

Yet More Breaking News Regarding the MA Earned Sick Time Law: Attorney General Issues Updated Safe Harbor For Employers With Existing PTO Policies

Recognizing that many of you may be just plain sick of MA Earned Sick Time news, on June 10, 2015, the Massachusetts Attorney General's Office released its [Updated Safe Harbor Regulation](#).

The Safe Harbor Regulation provides that some employers with existing paid time off policies will have a safe harbor for complying fully with the MA Earned Sick Time law through December 31, 2015. The first draft of the Safe Harbor Regulation (published in May 2015) left open many questions. The Attorney General's update clarifies what the Attorney General sought to accomplish with the Safe Harbor. This clarification makes the Safe Harbor a good option for many who previously did not see it as particularly useful. The Updated Safe Harbor Regulation is relatively straightforward, but the key provisions are highlighted below. If the Safe Harbor applies to your organization, you are considered in compliance with this law through December 31, 2015 without doing more.

The Safe Harbor now applies provided:

- The employer has a policy in place as of May 1, 2015 by which the employer offers full-time employees at least 30 hours of PTO in calendar year 2015, and
- On and after July 1, 2015, all employees not previously covered by that PTO policy (which includes part-time employees, new employees and per diem employees) either:

* (For accrual PTO policies) – Accrue paid time off at the same rate of accrual as covered full-time employees, or

* (For lump sum PTO policies) – Receive a prorated lump sum allocation based on the provision of lump sum PTO to covered full-time employees. As to lump sums, note also: (1) Where lump sums of PTO are provided annually, they may be halved for employees who received coverage as of July 1, 2015, and proportionally reduced for employees hired after July 1, 2015 and (2) Lump sum allocations may be proportionate for part-time employees.

For employers who will be able to make use of the Safe Harbor, they will be in full compliance as long as they (1) provide this leave as job-protected leave, (2) make this leave available for the allowed purposes as set out in the law, and (3) make PTO that is available to employees this year available to them after January 1, 2016 if unused during this Transition Year. Otherwise, employers are free to administer this PTO per the terms of their policies in effect as of May 1, 2015. However, remember that employers who take advantage of the Safe Harbor still will have to update their policy to comply

fully with the underlying law by January 1, 2016.

Employers who are not eligible to take advantage of the Safe Harbor will be expected to create a new policy that fully complies with the MA Earned Sick Time law by July 1, 2015.

In addition to the foregoing, the Attorney General also issued today a poster that employers can use to comply with the requirement that notice be provided to employees about this law. It can be found here: www.mass.gov/ago/earnedsicktime

Finally, we are told that the Attorney General intends to issue final regulations by June 19, 2015. We will continue to monitor this and keep you apprised of any developments. Please do not hesitate to contact your MBJ attorney with questions.

Tracy Thomas Boland is a Partner with Morgan, Brown & Joy, LLP and may be reached at (617) 523-6666 or at tboland@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters and has done so since 1923.

This alert was published on June 10, 2015.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.