



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Office of Long Term Services and Supports
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KENNETH J. SMITH
Director

TO: **All Consumers of PCA Services**
FROM: Ken Smith, Director of the Office of Long Term Services and Supports
DATE: May 29, 2015
RE: Implementation of Personal Care Attendant Earned Sick Leave

Effective July 1, 2015, Personal Care Attendants shall be eligible for Earned Sick Leave. Draft Regulations 940 CMR 33.0 can be viewed at <http://www.mass.gov/ago/earnedsicktime>

You, as a consumer of PCA services, and the employer of your PCA(s), will receive Functional Skills Training from your PCM Agency on the following,

- a. How Earned Sick Time is earned (accrued), can be used by your PCA(s).
- b. General Provisions of Earned Sick Time, included below.
- c. When used by your PCA(s), Sick Leave *is not* deducted from your authorized hours for PCA Services.
- d. How to complete and submit the Sick Leave Timesheet Activity Forms to your Fiscal Intermediary.
- e. Ensuring you have individuals on your PCA Back-up list, for when your PCA(s) may be out sick.
- f. Should your PCA(s) have questions regarding their accrued Sick Leave, they should contact the Fiscal Intermediary, or visit the PayChoice web portal at: <https://www.OnlineEmployer.com/feapca>
- g. Consequences of any fraudulent use of Earned Sick Time.

Sick time can only be reported on the PCA Sick Time Activity Form Time Sheet. Any sick time reported on a Regular Activity Form Time Sheets will not be processed for payment. You may obtain PCA Sick Time Activity Forms from your Fiscal Intermediary.

General Provisions of Earned Sick Time:

General Provisions are subject to the Final Regulations as promulgated by the Attorney General of Massachusetts.

- PCAs will earn 1 hour of earned sick time for every 30 hours worked. PCAs can accrue up to 40 hours of earned sick time in a calendar year. The 40 hours include any hours rolled over from the previous year.
- The “calendar year” for tracking accrual, use, and carryover of earned sick time is any consecutive 12-month period of time as determined by MassHealth.
- PCAs may carry over up to 40 hours of unused earned sick time to the next year.
- Under the law, all PCAs who work enough hours must be allowed to accrue 40 hours per year of earned sick time. PCAs must also be allowed to use up to 40 hours per year of that accrued time.
- PCAs begin accruing sick time from their first date of actual work.
- A PCA can begin *utilizing* Earned Sick Time, 90 days *after* the PCA started working for a consumer or consumers of PCA Services in the MassHealth Personal Care Attendant Program.
- Under the law, Earned Sick Time can be used for the following reasons:



- 1) To care for the PCAs 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;
 - 2) To care for the PCAs own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care;
 - 3) To attend the PCAs routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse; or
 - 4) To address the psychological, physical or legal effects of domestic violence.
- A PCA 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 PCA returns to work.***
 - PCAs are entitled to use earned sick time in 15 minute increments. However, if a PCAs absence from work at a designated time requires the MassHealth Member to use a back-up PCA and the MassHealth Member does so, the MassHealth Member may require the PCA using sick time to take up to a full shift of Earned Sick Time.
 - PCAs must make a good faith effort to provide reasonable notice of the need in advance of the use of earned sick time. Reasonable notice may include the MassHealth Member's reasonable notification system that the PCA customarily uses to communicate with you, the employer, for absences or requesting leave. If you, the employer do not have an existing policy and procedure for providing reasonable notice, you, the employer must establish such a policy or procedure, preferably in writing. The policy or procedure should enable your PCA(s) to effectively provide reasonable notice in a way that can be documented.
 - If a PCA anticipates a multi-day absence from work, you, the employer may require notification on a daily basis from the PCA or the PCAs proxy (e.g. spouse, adult family member or other responsible party), unless the circumstances make such notification infeasible.
 - Fraud or abuse by engaging in an activity that is not consistent with allowable purposes for leave (e.g. being sick, caring for an ill family member) or by exhibiting a pattern of taking leave on days when the PCA is scheduled to perform duties perceived as undesirable, must be reported to the Bureau of Special Investigations at 617-727-8638 and the employer may discipline the PCA for misuse of sick leave.
 - If a PCA is absent for medical reasons, you, the employer, may require a statement from a health care provider that the absence was for a purpose covered by the law. A PCA 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.
 - If the PCA is absent from work due to domestic violence, you, the employer must accept any of the following:
 - 1) A restraining order or other order issued by a court;
 - 2) A police record documenting the abuse;
 - 3) A document showing that the abuser has been convicted of a violent crime against 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 individual in addressing the effects of the abuse on the individual or the individual's family; or
 - 6) A signed, written statement from the individual that abuse took place.

MassHealth AND you, the employer ***cannot require*** further information about the employee's medical condition or details of the domestic violence.

- MassHealth and MassHealth Member/Consumers, cannot retaliate against a PCA for using earned sick time, for exercising or attempting to exercise rights under the law, including: requesting and using sick leave; 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. Retaliation is illegal.