**Massachusetts Earned Sick Time Law:**

**Updates to Support Your Compliance**

The Massachusetts Earned Sick Time Law (“MESTL”) went into effect on July 1, 2015. To guide employers’ compliance with this new law, the Massachusetts Office of the Attorney General (AG) has recently issued a number of important items, including (1) Final Regulations, codified at 940 CMR 33; (2) a Notice for distribution to employees; (3) Safe Harbor Notice regarding employer compliance during the 2015 transition year; and (4) Sample Massachusetts Earned Sick Time Policy. We recommend that all employers with employees in Massachusetts review their existing paid time off policies to ensure their compliance with the new law.

**Overview of New Law**

Effective **July 1, 2015**, all private sector employers in Massachusetts are required to provide *all*employees (including part-time and temporary employees) with up to 40 hours of sick leave per benefit year.  Employers with 11 or more employees must provide*paid* sick leave; while employers with fewer than 11 employees must provide*unpaid* sick leave. Sick time under the MESTL is available for the employee’s own illness or injury; to care for a child, parent or spouse with an illness or injury; to travel to and attend routine medical and dental appointment for employee or for child, parent or spouse; or to address psychological, physical or legal effects of domestic violence.

**Safe Harbor Through December 31, 2015**

Because the law became effective in the middle of the calendar year, the AG’s safe harbor announcements will be helpful for employers that already had a paid time off (PTO) policy in place as of May 1, 2015, provided they meet certain requirements.

On May 18, 2015, the AG issued an initial Safe Harbor Notice announcing that for the period between July 1 and December 31, 2015 (transition year), an employer will be in compliance with the Earned Sick Time Law provided that:

* The employer has a paid time off (PTO) policy as of May 1, 2015;
* PTO policy provides employee the right to use at least 30 hours of paid time off in 2015 calendar year; and
* Any paid time off used by employee (including sick time) from July 1, 2015 through December 31, 2015 must be job protected leave subject to the law’s non-retaliation and non-interference provisions.

By way of clarification, a paid time off policy that will satisfy this safe harbor may include a variety of different policies (or combination of such policies), such as a vacation policy, a sick leave policy or what is commonly referred to as a “PTO policy” that provides employees with a bank of time off for various purposes.  Such policies may accrue the paid time off over time and/or be frontloaded at the beginning of the year.

On June 10, 2015, the AG issued an updated Safe Harbor Notice to address the safe harbor’s applicability to part-time, temporary and other employees who may not be covered by an existing PTO policy. The AG clarified that these employees may also be covered by the safe harbor if, on or after July 1, these employees: (1) accrue paid time off at the same rate as covered full-time employees; or (2) if the policy provides for lump sum allocations, such employees “receive a prorated lump sum allocation based on the provision of lump sum paid time off/sick leave to covered full-time employees.”

The safe harbor will permit employers to administer their PTO policy for the second half of the 2015 calendar year consistent with existing policy, and an employer can wait until January 1, 2016 to revise its policy, if necessary, to comply with all of the provisions of the Earned Sick Time Law.  As highlighted by the updated Safe Harbor Notice, if an employer’s existing policy does not include temporary and part-time employees, employer should evaluate how to provide earned sick time for these employees as well

**Final Regulations**

On June 19, 2015 -- just a few weeks prior to the July 1, 2015 effective date of the new law -- the AG issued final regulations interpreting many aspects of the new law. The regulations provide helpful guidance on the new law, which will be useful to employers who are revising and creating new sick time and paid time off policies.

Below are some highlights of the final regulations:

 **Which employers must provide *paid*sick leave?**

* Employers must provide **paid** sick time to eligible employees if the employer maintained an average of 11 or more employees on the payroll during the preceding benefit year.
* When calculating employees to determine paid vs. unpaid sick time, employer should count all employees, including full-time, part-time, seasonal and temporary, and regardless of whether or not employees working in Massachusetts.

**Which employees are eligible for earned sick leave?**

* Employees are eligible for earned sick leave if the employee’s “primary place of work is in Massachusetts”, even if the employee spends less than 50% of time working in Massachusetts and even if the employer is headquartered or located outside of Massachusetts.
* For example, if an employee works 40% of time in Massachusetts, 30% of time in New Hampshire and 30% of time in other states, Massachusetts is the primary place of work.
* If an employee is eligible for earned sick leave in Massachusetts, all hours worked may be applied to accrual, even those hours worked outside of Massachusetts.

 **How is sick leave accrual calculated?**

* Employers must provide all employees with a minimum of one hour of sick leave for every 30 hours worked, including overtime – up to a maximum of 40 hours per “calendar year”.
* A “calendar year” may be any consecutive 12-month period of time as determined by the employer. The “year” may be January 1-December 31, a tax year, fiscal year, contract year or year running from employee’s hire date, and the AG advises that it will be helpful to use the same year used for determining wages and benefits.
* Exempt employees are assumed to work 40 hours in each workweek unless their jobs specify a lower number of hours per week (e.g. part-time exempt employee).
* Employees accrue earned sick time only on hours worked, and not on hours paid when not working, e.g. paid vacation time.

**In what increments may employees use earned sick time?**

* Employees are entitled to use earned sick time in hourly increments or smaller increments if the employer uses an increment smaller than one hour to account for absences or use of other time.
* If an employee’s absence at a specific time requires an employer to hire a replacement or call in another employee and the employer does so, the employer may require the employee to use an equal number of hours as the replacement or call-in employee works, up to a full shift of earned sick time. If the employee lacks sufficient accrued earned sick time to cover such time away from work, the employer must provide sufficient job-protected unpaid leave to make up the difference in the shift.

**What if employer has another paid leave or PTO policy?**

* Employers may have their own sick leave or paid time off policies so long as employees can use at least the same amount of time, for the same purposes, under the same conditions and with the same job protections as provided in the MESTL. Specifically:
	+ Accrual at the rate of no less than one hour for every 30 hours worked;
	+ Pay at the employee’s same hourly rate;
	+ Access for all uses authorized under the MESTL;
	+ Availability under the same conditions of notice and documentation; and
	+ Extension of same job protections.
* Employers may provide employees with a lump sum of 40 hours or more of paid sick leave or paid time off at the beginning of each benefit year, and if employer front loads the paid sick leave it does not need to track accrual or allow any rollover to following year, provided that leave is otherwise consistent with the MESTL.
* Employers may have different paid leave policies for different groups of employees, so long as all employees can use at least the same amount of time, for the same purposes, under the same conditions and with the same job protections as provided in the MESTL. For example, employees working more than 20 hours per week may receive 80 hours of paid time off per benefit year, while temporary employees and employees working fewer than 20 hours may accrue earned sick time at the rate of one hour for every 30 hours worked.
* Employers may have an unlimited sick leave policy and are not required to track accrual of sick leave or allow any rollover, provided that such sick leave is otherwise consistent with the MESTL.

**When may employer require written documentation from health care provider for use of earned sick time?**

* Employer may require written documentation for use of earned sick time if sick leave:
	+ exceeds 24 consecutively scheduled work hours;
	+ exceeds 3 consecutive days on which employee scheduled to work;
	+ occurs within 2 weeks prior to employee’s final scheduled day of work before employment termination, except in case of temporary employee;
	+ occurs after 3 unforeseeable and undocumented absences within a 3- month period; or
	+ for employees 17 and under, occurs after 3 unforeseeable and undocumented absences within a 3-month period

If you have any questions or would like assistance reviewing your employee policies or handbooks, please contact one of the members of our employment law team:

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