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Massachusetts Attorney General Creates a “Safe Harbor” From the Requirements of the Massachusetts Sick Leave Law

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The Massachusetts Attorney General recently issued a supplemental regulation to the state’s new sick leave law that aims to provide a “safe harbor” to Massachusetts employers that had qualifying paid time off (“PTO”) policies (including sick, personal, vacation, and/or combined PTO policies) in place as of May 1, 2015. The new regulation is welcome news to employers who are struggling to adopt policies that comply with the new law.

The Massachusetts sick leave law, which goes into effect on July 1, 2015, requires private sector employers in Massachusetts to provide employees with up to 40 hours of sick leave each calendar year.¹ Although the Massachusetts Attorney General has issued proposed regulations addressing some of the questions raised by the new law,² those regulations likely will not be finalized until June 19, 2015 at the earliest. As a result, employers have been urging the Legislature and the Attorney General to delay implementation of the law.

In response, the Attorney General issued a safe harbor regulation. Under the supplemental regulation, employers with PTO policies, including sick, personal, vacation, and/or combined PTO policies, that were in place as of May 1, 2015, and that provide employees the right to use at least 30 hours of paid time off during calendar year 2015, are deemed to be in compliance with the new law from July 1, 2015 through December 31, 2015, even though they might not technically satisfy all of the requirements imposed by the new law. Employers who had otherwise qualifying PTO policies effective May 1, 2015 can also avail themselves of the safe harbor by expanding eligibility for those plans to all employees. Thus, an employer with a sick, personal, vacation, or combined PTO policy in place as of May 1, 2015 that provided only certain employees the right to use at least 30 hours of paid time off can take advantage of the safe harbor with respect to all employees by expanding the scope of eligibility under its existing PTO policy to include employees who were not previously eligible.

¹ See Adam Forman, Christopher Kaczmarek, and Carie Torrence, *Massachusetts Voters Approve Paid Sick Leave Law*, Littler Insight (Nov. 7, 2014).

² See Adam Forman, Christopher Kaczmarek, and Carie Torrence, *Proposed Regulations Shed Light on Unanswered Massachusetts Sick Leave Questions*, Littler Insight (May 12, 2015).

In addition, to fit within this safe harbor provision, any time off taken under an existing PTO policy from July 1, 2015 through December 31, 2015 must be treated as job-protected leave subject to the law's non-retaliation and non-interference provisions. Employers with existing PTO policies that extend job protection and non-retaliation to paid time off taken under those policies may otherwise continue to administer their PTO policies as they were administered as of May 1, 2015. An employer that provided paid time off to employees without job protection must extend job protection to any use of paid time off on or after July 1, 2015 in order to comply with the new law.

Employers eligible for the safe harbor must adjust their paid time off policies to comply with the new law on or before January 1, 2016. In effect, the supplemental regulation extends the period within which these employers are obligated to meet the precise requirements of the law for an additional six months, but in recognition of that transition period, they must ensure that existing policies are implemented in a manner that complies with the intent of the new law.

Employers should consult with experienced employment counsel when assessing whether the safe harbor is available to them. Littler Mendelson is holding a free Breakfast Briefing on June 5, 2015 in Burlington, Massachusetts to discuss the new sick leave law, as well as other new federal and state employment laws. Click [here](#) for more information.