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CLIENT ALERT

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Attorney General Issues Final Regulations to New Sick Leave Law

Under Massachusetts's new sick leave law, voted 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. 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 Final Regulations that address ambiguities in the new law. They retain the main points contained in the Proposed Regulations and described in CLIENT ALERT: ATTORNEY GENERAL ISSUES PROPOSED REGULATIONS TO NEW SICK LEAVE LAW. The Final Regulations also expand upon the Proposed Regulations by answering the following questions in more detail.

May I Cap Accrual of Sick Time at Forty Hours?

Yes. When an employee accrues forty hours of sick time in a calendar year, no additional time is accrued regardless of additional hours worked. Where an employee's sick time bank reaches forty hours, you may opt to delay further accrual until the employee draws down the bank to below forty hours.

May Earned Sick Time Run Concurrently with FMLA and Other Federal and State Leave Laws?

Yes. Earned sick time may run concurrently with other laws that allow employees to use leave for the same purposes as the Earned Sick Time Law.

Am I Required to Pay for Unused Sick Time at an Employee's Termination?

No. You are not required to pay for unused sick time at an employee's termination but you may elect to do so.

May I Require Documentation of the Need for Leave?

In some circumstances. You may require documentation for leave that:

- 1) Exceeds twenty-four consecutively scheduled work hours;
- 2) Exceeds three consecutive work days;
- 3) Occurs two weeks before an employee's final day of work; or
- 4) Occurs after four unforeseeable and undocumented absences in a three-month period.

You may **NOT** require documentation to explain the nature of any illness or the details of domestic violence.

Must I Keep Records of Earned Sick Time Accrual and Use?

Usually, yes. However, if you provide a lump sum at the beginning of the calendar year, you need only track and record the use of earned sick time. If you provide unlimited sick time, a PTO, vacation, or other policy that complies with the new law, you need not track accrual or use of earned sick time separate from your other accrual method.

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

The Proposed Regulations clarified that an employee may not be disciplined for using earned sick time or for opposing practices that the employee believes violate the sick time law, but that he or she 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.

The Final Regulations add that employees may also be disciplined for using earned sick time as an excuse to be late for work without an authorized purpose.