

June 10, 2015

REVISED MASSACHUSETTS EARNED SICK TIME LAW SAFE HARBOR FOR EMPLOYERS WITH EXISTING POLICIES PROVIDING PAID TIME OFF

The MA Attorney general posted today on its web site a revised safe harbor for employers with existing paid time off policies. These revisions directly address use of the safe harbor by employers that have some employees who do not currently receive a paid leave/sick benefit under the employer's existing paid time off policy.

The revised safe harbor also clarifies that employers opting to use the safe harbor may also choose full compliance with the Earned Sick Time law and regulations beginning July 1, 2015 for some or all employees -- which would include the ability to create a separate EST compliant plan for employees who do not currently receive a paid leave/sick benefit under the employer's existing paid time off policy. The revised safe harbor provides, in its entirety, as follows:

“Employers with a policy in existence on May 1, 2015 that provides paid time off or paid sick leave, shall be deemed in compliance with the Earned Sick Time law until January 1, 2016 provided;

1) Full time employees on the policy have the right to earn and use at least 30 hours of paid time off/sick leave during the calendar year 2015; and

2) On and after July 1, 2015, all employees not previously covered by the policy, including part-time employees, new employees, and per diem employees must either:

a) accrue paid time off at the same rate of accrual as covered full-time employees; or

b) if the policy provides lump sum allocations, receive a prorated lump sum allocation based on the provision of lump sum paid time off/sick leave to covered full-time employees. Such lump sum allocations may:

i) where lump sums of paid time off are provided annually, be halved for employees who receive coverage as of July 1, 2015, and proportionately reduced for employees hired after July 1, 2015; and/or

ii) be proportionate for part-time employees.

3) *If an employee is not compensated on an hourly or salaried basis, the employee must accrue or receive lump sum allocations based on a reasonable approximation of hours worked.*

4) *30 hours of paid time off/sick leave or such lesser amounts as are earned by employees under this section must be:*

a) job protected leave subject to the law's non-retaliation provisions; and

b) available for the allowed purposes of the leave under the law;

c) available to the employee after January 1, 2016 if unused during the Transition Year.

5) *In all other respects, during this transition period, the employer may continue to administer paid time off under policies in place as of May 1, 2015.*

6) *On or before January 1, 2016, all employers operating under this safe harbor provision must adjust their policy providing paid time off to conform to the Earned Sick Time law. Employers with the option to utilize the safe harbor may also choose full compliance with the Earned Sick Time law and regulations beginning July 1, 2015 for some or all employees."*

NOTICE TO EMPLOYEES ALSO RELEASED

Also today, the AG released the English-language version of the "Notice to Employees." The statute requires that employers "*shall post this notice in a conspicuous location accessible to employees in every establishment where employees with rights under this section work, and shall provide a copy to their employees.*"

The Notice to Employees is now available for download on the Attorney General's Earned Sick Time website: www.mass.gov/ago/earnedsicktime. Notices in other languages will be coming soon.

STAY TUNED

The public comment regarding the MA Earned Sick Time Law end today. A final EST regulation will be forthcoming later this month.

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