

**Labor & Employment Alert  
June 2015**

**Earned Sick Time Law: Attorney General Issues Final  
Regulations; Law Effective July 1, 2015**

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Voters in Massachusetts approved the Earned Sick Time Law (the “Law”) in November 2014. Among other provisions, the Law entitles employees to accrue and use up to 40 hours of earned sick time each calendar year. The Law is scheduled to go into effect July 1, 2015. Following the issuance of proposed regulations on April 24, 2015, and an extensive comment period, the Massachusetts Attorney General released Final Regulations on June 19, 2015, further clarifying many aspects of the Law and making changes to the proposed regulations. A full copy of the Final Regulations can be found at: <http://www.mhtl.com/assets/PDF/940-cmr-33-00-1.pdf>

The Final Regulations include clarifications and adjustments to provisions regarding the accrual, use and payment of Earned Sick Time, employer size, notice requirements, and rules for requiring medical documentation. The Final Regulations also include clarifications on when employees can make up time instead of using earned sick time and how employers with existing leave policies can keep their own plans while complying with the law.

Some of the important areas of clarification and/or emphasis in the Final Regulations include:

- **Coverage:** Coverage remains broad; covered employers include *all* private and public employers except cities and towns (unless accepted the Law by vote or appropriation) and certain other local public bodies.<sup>1</sup> The definition of covered employees includes *all* employees, including full time, part time, seasonal, temporary, or any other person who performs services for wages or other remuneration. The Final Regulations create exceptions for certain students, as well as adult residents who reside in a Massachusetts licensed program and perform work duties within the program setting as part of bona fide educational or vocational training.
- **Authorized Uses:** The Final Regulations provide that an employee may use earned sick time for the following purposes:

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<sup>1</sup> The Final Regulations clarify that school committees and other local public bodies, such as educational collaboratives, are also excluded from the definition of covered employer unless the law is accepted by that local public body.



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- For the employee to care for his/her child, spouse, parent, or parent of a spouse, who has a physical or mental illness, injury, or medical condition necessitating home care, professional medical diagnosis or care, or preventative medical care;
  - To care for the employee's own physical or mental illness, injury, or medical condition necessitating home care, professional medical diagnosis or care, or preventative medical care;
  - For the employee to attend a routine medical appointment for himself/herself or his/her child, spouse, parent or parent of a spouse;
  - For the employee to address the psychological, physical or legal effects of domestic violence;
  - To travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.
- **Concurrent Use:** The Final Regulations allow earned sick time to run concurrently with FMLA Leave, Parental Leave, Small Necessities Leave, and other statutory leave, where applicable.
  - **Hourly Rate:** The Final Regulations provide guidance on how to calculate the hourly rate for purposes of providing paid sick time, including employees receiving varying hourly rates, the service rate (*e.g.*, wait staff), commission, or those paid on a piece work basis.
  - **Transition Year:** The Final Regulations incorporate the previously announced temporary "Safe Harbor," which provides a reprieve from some of the requirements of the Law for the remainder of the 2015 calendar year for qualifying employers who already maintain certain paid time off policies. See our previous Alert for more information on the Safe Harbor at: <http://www.mhtl.com/assets/Uploads/Earned-Sick-Time-Law-Update.PDF>.
  - **Substitution of More Generous Sick Leave Policies:** The Final Regulations provide more detailed guidance on the substitution of paid time off policies, and clarify certain administrative elements, such as designation of paid time off as earned sick time for multi-use policies, and tracking earned sick time use, accrual, and rollover where employers provide annual, lump sum paid time off.
  - **Break-in-Service:** The Final Regulations provide that following a break in service of up to four months, an employee shall maintain the right to use earned sick time accrued before the break in service; for breaks in service from four to twelve months an employee must have a bank of at least 10 hours of earned sick time in order to be eligible to use previously accrued leave on return to work. A "break in service" is defined as a period of time extending from the date an employee last worked for an employer until the



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employee's return to employment with that employer, whether the separation was voluntary or involuntary.

- **Employee Notice and Certification:** The Final Regulations provide additional details on when and under what circumstances an employer may require notice and certification (documentation) for the use of sick time. The Final Regulations expand when an employer may request certification from an employee to include instances where the absence:
  - exceeds 24 consecutively scheduled work hours;
  - exceeds 3 consecutive days on which the employee was scheduled to work;
  - occurs within 2 weeks prior to an employee's final scheduled day of work before termination of employment, except in cases of temporary employees;
  - occurs after 4 unforeseeable and undocumented absences within a 3-month period; or
  - for employees aged 17 and under, occurs after 3 unforeseeable and undocumented absences within a 3-month period.
- **Employer Notice:** The Final Regulations clarify the employer's responsibility to post and provide notice of the Law to employees. The Final Regulations require employers to provide a hard or electronic copy of the Attorney General prepared Notice (which can be found at: <http://www.mhtl.com/assets/PDF/est-employee-notice-1.pdf>) or include an earned sick time policy or allowable paid time off substitute in an employee handbook or manual.

Employers must carefully review their own policies and/or handbooks to ensure compliance with the Final Regulations and Law, which are both effective July 1, 2015. Given the complexity of certain aspects of the regulatory provisions and Law, consultation with counsel may be prudent.

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

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