

## Massachusetts' New Sick Leave Law: Act Now to Avoid Hidden Traps

Massachusetts voters recently approved a ballot measure that will require employers in the Commonwealth with more than ten employees to provide paid sick time to every employee beginning July 1, 2015. For employers who do not currently provide any paid sick time, implementing the new law will be relatively straightforward: read the law and develop a policy that tracks it. However, most employers already provide employees with significant amounts of paid time off. Those employers must review, and in all likelihood revise, their policies in order to avoid unintended violations of the new law.

Under the new law, an employer that provides employees paid time off under a "paid time off, vacation or other paid leave policy" does not need to provide additional paid sick time so long as the employer "make[s] available an amount of paid time off sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under" the new law. While the intent of this provision is to avoid additional mandates to employers already providing paid time off, most existing policies will need to be adjusted in some respect in order to comply with the new law. Some existing policies may be more difficult than others to conform to the new law.

A policy must meet three elements in order to comply with the new law. First, it must provide an amount of paid time off sufficient to meet the accrual requirements of the new law. Under the new law, an employee earns one hour of paid sick time for each 30 hours worked, up to 40 hours of paid sick time per calendar year. Accrual begins on the date of hire (or July 1, 2015, whichever is later). Exempt employees are assumed to work 40 hours per week and therefore accrue 1 and 1/3 hours per work week. Employees may carry over up to 40 hours of unused sick time each calendar year. An employer with an existing paid time off policy, therefore, must ensure that each employee has sufficient paid time off to equal or exceed what he or she would have earned under the Massachusetts law.

Second, the time off must be available for the same purposes as the paid time off under the law. The law provides four separate qualifying purposes: (1) to care for a close family member (child, spouse, parent, or parent of spouse, as defined in the law) with an illness; (2) because of the employee's own illness; (3) to attend routine medical appointments for the employee or the employee's family member; or (4) to address the psychological, physical or legal effects of domestic violence. Some

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

Susan J. Baronoff

Michael Colgan Harrington

Lauren M. Hopwood

William J. Keenan, Jr.

Hugh F. Murray, III

Lissa J. Paris

Rachel Faye Smith

Barry J. Waters

Jennifer A. Corvo

Stella Szantova Giordano

Colleen O'Neill

Monica P. Snyder

Kristen L. Zaehring

employers currently provide significant amounts of paid time off, but limit the use by category. Some sick time policies, for example, apply only to the employee's own illness. An employer in Massachusetts must review its policy to ensure that there is sufficient time available for the specific purposes listed and, if there is not, change the policy so that there is.

Finally, an employer's policy must provide leave "under the same conditions" as earned paid sick time under the new law. An employee under the new law may use up to 40 hours of accrued leave in each calendar year, beginning on the 90th day of his or her employment. Employers that use some period other than a calendar year may need to carefully track leave usage or change its policy. Employees may use paid sick time under the law in the smallest increment used by the employer's payroll system. Thus, sick time could be used in increments of 15 minutes if that is how the payroll system works. Employer will need to modify policies that require time to be used in longer increments – hours, days, weeks – to allow use in smaller increments. Under the law, employers may only request certification from a health care provider if the employee uses more than 24 consecutive hours of sick time. Therefore, employers need to examine existing sick time practices to conform to the new law.

In adjusting old policies to reflect the new paid sick leave law, employers must also consider other laws, such as the Massachusetts Small Necessities Leave Act, the Massachusetts Domestic Violence Leave Act, and the federal Family Medical Leave Act. Moreover, employers with employees who are represented by a union may not make changes to terms and conditions of employment – including paid time off policies - unless they first bargain with the union and reach either agreement or, in the absence of a collective bargaining agreement, impasse. Such bargaining may take some time, so unionized employers should start this review immediately.

Employers with existing policies that provide employees with paid time off have at least as much work to do between now and July 1, 2015 as do employers with no existing paid time off at all. Although it is possible that the Legislature will fine tune the law and the Attorney General will issue regulations under the law before July 1, 2015, the time to start a review is now.

Please contact Susan J. Baronoff at 617.457.4031 or [sbaronoff@murthalaw.com](mailto:sbaronoff@murthalaw.com) or Hugh F. Murray, III at 860.240.6077 or [hmurray@murthalaw.com](mailto:hmurray@murthalaw.com) if you have any questions concerning the issues discussed in this article.