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NEW MASSACHUSETTS EARNED SICK TIME LAW WILL NOT BE DELAYED, BUT THERE IS A SIX-MONTH TRANSITIONAL SAFE HARBOR FOR SOME EMPLOYERS

The Massachusetts Paid Sick Day Initiative, Question 4 on the November 4, 2014 ballot in Massachusetts, was approved by the voters and became law (Chapter 149 section 148C of the MA General Laws), effective July 1, 2015. The measure was designed to enable employees who work in MA for employers with eleven or more employees to earn and use up to 40 hours of paid sick time per year. In addition, employees who work in MA for employers with ten or fewer ore employees are entitled to earn and use up to 40 hours of unpaid sick time per year.

Attorney General Maura Healey filed draft regulations (940 CMR 33.00) in late April 2015 to implement the new law. The AG's Office expects to file final regulations early this summer following a public comment period that ends June 10, 2015.

Yesterday, May 18, 2015, the AG's Office posted on its web site the following transitional six-month safe harbor period for employers with existing paid time off programs:

TRANSITION YEAR: SAFE HARBOR FOR EMPLOYERS WITH EXISTING PAID TIME OFF POLICIES

For the period July 1 to December 31, 2015, any employer with a paid time off policy in existence as of May 1, 2015, providing to employees the right to use at least 30 hours of paid time off during the calendar year 2015 shall be in compliance with the law with respect to those employees and to any other employees to whom the use of at least 30 hours of paid time off under the same conditions are extended.

To remain in compliance, any paid time off, including sick time, used by an employee from July 1 to December 31, 2015, must be job protected leave subject to the law's non-retaliation and non-interference provisions. In all other respects, during this transition period, the employer may continue to administer paid time off under policies in place as of May 1, 2015.

On or before January 1, 2016, all employers operating under this safe harbor provision must adjust their paid time off policy to conform with the earned sick time law.

SOME EMPLOYERS NOW HAVE A CHOICE

Based on the transitional safe harbor posted by the AG's Office yesterday, those employers with a current paid time off policy in place on May 1, 2015 may choose to either:

- Comply with the MA Earned Sick Time Law on the law's July 1, 2015 scheduled effective date, or
- Follow its current paid time off policy for the balance of 2015; provided, however, that the current policy:
 - provides at least 30 hours of paid time-off in 2015, AND
 - the current paid time off policy is extended to all employees, including those employees not covered by the current policy on May 1, 2015.

STAY TUNED

Employer groups are still working with the AG's Office to clarify certain provisions of the MA Earned Sick Time Law, including the new transitional safe harbor. It is likely that we will see adjustments or clarifications to this new safe harbor in the coming days and weeks.

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