

Question 4: November 4, 2014 Massachusetts state election

<http://www.sec.state.ma.us/ele/ele14/pip144.htm>

Be it enacted by the People, and by their authority:

SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after section 148B the following two sections:-

Section 148C. (a) As used in this section and section 148D, the following words, unless the context clearly requires otherwise, shall have the following meanings:-

“Child”, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person who has assumed the responsibilities of parenthood.

“Earned paid sick time”, the time off from work that is provided by an employer to an employee as computed under subsection (d) that can be used for the purposes described in subsection (c) and is compensated at the same hourly rate as the employee earns from the employee’s employment at the time the employee uses the paid sick time; provided, however, that this hourly rate shall not be less than the effective minimum wage under section 1 of chapter 151.

“Earned sick time”, the time off from work that is provided by an employer to an employee, whether paid or unpaid, as computed under subsection (d) that can be used for the purposes described in subsection (c).

“Employee”, any person who performs services for an employer for wage, remuneration, or other compensation, except that employees employed by cities and towns shall only be considered Employees for purposes of this law if this law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth.

“Employer”, any individual, corporation, partnership or other private or public entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation, except the United States government shall not be considered an Employer and cities and towns shall only be considered Employers for the purposes of this law if this law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth.

“Health care provider”, the meaning given this term by the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as it may be amended and regulations promulgated thereunder.

“Parent”, a biological, adoptive, foster or step-parent of an employee or of an employee’s spouse; or other person who assumed the responsibilities of parenthood when the employee or employee’s spouse was a child.

“Spouse”, the meaning given this term by the marriage laws of the commonwealth.

(b) All employees who work in the commonwealth who must be absent from work for the reason set forth in subsection (c) shall be entitled to earn and use not less than the hours of earned sick time provided in subsection (d).

(c) Earned sick time shall be provided by an employer for 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; or

(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; or

(3) attend the employee’s routine medical appointment or a routine medical appointment for the employee’s child, spouse, parent, or parent of spouse; or

(4) address the psychological, physical or legal effects of domestic violence as defined in subsection (g 1/2) of section 1 of chapter 151A, except that the definition of employee in subsection (a) will govern for purposes of this section.

(d) (1) An employer shall provide a minimum of one hour of earned sick time for every thirty hours worked by an employee. Employees shall begin accruing earned sick time commencing with the date of hire of the employee or the date this law becomes effective, whichever is later, but employees shall not be entitled to use accrued earned sick time until the 90th calendar day following commencement of their employment. On and after this 90 day period, employees may use earned sick time as it accrues.

(2) Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of earned sick time at a faster rate, or the use of earned sick time at an earlier date, than this section requires.

(3) Employees who are exempt from overtime requirements under 29 U.S.C. section 213(a)(1) of the Federal Fair Labor Standards Act shall be assumed to work 40 hours in each work week for purposes of earned sick time accrual unless their normal work week is less than 40 hours, in which case earned sick time shall accrue based on that normal work week.

(4) All employees employed by an employer of eleven or more employees shall be entitled to earn and use up to 40 hours of earned paid sick time from that employer as provided in subsection (d) in a calendar year. In determining the number of employees who are employed by an employer for compensation, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted.

(5) Notwithstanding section 17 of chapter 15D, sections 70-75 of chapter 118E, or any other special or general law to the contrary, the PCA Quality Home Care Workforce Council shall be deemed the Employer of all Personal Care Attendants, as defined in section 70 of chapter 118E, for purposes of subsection (d)(4) of this section, the Department of Medical Assistance shall be deemed the Employer of said Personal Care Attendants for all other purposes under this section, and the Department of Early Education and Care shall be deemed the Employer of all Family Child Care Providers, as defined in section 17(a) of chapter 15D, for purposes of this section.

(6) All employees not entitled to earned paid sick time from an employer pursuant to subsection (d)(4)-(5) shall be entitled to earn and use up to 40 hours of earned unpaid sick time from that employer as provided in subsection (d) in a calendar year.

(7) Earned sick time shall be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time. Employees may carry over up to 40 hours of unused earned sick time to the next calendar year, but are not entitled to use more than 40 hours in one calendar year. Employers shall not be required to pay out unused earned sick time upon the separation of the employee from the employer.

(e) If an employee is absent from work for any reason listed in subsection (c) and, by mutual consent of the employer and the employee, the employee works an equivalent number of additional hours or shifts during the same or the next pay period as the hours or shifts not worked due to reasons listed in subsection (c), an employee shall not be required to use accrued earned sick time for the employee's absence during that time period and the employer shall not be required to pay for the time the employee was so absent. An employer shall not require such employee to work additional hours to make up for the hours during which the employee was so absent or require that the employee search for or find a replacement employee to cover the hours during which the employee is utilizing earned sick time.

(f) Subject to the provisions of subsection (n), an employer may require certification when an earned sick time period covers more than 24 consecutively scheduled work hours. Any reasonable documentation signed by a health care provider indicating the need for earned sick time taken shall be deemed acceptable certification for absences under subsection (c)(1), (2) and (3). Documentation deemed acceptable under subsection (g 1/2) of section 1 of chapter 151A shall be deemed acceptable documentation for absences under subsection (c)(4). An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence. The employer shall not delay the taking of earned sick time or delay pay for the period in which earned sick time was taken for employees entitled to pay under subsection (d), on the basis that the employer has not yet received the certification. Nothing in this section shall be construed to require an employee to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2 note.

(g) When the use of earned sick time is foreseeable, the employee shall make a good faith effort to provide notice of this need to the employer in advance of the use of the earned sick time.

(h) It shall be unlawful for any employer to 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, by using the taking of earned sick time under this section 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 this section.

(i) It shall be unlawful for any employer to take any adverse action against an employee because the employee opposes practices which the employee believes to be in violation of this section, or because the employee supports the exercise of rights of another employee under this section. Exercising rights under this section shall include but not be limited to filing an action, or instituting or causing to be instituted any proceeding, under or related to this section; providing or intending to provide any information in connection with any inquiry or proceeding relating to any right provided under this section; or testifying or intending to testify in any inquiry or proceeding relating to any right provided under this section.

(j) Nothing in this section shall be construed to discourage employers from adopting or retaining earned sick time policies more generous than policies that comply with the requirements of this section and nothing in this section shall be construed to diminish or impair the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan in effect on the effective date of this section that provides to employees greater earned sick time rights than the rights established under this section.

(k) Employers required to provide earned paid sick time who provide their employees paid time off under a paid time off, vacation or other paid leave policy who make available an amount of paid time off sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this section are not required by this section to provide additional earned paid sick time.

(l) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2), (4), (6) and (7) of subsection (b) of section 27C and to section 150.

(m) The attorney general shall prescribe by regulation the employer's obligation to make, keep, and preserve records pertaining to this section consistent with the requirements of section 15 of chapter 151.

(n) The attorney general may adopt rules and regulations necessary to carry out the purpose and provisions of this section, including the manner in which an employee who does not have a health care provider shall provide certification, and the manner in which employer size shall be determined for purposes of subsection (d)(4).

(o) Notice of this section shall be prepared by the attorney general, in English and in other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A. Employers shall post this notice in a conspicuous location accessible to employees in every establishment where employees with rights under this section work, and shall provide a copy to their employees. This notice shall include the following information:

- (1) information describing the rights to earned sick time under this section;
- (2) information about notices, documentation and any other requirements placed on employees in order to exercise their rights to earned sick time;
- (3) information that describes the protections that an employee has in exercising rights under this section;
- (4) the name, address, phone number, and website of the attorney general's office where questions about the rights and responsibilities under this section can be answered; and
- (5) information about filing an action under this section.

Section 148D. The executive office of health and human services, in consultation with the attorney general, shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under this section. This program shall include the distribution of notices and other written materials in English and in other languages to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

SECTION 2. Section 150 of chapter 149 is hereby amended by inserting after the word "148B", the following word:- , 148C.

SECTION 3. If any provision of this act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

SECTION 4. This act shall take effect on July 1, 2015.