

Attorney General Clarifies Safe Harbor Under Earned Sick Time Law

Written by Christopher Feudo

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On Wednesday, June 10, 2015, the Office of the Attorney General issued additional guidance clarifying the “safe harbor” to the Massachusetts Earned Sick Time (“EST”) law it announced on May 18, 2015. Specifically, the new guidance addresses what employers must provide those employees who are not currently receiving at least 30 hours of paid time off (“PTO”) to be deemed in compliance with the EST law through December 31, 2015.

Under the new guidance, employers with a PTO or paid sick leave policy in existence as of May 1, 2015 will be deemed to be in compliance with the EST law until January 1, 2016 provided:

- The policy provides full-time employees with the right to earn and use at least 30 hours of PTO during calendar year 2015; and
- On or after July 1, 2015, all employees not previously covered by the policy, including part-time employees, new employees, and per diem employees, either:
 - ▶ accrue PTO at the same rate of accrual as covered full-time employees; or
 - ▶ if the policy provides PTO in a lump sum, receive a lump sum of PTO prorated based on the PTO given to covered full-time employees.

If employers currently provide covered employees with a lump sum of PTO each year, they may give half that amount of PTO to employees not previously covered by the PTO policy to use for the remainder of 2015. The lump sum may also be “proportionally reduced” for employees hired after July 1. Additionally, employers may prorate lump sums given to part-time employees. If an employee is not compensated on an hourly or salaried basis, employers must permit the employee to accrue or grant the employee a lump sum based on a “reasonable approximation” of the employee’s hours worked.

To be eligible for the safe harbor, 30 hours of the PTO granted to employees in 2015 (or any lesser amount authorized by the safe harbor) must be: (1) treated as job protected leave under the EST law’s non-retaliation provisions; (2) be available for the purposes allowed by the EST law; and (3) be available to the employee after January 1, 2016 if unused during 2015.

Employers who fall under the safe harbor are required to revise their PTO policy to conform with all provisions of the Earned Sick Time law by January 1, 2016.

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