

MASSACHUSETTS

EARNED PAID SICK TIME

An employee can accrue **one hour of paid sick time for every 30 hours worked**, beginning their first day of employment or July 1, 2015, whichever is later.

90-Day Vesting Period

Employees can begin to use earned sick time 90 days following their first date of actual work with the company, regardless of the number of days worked during the 90-day period.

Employees who have been employed for at least 90 days as of July 1, 2015, meaning their first dates of actual work occurred on or before April 2, 2015, may use earned sick time as it accrues.

Employee is **limited to 40 hours of sick time being taken in one calendar year**.

An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Massachusetts regardless of the location of the employer.

If an employee is eligible to accrue and use earned sick time, then all hours the employee works must be applied toward accrual of earned sick time regardless of the location of the work and regardless of the location of the employer.

Eligible employees permanently transferred to another state but remaining with the same employer will no longer accrue earned sick time but may use their accrued time.



EFFECTIVE: 7/1/2015

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.

Paid Sick Leave – Use of

- Care for the employee's child, spouse, or parent of a spouse, 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; or
- 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; or
- Attend a routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse;
- Address the psychological, physical or legal effects of domestic violence as defined by the law; or
- Travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

Family Member

- Child (biological, adopted, or foster child, stepchild, legal ward, or a child of a person who as assumed the responsibilities of parenthood (a child of an employee standing in loco parentis);
- Parent (biological, adoptive, foster or step-parent of an employee or of an employee's spouse; or other person who assumed the responsibilities of parenthood when the employee or employee's spouse was a child
- Spouse (the meaning given this term by the marriage laws of the commonwealth)

If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for earned sick time, an employer may discipline the employee for misuse of sick leave.

Paid Sick Leave – Use of (Cont.)

Note: An employee may not use earned sick time if the employee is not scheduled to be at work during the period of use.

If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of earned sick time, unless the employee provides verification of authorized use.

Paid Sick Leave – Employee Notice Requirement

- Employee must be eligible and accumulate sick time before requesting use of sick leave.
- An employee may request paid sick days in writing or verbally.
- If the need for paid sick leave is foreseeable or pre-scheduled, the employee shall make a good faith effort to provide notice of this need to the customer **and** the company branch representative by providing up to seven days' notice, except where the employee learns of the need to use earned sick time within a shorter period.
- If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for paid sick leave to the customer **and** the company branch representative as soon as practicable.
- For multi-day absences, the employer requires notification to the customer **and** the company branch representative of the expected duration of the leave or, if unknown, then on a daily basis from the employee or the employee's surrogate (e.g., spouse, adult family member or other responsible party), unless the circumstances make such notice unreasonable.
- Employer may seek verification of authorized use from a parent or guardian if they have reasonable suspicion that an employee, age 17 and under, is misusing earned sick time, unless verification would create a health and safety risk or hardship to the employee.

Documentation of Use of Earned Sick Time May be Requested:

Within seven days after taking the earned sick time, an employer may require written documentation (signed by a health care provider indicating the need for the earned sick time taken—but no documentation is required to explain the nature of the illness or the details of the domestic violence) for an employee's use of earned sick time that:

- a) Exceeds 24 consecutively scheduled work hours;
- b) Exceeds 3 consecutive days on which the employee was scheduled to work;
- c) Occurs after 4 unforeseeable and undocumented absences within a 3-month period; or
- d) For employees aged 17 and under, occurs after 3 unforeseeable and undocumented absences within a 3-month period

If the employee does not have health care coverage, employees may provide a signed, written statement evidencing the need for the use of the earned sick time, without being required to explain the nature of the illness.

Note: If an employee fails to provide the documentation in a timely manner, without reasonable justification, the employer may recoup the sum paid for earned sick time from future pay, as an overpayment or the employer may deny the future use of an equivalent number of hours of accrued earned sick time until documentation is provided, but may not otherwise take adverse action.

Paid Sick Leave – Accrual

- The rate of pay for “paid sick days” shall be the employee’s regular hourly rate.
- For employees who receive different pay rates for hourly work from the same employer, the same hourly rate means: the wages the employee would have been paid for the hours absent during use of earned sick time if the employee had worked.
- The same hourly rate shall NOT include:
 - Commissions, bonuses, or other incentive pay based on sales or production
 - Overtime, holiday pay, or other premium rates (not referring to shift differentials)
- Employees who are exempt from overtime requirements shall be assumed to work 40 hours in each week unless their normal work week is less than 40 hours, in which case earned sick time shall accrue and the same hourly rate shall be calculated based on the employee’s normal work week.
- Employees accrue earned sick time on all hours worked at a rate of one hour of earned sick time for every 30 hours worked, including overtime hours, up to a cap of 40 hours per calendar year.
- Employees accrue earned sick time only on hours worked, not on hours paid when not working. For example, employees do not accrue earned sick time during vacation, paid time off, or while using earned sick time.
- The smallest amount of sick time an employee can use is one hour. For uses beyond one hour, employees may use earned sick time in hourly increments or in the smallest increment the employer’s payroll system uses to account for absences or use of other time.
- Once the employees have accrued 40 hours of earned sick time during the calendar year, they do not continue to accrue more hours of earned sick time regardless of the additional hours they work.
- Once an employee possesses a bank of 40 hours of unused earned sick time, further accrual will be delayed until the employee draws down the bank of earned sick time to below 40 hours.
- Employees can carry over 40 hours of unused sick time to the next calendar year, but cannot use more than 40 hours in a calendar year if the employee works sufficient hours to earn the time.

Note: If an employer has a paid leave policy, such as PTO or vacation policy, that makes available to employees leave that may be used for the same purposes specified in regulations (or for any purpose) and that is sufficient to meet the regulation’s requirements for paid sick leave accrual, then it is not required to provide additional paid sick leave.

Employees Should be Aware:

- Earned sick time may not be invoked as an excuse to be late for work without an authorized purpose under M.G.L. c 149, § 148C.
- An employee may not accept a specific shift assignment with the intention of calling out sick for all or part of that shift.
- Where an employee’s use of earned sick time requires the 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 sick time to cover such time away from work, the employer must provide sufficient job-protected unpaid leave to make up the difference in that shift.

Break in Service Rules

Break Period	Employees Shall Maintain
Up to Four Months	The right to use any unused earned sick time accrued before the break in service
Between Four and 12 Months	The right to use earned sick time accrued before the break in service if the employee's unused bank of earned sick time equals or exceeds 10 hours
Up to 12 Months	Their vesting days from the employer and do not need to restart the 90-day vesting period

Paid Sick Leave – Upon Termination

Accrued unused paid sick leave **is not paid out** upon termination, resignation, retirement, or other separation from employment.

Note: Only paid out if using a PTO or vacation policy to comply with the Ordinance

Massachusetts – In SAP if the employee is *working* in Massachusetts, mark as “**Massachusetts**”.

EARNED SICK TIME

Notice of Employee Rights

Beginning July 1, 2015, Massachusetts employees have the right to earn and take sick leave from work.

WHO QUALIFIES?

All employees in Massachusetts can earn sick time.

This includes full-time, part-time, temporary, and seasonal employees.

HOW IS IT EARNED?

- Employees earn 1 hour of sick time for every 30 hours they work.
- Employees can earn and use up to **40 hours per year** if they work enough hours.
- Employees with unused earned sick time at the end of the year can **rollover up to 40 hours**.
- Employees **begin earning** sick time on their first day of work and **may begin using** earned sick time 90 days after starting work.

WILL IT BE PAID?

- If an employer has 11 or more employees, sick time must be paid.
- For employers with 10 or fewer employees, sick time may be unpaid.
- Paid sick time must be paid on the same schedule and at the same rate as regular wages.

WHEN CAN IT BE USED?

- An employee can use sick time when the employee or the employee's child, spouse, parent, or parent of a spouse is sick, has a medical appointment, or has to address the effects of domestic violence.
- The smallest amount of sick time an employee can take is one hour.
- Sick time cannot be used as an excuse to be late for work without advance notice of a proper use.
- Use of sick time for other purposes is not allowed and may result in an employee being disciplined.

CAN AN EMPLOYER HAVE A DIFFERENT POLICY?

Yes. Employers may have their own sick leave or paid time off policy, so long as employees can use at least the same amount of time, for the same reasons, and with the same job-protections as under the Earned Sick Time Law.

RETALIATION

- Employees using earned sick time cannot be fired or otherwise retaliated against for exercising or attempting to exercise rights under the law.
- Examples of retaliation include: denying use or delaying payment of earned sick time, firing an employee, taking away work hours, or giving the employee undesirable assignments.

NOTICE & VERIFICATION

- Employees must **notify** their employer before they use sick time, except in an emergency.
- Employers may require employees to **use a reasonable notification system** the employer creates.
- Employees out of work for 3 consecutive days **OR** using sick time within 2 weeks prior to leaving their jobs, may be required by their employer to provide documentation from a medical provider.

DO YOU HAVE QUESTIONS?

Call the Fair Labor Division at 617-727-3465 ○ E-Mail us at EarnedSickTime@state.ma.us

Visit www.mass.gov/ago/earnedsicktime



Commonwealth of Massachusetts
Office of the Attorney General

The Attorney General enforces the Earned Sick Time Law and regulations.

It is unlawful to violate any provision of the Earned Sick Time Law.

Violations of any provision of the Earned Sick time law, M.G.L. c. 149, §148C, or these regulations, 940 CMR 33.00 shall be subject to paragraphs (1), (2), (4), (6) and (7) of subsection (b) of M.G.L. c. 149, §27C(b) and to §150.

This notice is intended to inform.

Full text of the law and regulations are available at www.mass.gov/ago/earnedsicktime.