

# Model Massachusetts Earned Sick Leave Policy

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The Massachusetts earned sick leave law<sup>1</sup> went into effect on July 1, 2015. The law requires employers to give their Massachusetts employees the chance to earn and use sick leave each year. We recommend the following sick leave policy as a starting point, modified as necessary to match your needs and your existing leave programs.

## Earned Sick Leave

All employees of the Company whose primary place of work is Massachusetts<sup>2</sup> are eligible to accrue paid sick leave.<sup>3</sup> Eligible employees begin to accrue sick leave on their first day of work and may begin using accrued leave after they have been employed for 90 days. Sick leave accrues at a rate of 1 hour per 30 hours worked.<sup>4</sup> Full-time salaried employees are presumed to work 40 hours per week for accrual purposes, unless their job specifies a lower number of hours per week. Employees can accrue and use a maximum of 40 hours of sick leave per benefit year. No more than 40 hours of earned, unused sick leave may be carried over from one benefit year to the next.<sup>5</sup> An employee who has 40 hours of accrued sick leave will not accrue additional leave until some is used. Sick leave is paid at the employee's current regular pay rate, on the same schedule as regular wages are paid, and does not include commissions, bonuses, overtime, holiday pay, or any other premiums.<sup>6</sup>

An employee may use sick leave to:

- 1) Care for the employee's child, spouse, parent, or spouse's parent 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;
- 3) Attend the employee's routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or spouse's parent;
- 4) Address the psychological, physical or legal effects of domestic violence; or
- 5) Travel to and from an appointment, pharmacy, or other location related to the purpose for which the sick leave was taken.

Employees may use earned sick leave in hourly increments.<sup>7</sup> Any sick leave taken will run concurrently with time off provided under other state and federal laws that allow employees to take leave for the purposes listed above.

Employees must give the Company notice of any use of sick leave.<sup>8</sup> For pre-scheduled or foreseeable absences, employees must give notice seven days in advance. If the need for sick time is unforeseeable, employees must report this need as soon as is practicable by telephone call or email to the employee's manager or supervisor.

If an employee is unable to provide notice personally, the employee's spouse, adult family member, or other responsible representative may provide notice. For multi-day absences from work, employees must notify the Company of the expected duration of the leave or, if unknown, provide notice on a daily basis. Sick leave will not excuse lateness for work unless used for an allowable purpose listed above.

The Company will never request documentation to explain the nature of an illness or the details of any domestic violence for which an employee has taken leave under this provision. If an employee receives such a request from a manager or supervisor, the employee should not respond to the request and should report it to HR. The Company may, however, require employees to submit written verification that they have used earned sick time for allowable purposes. When an employee's use of earned sick time results in an absence of more than 24 consecutive work hours (or three consecutive work days), the Company may also require a written certification from the employee's health care provider that he or she used sick time for an allowable purpose.<sup>9</sup> In addition, the Company may require certification from a health care provider for sick leave taken within two weeks of an employee's scheduled termination date or after four unforeseeable and undocumented absences within a three-month period.

If an employee is absent for more than 24 consecutive work hours for reasons related to domestic violence, the Company may request documentation concerning the need for earned sick time. In such cases, the employee may provide:

- A restraining order issued by a court;
- A police record documenting the abuse;
- Documentation that the perpetrator of the abuse has been convicted of assault, battery, rape or another "crime against the person" under Massachusetts law, where the victim was a family or household member;
- Medical documentation of the abuse;
- A statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee in addressing the effects of the abuse; or
- A signed written statement from the individual attesting to the abuse.

The Company will not disclose any evidence of domestic violence without the consent of the employee.

If the Company requires certification or documentation concerning the use of earned sick leave, the employee must provide it within seven days of the sick leave for which such certification or documentation is required. If the employee fails to do so, without reasonable justification, the Company may recoup the amount paid for earned sick leave from the employee's future pay. The Company may also delay or deny the future use of an equivalent amount of earned sick time until such certification or documentation is provided.

Any employee who misuses earned sick leave by taking it for a purpose that is not consistent with the allowable

purposes listed above will be subject to discipline up to and including termination. The Company will not base any adverse employment action, including denying use or delaying payment of earned sick leave, on an employee's lawful use of sick leave.

No payment will be made for earned, unused sick leave upon separation from employment.<sup>10</sup>

If you have any questions on how to customize this policy for your company's needs, please contact a member of [Locke Lord's Labor & Employment Practice Group](#).

#### Endnotes

- 1 G.L. c. 149 § 148C.
- 2 An employee's primary place of work is in Massachusetts if he or she does more work in Massachusetts than anywhere else. All hours worked count toward accrual of sick leave, regardless of where the work took place.
- 3 Employers with fewer than 11 employees may provide unpaid sick leave. All of an employer's employees count toward this total, whether or not they are in Massachusetts.
- 4 Employers may deviate from this statutory accrual rate under certain circumstances, such as if they allow unlimited sick leave or allocate lump sums of sick leave on a schedule specified by the Attorney General.
- 5 Upon returning to work after a "break in service" of up to four months, an employee retains any unused earned sick time accrued before the break. If the break is between four and 12 months, an employee retains sick leave only if the accrued amount exceeds 10 hours. After a break of more than 12 months, a returning employee loses any unused earned sick time but does not need to restart the 90-day waiting period.
- 6 When determining an employee's regular pay rate, special rules apply to employees paid on commission, employees whose hourly rate varies by task or shift, tipped employees, and employees who work on a piece work or fee-for-service basis.
- 7 After the first hour of sick leave, employers with payroll systems that account for time in increments smaller than one hour must allow employees to use sick leave in those smaller increments. In certain circumstances, however, an employer can require an employee to use up to a full shift of sick leave.
- 8 Employers are required to maintain a reasonable notification system for employees to use when giving notice of sick leave.
- 9 The law allows employees who do not have health care coverage to sign a written statement themselves.
- 10 Upon returning to work after a "break in service" of up to four months, an employee retains any unused earned sick time accrued before the break. If the break is between four and 12 months, an employee retains sick leave only if the accrued amount exceeds 10 hours. After a break of more than 12 months, a returning employee loses any unused earned sick time but does not need to restart the 90-day waiting period.

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#### About the Author



Will Dunham's practice focuses on labor and employment law and litigation. He represents employers in all phases of litigation in state and federal court, defending clients against discrimination, wage-and-hour, and retaliation claims under state and federal law. He also has extensive experience litigating non-compete and trade secret issues. In addition to litigation, Will has handled numerous matters for employers before state and federal administrative agencies.