than eleven employees may provide unpaid sick time. The Attorney General has issued proposed regulations that address ambiguities in the new law. Since the proposed regulations are scheduled to be made final only days before July 1, 2015 – the effective date of the law – the Attorney General has implemented a six-month extension for qualifying employers. [See Client Alert: [Certain Employers Have Six Month "Safe Harbor" Period](#).] An overview of the proposed regulations follows.

#### **Do Paid Time Off Banks Meet the Sick Time Law's Requirements?**

Yes, if (i) one hour of PTO accrues for every thirty hours worked, and (ii) the PTO may be taken for the same reasons as sick time. Leave policies are also permitted to provide more than forty hours of leave per year, leave may accrue more quickly than the law requires, and employers may provide a lump sum of forty hours of leave at the beginning of each year.

Under all of these arrangements, leave must be job-protected (meaning that an employer may not fire an employee for taking the leave) and the employer must provide notice of its leave policy. If the leave is paid, it must be paid at the employee's regular rate.

#### **May I Require an Employee to Make Up Used Sick Time?**

No, but you may permit him or her to do so. Make-up hours are subject to the overtime pay laws.

#### **How Do I Define "Calendar Year" for the Accrual of Sick Time?**

"Calendar year" is defined as any consecutive twelve-month period as determined by an employer. The period must be consistent with other policies, and employees must be given written notice of the period on their first day of actual work.

#### **Does Sick Time Accrue for Hours Worked for the Same Employer But in Another State?**

Yes, as long as the majority of the employee's work hours occur in Massachusetts. Sick time also accrues during overtime hours. However, exempt employees are presumed to work only forty hours per week, unless their job specifies fewer hours.

**How Do I Determine Whether I Must Provide Paid Leave?**

You must provide paid leave if, in the current or prior calendar year, you maintained at least eleven employees on your payroll during either: (1) twenty or more weeks; or (2) sixteen consecutive weeks. All of your employees must be counted, whether they work in Massachusetts or not, and regardless of their ability to accrue and use earned sick time.

**Must I Provide Additional Hours to Employees who Used Sick Time Before July 1, 2015?**

Any sick leave granted prior to July 1, 2015 will be credited unless (1) you are required to provide paid leave; and (2) the leave taken before July 1, 2015 was unpaid.

**May Employees Begin Using Sick Time on July 1, 2015?**

Employees that have worked for at least ninety days as of July 1, 2015 begin accruing sick time on that date and may use it as it accrues. Employees who have worked fewer than ninety days as of July 1, 2015 begin accruing sick time on that date and may use it when they have been employed for ninety days. Employees who begin working after July 1, 2015 begin accruing sick time on their first day of actual work and may use it when they have been employed for ninety days.

**May I Discipline an Employee who Abuses the Sick Time Law?**

An employee may not be disciplined for using earned sick time or for opposing practices that the employee believes violate the sick time law. However, an employee may be disciplined for (1) using sick time for unauthorized purposes; or (2) exhibiting a clear pattern of taking leave on days when the employee is scheduled to perform undesirable duties.

A full copy of the proposed regulations is available at  
[<http://www.mass.gov/ago/docs/regulations/proposed/940-cmr-33-00-proposed.pdf>.]

If you would like to speak to someone about these or other provisions of the new law, please contact Diane DeGiacomo, Chair of our Employment Law Group.

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