

[Back to web Version](#)

## Earned Sick Leave Becomes Law in Massachusetts

November 5, 2014



On November 4, 2014, Massachusetts voters passed a ballot measure to provide earned paid sick leave to employees. Effective July 1, 2015, employers with more than 10 employees will be required to allow all employees who work in Massachusetts to accrue and use up to 40 hours of paid sick leave per calendar year. Employers with 10 or fewer employees will be required to allow their employees to earn and use up to 40 hours of unpaid sick leave.

However, employers that already provide their employees paid time off under a paid time off, vacation, or other paid leave policy are not required to provide any additional paid sick time under this law, provided they permit employees to use at least 40 hours per calendar year for the purposes covered under the law. Furthermore, this law *does not* override any employer's obligations under any collective bargaining agreement, contract, or benefit plan with more generous provisions.

Employees can use earned sick leave, whether paid or unpaid, to:

- 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;
- attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or
- address the effects of domestic violence on the employee or the employee's dependent child.

### How Is The Time Earned?

Employees will earn a minimum of one hour of sick leave for every 30 hours worked starting on July 1, 2015 or from their date of hire (whichever is later), up to a maximum of 40 hours per calendar year. Employees are not entitled to use their accrued earned sick time for the first 90 days of their employment.

As with the Family and Medical Leave Act, employees may use their earned sick leave intermittently, either in hourly increments or the smallest increment in the payroll system for absences.

Employees are permitted to carry-over up to 40 hours of earned but unused sick leave into the next calendar year. Unlike vacation and other paid time off, employers *are not* required to pay employees for accrued but unused sick leave upon separation from employment.

You may require medical certification of the need for earned sick leave if your employee is absent for more than 24 consecutively scheduled work hours, but you may not delay or deny sick leave because you have not received medical certification. When the need for leave is foreseeable, employees must make a good faith effort to provide advance notice of their leave.

### What Are Employees' Rights?

Employers are prohibited from interfering with an employee's right to earned sick leave or retaliating against an employee who requests earned sick leave. Employers are also prohibited from retaliating against an employee based on the employee's support of another employee's exercise of such rights. In addition to enforcement by the Massachusetts Attorney General, employees who believe their rights under this act have been violated will have a private right of action to sue their employers. The Attorney General is required to create a notice poster informing

employees of their rights and responsibilities under this law. The Attorney General will also prescribe all employers' obligations to make, keep, and preserve records concerning earned sick time.

### **What Should A Massachusetts Employer Do?**


In anticipation of these changes, Massachusetts employers should review their paid time off, vacation, or other paid leave policies to determine whether they will have to implement earned sick leave for any of their employees. You should also inform your managers and supervisors the company's new policy changes and advise them of their added responsibilities.

Also consider revising your employee handbooks to account for these changes and be on the look-out for the poster issued by the Massachusetts Attorney General.

If you have any questions about this new law please contact the Fisher & Phillips attorneys in the Boston office at (617) 722-0044.

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*This Legal Alert provides an overview of a specific new Massachusetts state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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