

It's Spreading Like the Flu – Massachusetts Becomes the 3rd State to Require Employers to Provide Paid Sick Time

Labor & Employment Law Update

on October 26, 2014

On November 4, 2014, Massachusetts voters approved a ballot referendum requiring Massachusetts employers to provide paid sick leave. The new law will take effect on July 1, 2015. Massachusetts joins California and Connecticut as states requiring employers to provide paid sick leave, along with cities such as San Francisco, Newark and New York City.

Under the new Massachusetts law, employers with 11 or more employees must allow all employees (whether full or part time) to earn and use up to 40 hours of paid sick time per year. Employees accrue paid sick time at the rate of 1 hour for every 30 hours worked. (Employers with 10 or fewer employees must allow their employees to use unpaid sick time, accrued at the same rate as paid sick time by employees at companies with 11 or more employees.)

Employees may use sick time for their own physical or mental illness or condition, for a spouse, child, or parent's (or spouse's parent's) illness or condition, or to address the psychological, physical or legal effects of domestic violence.

An employer and employee can mutually agree, but the employer may not **require** that an employee who takes time off for a covered reason may make up the time by working an equivalent number of hours during the same or next pay period rather than use accrued sick leave. (Note, however, that if a different workweek is used, there could be overtime implications if those "additional hours" put the employee over 40 hours for that particular workweek.)

When the need for paid sick time is foreseeable, the employee must make a good faith effort to provide advance notice of the leave (e.g., a doctor's appointment, a court appearance for domestic violence, etc.) For an absence that covers more than 24 consecutive scheduled work hours, an employer may require certification from a health care provider that the absence was necessary for a covered reason.

An employer may not interfere with, or retaliate against an employee for, the use of sick time under the new law.

Employees begin earning sick time on their first day of employment or July 1, 2015, whichever is later. But an employer may require a waiting period of 90 calendar days after commencement of employment for an employee to begin using sick time.

Employees may carry over up to 40 hours of accrued but unused sick time, but an employer may place a limit of 40 hours of sick time that may be used per year. Importantly, employers are not required to pay employees for accrued but unused sick time upon termination of employment.

The law requires the Massachusetts Attorney General to create a Notice, which employers must post in a conspicuous place in the workplace as well as provide a copy to employees.

What Should Employers Do?

Between now and July 1, 2015, Massachusetts employers should update their sick leave, PTO leave, and record-retention policies to ensure compliance and proper record keeping. Employers should also ensure that all managers and supervisors are trained in the application of the new law and the employer's revised policies.

Finally, employers should update their new hire packets and Employee Handbooks to reflect compliance with the new law.

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