



Sample Massachusetts Earned Sick Time Policy¹

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Accrual of Sick Time

All employees of the Company whose primary place of employment is Massachusetts shall be eligible to accrue and use paid [or unpaid, for employers with fewer than eleven (11) employees] sick time. Sick time accrues at the rate of one (1) hour for every thirty (30) hours worked per calendar [fiscal] [anniversary] year, up to a maximum of forty (40) hours. For accrual purposes, exempt employees will be assumed to work forty (40) hours per week, unless they are normally scheduled to work fewer than forty (40) hours, in which case earned sick time accrues based on their regular schedule. Up to forty (40) hours of unused sick time may be carried over into the following year.

[Alternate accrual method: Employees will be granted forty (40) hours of earned sick time at the outset of employment and at the start of every calendar [fiscal] [anniversary] year thereafter.]

Use of Sick Time

Employees may not use more than forty (40) hours of accrued sick time per calendar [fiscal] [anniversary] year. Accrual of sick time begins on the employee's date of hire, but employees may not use such earned sick time until ninety (90) days after their start date.

Sick time is provided to allow employees to:

1. care for employee's own physical or mental illness, injury, or other medical condition that requires home, preventative or professional care;
2. care for a child, parent, spouse, or parent of a spouse who is suffering from a physical or mental illness, injury, or other medical condition that requires home, preventative or professional care;
3. attend routine medical and dental appointments for themselves or for their child, parent, spouse, or parent of a spouse;

¹ This sample policy is provided for educational purposes only and should not be relied on as legal advice. Consult with counsel about your legal obligations under the earned sick time law and how to appropriately tailor this policy for your business.

4. address the psychological, physical, or legal effects of domestic violence; and
5. travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

Use of sick time for other purposes is not allowed and may result in an employee being disciplined.

Employees may not use sick time if the employee is not scheduled to be at work during the period of use. An employee may not accept a specific shift assignment with the intention of calling out sick for all or part of that shift.

Earned sick time may be used for full or partial day absences. The smallest amount of sick time that an employee can take is one (1) hour. Sick time cannot be used as an excuse to be late for work without notice of an authorized purpose. If an employee's absence from work requires the Company to call in a replacement worker to cover the absent employee's job functions, the Company may require the absent employee to use an equal number of hours of sick time as were worked by the replacement.

[In certain circumstances, the employee and supervisor may mutually agree that an employee will work and be paid for an equivalent number of additional hours or shifts during the same or the next pay period as the hours or shifts taken as sick time. In those cases, the employee will not be required to use accrued sick time, and the Company will not pay for the time that the employee was absent.]

[The Company may, at its discretion, permit employees to use earned sick time before the employee accrues it, and count the use against future accrual. In such cases, the Company's agreement to permit such use will be confirmed in writing.]

Absence Notification Procedures

If an employee determines that the employee needs to be absent, to be late or to leave work early, the employee must give advance notice to his or her supervisor. Notice should be provided in person, by telephone or e-mail [or text].

If the absence is foreseeable (i.e., if the employee will be absent to attend a previously scheduled appointment), the employee must provide seven (7) days advance notice, or more if possible.

If the absence is not foreseeable, the employee must provide notice to his or her supervisor at least ____ (x) hours before the start of the employee's shift. If _____ (x) hours' notice is not feasible due to accidents or sudden illness, notice must be provided as soon as practicable.

If an employee is going to be absent on multiple days, the employee or the employee's surrogate (i.e., spouse, adult family member or other responsible party) must provide notice of the expected duration of the leave or, if unknown, provide notice on a daily basis, unless the circumstances make such notice unreasonable.

Verification of Use of Sick Time

The Company will generally require an employee to submit a doctor's note or other documentation to support the use of sick time if the absence:

- a. exceeds twenty-four (24) consecutively scheduled work hours or three (3) consecutive days on which the employee is scheduled to work;
- b. occurs within two (2) weeks prior to an employee's final scheduled day of work (except in the case of temporary employees); or
- c. occurs after four unforeseeable and undocumented absences within a three (3)-month period.

[In other circumstances, the Company may, at its discretion, require the employee to personally verify in writing that they have used sick time for an allowable purpose.]

Required documentation must be submitted within seven days of the absence. Additional time may be granted for good cause shown.

If an employee fails to timely comply with the Company's documentation requirements, the Company may recoup the sick time paid from future wages. *[Alternative for small employers: If an employee fails to timely comply with the Company's documentation requirements for use of unpaid sick time, the Company may deny future use of an equivalent number of hours of accrued sick time until the documentation is provided.]*

[In cases where the Company has a reasonable belief that the employee's return to work could present a significant risk of harm to the employee or others, the employee may be required to provide a fitness for duty certificate prior to returning to work.]

Company Expectations Regarding Attendance

Employees should remember that regular, reliable attendance and timeliness is expected. If an employee is repeatedly absent, late or leaves work early for reasons not covered by earned sick time, is absent or tardy for more than forty (40) hours in a year, commits fraud or abuse by engaging in an activity that is not consistent with allowable purposes for sick time or exhibits a clear pattern of taking sick time on days just before or after a weekend, vacation or holiday, the employee may be subject to disciplinary action.

[Employees who use sick time will not be eligible for the Company's perfect attendance bonus.]

[If an employee is absent from work the day before or after a scheduled holiday, the employee will not receive holiday pay.]

Payout of Sick Time

Sick time is not [is] payable on termination of employment.

[The Company permits [requires] employees to cash out up to forty (40) hours of unused sick time at the end of the calendar year. In such cases, the Company will provide the employee with an equivalent amount of unpaid sick time, up to sixteen (16) hours, to use the following year until the employee accrues new paid time.]

[Interaction with Other Types of Leave

If any time off covered under this policy is also covered under the Company's FMLA, Parental Leave, Domestic Violence Leave, SNLA leave or other leave of absence policies, sick time shall run concurrently with such leave. Employees may choose to use, and the Company may also require employees, to use earned sick time to receive pay for absences under other leave policies if those absences would otherwise be unpaid.]

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 a emergency.
- Employers may require employees to **use a reasonable notification system** the employer creates.
- If an employee is out of work for 3 consecutive days **OR** uses sick time within 2 weeks of leaving his or her job, an employer may require documentation from a medical provider.

DO YOU HAVE QUESTIONS?

Call the Fair Labor Division at 617-727-3465 ○ Visit www.mass.gov/ago/earnedsicktime



Commonwealth of Massachusetts
Office of the Attorney General
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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.

