

## Massachusetts releases proposed sick leave regulations

The Massachusetts attorney general's office has released proposed regulations on the sick leave law (*M.G.L. c. 149 § 148C*) that was approved by Massachusetts voters on November 4, 2014.

Effective July 1, 2015, all employers are required to provide sick leave to their employees, however, as we reported in *EY Payroll NewsFlash* Vol. 15, #244 (dated November 4, 2014), only those employers with 11 or more employees are required to provide up to 40 hours of paid sick leave each calendar year, while employers with less than 11 employees are required to provide up to 40 hours of unpaid sick leave each calendar year. (*News release, April 27, 2015.*)

Employers are asked to provide comments concerning these rules by June 10, 2015.

In part, the regulations provide that:

- All Massachusetts employees are eligible for sick leave, whether paid or unpaid, including full time, part-time, seasonal, and temporary employees. This also includes interns who must be treated as employees under Massachusetts state law.
- An employee is eligible to accrue and use sick leave if the employee's primary place of work is in Massachusetts; whether or not the employee spends more than 50% of working time in Massachusetts. For example, an employee who works 40% of her hours in Massachusetts, 30% in New Hampshire and 30% in another state has Massachusetts as her primary place of work. In such a circumstance, the employer must use all the hours the multistate employee works to determine the earned sick leave accrual, regardless of the location of the work. For example, an employee who works 900 hours in Massachusetts and 150 hours in other states for the calendar year must accrue earned sick leave on all 1,050 hours worked.

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### No delay of law's effective date in sight

Associated Industries of Massachusetts (AIM) urged policymakers to postpone the effective date until January 1, 2016, feeling that the period between the release of regulations and the July 1, 2015 effective date leaves employers inadequate time to comply with the law.

According to AIM's blog, the state Senate rejected AIM's proposal to delay the effective date.

More information concerning AIM's efforts is available [here](#).

Information on the sick leave law, the proposed regulations or the hearing locations is available [here](#).

- An employee can use earned sick time if required to miss work in order (1) to care for a physical or mental illness, injury or medical condition affecting the employee or the employee's child, spouse, parent, or parent of a spouse; (2) to attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or (3) to address the effects of domestic violence on the employee or the employee's dependent child.

### **Rate of accrual**

Employees must accrue paid or unpaid sick leave at a rate of not less than one hour of earned sick leave for every 30 hours of work, including overtime hours. Employees who are exempt from overtime requirements are assumed to work 40 hours in each work week unless their job specifies a lower number of hours per week, such as a salaried part-time employee. In such a case, earned sick leave shall accrue based on that specified number of hours per week.

At the end of the employer's calendar year, an employee may carry over up to 40 hours of unused earned sick leave to the next calendar year. An employer may offer an employee a payout of up to 40 hours of unused earned sick leave at the end of the employer's calendar year, provided the employer makes available to the employee at least 16 hours of sick leave at the beginning of the new calendar year. Employers have the option but are not required to payout unused earned paid sick leave upon separation from employment. An employer is not permitted to payout sick leave as it accrues during the employer's calendar year or otherwise cause a forfeiture of an employee's right to accrued sick leave.

Employers may deviate from the accrual rate of earned sick leave as long as their sick leave (or other paid leave) policies are more generous than that required under the sick leave law.

### **Vesting period**

Employees begin accruing earned sick leave on the first date of work and may begin to use any accrued earned sick leave after 90 calendar days, regardless of the number of days worked during the 90 calendar day period. Employees who have worked for the employer for at least 90 calendar days as of July 1, 2015 begin accruing earned sick leave as July 1, 2015 and may use earned sick leave, whether paid or unpaid, as it accrues. Employees who have been employed for less than 90 calendar days as of July 1, 2015 begin accruing earned sick time on July 1, 2015 and may use earned sick leave when they have been employed for 90 days. Employees who start work after July 1, 2015 begin to accrue earned sick leave as of their first day of work and may use accrued earned sick leave when they have been employed for 90 calendar days.

### **Calendar year**

For the purpose of determining accrual and use of earned sick leave, any consecutive 12-month period of time as determined by an employer may constitute a calendar year, including, for example: a year that runs from January 1 to December 31, tax year, fiscal year, contract year, or the year running from an employee's anniversary date of employment. Employers must apply the choice of "calendar year" consistently and uniformly to all employees and must inform their employees in writing at the date of hire what constitutes the "calendar year." However, for the purposes of determining whether sick leave must be paid or unpaid, the "calendar year" must be January 1 to December 31.

Any change by an employer in the designation of what a calendar year means for purposes of accrual and use must be prospective and must not cause the loss of any employee's accrued earned sick leave.

### **Determining whether sick leave must be paid or unpaid**

An employer must provide earned paid sick leave to eligible employees if:

- a. the employer maintained 11 or more employees on the payroll during 20 or more weeks (whether consecutive or not) over either the current or preceding calendar year; or
- b. the employer maintained 11 or more employees on the payroll during 16 consecutive weeks over the current or preceding calendar year.

All employees, **whether working in or outside Massachusetts**, and regardless of their eligibility to accrue and use earned sick leave, must be counted for the purpose of determining whether an employer meets the paid sick leave threshold. Employers that are not required to provide paid sick leave must provide employees with the right to accrue and use up to 40 hours per calendar year of unpaid sick leave.

Earned paid sick leave must be paid at the same hourly rate as the employee is paid for employment at the time the employee uses the paid sick time and must be equal to at least the state's current minimum wage.

Employers must notify employees in writing 90 days in advance if earned paid sick leave will be changing to unpaid sick leave based on a change in the employer's size. When an employee has unused, earned paid sick leave at the time that an employer converts from paid to unpaid sick leave because of a reduction in size below 11 employees, the unused paid sick leave must remain paid sick leave until exhausted, despite the fact that the employee will begin to accrue unpaid sick leave.

### **Separated employees**

Accrued sick leave must be held for a separating employee for up to one year from the date the employee last worked for the employer, whether the separation was voluntary or involuntary. Upon return to work, an employee must maintain the right to use any accrued earned sick leave after a break in service of up to one year from the last date of work. Employers have the option to instead payout unused earned paid sick leave upon separation from employment.

### **Recordkeeping and notice**

Employers must maintain an accurate record of the accrual and use of earned sick leave for a period of three years and provide a copy of the records upon demand by the attorney general or the employee. Employers must inform their employees in writing upon hire what constitutes the employer's "calendar year."

Employers must post a notice of the law and regulations in a conspicuous location where employees work and provide a copy of the notice to employees. The attorney general's office will provide a template of the notice before the law's effective date.

### **Hearings to be held on the proposed regulations**

The attorney general's office will hold public hearings on the proposed regulations during the months of May and June 2015. Interested parties may also submit formal comments by email to [agoregulations@state.ma.us](mailto:agoregulations@state.ma.us) or in writing to: Mike Firestone, Assistant Attorney General, Attorney

General's Office, 1 Ashburton Place, 20th Floor, Boston, MA 02108. Comments must be submitted by 5:00 PM on June 10, 2015.

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