ML STRATEGIES

Massachusetts Earned Sick Time Law Takes Effect July 1

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VIEWPOINT TOPICS

- State & Local Government Relations

SERVICE AREAS

- State & Local Government Relations

Massachusetts' Earned Sick Leave Law, which voters passed by ballot initiative last November, is set to become effective in less than two months on July 1, 2015. On April 27, Attorney General Maura Healy's office released proposed regulations to clarify how the ballot law will be implemented.

Important Regulations

Of the nine sections of regulations in 940 CMR 33.00, the following items may have the biggest impact on employers who do not already have earned sick leave policies in place:

- Employers must provide earned paid sick time to eligible employees if they maintained 11 or more employees on the payroll during 20 or more weeks (whether consecutive or not) or for 16 consecutive weeks over either the current or preceding calendar year.
- An employee can accrue and use earned sick time if their primary place of work is Massachusetts. Primary place of employment has been defined not as more than 50 percent, but rather, the largest percentage of their time. If the employee is eligible, then all of the hours they work for a single employer, regardless of location, must be applied toward their accrual.
- All of an employer's employees, whether working in or outside Massachusetts, and regardless of their eligibility to accrue and use earned sick time, shall be counted for the purpose of determining employer size.
- The minimum accrual rate for earned sick time is one hour per every 30 hours of work, including overtime hours. Employees will begin accruing the sick time on their first day of work and can begin to use it 90 calendar days after their first day, regardless of how many days they worked in the interim.
- Employers are permitted to choose any twelve-month period to serve as their "calendar year" for the purposes of employee sick-time accrual, but the standard calendar year will remain in place for determining employer size.
- The payment of earned sick time must occur on the same schedule as regular wages are paid and employers cannot delay payment pending documentation of the use of the earned sick time.
- An employee is free to use accrued sick time after a break in service of up to one year.
- Employers and employees can come to a mutual agreement where an employee works additional hours to avoid the use and payment of earned sick time, but an employer cannot require that an employee who has used earned sick time make up the time off from work.
- Employees must make good-faith efforts to alert their employers of their use of earned sick time; however, the employer can never require any documentation to explain the nature of the illness or the details of the domestic violence or other matter that required the employee to utilize his or her earned sick time. Employers also cannot take adverse action against an employee solely for the use of earned sick time.
- Employers will be able to discipline employees for misuse of earned sick time. Such misuse could include taking leave for a purpose not consistent with the statute (e.g., outside of being sick, caring for an ill family member) or a clear pattern of taking leave at times when the employee is scheduled to perform duties perceived as undesirable.

Adaptations for 2015, a Transition Year

As the law will take effect in the middle of 2015, the remainder of the year will be seen as a transition year. Specific regulations have been put in place for this:

- Any unused, earned sick time accrued in 2015 beyond 24 hours may be carried over into 2016.
- If the employer did not previously offer earned paid sick time, even employees who took unpaid sick time earlier in 2015 are eligible to accrue and use 40 hours of earned sick time in the remainder of the year.
- Employers are not required to provide more than 40 hours of earned paid sick time in 2015.
- Employers are encouraged to keep good records of their employees' accrual and use of earned sick time for at least three years.

During the annual **budget debate in the House of Representatives**, Republicans sought to push back the implementation of the earned sick time law; however, the Democrat majority rejected the proposal.

Business Community Reaction

Since the passage of the Earned Sick Leave ballot initiative last November, various business organizations across the Commonwealth have voiced concern over the forthcoming law and regulations. After the ballot initiative passed, Massachusetts Restaurant Association CEO Bob Luz told the Boston Business Journal, “It’s death by a thousand cuts.” In January, the Associated Industries of Massachusetts (AIM) stated its concerns that interns, employees paid on commission, and independent contractors could be improperly grouped into the law. Some nonprofit organizations are also worried about the impact of the new sick leave mandates; for example, Peter Doliber, Executive Director of the Alliance of Massachusetts YMCAs, stated that YMCAs across the state are rethinking their staffing models in response to the “increased personnel costs from these mandated changes.”

Many employers have lobbied for a delay in the implementation of the regulations from July 1, 2015 to January 1, 2016, noting that businesses need time to fully understand the regulations and adjust their practices. Still, Healy has firmly stood by the midsummer start date. She has cited the welfare of low-paid workers, stating, “Nearly one million of our most vulnerable, lowest paid workers will be eligible for earned sick time for the first time under this law. We should not make them wait any longer,” in a letter to Sen. Karen Spilka (D-Ashland).

An early opponent of the earned sick time initiative for its “unintended consequences” post passage, Governor Charlie Baker has stated his intent to “enthusiastically implement” the law. While he still feels it is the “the broadest, most restrictive, most comprehensive earned sick time policy in the country by a wide margin” and advocates for more flexible policies, Baker still believes fully in the need for earned sick time. According to Baker, “We’re going to … see where it goes, and I certainly hope that it doesn’t have some of the unintended consequences that I was concerned about.”

Public Comments

The Attorney General’s office announced a series of six public hearings and three listening sessions to be held throughout the state to accept commentary on the proposed regulations. They will also be accepting comments online through June 10, 2015. A full list of the listening sessions and public hearings can be found here, and questions and requests for information can also be submitted to **earnedsicktime@state.ma.us**.

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