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Massachusetts voters recently approved a ballot measure that will allow Massachusetts employees to earn and use sick time under certain conditions. Under the new law, which will take effect on July 1, 2015, employees who work for employers with 11 or more employees will be eligible to earn and use up to 40 hours of *paid* sick time per calendar year, while employees working for smaller employers will be eligible to earn and use up to 40 hours of *unpaid* sick time per calendar year. The law covers both private and public employers and applies to exempt, non-exempt, full-time, part-time, and temporary employees.

The specific requirements of the new law are as follows:

- **Amount of sick time:** Employees will earn 1 hour of sick time for every 30 hours worked and will begin earning those hours on the date of hire or July 1, 2015 (whichever is later). For employees who work 40 hours a week, this equates to approximately 1.3 hours per week or 5.3 hours per month.
- **Use of sick time:** Employees may use their sick time beginning on the 90th day of employment. Employees must make a good faith effort to notify their employer in advance if the need for sick time is foreseeable. Sick time must be used in hourly increments (or the smallest increment that the employer's payroll system uses to account for absences or use of other time, if those increments are smaller than an hour).
- **Carry-over and cap on accruals:** Unused sick time must carry over to the next year, up to a permissible cap of 40 hours.
- **Rate of pay:** Sick time must be paid out at the employee's hourly wage.
- **Purposes of sick time: Sick time may be used in** order **to:** (1) 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) attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or (3) address the effects of domestic violence on the employee or the employee's dependent child.
- **No pay-out for earned sick time upon termination:** Unlike vacation time, employers *are not required* to pay out earned, unused sick time to the employee upon the employee's termination.
- **Employers who already have PTO policies:** An employer that already has a paid leave or paid time off ("PTO") policy is *not* required to provide additional paid sick time as long as its own policy provides as much paid time off, which may be used for the *same purposes* and under the *same conditions*, as the new law. Employers who already have a PTO policy still must comply with the notice, posting, and other requirements of the new law.
- **Make-up time:** If an employee misses work for a reason that makes them eligible for paid sick time, but agrees with the employer to work the same number of hours or shifts in the same or next pay period, the employee does not have to use earned sick time for the missed time, and the employer does not have to pay for that missed time. Employers cannot require such an employee to work additional hours to make up for missed time or to find a replacement employee.
- **Certification:** Employers may require certification of the need for sick time if an employee uses sick time for more than 24 consecutively scheduled work hours. However, employers may not delay the employee's use of sick time or the payment for sick time because they have not yet received the certification.
- **Notice and posting requirements:** The Attorney General will prepare a multilingual notice regarding the right to sick time, and employers are required to post the notice in a prominent location and provide a copy to employees.
- **No discrimination or retaliation:** Employers are prohibited from interfering with or retaliating based on an employee's use of sick time, and from retaliating based on an employee's support of another employee's use of sick time.

As a result of this new law, employers who do not currently provide their Massachusetts employees with sick time must do so by July 1, 2015. Employers with existing PTO or sick time policies should review those policies to ensure they are in compliance with the new law, including the notice and posting requirements. Failure to comply with the new law will subject employers to significant penalties.

Until courts and the Attorney General provide additional guidance, questions about proper implementation of the new law, especially as it relates to existing PTO policies, will no doubt arise. To discuss these issues further or pose questions about this *Alert*, please contact one of the attorneys listed above.

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