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Client Update

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Massachusetts' Mandatory Sick Pay Law Takes Effect July 1, 2015 – Full Compliance Deferred for Certain Employers Until January 1, 2016

As noted in a previous E-Alert from our firm, on November 4, 2014, Massachusetts voters approved a mandatory sick pay law. Although this law takes effect July 1, 2015, the Attorney General has provided a safe harbor for certain employers until January 1, 2016. The safe harbor protects employers who have a paid time off/sick pay policy of at least thirty hours per year in place before May 1, 2015. In addition, on and after July 1, 2015, all employees not previously covered by such a policy, including part-time employees, new employees, and per diem employees, must also be entitled to time off under the policy at the same rate of accrual as full time employees. Notwithstanding the six month safe harbor provision, all employers are still subject to the anti-retaliation/job protection provisions as of July 1, 2015. As of January 1, 2016, all employers must comply with all aspects of the new paid sick leave law as summarized below.

Notwithstanding the six month safe harbor for some employers, all employers must post the required Notice prepared by the Attorney General, in a conspicuous location accessible to employees, and must provide a copy to their employees. We also recommend that for those eligible employers who want to take advantage of the six month safe harbor period, they post a second Notice explaining the six month transitional safe harbor period.

This law does not override employers' obligations under any contract or benefit plan with more generous provisions than those in the law. Employers that have their own policies providing at least as much paid time off, usable for the same purposes and under the same conditions as this new law, are not required to provide additional paid sick time.

Summary of Law

Employees who work for employers having eleven or more employees can earn and use up to 40 hours of job protected paid sick time per calendar year, while employees working for smaller employers can earn and use up to 40 hours of job protected unpaid sick time per calendar year.

Employees must earn at least one hour of sick time for every 30 hours worked, and begin

accruing those hours on the date of hire or on July 1, 2015, whichever is later. Employees can begin to use earned sick time on the 90th day after hire.

An employee can use earned sick time if required to miss work in order (1) 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; (2) to attend routine medical appointments of the employee or the employee's child, spouse, parent, or parent of a spouse; or (3) to address the effects of domestic violence on the employee or the employee's dependent child.

Employees must make a good faith effort to notify an employer in advance if the need for earned sick time is foreseeable. Employers may require up to 7 days advance notice for planned or foreseeable leave. Reasonable notice may include compliance with an employer's reasonable notification system that the employee customarily uses to communicate with the employer for absences or requesting leave.

Employers may require certification of the need for sick time if an employee uses sick time for more than 24 consecutively scheduled work hours. Employers cannot delay the taking of or payment for earned sick time because they have not received the certification. However, if an employee fails to submit certification or documentation within 30 days of taking earned sick time for which certification or documentation is required and there is no reasonable justification for the failure to comply, future use of earned sick time may be delayed or denied until the certification or documentation is provided.

Employers are prohibited from interfering with or retaliating based on an employee's exercise of earned sick time rights, and from retaliating based on an employee's support of another employee's exercise of such rights.

If you have questions about this new law or need assistance drafting a policy in compliance with this law, please contact Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com).