

**Labor & Employment Alert**  
**June 2015**

**Earned Sick Time Law Update: Massachusetts Attorney General  
Publishes Notice for Employers and Clarifies Temporary “Safe  
Harbor”**

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Voters in Massachusetts approved the Earned Sick Time Law (the “Law”) in November 2014. Among other provisions, this Law entitles employees to accrue and use up to 40 hours of earned sick time each calendar year.<sup>1</sup> The Law is scheduled to go into effect July 1, 2015. The Attorney General is in the process of drafting and issuing regulations interpreting the Law.

Notice

The Law requires the Attorney General to prepare a notice for employers to post in a conspicuous location in every establishment where employees with rights under the law work. The AG has recently published this Notice, a copy of which can be found here: <http://www.mhtl.com/assets/PDF/est-employee-notice-1.pdf>

Safe Harbor Update

Last month, we notified you that the Attorney General announced a temporary “Safe Harbor” for employers that already provide to employees the right to use at least 30 hours of paid time off during calendar year 2015. On June 10, 2015, the AG issued a new advisory on the Safe Harbor clarifying which employers may be eligible. A copy of this advisory can be found here: <http://www.mhtl.com/assets/PDF/est-safe-harbor-2.pdf>

Specifically, the Attorney General explained that an employer with a policy already in existence as of May 1, 2015 that provides paid time off or paid sick leave will be “deemed in compliance” with the earned sick time law until January 1, 2016, provided that:

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

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<sup>1</sup> The Law does not apply to Cities and Towns unless the Law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of Massachusetts

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2. As of 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 for a lump sum allocation, receive a prorated lump sum allocation of the amount, which may be calculated by cutting it in half for employees who receive coverage effective July 1, 2015 and proportionately reducing it for employees hired after July 1, 2015, and/or providing a lump sum that is “proportionate for part-time employees”;
3. If an employee is not compensated on an hourly basis or salaried basis, the employee must accrue time or receive a lump sum allocation based on a reasonable approximation of hours worked; and
4. 30 hours of paid time off/sick leave or such lesser amounts as are earned by employees under the Safe Harbor must be:
  - a. job protected and subject to the sick leave law’s non-retaliation provisions;
  - b. available for the allowed purposes of the leave under the law; and
  - c. available to the employee after January 1, 2016 if unused during the remainder of 2015.

It is the Attorney General’s position that in all other respects, for the remainder of 2015, employers who are eligible for the Safe Harbor may continue to administer paid time off under policies in place as of May 1, 2015. On or before January 1, 2016, all employers operating under the Safe Harbor must adjust their policy to be in full compliance with the earned sick time law and regulations. Employers with the option to utilize the Safe Harbor may also choose to fully comply with the Law effective July 1, 2015 for all or some of its employees.

As July 1, 2015 approaches, employers are advised to stay on top of additional alerts or clarifications from the Attorney General and carefully review policies for compliance. Final Regulations, which will likely provide additional clarification on many aspects of the law, are expected from the Attorney General soon. Stay tuned for additional Alerts.

***This Client Alert was prepared by Attorney Kier Wachterhauser. If you have any questions about this issue, please contact Attorney Wachterhauser or the attorney responsible for your account, or call (617) 479-5000.***

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