

Sample Massachusetts Earned Sick Time Policy¹

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 benefit year *[any consecutive 12 month period of time determined by the employer, including calendar year, fiscal year, tax year, or year based on date of hire]*, up to a maximum of 40 hours.

For accrual purposes, exempt employees will be assumed to work 40 hours per week, unless they are normally scheduled to work fewer than 40 hours, in which case earned sick time accrues based on their regular schedule.

Alternate accrual method 1: Employees will be provided a lump sum of 40 hours of earned sick time at the start of each benefit year.

Alternate accrual method 2: Employees will be provided earned sick time in lump sums at the set rates provided for in the Earned Sick Time final regulations, 940 CMR 33.07(8), based on their average work week.

Use of Sick Time

Employees may use up to 40 hours of accrued sick time per benefit year. Accrual of sick time begins on the employee's first date of actual work, but employees may not use such earned sick time until 90 calendar days after their start date.

Sick time is provided to allow employees to:

1. care for the 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 by the Massachusetts Attorney General's Office 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, M.G.L. c. 149, § 148C and 940 Code Mass. Regs 33.00, to appropriately tailor this policy to your business. Those with additional questions may also contact the Attorney General's Office at (617) 727-3465.

4. address the psychological, physical, or legal effects of domestic violence; or
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 hour. For uses beyond one hour, employees can use sick time in *[xx minute increments which reflect the smallest increment used in the employer's payroll system]*.

Sick time cannot be used as an excuse to be late for work without 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. If the employee lacks sufficient accrued sick time to cover all such time worked by the replacement, the employer will provide sufficient job-protected unpaid leave to make up the difference in that shift.

[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.]

Up to 40 hours of unused sick time may be carried over into the following benefit year.

Absence Notification Procedures

If an employee needs to be absent, to be late or to leave work early (for purposes that are permissible under the earned sick time law), the employee must give advance notice to his or her supervisor, except in an emergency.

Notice should be provided through a notification system established by the Company in a manner that the employee customarily uses to communicate with the employer for absences or requesting leave.

If the absence is foreseeable (for example, if the employee will be absent to attend a previously scheduled appointment), the employee must provide up to seven days' advance notice, unless the employee learns of the need to use earned sick time within a shorter period of time.

If the absence is not foreseeable, the employee must provide notice to his or her supervisor at least ____ hours before the start of the employee's shift. If _____ hours' notice is not reasonable due to an accident 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 (e.g., spouse, adult family member or other responsible party) must provide notice of the expected duration of the leave or, if unknown, provide notice of continuing absence on a daily basis, unless the circumstances make such notice unreasonable.

Documentation 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 absence²:

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

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

If an employee fails to timely comply with the sick time law's documentation requirements, the Company may recoup the sick time paid from future wages.

[Alternative for employers providing unpaid sick time: 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, but may not otherwise take any adverse action.]

Optional Verification of Use of Sick Time

² Where documentation is required, employees who do not have health care coverage through a private insurer, the Massachusetts Healthcare Connector and related insurers, or an employer that provides health insurance to employees may provide a signed, written statement evidencing the need for the use of the earned sick time, without being required to explain the nature of the illness, in lieu of documentation by a health care provider. Employers may use the Attorney General's model form as a guide for their own policies and may include a check-off listing of the statutory reasons for permissible use of earned sick time on such form. Employers using their own verification form shall not require any additional information beyond what is required under M.G.L. c. 149, § 148C.

[The Company may require an employee to personally verify in writing that he or she has used sick time for an allowable purpose, but the employee shall not be required to explain the nature of the illness or the details of the domestic violence. A doctor's note or other documentation will not be required.³]

Company Expectations Regarding Attendance

Employees should remember that regular, reliable attendance and timeliness is expected.

If an employee commits fraud or abuse by engaging in an activity that is not consistent with allowable purposes for sick time, the employee may be subject to disciplinary action.

If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, the Company may discipline the employee for misuse of earned sick time, unless the employee provides verification of authorized use.

[A company may provide that employees who use sick time will not be eligible for the Company's perfect attendance bonus.]

[A company may provide that 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.⁴

[The Company permits employees to cash out up to 40 hours of unused sick time at the end of the benefit year. In such cases, the Company will provide the employee with an equivalent amount of unpaid sick time, up to sixteen 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, 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.

³ Employers using their own verification form shall not require any additional information than what is required by M.G.L. c. 149, § 148C.

⁴ At the discretion of the employer.