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## The Massachusetts Earned Sick Leave Law

### I. Tocci & Lee's Top Ten Statute Takeaways

1. Sick Time is earned immediately by employees at a rate of one hour per every 30 hours work.
2. An employer may preclude an employee from using earned sick time during the first 90 days of employment.
3. Earned sick leave must only be paid *only if* the employer has or had 11 or more employees (full or part-time, in state or out of state) during 20 or more weeks or 16 consecutive weeks during the current or prior calendar year.
4. Earned sick time, if paid, must be paid at the employee's regular base rate and no less than minimum wage – currently \$9.00 per hour – *not* the service minimum wage rate.
5. Employers do not have to pay out earned sick leave at the termination of employment.
6. Employees who experience a “break in service” may keep accrued sick time until they are returned to service. A break in service is akin to a temporary layoff with rehire rights or an extended leave of absence.
7. An employer may cap earned sick time at 40 hours per year.
8. An employer may institute a “use it or lose it” policy but *must* allow an employee to carry over up to 40 hours per year.
9. An employer may adopt a general “Paid Time Off” policy as long as the criteria of the Earned Sick Leave Law are met by the policy.
10. An employer may provide sick leave benefits or adopt sick leave policies that are more beneficial to the employee.

## II. Responding to Government Audits

The Office of the Massachusetts Attorney General is responsible for enforcing the earned sick leave law and for investigating reported violations. Once an investigation is launched, the AG may review all payroll records to ensure compliance with wage and hour laws. The AG is not limited to investigating only sick leave law compliance. The following are some general tips if you are faced with an investigation by the Office of the Massachusetts Attorney General.

- If your establishment requires more time to prepare for the initial meeting do not be afraid to ask for more time. The AG is aware of business exigencies which may make it difficult to prepare for and schedule a meeting. But, do not push the envelope more than one or two weeks.
- Advise your legal representative that you are being audited. A competent advisor should be able to provide sound advice regarding the impending audit and compliance issues. If you are more comfortable having your legal representative present at the audit arrange for his or her presence, it is your right.
- Be prepared to present all sick time, wage, hour and child labor records as well as any other records required to be maintained by law.
- Arrange for the employee who is best able to explain your establishment's sick leave, pay, wage and hour practices to be available during the audit.
- Cooperate, cooperate, cooperate. The AG is there to insure compliance, not to put you out of business. Defensive, uncooperative employers may unwittingly invite more extensive scrutiny of their employment practices.

Prevention is the best medicine. Most violations are due to poor record keeping. It is not enough to be in compliance of the sick leave and wage and hour laws – you must be prepared to demonstrate compliance. A well-organized and maintained record keeping system, which includes all records required by law, may save you thousands of dollars in attorneys' fees and penalties.

**III. Summary of Potential Employer Liability Under the Massachusetts Sick Leave, Minimum Wage, Overtime and Payment of Wages Statutes:**

- employees may bring civil suits and may be awarded back pay, including overtime, plus treble damages and attorneys' fees.
- the Office of the Massachusetts Attorney General ("AG") may order the employer to pay restitution to the wronged employee or employees and may impose civil penalties of up to \$7,500 for an unintentional first violation and \$25,000 for each subsequent violation, or \$15,000 for the first intentional violation and \$25,000 for each subsequent violation.
- the AG may bring criminal charges that carry a fine of up to \$10,000 and up to 6 months in jail for the first violation without willful intent, and \$25,000 and up to 1 year in jail for each subsequent violation. For violations with willful intent, the AG may bring criminal charges that carry a fine of up to \$25,000 and 1 year in jail for the first violation, and \$50,000 and 2 years in jail for each subsequent violation.

The AG takes the position that the fines and penalties described above apply to each employee for each workweek in which a violation exists: that is, the AG could seek to impose separate fines and penalties for each week and for each employee.

**PLEASE FEEL FREE TO CONTACT ATTORNEY JOHN TOCCI OF TOCCI & LEE AT (617) 542-6200 EXT. 212 FOR ADVICE OR REPRESENTATION IN ANY EMPLOYMENT, EMPLOYMENT LITIGATION OR GENERAL BUSINESS LITIGATION MATTER.**