



## Earned Paid Sick Leave Frequently Asked Questions

Chapter 149 of the General Laws, §148C and 940 CMR 33.02 require that the employer shall provide a minimum of one hour of earned sick time for every thirty hours worked by an employee, up to a maximum of 40 hours of sick time in a calendar year.

1. What types of employees are eligible for this new earned paid sick leave plan?

**Answer:** Any person who performs services for an employer for wage, remuneration, or other compensation, including full time, part-time, seasonal, and temporary employees, except:

- a. *Federal work study students;*
- b. *Students providing support services to residents of a residence hall, dormitory, apartment building, or other similar residence operated by the institution at which they are matriculated in exchange for a waiver or reduction of room, board, tuition or other education-related expenses;*  
*or*
- c. *Students exempt from Federal Insurance Contributions Act (FICA) tax pursuant to 26 U.S.C. § 3121(b) (10).*

The law does not override employers' obligations under any contract or benefit plan with more generous provisions than those in the law. Employers that have their own policies providing as much paid time off, usable for the same purposes and under the same conditions as the law, are not required to provide additional paid sick time. **Therefore, University employees that are already receiving accrued sick time that is in compliance with the conditions of the state law, and is more generous than the state law requires, will not be impacted by this new law.**

2. If a full-time benefited employee already receiving a sick leave accrual benefit for their full time position, also works in a non-benefited job for UMass, is the employee eligible to receive earned sick leave for the part-time job?

**Answer:** Yes

3. If an employee works multiple jobs for UMass (i.e. 3 part-time non-benefited positions), how will the employee earn sick time?

**Answer:** The employee would need to be enrolled in the sick leave plan for every job separately. The employee would accrue sick leave for each job based on the hours worked at each respective job.

4. Are employees eligible for FMLA leave? Can they use their earned sick time?

**Answer:** If an employee is otherwise eligible for FMLA leave, s/he may use earned sick leave concurrently with the FMLA leave.

5. When are student employees eligible to accrue and sick time under the law?

**Answer:** When students are paying FICA taxes over the summer, they are considered employees under the sick time law and should accrue sick time accordingly. This time can only be used while these students continue to pay FICA taxes. Once these students become FICA-exempt during the academic



year, they may not use accrued time as they are no longer employees for the purposes of the sick time law. Also being FICA-exempt would constitute a break in service.

- Example: Being FICA-exempt would constitute a break in service for student employees under the regulations. If a student employee had unused sick time of 10 hours or more, they can carry it over up to a maximum of 40 hours and use it during the next period they are paying FICA taxes, assuming the break is between 4 and 12 months. Any unused sick time less than 10 hours, would be lost.

6. When should employees who are already active prior to 7/1/15 be enrolled in the new sick leave plan?

**Answer:** Effective June 28, 2015, a new sick leave accrual plan (5M) and benefit plan (MASICK) was created for all non-benefited employees and will be administered on a calendar year basis.

7. How is the sick time earned?

**Answer:** Accruals will be done at a rate of .0333 hours (2 minutes per hour worked) which equates to 1 hour of sick time earned for every 30 hours worked.

8. When is the sick leave credited to employees?

**Answer:** The earned sick leave is credited every pay period during payroll processing.

9. How will the employee verify earned sick time accrued and available?

**Answer:** Earned sick time will be available on the HR Direct timesheet and on line remittance advice.

10. Is there a waiting period before an employee is eligible to use their earned sick leave?

**Answer:** Although the law permits a 90 day vesting period, UMass will allow all eligible non-benefited employees to begin using hours as they accrue.

11. How many hours are employees able to use in calendar year?

**Answer:** Employees are eligible to use 40 hours per year, in no less than 15 minute increments.

12. Are employees allowed to carry over sick leave into the next calendar year?

**Answer:** Yes. Employees may carry over a total of up to 40 hours into the next calendar year.

13. If employees are allowed to carry over sick leave into the next calendar year, are they also eligible to continue to earn sick leave in the next year?

**Answer:** Yes. The employee can earn the difference between what was carried over and 40 hours.

- Example 1: On January 1, 2016 the employee carries over 30 hours of unused sick leave, he/she may earn 10 hours additional hours during 2016.



14. Are compensated absences (i.e. jury duty, military leave, sick leave, or other paid time off) counted towards “hours worked” for sick accrual purposes?

**Answer:** No. The employee will only accrue earned sick leave based on the actual hours worked, including overtime hours.

15. If an employee has a full- time benefited position and also has a part-time non- benefited position with UMass, can the employee use sick leave earned in one job for the other job?

**Answer:** No. The employee will accrue sick leave for each position separately. The employee may only use sick leave accrued from each position to cover the hours not worked in their respective jobs.

16. Is there a cash-out of unused sick leave if an employee separates from service?

**Answer:** No. There is no cash-out when employees enrolled in this leave plan separate from service.

17. Would sick time transfer if an employee transfers from a non-benefited position to a benefited position or vice versa?

**Answer:** When non-benefited employees become benefited employees, any accrued and unused sick time under the new non-benefited leave accrual plan would be transferred to the benefited position. If an employee goes from benefited to non-benefited, then they should only be eligible to transfer up to 40 hours of accrued and unused sick time to the non-benefited position.



## Notice of Employee Rights

Beginning July 1, 2015, Massachusetts employees have the right to earn and take sick leave from work.

### WHO QUALIFIES?

**All employees** in Massachusetts can earn sick time.

This includes full-time, part-time, temporary, and seasonal employees.

### HOW IS IT EARNED?

- Employees earn 1 hour of sick time for every 30 hours they work.
- Employees can earn and use up to **40 hours per year** if they work enough hours.
- Employees with unused earned sick time at the end of the year can **rollover up to 40 hours**.
- Employees **begin earning** sick time on their first day of work and **may begin using** earned sick time 90 days after starting work.

### WILL IT BE PAID?

- If an employer has 11 or more employees, sick time must be paid.
- For employers with 10 or fewer employees, sick time may be unpaid.
- Paid sick time must be paid on the same schedule and at the same rate as regular wages.

### WHEN CAN IT BE USED?

- An employee can use sick time when the employee or the employee's child, spouse, parent, or parent of a spouse is sick, has a medical appointment, or to address the effects of domestic violence.
- The smallest amount of sick time an employee can take is one hour.
- Sick time cannot be used as an excuse to be late for work without advance notice of a proper use.
- Use of sick time for other purposes is not allowed and may result in an employee being disciplined.

### CAN AN EMPLOYER HAVE A DIFFERENT POLICY?

Yes. An employer can have their own sick leave or paid time off policy, so long as employees can use at least the same amount of time, for the same reasons, and with the same job-protections as under the Earned Sick Time Law

### RETALIATION

- Employees using earned sick time cannot be fired or otherwise retaliated against for exercising or attempting to exercise rights under the law.
- Examples of retaliation include: denying use or delaying payment of earned sick time, firing an employee, taking away work hours, or giving the employee undesirable assignments.

### NOTICE & VERIFICATION

- Employees must **notify** their employer before they use sick time, except in an emergency.
- Employers may require employees to **use a reasonable notification system** the employer creates.
- If an employee is out of work for 3 consecutive days **OR** uses sick time within 2 weeks of leaving their job, an employer may require documentation from a medical provider.

### DO YOU HAVE QUESTIONS?

Call the Fair Labor Division at 617-727-3465  E-Mail us at [EarnedSickTime@state.ma.us](mailto:EarnedSickTime@state.ma.us)

Visit [www.mass.gov/ago/earnedsicktime](http://www.mass.gov/ago/earnedsicktime)

