

## Earned Sick Time in Massachusetts Frequently Asked Questions

**These FAQs are based upon the Massachusetts Earned Sick Time Law, M.G.L. c. 149, § 148C, and its accompanying regulations, 940 CMR 33.00.**

**The Earned Sick Time Law sets minimum requirements; employers may choose to provide more generous policies.**

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## Section 1: Introduction, Applicability & Eligibility

### Subsection A: Introduction

**Q: When do employers have to start complying with the law?**

A: All employers must begin complying with the Earned Sick Time Law on July 1, 2015.

Some employers who already offer paid sick leave or paid time off can keep those policies in place until December 31, 2015, provided they meet the requirements of the Attorney General's safe harbor provision (section 33.03 of the regulations).

**Q. What does the Earned Sick Time Law do?**

A. The law entitles Massachusetts employees to earn up to 40 hours per year of sick leave to address certain personal and family needs. The number of hours to which an employee is entitled is related to the number of hours worked. An employee would be entitled to 40 hours of sick leave per year if the employee worked enough hours to earn 40 hours of earned sick time.

All employers must provide earned sick time, but only employers of 11 or more employees must provide earned sick time that is paid. Smaller employers must also provide earned sick time, but it may be unpaid.

**Q: Where can I find more information about the law?**

A: The Attorney General's website has more information about the law and regulations:  
[www.mass.gov/ago/earnedsicktime](http://www.mass.gov/ago/earnedsicktime).

### Subsection B: Employees Eligible for Earned Sick Time

**Q: Which employees are eligible for earned sick time?**

A: Most employees who work in Massachusetts are eligible, including full-time, part-time, seasonal, per-diem, and temporary employees. To be eligible, an employee's **primary place of work** must be in Massachusetts.

**Q: Are any employees exempted from earned sick time?**

A: There are several types of workers who are not eligible for earned sick time under the law:

- 1) an employee of the United States government;
- 2) a student attending a public or private institution of higher education in Massachusetts who is:
  - a. participating in a federal work-study program or a substantially similar financial aid or scholarship program;
  - b. providing support services to residents of a residence hall, dormitory, apartment building, or other similar residence operated by the institution at which the student is matriculated in exchange for a waiver or reduction of room, board, tuition, or other education-related expenses; or
  - c. exempt from Federal Insurance Contributions Act (FICA) tax pursuant to 26 U.S.C. § 3121(b)(10);
- 3) a school-aged student under 20 U.S.C. § 1400 et. seq., the Individuals with Disabilities Education Act (IDEA); or
- 4) an adult client participating in a Massachusetts licensed program and performing work duties within the program setting as part of bona fide educational or vocational training.

**Q: Does this law apply to independent contractors?**

A: No. Properly classified independent contractors are not employees.

Determining if someone is an employee or independent contractor depends on several factors. These factors include how much supervision, direction, and control the employer has over the services being provided. Workers may meet the legal standard for classification as employees but may be misclassified as independent contractors by their employer and improperly denied access to earned sick time and other benefits.

For more information, please visit: <http://www.mass.gov/ago/doing-business-in-massachusetts/workplace-rights/worker-classification/independent-contractor.html>.

**Q: Does the law apply to municipal employees?**

A: No. Employees of a city or town, as well as local public employers not covered by the term cities and towns, such as school committees, including regional schools and educational collaboratives, are not eligible for earned sick time. Municipalities can, consistent with the state constitution, opt in to the law.

**Q: Does the law apply to state employees?**

A: Yes.

**Q: Are non-profit employees eligible for Earned Sick Time?**

A: Yes.

**Q: Are unionized employees eligible for Earned Sick Time?**

A: Yes.

**Q: Are domestic workers eligible for Earned Sick Time?**

A: Yes.

**Q: Are per-diem workers eligible for Earned Sick Time?**

A: Yes.

**Q: Are county employees eligible for Earned Sick Time?**

A: Yes.

**Q: Is there a minimum amount of hours that must be worked in order for an employee to be eligible for earned sick time?**

A: No. Employees working very few hours will simply accrue more slowly.

**Q: How do I know if my primary place of work is in Massachusetts?**

A: For most employees, the location where they do most of their work for their employer is their primary place of work.

- 1) If the employee spends work hours traveling outside Massachusetts (making deliveries, engaging in sales, etc.) but returns regularly to a Massachusetts base of operations before resuming a new travel schedule, Massachusetts is the primary place of work.
- 2) If an employee is constantly switching locations of work, the primary place of work may be determined by assessing the state in which the employee spent the plurality of his or her working time over the previous benefit year. For new employees, employers should make a reasonable

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assessment of the primary place of work.

- 3) If an employee telecommutes through an arrangement with his or her employer to a Massachusetts worksite, Massachusetts is the primary place of work even though the employee does not physically spend those telecommuting hours in Massachusetts.
- 4) It is not necessary for an employee to spend 50% of the employee's working time in Massachusetts for it to be the employee's primary place of work.
- 5) If an employee permanently relocates into Massachusetts, the employee's primary place of work will become Massachusetts on the first date of actual work in Massachusetts.

**Q: What if an employee moves between worksites often enough that the employer cannot determine a primary place of work, for example, in the construction industry? How should the employer determine the primary place of work?**

A: Such an employee's "primary place of work" for a benefit year will be the state in which the employee worked for the most hours during the previous twelve-month benefit year. If the employee did not work for the employer during the previous benefit year and the employer cannot otherwise determine a primary place of work, then the employer need only allow the employee to accrue earned sick time on hours worked in Massachusetts.

**Q: If an employee doesn't live in Massachusetts, could he or she be eligible to earn sick time?**

A: Yes, if Massachusetts is his or her primary place of work.

### **Subsection C: Which Employers Need to Provide Earned Sick Time?**

**Q: Which employers have to provide earned sick time?**

A: Nearly all employers in Massachusetts must provide their employees with the ability to accrue and use earned sick time.

The only employers not required to provide earned sick time are the United States government, Massachusetts cities and towns, and certain other local public employers, such as school committees, including regional schools and educational collaboratives.

**Q: What happens to an employee's earned sick time if their employer sells the business?**

A: If an employer sells its business or the business is otherwise acquired by another business, an employee will retain and may use all accrued sick time. If the successor employer has fewer than eleven employees, and the former employer had eleven or more employees, the employee is entitled to use and be compensated for unused sick time accrued while working for the former employer, until such sick time is exhausted.

**Q: Do employers based outside of Massachusetts have to provide earned sick time?**

A: If an employer has an employee or employees with a primary place of work in Massachusetts, then the employer must provide the employee or employees with earned sick time.

**Q: Do employers with less than 50 employees have to provide earned sick time?**

A: All employers, regardless of the number of employees, must provide earned sick time.

**Q: Does an employer have to provide earned sick time to employees who also work for other employers?**

A: Yes. Each employer must provide each employee with the ability to accrue and use up to 40 hours of earned sick time in a benefit year.

**Q: Do school committees have to provide earned sick time? How about regional school committees?**

A: No, for the purposes of the Earned Sick Time law, school committees are an exception to the term “employer” and do not have to provide sick time unless the Earned Sick Time law is accepted by vote or by appropriation.

## **Section 2: Paid versus Unpaid Earned Sick Time**

**Q: Does the earned sick time need to be paid?**

A: The employer's size determines if the earned sick leave must be paid. If an employer has 11 or more employees, then earned sick time MUST be paid. If an employer has 10 or fewer employees, then earned sick time MAY be unpaid.

**Q: How do you determine the size of the employer?**

Employers should count all employees who work for pay on a full-time, part-time, seasonal, per diem, or temporary basis. This includes employees in other states or countries. Owners and officers who are on the company's payroll count as employees for the purposes of these regulations.

Employers shall determine whether the employer has 11 or more employees by counting the number of employees, including full time, part-time, seasonal, and temporary employees, on the payroll during each pay period of the benefit year and dividing by the number of pay periods. If the employer has pay periods with no one on the payroll, the number of employees counted for that pay period is zero.

**Q: How often does an employer have to determine employer size?**

A: Once per year.

**Q: If some employees don't live in Massachusetts, do they count toward the number of employees?**

A: Yes, it does not matter where the employee lives. When determining employer size, employers are to count all employees in all locations.

**Q: What if I am a new employer – how do I calculate the size of my new company?**

A: The employer should use a real-time calculation of employees in the first year, recognizing that an employer is not required to provide paid sick leave until the number of employees is 11 or more.

**Q: If the employer has multiple locations, do all employees count toward the number of employees?**

A: It depends on the relationship between the entities, including how they operate and if the employees are interchangeable.

**Q: Who is the employer of a “temp worker”?**

A: Employees furnished to an employer by a temporary staffing agency and paid by the staffing agency count as employees of both the staffing agency and the employer for the purpose of determining employer size.

## Section 3: General Rules

### Subsection A: How is Earned Sick Time Accrued?

**Q: How do employees earn sick time?**

A: Employers have several options to provide their employees earned sick time. Employees can accrue time as they work, or may be provided with a lump sum on a monthly or yearly basis.

**Q: If accruing earned sick time based on number of hour worked, at what rate is it accrued?**

A: One hour of earned sick time is accrued for every 30 hours worked. In other words: employers must allow employees to accrue at a rate no slower than 1 hour earned for every 30 hours worked.

**Q: If employers provide earned sick time in a lump sum each month or year, how much earned sick time must be given to employees?**

A: The amount must be the equivalent of no less than 1 hour of earned sick time for every 30 hours worked. For more options about earned sick time schedules, please see [“Section 5: Using Other Paid Time Off \(PTO\) Policies Instead.”](#)

**Q: How much earned sick time do employees get?**

A: An employee must be allowed to accrue 40 hours per benefit year if the employee works sufficient hours. For example, an employee who accrues on hourly basis would have to work 1,200 hours to accrue 40 hours of earned sick time. Employees must be allowed to use up to 40 hours per year for authorized purposes if they have earned that time.

**Q: When does an employee start accruing?**

A: Employees begin accruing earned sick time on their first date of actual work.

**Q: What hours count towards accrual?**

A: All hours worked by an employee, including overtime and hours worked outside of Massachusetts, count towards the accrual of earned sick time.

*Example:* If an employee for a catering company located in Massachusetts works 900 hours in Massachusetts and 150 hours in other states, that employee will earn sick time on all 1,050 hours worked for the company.

**Q: Do employees accrue earned sick time while they are on vacation or other leave?**

A: No. Employees are only entitled to accrue earned sick time for hours actually worked.

**Subsection B: Carryover of hours from one year to the next**

**Q: How many hours of earned sick time can an employee carry over from one year to the next?**

A: The method by which an employee earns sick time determines if an employer must allow carryover of unused earned sick time.

Employer’s Policy	Employer’s Carryover Obligation
The employee is provided earned sick time via accrual.	The employee must be allowed to carry over at least 40 hours of unused earned sick time into the next year.
The employee is provided earned sick time in a lump sum allocation of at least 40 hours at the beginning of each <i>benefit year</i> .	The employer <i>is not</i> obligated to allow an employee to carry over unused earned sick time into the next year.
The employee is provided earned sick time in a lump sum allocation at the beginning of each <i>month</i> .	The employer <i>is</i> obligated to allow an employee to carry over at least 40 hours of unused earned sick time into the next year.
The employee is paid out for unused earned sick time at end of benefit year (which is not required but employers may elect to do so).	If the employer elects to pay out unused earned sick time to an employee, then the following rules apply: <ul style="list-style-type: none"> <li>• If paying out 16 hours or more: must provide 16 hours of unpaid sick time until the employee accrues new paid time, which must replace the unpaid time as it accrues.</li> <li>• If paying out less than 16 hours must provide an amount of unpaid sick time equivalent to the amount paid out until the employee accrues new paid time, which must replace the unpaid time as it accrues.</li> </ul>

**Q. If an employee carries over 40 hours of unused sick leave to a new benefit year, can the employee use 80 hours of sick leave in the next benefit year?**

A. No. Employers are only required to allow employees to use up to 40 hours of earned sick time per benefit year.

Employers may cap the amount of earned sick time hours accrued at 40 hours, regardless of the additional hours worked by an employee. Once an employee possesses a bank of 40 hours of unused earned sick time, the employer may opt to delay further accrual until the employee draws down the bank of earned sick time to below 40 hours.

*Example:* An employee earns 40 hours of earned sick time in year 1 and rolls over these 40 hours into year 2. This employee starts year 2 with 40 hours and in year 2 uses all 40 of those hours and earns another 40 hours. During year 2, the employer may cap the amount of hours an employee uses at 40 hours.

## Subsection C: Permissible Uses of Earned Sick Time

### **Q: When can an employee begin using earned sick time?**

A: An employee may begin using earned sick time on the 90<sup>th</sup> calendar day after an employee starts working for the employer.

*Example:* Jasper's first date of actual work as a salesperson at a shop is October 1, 2016. Jasper will be eligible to use any accrued earned sick time 90 days later, which is December 30, 2016.

### **Q: What can earned sick time be used for?**

A: Earned sick time can be used to care for the employee's child, spouse, parent, 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.

Earned sick time can be used to 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.

Earned sick time can be used to attend a routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse.

Earned sick time can be used to address the psychological, physical or legal effects of domestic violence.

Earned sick time can be used to travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

### **Q: What is “preventative medical care”?**

A: Preventative medical care typically is routine health care that includes screenings, checkups, and patient counseling to prevent illnesses, disease, or other health problems. For examples of preventative care, go to HealthCare.gov: <https://www.healthcare.gov/what-are-my-preventive-care-benefits/>.

### **Q: Who is considered a child under the law?**

A child includes a biological, adopted, or foster child, as well as a stepchild, a legal ward, or a child for whom an employee has assumed the responsibilities of parenthood.

### **Q: Can employees use earned sick time for the health care of adult children?**

A: Yes.

### **Q: Can an employee's use of earned sick time be counted toward leave under other laws?**

A: Yes. An employee's use of earned sick time may be counted toward concurrent leave under federal or state law, such as the Family Medical Leave Act (FMLA).

Employees may choose to use, or employers may require employees to use, earned paid sick time to receive pay when taking other statutorily-authorized leave that would otherwise be unpaid.

### **Q: When can a per diem or on-call employee use earned sick time?**

Per diem or on-call employees can use earned sick time only for hours they have been scheduled to work. Being “scheduled to work” does not include shifts for which an employee has been asked to be available or on call, unless the employee is required to remain on call on the employer's premises.



## Subsection D: Payment of Earned Sick Time

**Q: If earned sick time is paid, what is the pay?**

A: Generally speaking, employees must be paid what they would have earned if they had worked instead of using earned sick time. Hourly workers must be paid their regularly hourly rate. Sick time hours are not paid at overtime or premium rates. To determine the proper rate of earned sick time pay for non-hourly employees, please review the definition of the “same hourly rate” in the final regulations.

**Q: If an employee is scheduled to work overtime and calls out sick, does the employee get the overtime rate?**

A: No. Workers using earned sick time do not receive overtime but do accrue earned sick time when working overtime.

**Q: If a retail employee is scheduled to work on Sunday and calls out sick, does the employee get the Sunday premium rate?**

A: No. Workers using earned sick time do not receive premium rates but do accrue earned sick time when working on a Sunday.

**Q: What is the rate of pay for employees who receive a salary?**

A: For employees paid a salary, the same hourly rate means the employee's salary in the previous pay period divided by the total hours worked in the employee's the previous pay period. For determining total hours worked during the pay period, executive, administrative and professional employees shall, and othersalaried non-exempt employees may, 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.

**Q: What is the rate of pay for employees who are paid on a piece work or fee-for-service basis?**

A: For employees paid on a piece work or a fee-for-service basis, the same hourly rate means a reasonable calculation of the wages or fees the employee would have received for the piece work, service, or part thereof, if the employee had worked. Regardless of the basis used, the same hourly rate shall not be less than the effective minimum wage under M.G.L. c. 151, § 1, where applicable.

**Q: What is the rate of pay for employees who work on commission?**

A: Employees paid on commission (whether base wage plus commission or commission only) must be paid the greater of the base wage or the effective minimum wage under M.G.L. c. 151, § 1.

**Q: What is the rate of pay for restaurant workers who derive income from tips?**

A: Employees whose wages are based on tips or gratuities must be paid at least the Massachusetts minimum wage. Employees are not entitled to lost tips or gratuities during use of earned sick time.

Regardless of the measure used, an employee cannot be paid less than the state minimum wage. The Massachusetts minimum wage is \$9.00 per hour. On January 1, 2016 the minimum wage will be \$10.00 per hour. On January 1, 2017, the minimum wage will be \$11.00 per hour.

More information about the minimum wage is available here: <http://www.mass.gov/ago/doing-business-in-massachusetts/workplace-rights/wage-and-hour/minimum-wage.html>.

**Q: What is the rate of pay for employees who receive different pay rates for hourly work from the same employer?**

A: Employers may choose one of these methods:

- 1) the wages the employee would have been paid for the hours that, but for the use of earned sick time, the employee would have worked; or
- 2) the blended rate, determined by taking the weighted average of all regular rates of pay over the previous pay period, month, quarter or other established period of time the employer customarily uses to calculate blended rates for similar purposes.

Whatever method the employer elects to determine the same hourly rate, (a) or (b) above, the employer must use a consistent method for each employee throughout a benefit year.

**Q: When must an employee be paid after using earned paid sick time?**

A: When used, earned paid sick time must be paid on the same schedule as regular wages are paid. Employers may not delay compensating employees for earned paid sick time.

**Q: Are employers obligated to pay employees for unused earned sick time upon termination or at the end of employment?**

A: No. Employers are not required to pay out unused earned sick time when an employee leaves, but may do so voluntarily.

Employers who use a vacation policy to meet the requirements of the earned sick time law should note that Massachusetts law requires unused vacation to be treated as any other wages. Employees must be paid for all earned vacation upon termination of employment. More information is available here:

<http://www.mass.gov/ago/doing-business-in-massachusetts/workplace-rights/leave-time/vacation.html>

**Q: Can an employer pay out an employee for unused time at the end of the year?**

A: Yes. An employer is allowed to offer an employee a pay out of up to 40 hours of unused earned sick time at the end of the benefit year.

Employers paying out 16 hours or more must provide 16 hours of unpaid sick time until the employee accrues new paid time, which must replace the unpaid time as it accrues.

Employers paying out less than 16 hours must provide an amount of unpaid sick time equivalent to the amount paid out until the employee accrues new paid time, which must replace the unpaid time as it accrues.

**Q: Can an employee agree with an employer to be paid for earned sick time on an as-accrued basis instead of only at the end of the benefit year?**

A: No.

**Q: Can employees donate their earned sick time to a colleague who has exhausted his or her earned sick time?**

A: The law does not require employers to permit donation of earned sick time. An employer may have a policy in place that permits employees to donate earned sick time. An employer cannot require employees to donate earned sick time.

## Section 4: Implementing the Earned Sick Time Law

**Q: What is the “benefit year” for tracking accrual, use, and carryover of earned sick time?**

A: Any consecutive 12-month period of time, as determined by an employer.

**Q: May an employer's sick leave policies differ from what the law requires?**

A: The law establishes minimum requirements. An employer is permitted to have a policy that is *more* generous. For example, an employer may allow employees to earn or use more sick time than the law would require, give employees more than 40 hours of sick time up front at the beginning of the benefit year, or permit employees to use sick time before it has accrued.

**Q: May employers provide different policies for different categories of employees?**

A: Yes. The law provides the minimum requirements and employers may have more generous policies. Employers may have different policies for different categories of employees as long as the minimum requirements are met for all employees.

**Q: May an employee work additional hours or shifts instead of using earned sick time?**

A: Yes, but only if both the employer and employee agree to this arrangement. If, by taking on additional hours, the employee works more than 40 hours in a week, then he or she must be paid at the overtime rate.

**Q: If an employee uses sick time, may the employer require the employee to find a replacement?**

A: No. An employer can never require an employee to find a replacement.

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**Q: If an employee leaves the employer, and then returns, what happens to the employee’s unused earned sick time?**

A: An employee retains the right to use any accrued sick time after a break in service, whether voluntary or not, for up to one year from the last date of work if the employee returns to work.

Break in Service		
Duration of Employee’s Break in Service	Employer’s Obligation	Employee’s Earned Sick Time
Four months or less.	Employer must reinstate all previously accrued earned sick time.	All previously earned sick time is reinstated to the employee.
More than four months, and up to 12 months.	<i>If employee had accrued 10 or more hours of earned sick time prior to the break in service, the employer must reinstate the earned sick time.</i>	All previously earned sick time is reinstated to the employee.
	<i>If employee had accrued less than 10 hours of earned sick time prior to the break in service, the employee is not entitled to reinstatement of any earned sick time.</i>	Employee has a zero balance of accrued earned sick time on the first day of reemployment.
More than 12 months.	The employee is not entitled to reinstatement of any unused earned sick time, regardless of amounts accrued.	Employee has a zero balance of accrued earned sick time on the first day of reemployment.

*Example:* An employee has accrued 20 hours of earned sick time and then goes on an unpaid sabbatical for 11 months. Upon the employee’s return to employment, 11 months from the date the employee last worked for the employer, the employee shall have the right to use the 20 hours of sick time accrued prior to the sabbatical.

**Q: If an employee leaves the employer, and then returns, when does he or she begin accruing earned sick time?**

A: If an employee returns within 12 months, then the employee will immediately be able to accrue earned sick time. If the employee returns more than 12 months later then he or she could be treated like a new employee, and would have to wait 90 days before being able to access accrued earned sick time.

**Q: If an employee is transferred to another division or location of the same employer in Massachusetts, is the employee entitled to earned sick time that was accrued at the previous location?**

A: Yes. The employee gets to keep and can use all previously accrued earned sick time.

**Q: If a temp worker is hired into a permanent position by the same company, does the temp worker get to keep their accrued time? Does the temp worker need to restart the 90-day vesting period?**

A: A temp worker is a joint employee of the temporary staffing agency and the client company. If the temporary staffing agency pays the temp worker, then the accrued time applies only while the temp worker is the employee of the temp agency, and the temp worker does not keep the accrued time once that employment

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is ended. However, the temp worker does not need to restart the 90-day vesting period.

**Q: What increments of leave time can an employee take off?**

A: 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. However, if an employee's absence from work at a designated time requires the employer to hire a replacement and the employer does so, the employer may require the employee using sick time to take up to a full shift of earned sick time.

**Q: Can an employer establish minimum amounts of time for use of earned sick time?**

A: No. Employer policies that require, for example, an employee to take sick time in a four-hour or eight-hour block of time are not permissible.

**Q: What if an employer hires a replacement?**

A: If an employer hires a replacement to fill in for the employee using earned sick time, then the employer may require the employee to use an equal number of hours as the replacement employee works, up to a full shift of earned sick time.

If the employee lacks sufficient accrued earned 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.

**Q: Can an employee use earned sick time before having accrued it?**

A: Employers may arrange for employees to use earned sick time before they accrue it and for employers to count the use against future accrual.

## **Section 5: Using Other Paid Time Off (PTO) Policies**

**Q: Can other paid time off (PTO) policies satisfy an employer's obligation to provide earned sick time?**

A: Yes, as long as employees can use the PTO (such as vacation time or personal leave) for the same purposes and with the same rights that they would be able to use earned sick time.

An employer may substitute an existing plan so long as employees:

- 1) accrue at the rate of at least one hour of PTO for every 30 hours worked;
- 2) may use up to 40 hours per year of PTO;
- 3) are paid at least the amount that would be required for earned sick time;
- 4) can use PTO for the same purposes as earned sick time;
- 5) receive a notice of their rights under the law; and
- 6) receive the same job protections.

Please note: parties to certain employment contracts that were in effect on July 1, 2015 (for example, collective bargaining agreements, or employment benefit program or plans) may have additional obligations. Nothing in the Answer (above) in and of itself permits such parties to unilaterally modify an existing plan to satisfy earned sick time requirements.

**Q: If an employer already offers a single pot of paid time off in a year, must it now have two separate leave policies? One for earned sick time and a second for other types of leave?**

A: The law does not require employers to have separate leave policies. However, employers should have clear guidelines to ensure that their employees can accrue and use sick time consistent with the amounts and purposes articulated in the earned sick time law.

**Q: If an employee uses up all of his or her paid time off, does the employer have to provide additional time if the employee gets sick?**

A: Employers that provide 40 or more hours of paid time off that also may be used as earned sick time are not required to provide additional sick leave to employees who use their time for other purposes and have need of sick leave later in the year. Employers must provide notice to employees that additional time will not be provided.

**Q: If an employer has a mix of full-time, part-time, seasonal or per diem employees, can it have different leave policies for each?**

A: Yes. Employers can have different leave policies for different groups of employees, so long as all employees can use at least the same amount of time, for the same purposes, under the same conditions, and with the same job protections provided in the law.

**Q: If an employee gets sick in the middle of a vacation, can the employee use earned sick time?**

A: No. The employee was on vacation and not scheduled to work.

**Q: I don’t want to track accrual, can I provide a lump sum of earned sick time?**

A: Yes. Employers who prefer not to track accrual of earned sick time over the course of the benefit year may use the following schedules for providing lump sums of sick leave or paid time off to their employees. Employers using these schedules will be in compliance even if an employee’s hours vary from week to week. Employers may accelerate the accrual or increase hours if they choose. Employees accruing earned sick time on these schedules will have the right to roll over their earned sick time up to 40 hours and accrual may be delayed while an employee maintains an unused bank of 40 hours.

Acceptable Lump Sum Allocations Based on Hours Worked		
Average no. of Hours Worked in a Week	Employee is provided this number of hours per month, as a lump sum, to be used for Earned Sick Time	Employee will be provided this amount of Earned Sick Time for this many months
37.5-40 hours	8 hours per month	5 months
30 hours	5 hours per month	8 months
24 hours	4 hours per month	10 months
20 hours	4 hours per month	9 months
16 hours	3 hours per month	10 months
10 hours	2 hours per month	10 months
5 hours	1 hours per month	10 months

**Q: What if I want to use the monthly lump sums, but my employees average 50 or more hours per week?**

A: Employers may provide a lump sum at the beginning of the benefit year. They may also provide earned sick time on a schedule that is more generous.

**Q: When do I have to provide these lump sums?**

A: Employers who provide earned sick time on a monthly basis should have a uniform policy for all employees.

**Q: If an employer who offers more Earned Sick Time than required by law changes their policy, can that employer take away sick days an employee has already earned?**

A: No, an employer who offers more EST than required by law can make a prospective change to reduce it to the minimum amount required, but that change cannot be made retroactively if an employee has already “earned” (accrued) that time. An employer could prevent employees from accruing more time in the future but must allow employees to use the sick time they have already earned.

## **Section 6: Notification Requirements and Options for Employees Using Earned Sick Time**

**Q: Do employees need to notify their employers before they use earned sick time?**

A: Yes. An employee must make a good faith effort to provide notice of the need in advance of the use of earned sick time.

**Q: Does an employee have to reference “Earned Sick Time” in order to use earned sick time?**

A: No. An employee does not need to reference the law or the term “earned sick time” to his or her employer in order to use earned sick time.

**Q: What sort of notification system can an employer use?**

A: Reasonable ones. Reasonable notice may include compliance with an employer’s reasonable notification system that the employee customarily uses to communicate with the employer for absences or requesting leave. If an employer does not have an existing policy and procedure for providing reasonable notice, the employer shall establish such a policy or procedure, preferably in writing. The policy or procedure should enable the employee to effectively provide reasonable notice in a way that can be documented.

**Q: Can an employer require advance notice about a pre-scheduled use of earned sick time like an annual check-up?**

A: Yes, employers may require up to seven days’ notice if the employee has a pre-scheduled or anticipated time the employee plans to take off to use earned sick time.

**Q: What notice can an employer require for multi-day absences?**

A: If an employee uses multiple earned sick days (more than one), an employer may require notification 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 notification unfeasible.

**Q: Can an employer require post-use written verification from employees?**

A: Yes, employers may require employees to submit written verification that they used earned sick time for allowable purposes after using any amount of time. An example form may be found on the Attorney General’s Earned Sick Time webpage ([www.mass.gov/ago/earnedsicktime](http://www.mass.gov/ago/earnedsicktime)).

In no event, however, may an employer request additional medical or other documentation from an employee substantiating the need to use earned sick time until the employee uses more than 24 consecutive hours or 3 days of earned sick time.



**Q: Can an employee be disciplined for using earned sick time fraudulently?**

A: If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for earned sick time (e.g., being sick, caring for an ill family member) or by exhibiting a pattern of taking earned sick time on days when the employee is scheduled to perform duties perceived as undesirable, an employer may discipline the employee for misuse of earned sick time.

An employee may not be disciplined for using earned sick time for allowable purposes when following all other rules. Please see “retaliation” section of this document for more information.

## **Section 7: Documentation Requirements and Options for Employers**

**Q: May an employer require an employee to provide written documentation, like a doctor's note, when the employee uses earned sick time?**

A: It depends.

An employer can require written documentation if: (1) the employee is absent from work for more than 24 consecutively-scheduled work hours; (2) the employee is absent for three consecutively-scheduled work days; (3) the employee's absence occurs within two weeks prior to an employee's final scheduled day of work before termination of employment, except in the case of temporary workers; or (4) the employee's absence occurs after four unforeseeable and undocumented absences within a three-month period.

**Q: Are there any documentation requirements for teenage workers?**

A: Yes. An employer can request documentation from an employee aged 17 and under, if there are three unforeseeable and undocumented absences within a three-month period.

**Q: What kind of documentation can an employer require?**

A: If the employee is absent for medical reasons, the employer may require a statement from a health care provider that the absence was for a purpose covered by the law. An employee who does not have a health care provider may sign a written statement that earned sick time was needed for a reason covered by the law. The Attorney General's Office provides a model statement on its website at [www.mass.gov/ago/earnedsicktime](http://www.mass.gov/ago/earnedsicktime) that employers can use as a guide.

An employer may *never* require further information about the details of a medical condition.

**Q: What if an employee is absent from work due to domestic violence?**

A: If the employee is absent from work due to domestic violence, the employer must accept any of the following documentation:

- 1) a restraining order or court document;
- 2) a police record documenting the abuse;
- 3) documentation that the perpetrator of the abuse has been convicted of one or more of the offenses enumerated in M.G.L. c. 265 where the victim was a family or household member;
- 4) medical documentation of the abuse;
- 5) a statement provided by a counselor, social worker, health worker, member of the clergy, shelter worker, legal advocate, or other professional who has assisted the employee in addressing the effects of the abuse on the employee or the employee's family; or
- 6) a signed written statement from the employee attesting to the abuse.

An employer may *never* require further information about the details of the domestic violence.

**Q: I work in an industry that requires an employee to certify that he or she is healthy enough to return to work. Can I still ask for documentation?**

A: An employer may require an employee to provide a fitness-for-duty certification, a work release, or other documentation from a medical provider before an employee returns to work after an absence during which earned sick time was used if such certification is customarily required and consistent with industry practice or state and federal safety requirements and reasonable safety concerns exist regarding the employee's ability to perform duties. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the employee or others.

**Q: How long does an employee have to provide documentation?**

A: Employers may require employees to submit required documentation within seven days after the taking of earned sick time, unless, for good cause shown, an employee requires more time to provide such documentation.

**Q: Can an employer delay compensating an employee for earned paid sick time until the employer receives documentation?**

A: No. However, if an employee fails to comply without reasonable justification with the documentation requirements of the employer, the employer may recoup the sum paid for earned sick time from future pay, as an overpayment. Employees must be put on notice of this practice.

**Q: What happens if an employee fails to provide documentation for use of unpaid earned sicktime?**

A: The employer can deny the future use of an equivalent number of hours of earned sick time until documentation is provided.

## **Section 8: Recordkeeping and Disclosure Obligations for Employers**

**Q: Does an employer have to include accrued earned sick time and use on an employee's paycheck?**

A: No. Employers are not required to provide earned sick time information on **paychecks**.

**Q: Does an employer have to give employees access to their own earned sick time records?**

A: Yes.

**Q: Do employers have to keep track of the sick time employees earn and use?**

A: If an employer's policy provides earned sick time that is separated from any other time off, yes, employers have to maintain records of the sick time that employees accrue and use for at least three years.

If an employer provides time off to employees under a paid time off, vacation or other policy that complies with the Earned Sick Time Law, the employer is not required to track and keep a separate record on accrual and use of earned sick time.

**Q: Do employers have to post a notice about earned sick time rights for their employees?**

A: Yes, employers must post a notice of the Earned Sick Time Law where employees are likely to see it and in languages spoken by employees. The poster is available for download here in several languages: [www.mass.gov/ago/earnedsicktime](http://www.mass.gov/ago/earnedsicktime).

**Q: Do employers have to give a copy of this notice or a copy of the employer's policy to employees?**

A: Yes. Employers must provide a hard copy or electronic copy of this notice to all eligible employees, or include the employer's policy on earned sick time or the employer's allowable substitute paid leave policy in any employee manual or handbook.

**Q: What other information about earned sick time do employers have to give employees?**

A: Employers must notify all employees at least 30 days in advance in writing if earned sick time will be changing from paid to unpaid, or from unpaid to paid sick time, based on a change in employer size.

## **Section 9: Retaliation Prohibited**

**Q: Can an employer retaliate against an employee for using earned sick time?**

A: No. Retaliation is illegal. An employer cannot retaliate against an employee for exercising or attempting to exercise rights under the law, including: requesting and using earned sick time; filing a complaint for alleged violations of the law; communicating with any person, including coworkers, about any violation of the law; participating in an administrative or judicial action regarding an alleged violation of the law; or informing another person of that person's potential rights.

**Q: What constitutes retaliation?**

A: Retaliation includes any threat, discipline, discharge, demotion, suspension, or reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under the law.

**Q: Does the law protect an employee from retaliation if the employee mistakenly, but in good faith, alleges a violation?**

A: Yes.

**Q: What about reward based attendance policies?**

A: Attendance policies that reward employees for good attendance and holiday pay incentives that provide extra compensation for coming to work on the days immediately before and after a holiday are permissible so long as employees are not subject to any adverse actions for exercising their rights under the Earned Sick Time law and its regulations.

An employee's inability to earn a reward for good attendance or to receive a holiday pay incentive based on an employee's absence occasioning use of earned sick time shall not constitute an adverse action or interference with an employee's rights.

## **Section 10: Violations**

**Q: How will the Earned Sick Time Law and regulations be enforced?**

A: The law grants the Attorney General the authority to go to court to halt a violation. It also grants the Attorney General the ability to issue civil citations against employers.

**Q: Can employees file a complaint?**

A: Employees can file a complaint with the Attorney General's Office. The complaint form is available online at [www.mass.gov/ago](http://www.mass.gov/ago) by clicking on "file a complaint," or by contacting (617) 727-3465.

**Q: Can employees sue their employers?**

A: Employees must first file a complaint with the Attorney General, before they may file a private lawsuit in court. Employees must then either wait 90 days after filing with the Attorney General before filing in court, or receive permission from the Attorney General's Office to proceed with a private suit before the 90-day period expires. In order to do this, employees must request a private right of action from the Attorney General's Office. Employees will need proof of filing the complaint with the Attorney General in order to pursue a lawsuit.

**Q: Will the Attorney General ask an employee about immigration status or legal right to work?**

A: No. All workers in Massachusetts are entitled to the protections of the earned sick time law. The Attorney General will never inquire about immigration status.

**Section 11: Additional Information ([www.mass.gov/ago/earnedsicktime](http://www.mass.gov/ago/earnedsicktime))**

**Final regulations:** Regulations written by the Attorney General's Office to provide guidance on employees' and employers' rights and responsibilities under the Earned Sick Time Law.

**Sample Policy:** A sample Earned Sick Time policy for employers.

**Sample Verification Form:** A sample form employers may use to ask employees to verify their use of earned sick time.

**Summary of the Law:** The Earned Sick Time Law is summarized in English, Spanish, and Portuguese (as of August 2015).

**Notice of Employee Rights:** This is available for download in English, Portuguese, Spanish, Russian, Italian, Haitian Creole, Vietnamese, Laotian and Chinese (as of August 2015).