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CLIENT ALERT

MANDATORY EARNED SICK TIME IS THE LAW OF THE LAND IN MASSACHUSETTS

For Massachusetts employers, Election Day 2014 brought a significant change – one that will impact employee leave policies and personnel manuals across the Commonwealth. By ballot initiative, Massachusetts has adopted a broad right of employees to accrue earned sick time. In the case of organizations with 11 or more employees, the new right is to paid sick time; for smaller entities, the leave is unpaid.

Although the new requirements do not take effect until July 1, 2015, it would be wise to review your policies and make any necessary changes before January 1, 2015. In short, unless your existing policies are more generous than the benefits outlined below, you will need to revise your employee handbook and adopt new policies.

Although we await regulations from the Attorney General that may answer some open questions, we wanted to share with you what we know:

1. Paid or Unpaid. If your employee headcount (including full-time, part-time and temporary workers) is 11 or more, the new mandated sick time is paid. For employers with 10 or fewer employees, sick time is unpaid.
2. Accrual of Earned Sick Time. Employees will earn (or “accrue”) one hour of sick leave for every 30 hours worked up to a maximum of 40 hours of sick leave in a calendar year. Accruals will begin on July 1, 2015. However, sick leave may not be used until an employee has worked for 90 days.
3. Using Earned Sick Time. Employees may use up to 40 hours of earned sick time in a calendar year. It may be used in hourly increments or in the smallest increment that your payroll system uses to account for absences. Whether an employee’s status as “overtime exempt” is imperiled by partial-day absences under this, as well as the interplay with the Family and Medical Leave Act (FMLA), are among the open questions.

Notably, earned sick time may be used for a wider range of reasons than those specified in the FMLA. Under the new Massachusetts law, grounds for taking sick time include the employee's or a close family member's physical or mental illness, injury or medical condition that requires medical or "home care," and even "preventative medical care".

Moreover, the law covers time off for routine medical appointments and for addressing the physical, psychological and legal effects of domestic violence.

4. Carrying Over Sick Time to a New Year. Although employees are not entitled to use more than 40 hours in one calendar year, they may carry over up to 40 hours of unused earned sick time to the next calendar year. Thus, an employee could start a new calendar year with a "sick time bank" from the prior year that would be available for use immediately.
5. Medical Documentation. For sick leave exceeding three days, an employer may request "reasonable" medical documentation but may not require information regarding the nature of the illness. Moreover, an employer may not delay an employee's taking of, or payment for, earned sick time because of a failure to provide the requested documentation.
6. Retaliation. The new law includes a broad prohibition against action that would "interfere with, restrain, or deny" the exercise of, or the attempt to exercise, any rights provided under the law.
7. No Payment at Termination. Accrued unused sick time does not have to be paid upon termination of employment. This contrasts with accrued unused vacation time which is considered a form of wages and must be paid upon termination.
8. Posting Notices. The new law requires the Attorney General to prepare a notice for employers to post in their workplaces "in a conspicuous location accessible to employees in every establishment where employees with rights under this section work". The law also requires postings at health care facilities, child care centers, and schools.
9. PTO Policies. The law allows employers with Paid Time Off policies covering all types of paid leave (sick, vacation, personal days) to maintain their policies as long as the policies provide the minimum rights under the new law. However, the new law may complicate an employer's effort to limit the amount of PTO carried over by employees to the next calendar year.

Your top priority should be to review existing sick leave or PTO policies to determine whether they need to be changed to comply with this new mandate. Before July 2015, you will also need to train managers, supervisors and human resources administrators about the requirements of the law, particularly in view of the new mandate's considerably more expansive definition of "sick time" than the FMLA, and because employers will have less leverage to require medical documentation. Finally, if your employees accrue sick leave on a calendar-year basis, any necessary changes to your policy should be made before January 1, 2015.

For questions or assistance with policy revisions or training, feel free to contact Paul Holtzman at pholtzman@kb-law.com or Anjali Waikar at awaikar@kb-law.com.