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Policy Title: Earned Sick Leave Policy

Policy Number: HR-INTERNAL-01

Brief Description: Establishes the guidance for implementation of the MA Earned Sick Leave Law

Effective: 7/1/2015

Responsible Office: Human Resources

Last Reviewed/Updated: NEW POLICY

INTRODUCTION

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.

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.**

This law may run concurrently with time off provided by the Family Medical Leave Act, the Massachusetts Parental Leave Act, the Massachusetts Domestic Violence Leave Act, the Small Necessities Leave Act, and other leave laws that may allow employees to make concurrent use of leave. UMass requires employees to use, earned paid sick time, to receive pay when taking other statutorily-authorized leave that would otherwise be unpaid.

DEFINITIONS

Benefit Year. "Benefit year" is used interchangeably with "calendar year" for purposes of 940 CMR 33.00.

Break in Service. A period of time extending from the date an employee last worked for an employer until the employee's return to employment with that employer, whether the separation was voluntary or involuntary.

Calendar Year. The regulations allow for any consecutive 12-month period of time as determined by an employer. The University will use a year that runs from January 1 to December 31. "Calendar year" is used interchangeably with "benefit year" for purposes of 940 CMR 33.00.

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

Child For Whom an Employee Has Assumed the Responsibilities of Parenthood. A child of an employee standing in loco parentis, as defined by 29 U.S.C. § 2611(12) and 29 C.F.R. §§ 825.122(c) and 825.800.

Domestic Violence. Abuse committed against an employee or the employee's child by: (1) a current or former spouse of the employee; (2) a person with whom the employee shares a child in common; (3) a person who is cohabitating with or has cohabitated with the employee; (4) a person who is related to the employee by blood or marriage; or (5) a person with whom the employee has or had a dating or engagement relationship. Except as otherwise specified herein, this term shall be consistent with M.G.L. c. 151A, § 1(g)(1/2), including any amendments thereto.

Date of Hire. An employee's first date of actual work for an employer. "Date of hire" is used interchangeably with "first date of actual work" for purposes of 940 CMR 33.00.

Earned Paid Sick Time. Time off from work accrued by an employee and provided by an employer that can be used for the purposes described in 940 CMR 33.02: Definitions for Earned Sick Time compensated at the same hourly rate that the employee earns at the time the employee uses the paid sick time; provided, however, that the same hourly rate shall not be less than the effective minimum wage under M.G.L. c. 151, § 1 where applicable.

Earned Sick Time. Time off from work accrued by an employee during hours worked and provided by an employer to allow an employee to:

1. 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;
2. 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;
3. attend a routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse;
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.

Regular Hourly Rate. The amount that an employee is regularly paid for each hour of work.

Same Hourly Rate.

1. For employees compensated on an hourly basis, the same hourly rate means the employee's regular hourly rate.
2. For employees who receive different pay rates for hourly work from the same employer, the same hourly rate means the wages the employee would have been paid for the hours absent during use of earned sick time if the employee had worked;
3. For employees paid a salary, the same hourly rate means the employee's total earnings in the previous pay period divided by the total hours worked during the previous pay period. For determining total hours worked during the previous pay period, employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1), the Fair Labor Standards Act, shall 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. 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.
4. 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.

The same hourly rate shall not include:

1. sums paid as commissions, drawing accounts, bonuses, or other incentive pay based on sales or production;
2. sums excluded under 29 U.S.C. § 207(e), including contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance, and any other employee benefit plans;
3. overtime, holiday pay, or other premium rates. However, where an employee's regular hourly rate is a "differential rate," meaning a different wage rate paid for the same work performed under differing conditions (e.g. a night shift), the "differential rate" is not a premium.

APPLICABILITY

- A. Any person who performs services for an employer for wage, remuneration, or other compensation, as further defined by M.G.L. c. 149, § 148B, 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).¹

- B. An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Massachusetts regardless of the location of the employer. An employee need not spend 50% or more time working in Massachusetts for a single employer in order for Massachusetts to be the employee's primary place of work.
- C. If an employee is eligible to accrue and use earned sick time, then all hours the employee works must be applied toward accrual of earned sick time regardless of the location of the work and regardless of the location of the employer.

SPECIFIC PROVISIONS OF THE POLICY

(A) Accrual of Earned Sick Time:

1. 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 and will max out at 40 hours/year.²
2. Employees accrue earned sick time only on hours worked, not on hours paid when not working. For example, employees do not accrue earned sick time during vacation, paid time off, or while using earned sick time.
3. Employees exempt from overtime requirements under 29 U.S.C. § 213(a)(1) shall be assumed to work 40 hours in each work week for purposes of earned sick time accrual unless their jobs specify a lower number of hours per week, such as salaried part-time employees. In such cases, earned sick time shall accrue based on that specified number of hours per week.
4. Employees paid on a piece work or fee-for-service basis accrue earned sick time based on a reasonable measure of the time the employees work, including established practices or billing. Adjunct faculty compensated on a fee-for-service or "per-course" basis shall be deemed to work 3 hours for each "classroom hour" worked
5. Once employees have accrued 40 hours of earned sick time during the benefit year, they do not continue to accrue more hours of earned sick time regardless of the additional hours they work.
6. 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.
7. At the end of the benefit year, an employee may rollover up to 40 hours of unused earned sick time to the next benefit year.

(B) Use of Earned Sick Time:

1. Employees have the right to use 40 hours of earned sick time per benefit year if the employee works sufficient hours to earn the time.
2. An employee may not use earned sick time if the employee is not scheduled to be at work during the period of use.
3. The smallest amount of sick time an employee can use is 15 minutes.³
4. Earned sick time may not be invoked as an excuse to be late for work without an authorized purpose under M.G.L. c. 149, § 148C.
5. An employee may not accept a specific shift assignment with the intention of calling out sick for all or part of that shift.
6. Where an employee's use of earned sick time requires the manager to hire a replacement or call in another employee and the employer does so, the manager may require the employee to use an equal number of hours as the replacement or call-in 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 manager must provide sufficient job-protected unpaid leave to make up the difference in that shift.

¹ *When student employees 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.*

² *The law reads: "Employers may track accrual at an accrual rate of one hour of earned sick time for 30 hours worked or any equivalent accrual rate with smaller increments of time (e.g. one minute of sick time per 30 minutes worked, two minutes of earned sick time per hour worked)."*

³ *The law reads: "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."*

7. Where a manager does not hire a replacement or call in another employee but the employee's use of earned sick time results in the employee missing transportation to a work site, the employer may require the employee to use earned sick time only until the employee arrives at the work site.
8. A manager shall not require an employee to make up time off from work as a condition of using earned sick time. An employee and employer may, however, by mutual agreement arrange for the employee to work additional hours during the same or next pay period to avoid the use of, and payment for earned sick time.⁴
9. Managers and their fee-for-service employees may arrange to make up hours during the same pay period or any future pay period that is mutually agreeable.⁵
10. If an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for earned sick time under M.G.L. c. 149, § 148C, a manager may discipline the employee for misuse of sick leave.
11. If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, a manager may discipline the employee for misuse of earned sick time, unless the employee provides verification of authorized use under M.G.L. c. 149, § 148C.

(C) Payment of Earned Sick Time:

1. Earned paid sick time is paid at the same hourly rate listed in 940 CMR 33.02. See "Regular Hourly Rate" and "Same Hourly Rate."
2. 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.

(D) Accruing and Using Time:

1. Employees may begin accruing sick time on the first date of actual work.
2. Employees may use earned sick time as it accrues.⁶

(E) Break in Service:

1. Following a break in service of up to four months, an employee shall maintain the right to use any unused earned sick time accrued before the break in service.
2. Following a break in service of between four and 12 months, an employee shall maintain the right to use earned sick time accrued before the break in service if the employee's unused bank of earned sick time equals or exceeds 10 hours.⁷

PROCEDURE

(A) Notice of Use of Earned Sick Time

1. Employees must notify their manager before they use earned sick time, except in an emergency.
 - a. Earned sick time cannot be used as an excuse to be late for work without an authorized purpose under M.G.L. c. 149, § 148C.
 - b. For foreseeable or pre-scheduled use of earned sick time, your department may have a written policy requiring up to seven days' notice, except where the employee learns of the need to use earned sick time within a shorter period.
 - c. Notice required for unforeseeable absences is what is reasonable under the circumstances, recognizing that there are certain situations such as accidents or sudden illness for which advance notice might be infeasible.
 - d. For multi-day absences, your manager may require notification of the expected duration of the leave or, if unknown, then 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 notice unreasonable.

⁴ Please see attached form "Shift Change Request Form"

⁵ Please see attached form "Fee For Service Change Hours Agreement"

⁶The law reads: "Employees begin accruing earned sick time on the first date of actual work and may begin to use any accrued earned sick time 90 days following their first dates of actual work, regardless of the number of days worked during the 90-day period."

⁷ Being FICA-exempt would constitute a break in service for student employees under the regulations. For example, if a student employee had unused sick time of 10 hours or more, they can carry it over 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.

2. Your manager may require employees to use reasonable notification systems the department creates, provided that the employees shall be allowed to communicate with the employer in a manner the employee customarily uses to communicate with the employer for absences or requesting leave.
3. An employee may provide notice without explicitly referencing the of M.G.L. c. 149, § 148C, or using the term “earned sick time” so long as the employer is on notice that the employee intends to use accrued time for a proper purpose.
4. Managers may seek verification of authorized use from a parent or guardian if they have reasonable suspicion that an employee, age 17 or under, is misusing earned sick time, unless verification would create a health and safety risk or hardship to the employee.

(B) Documentation of use of earned sick time

1. A manager may require written documentation for an employee’s use of earned sick time that:
 - a. exceeds 24 consecutively scheduled work hours;
 - b. exceeds 3 consecutive days on which the employee was scheduled to work;
 - c. occurs within 2 weeks prior to an employee’s final scheduled day of work before termination of employment, except in the case of temporary employees (i.e. “temp workers”);
 - d. occurs after 4 unforeseeable and undocumented absences within a 3-month period; or
 - e. for employees aged 17 and under, occurs after 3 unforeseeable and undocumented absences within a 3-month period.
2. Written documentation that may be required includes:
 - a. Written documentation signed by a health care provider indicating the need for the earned sick time taken; or
 - b. With regard to indicating the need of leave related to domestic violence, any of the following:
 - i. a restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;
 - ii. a police record documenting the abuse;
 - iii. 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;
 - iv. medical documentation of the abuse;
 - v. 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
 - vi. a signed written statement from the employee attesting to the abuse.
3. The employer may never require, as a condition of granting, using, or verifying earned sick time, that an employee provide documentation to explain the nature of the illness or the details of the domestic violence.
4. All evidence of domestic violence experienced by an employee, including the employee’s statement and corroborating evidence, shall not be disclosed by the employer unless written consent for disclosure is given by the employee at the time the evidence is provided.
5. 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. Documentation may be submitted to an employer in hand or by any reasonable method, including e-mail.
6. Employees must submit such documentation within 7 days after the taking of earned sick time for which such documentation is required, unless, for good cause shown, an employee requires more time to provide such documentation.
7. If an employee fails to comply without reasonable justification with the documentation requirements of the employer as described in 940 CMR 33.06, UMass may recoup the sum paid for earned sick time from future pay, as an overpayment. Employees must be put on notice of this practice.
8. If the employee fails to provide documentation for unpaid earned sick time, UMass may deny the future use of an equivalent number of hours of accrued earned sick time until documentation is provided, but may not otherwise take adverse action.
9. Employers may require employees to personally verify in writing that they have used earned sick time for allowable purposes after using any amount of sick leave, provided that the employee shall not be required to explain the nature of the illness or the details of the domestic violence.⁸
10. Public employers performing essential public health and safety functions may require employees making any use of earned sick time during severe weather events or other emergencies to provide written documentation from a medical provider substantiating its use and to follow additional notification procedures set forth by the employer.

⁸ Please see attached form “Employee Verification Regarding Use of Sick”

If an employee fails without cause to follow policies in such circumstances, an employer may discipline an employee for misuse of sick leave.

11. Health care providers may require employees making any use of earned sick time during local, state or federally declared emergencies to provide written documentation from a medical provider substantiating its use and to follow additional notification procedures set forth by the employer. If an employee fails without cause to follow policies in such circumstances, an employer may discipline an employee for misuse of sick leave.
12. A manager 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.

(C) Prohibition on Retaliation and Non-interference

1. UMass will not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under or in connection with this section, including, but not limited to, using the taking of earned sick time under M.G.L. c. 149, § 148C, as a negative factor in any employment action such as evaluation, promotion, disciplinary action, or termination, or otherwise subjecting an employee to discipline for the use of earned sick time under M.G.L. c. 149, § 148C.
2. UMass will not take any adverse action against an employee because the employee opposes practices which the employee reasonably believes to be in violation of M.G.L. c. 149, § 148C, or 940 CMR 33.08, or because the employee supports the exercise of rights of another employee under M.G.L. c. 149, § 148C. Exercising rights under M.G.L. c. 149, § 148C, shall include but not be limited to filing an action, or instituting or causing to be instituted any proceeding, under or related to M.G.L. c. 149, § 148C; providing or intending to provide any information in connection with any inquiry or proceeding relating to any right provided under M.G.L. c. 149, § 148C; or testifying or intending to testify in any inquiry or proceeding relating to any right provided under M.G.L. c. 149, § 148C, or 940 CMR 33.00.

REFERENCES

Chapter 149 of the General Laws, §148C and 940 CMR 33.02 - www.mass.gov/ago/earnedsicktime

Earned Sick Leave FAQ's

Sample form "Shift Change Request"

Sample form "Fee for Service Change Hours Agreement"

Sample form "Employee Verification Regarding Use of Sick"

Earned Sick Leave Notice to Employees - <http://www.mass.gov/ago/docs/workplace/earned-sick-time/est-employee-notice.pdf>

Job Aid for Mass Sick Self Service time reporting

Job Aid for Mass Sick Timekeepers



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SHIFT CHANGE REQUEST FORM

Department: _____

Original Shift Date and Time: _____

New Mutually Agreed to Shift Date and Time: _____

Name of Employee: _____ Job Title: _____

Reason for Shift Change:

I understand that this is a mutual agreement between both the employee and manager to work additional hours during the same or next pay period to avoid the use of, and payment for earned sick time.

Signature of Person

Requesting Change: _____ Date: _____

Supervisor Signature: _____ Date: _____

Approved: YES/NO



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FEE FOR SERVICE

MUTUAL AGREEMENT TO MAKE UP HOURS

Department: _____

Original Work Date and Time: _____

New Mutually Agreed to Work Date and Time: _____

Name of Employee: _____ Job Title: _____

Reason for Change:

I understand that this is a mutual agreement to make up hours during the same pay period or any future pay period that is mutually agreeable.

Signature of Person
Requesting Change: _____ Date: _____

Supervisor Signature: _____ Date: _____

Approved: YES/NO



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Employee Verification Regarding Authorized Use of Earned Sick Time

Under the Massachusetts Earned Sick Time Law (M.G.L. c. 149, § 148C), employers are permitted to ask employees to verify that an instance of sick leave of any length was used for an authorized purpose under the law.

I, _____ (print or type name), attest that I used earned sick time for the authorized reason/s checked below:

☐ to care for my child, spouse, parent, or parent of my 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;

☐ to care for my own physical or mental illness, injury, or medical condition that requires home care, under the Massachusetts Earned Sick Time Law (M.G.L. c. 149, § 148C), employers are permitted to ask employees to verify that an instance of sick leave of any length was used for an authorized purpose under the law.

☐ professional medical diagnosis or care, or preventative medical care;

☐ to attend a routine medical appointment or a routine medical appointment for my child, spouse, parent, or parent of my spouse;

☐ to address the psychological, physical, or legal effects of domestic violence; or

☐ to travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

I used earned sick time in the amount of _____ hours and _____ minutes on the following date/s:

_____.

I understand that if an employee is committing fraud or abuse by engaging in an activity that is not consistent with allowable purposes for earned sick time under M.G.L. c. 149, § 148C, an employer may discipline the employee for misuse of sick leave.

I understand that if an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of earned sick time, unless the employee provides verification of authorized use under M.G.L. c. 149, § 148C.

Employee Signature: _____ Employee Name (Print): _____

Date Signed: _____