

MASSACHUSETTS EARNED SICK TIME LAW

Vision Payroll
June 26, 2015



Introduction



The Law

- The Law is located in M.G.L. c. 149, § 148C and the regulations in 940 C.M.R. 33.00



What Does the Law Require?

- The law requires that “earned sick time shall be provided by an employer for an employee...”



What is an Employer?

- Any individual, corporation, partnership or other private or public entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation, except the United States government shall not be considered an Employer and cities and towns shall only be considered Employers [if they choose to.]



What is an Employee?

- Any person who performs services for an employer [as defined above] for wage, remuneration, or other compensation...
- The term *Employees* includes the following:
 - › Full Time Employees
 - › Part Time Employees
 - › Seasonal Employees
 - › Temporary Employees
 - › Interns, if they are Employees



Interns and Sick Time



Six Criteria for Interns

- The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
- The internship experience is for the benefit of the intern;
- The intern does not displace regular employees, but works under close supervision of existing staff;
- The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
- The intern is not necessarily entitled to a job at the conclusion of the internship; and
- The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.



Independent Contractors and Sick Time



The Three-Factor Test

- ◉ Freedom from control—“Free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact.”
- ◉ Service Outside the Usual Course of the Employer’s Business—The service the individual performs must be “outside the usual course of business of the employer.”
- ◉ Independent Trade, Occupation, Profession or Business—The individual “is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.”



Primary Place of Work



Payment For Earned Sick Time

- Under 940 C.M.R. 33.04 (1):
 - > An employer must provide earned paid sick time to eligible employees if the employer maintained an average of 11 or more employees on the payroll during the preceding benefit year.
 - > Employers shall determine the average number of employees by counting the number of employees, including full time, part-time, seasonal, and temporary employees, on the payroll during each pay period and dividing by the number of pay periods. Employees furnished to an employer by a temporary staffing agency and paid by the staffing agency count as employees of both the staffing agency and the employer for the purpose of determining employer size.



Maintained Employees?



Rate of Pay

- ◎ If an employee receives more than one hourly rate, an employer can pay either:
 - > The wages the employee would have been paid for the hours absent during use of earned sick time if the employee had worked; or
 - > The blended rate, determined by taking the weighted average of all regular rates of pay over the previous pay period, month, quarter or other established period of time the employer customarily uses to calculate blended rates for similar purposes.



Rate of Pay

- Do not include any of the following in calculation of the hourly rate:
 - > Commissions
 - > Drawing Accounts
 - > Bonuses
 - > Incentive pay based on sales or production
 - > Employer contributions to pension plans
 - > Overtime, holiday pay, or other premium rates, but shift differentials are explicitly *included*.
- In no case should the rate used be *less than* the minimum wage, currently \$9.00 per hour.



Switching from
Paid to Unpaid,
or Unpaid to
Paid



Affiliated Employers



Accrual Rate

- Accrual rate is not less than one hour of earned sick time for every thirty hours of work, including overtime.



Which Hours are
Counted for
Accrual
Purposes?



Salaried
Employees v.
Exempt
Employees



Special Cases



Accrual Limits

- Employees do not accrue once they have accrued forty hours during the benefit year.
- An employer does not have to allow an employee to accrue once that employee has a bank of forty hours until the employee uses some of the accrued hours.



Ninety Day Vesting Period



Breaks in Service



Transitional Rules for 2015



What Happens if
an Employer
Switches To or
From Paid Sick
Time?



Using Sick Time

- Employees can use up to forty hours per year.
- Very important: Employers **cannot** require that an employee find a replacement employee to cover the hours or shift.



Using Sick Time

- If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for earned sick time..., an employer may discipline the employee for misuse of sick leave.
- If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of earned sick time, *unless* the employee provides verification of authorized use [emphasis added]...



When to Pay Sick Time

- Paid Sick Time must be paid on the same schedule as regular wages.



Paying Out Unused Sick Time



Notification By Employee



Requiring Written Documentation for Absences

- An employer may require written documentation for an employee's use of earned sick time that:
 - > A.) Exceeds 24 consecutively scheduled work hours;
 - > B.) Exceeds 3 consecutive days on which the employee was scheduled to work
 - > C.) Occurs within 2 weeks prior to an employee's final scheduled day of work before termination of employment, except in the case of temporary employees (*i.e.* "temp workers");
 - > D.) Occurs after 4 unforeseeable and undocumented absences within a 3-month period; or
 - > E.) For employees aged 17 and under, occurs after 3 unforeseeable and undocumented absences within a 3-month period.



Requiring Written Documentation for Absences

Written documentation that may be required includes:

- > Written documentation signed by a health care provider indicating the need for the earned sick time taken; or
- > With regard to indicating the need of leave related to domestic violence, any of the following:
 - a restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
 - a police record documenting the abuse;
 - documentation that the perpetrator of the abuse has been convicted of one or more of the offenses enumerated in M.G.L. c.265 where the victim was a family or household member;
 - medical documentation of the abuse;
 - a statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee in addressing the effects of the abuse on the employee or the employee's family; or
 - a signed written statement from the employee attesting to the abuse.



Failure to Provide Documentation



Verification of Proper Use of Sick Time



Alternate Sick Leave Policies

- An Employer can use a different sick leave or paid time off policy as long as the following conditions are met:
 - › Employees can use at least the same amount of time;
 - › Employees can use time for the same purposes;
 - › Employees can use time under the same conditions; and
 - › Employees get the same job protections.



Alternate Sick Leave Policies

- An Employer can use a PTO, vacation, sick leave, or other policy as long as the policy complies with the law:
 - › Accrual at the rate of no less than one hour for every 30 hours of work;
 - › Pay at the employee's same hourly rate;
 - › Access for all uses authorized under M.G.L. c. 149, § 148C;
 - › Availability under the same conditions of notice and documentation; and
 - › Extension of the same job protections



Alternate Sick Leave Policies

- For employees working an average of:
 - > 37.5-40 hours per week, provide 8 hours per month for 5 months
 - > 30 hours per week, provide 5 hours per month for 8 months
 - > 24 hours per week, provide 4 hours per month for 10 months.
 - > 20 hours per week, provide 4 hours per month for 9 months.
 - > 16 hours per week, provide 3 hour per month for 10 months.
 - > 10 hours per week, provide 2 hours per month for 10 months.
 - > 5 hours per week, provide 1 hour per month for 10 months.



Prohibition on Retaliation and Non-Interference

- Examples of adverse actions include but are not limited to:
 - > denying use or delaying payment of earned sick time;
 - > terminating an employee;
 - > taking away work hours;
 - > negatively altering the terms or conditions of employment;
 - > disciplining an employee under the employer's attendance policy;
 - > giving an employee undesirable assignments or schedule changes;
 - > giving false negative references for future employment;
 - > making false criminal reports to authorities about the employee;
 - > reporting an employee to immigration authorities; or
 - > threatening an employee with any of [these] adverse actions.



Recordkeeping and Disclosure

- Employers must keep the records for at least three years and provide them to the Attorney General's office or an employee upon request.



Action Items



Conclusion



Questions?

