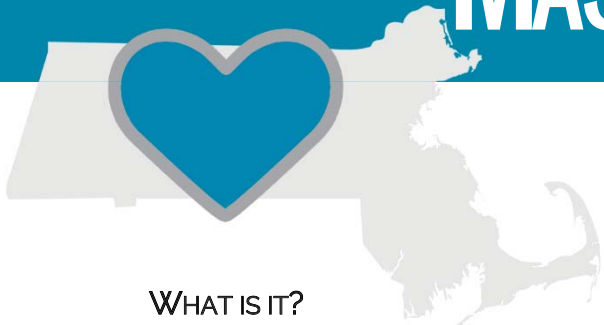


MASSACHUSETTS SICK LEAVE



Your guide to figuring it all out

WHAT IS IT?

The Earned Sick Time for Employees ballot question, also known as the Massachusetts Sick Leave Law, was voted on and approved by Massachusetts voters in November 2014. It mandates that employers provide at least 40 hours a year of sick leave to employees and that all but the smallest employers provide this leave on a paid basis. When this law goes into effect, Massachusetts will be one of three states with a paid sick leave requirement.

WHO IS COVERED?

Employers with ten or fewer employees (including temporary and part-time workers) will be required to provide sick leave but may provide it on an unpaid basis. Employers with 11 or more employees must provide paid sick leave.



There is NO exception for small employers: organizations with one or more employees will be required to provide sick leave.

The Basics

Effective July 1, 2015



40 hours of paid sick leave per year



Employers with 11 or more employees must offer paid sick leave



Employers with 10 or fewer employees may offer unpaid sick leave

This handy guide to the Massachusetts Sick Leave was created by





HOW IS LEAVE EARNED?

Employees are eligible to begin accruing sick leave on the later of their date of hire or July 1, 2015 at a rate of one hour of sick leave for every 30 hours worked. For exempt employees, a workweek will be considered to be the lesser of 40 hours or the actual normal workweek. Employers may cap the accrual of sick leave at 40 hours but must allow employees to roll over 40 hours of sick leave to the next calendar year. Accrued sick time is not required to be paid out at termination unless it is part of a combined paid time off (PTO) plan.

WHEN AND FOR WHAT PURPOSES CAN LEAVE BE USED?

Employees may use sick leave to:

- ✓ care for the employee's child, spouse, parent, or parent of a spouse, who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care;
- ✓ care for the employee's own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care;
- ✓ attend the employee's routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse; or
- ✓ address the psychological, physical or legal effects of domestic violence.



Employees are required to make a "good faith effort" to provide advanced notice of the leave. A note from a medical provider may be required if more than 24 consecutive working hours are taken as sick leave. Employers may not ask for the note to contain details of the reason for leave.

Annual use of paid sick leave may be capped by the employer at 40 hours. Though employees begin accruing sick leave on their date of hire (or July 1, 2015, whichever is later) they are not eligible to use sick leave until 90 days after hire. Sick leave may be used in one hour increments or the smallest increment that the employer uses to account for absences or use of other time, whichever is smaller. If the employer and the employee agree, the employee may make up missed hours in the same or next pay period and preserve their accrued leave.

WHAT ARE THE OTHER COMPLIANCE REQUIREMENTS?

Employers will need to post a multilingual notice about the new sick leave law and provide copies to employees. This notice will be prepared by the State Attorney General prior to the law's effective date. The Attorney General's office may also craft regulations requiring specific recordkeeping and record retention requirements.

The law forbids employers from interfering with or retaliating against an employee using sick leave. This includes prohibiting employers from taking disciplinary action or negative employment action for sick leave use, requiring employees to find coverage for their missed hours, and forcing an employee to make up hours taken as sick leave.



NEXT STEPS

Employers who already have paid sick leave or PTO policies in place should determine if their current policies will satisfy the new requirements. Employers who do not currently offer paid sick leave should begin to determine how they plan to implement the new requirements. All employers should ensure that they have the appropriate notice and recordkeeping procedures in place prior to July 1, 2015.

Already have a policy for some employees but not others? Here are some options . . .

1. **Make one new compliant policy that applies to all employees.**
2. **Rework old general policy to be compliant for those to whom it applies and add secondary policy for those who do not qualify for your general policy.**
3. **Keep old general policy as it is and add secondary sick leave only policy for all employees.**

Frequently Asked Questions

If we offer 40 hours of paid sick leave, do we meet the requirements of the new law?

In addition to offering the correct number of overall hours, you need to ensure that you are complying with the other requirements such as ensuring that the paid leave accrues at least as quickly as 1 hour for every 30 hours worked, that it accrues upon hire and can be used after 90 days employment, that you allow 40 hours to be accrued and carried over, that it can be used for the purposes given in the law and in the required increments, and that you track and document the time as required. In short, even if you have a plan that is overall as, or more generous, than required by the law, you will still need to look at your policy carefully to make sure it includes all the required details.

If we offer a lump sum of 40 hours of sick leave at the beginning of the year will this satisfy the requirement for the amount of sick leave?

The Massachusetts sick leave law does not specifically address whether lump sum sick leave policies are allowed. The law does, however, state that it does not prohibit "policies more generous than policies that comply with the requirements" of the sick leave law. As a lump sum policy would grant the entire sick leave amount immediately on each new year, it could be seen as being more generous. Final word on whether lump sum policies will be allowed will come from the Massachusetts Attorney General's office in the coming months.

How is the year measured?

For purposes of the allowed 40 hours use of sick leave, the Massachusetts law defines a year as being a calendar year.

Does an employee accrue extra sick time for overtime?

The employee must accrue one hour paid sick leave for every thirty hours worked. Accrual beyond that 1 hour for every 30 hours worked is not required for overtime hours. For exempt employees, a workweek for accrual purposes will be considered to be the lesser of 40 hours or the actual normal workweek.

We do not want to change our existing PTO/personal leave policies, what should we do?

If you want to keep your existing policy or eligibility unchanged, you would need to offer a separate Massachusetts paid sick leave policy to all employees who are not eligible for your paid leave programs and employees who are offered a form of paid leave that does not meet the minimum requirements of the law.

Does sick leave need to be paid at termination?

Accrued paid sick time is not required to be paid out at termination unless it is part of a combined paid time off (PTO) plan.

Will additional guidance be issues before the law goes into effect?

Yes. The Massachusetts Attorney General has been tasked with creating regulations to clarify the practices and policies in the administration and enforcement of the Earned Sick Time Law. This guidance will address issues such as how employees should be counted for determining when sick leave will need to be paid, how certain terms in the law should be defined and interpreted, how the initial implementation should work in order to get to the next calendar year, whether lump sum accrual will be permitted, and what documentation will be required, among other things. Draft regulations have already been completed and the final regulations should be available in the next couple of months. Additionally, the Attorney General's office plans to respond to frequently asked questions on their site in the near future. Finally, the notice for posting will be completed shortly by the Attorney General's office and will be available soon after for employers.