

# Massachusetts Sick Time Law: How This Statute Affects All Employers

By Dave Robinson on November 11, 2014



Last Tuesday, Massachusetts voters approved a ballot petition requiring employers to provide sick time to their employees. Given that many employers already provide employees with some form of paid time off (PTO) benefits, there is a temptation to simply ignore the requirements of this statute. However, the Sick Time Law will affect virtually all employers, requiring, at a minimum, a change in policies. This will provide basic answers regarding compliance with the statute and identify some potential pitfalls for employers.

## Who must comply with the Sick Time Law?

As of July 1, 2015, all employers with 11 or more employees must provide up to 40 hours of paid sick leave to all of their employees (employers with less than 11 employees must provide up to 40 hours of unpaid sick time). In determining the number of employees, all employees (full-time, part time and seasonal) are counted. Unlike most employment statutes, there appears to be no distinction between the status of employees (e.g., under Family and Medical Leave Act, part time employees are counted pro rata based on the amount of time they work). Rather, to determine whether the statute applies, all employees are counted equally.

## How does sick leave accrue?

Sick leave accrues 1 hour for every 30 hours worked by the employee. For exempt employees, it is assumed that they work 40 hours per week for accrual purposes. Accrual begins from the date of hire, provided that the employee shall not be entitled to use accrued sick time until the 90<sup>th</sup> calendar day following commencement of employment. Employees may carry over unused sick time into the next year, but cannot use more than 40 hours of sick time in a year. Unlike vacation time, employers are not required to pay out accrued but unused sick time upon the separation of employment.

## What can sick leave be used for?

An employee is entitled to use sick time to: (1) care for the employee's child, spouse or parent, or parent of a spouse, who is suffering from a physical or mental illness, injury or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; (2) care for the employee's own physical or mental illness, injury or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; or (3) attend a routine medical appointment for themselves or their child, spouse, parent, or spouse's parent; or (4) address the psychological, physical or legal effects of domestic violence.

## In what increments can sick leave be used?

Employees can use sick time in the smaller of hourly increments or the smallest increment

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that the employer's payroll system uses to account for employee absences. For example, if the employer can measure employee absences in half-hour increments, it must allow the employee to utilize sick time in the same fashion.

#### **Does the statute provide any protections for the employee?**

If an employee is absent from work for any of the covered reasons listed above, an employer cannot require the employee make up the time or make the employee find a replacement to cover the hours. Further, an employer cannot deny or otherwise interfere with an employee taking covered sick leave (i.e. taking the leave into account for discipline, termination, promotions, wage increases, etc.). Finally, the statute has an anti-retaliation provision which makes it unlawful for an employer to take any adverse action against an employee for complaining about violations of the Sick Time Law or assisting another employee in exercising their rights under the statute.

#### **Can an employer verify an employee's use of sick leave?**

An employer may require certification from a health care provider when the sick leave covers more than 24 consecutive work hours. For example, if an employee misses three consecutive 8 hour shifts, the employer has the right to request a certification justifying the absence. An employer may not delay the taking of sick time on the basis that the employer has not received the certification. Additionally, an employee is not required to provide documentation explaining the nature of the illness to the employer, even when required to provide a certification. Any reasonable documentation signed by a health care provider indicating the need for sick leave is acceptable under the statute.

#### **Is an employee required to provide advance notice to the employer to use sick leave?**

When the use of sick time is reasonably foreseeable, the employee shall make a "good faith" effort to provide notice to employer in advance of the use of earned sick time.

#### **How does this statute affect employers that already provide PTO?**

If an employer offers at least 40 hours of PTO, allowing employees to utilize such PTO for sick leave consistent with the statute will likely suffice. However, employers should be aware that certain policies regarding the exercise of sick leave may now be prohibited under the Sick Time Law. For instance, the Sick Time Law appears to prohibit employers from requiring a certification to substantiate the use of sick time short of a 24 hour consecutive period of leave. Additionally, rigid application of a "No Show/ No Call" policy (i.e. discipline for failing to call in prior to their shift) may also violate the statute if the employee can demonstrate that the use of sick time was not reasonably foreseeable or he/she made a "good faith" effort to provide notice. Finally, incentive benefits provided to employees under a perfect attendance policy may violate the statute if the employer counts the use of sick leave as an absence. Accordingly, it is important for employers to review their policies and practices regarding the use of sick time, even if PTO for sick leave is already provided.

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