

# Client Alert



A report for clients and  
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## Massachusetts Considers Mandating Paid Sick Leave

While Massachusetts does not currently require employers to provide any paid sick leave to their employees, that may soon change. While many employers in Massachusetts and around the country already choose to voluntarily provide this benefit, a bill currently pending in the Massachusetts legislature would make the provision of up to seven paid sick days per year a legal requirement.

### The Proposed “Paid Sick Days Act”

The proposed Act (S.B. 688 and H.B. 1815) would require all public and private Massachusetts employers to provide a minimum of seven paid sick days per year to their employees, with the sick days accruing at a rate of one hour of pay for every thirty hours worked. The legislation would also provide that the sick days could be used by employees for any of the following purposes:

- Care for the employee’s sick child, spouse, parent or spouse’s parent;
- Care for the employee’s own illness, injury or medical condition;
- Attendance at routine medical appointments for the employee or his/her child, spouse, parent or spouse’s parent; or
- Addressing the psychological, physical or legal effects of domestic violence.

The proposed legislation would allow an employer to require certification of the qualifying illness or injury only if the employee’s leave period lasts more than three consecutive workdays. The bill defines reasonable certification to include any documentation signed by a

health care provider involved in the treatment of the illness, injury or health condition that necessitated the leave. The Act would also make it unlawful for an employer to consider exercise of any employee’s rights under the Act as a negative factor in hiring, evaluation, promotion or disciplinary actions.

### The Effect of the Paid Sick Days Act on Massachusetts Employers

Employers who already have a policy providing over twenty days per year of “paid time off” (not necessarily limited to sick days) for each employee will not be required to change their policy under the Act. In order to be compliant, however, the employer’s policy must also (i) allow employees, at their option, to take paid sick days that are at least equivalent to those described in the Act; or (ii) provide paid sick leave in the amounts equivalent to those described in the Act. Those employers who do not already provide such a policy may experience an increased financial burden under this legislation. The Act will also require such employers to provide conspicuous notice to employees, including information describing the employees’ rights under the Act. Upon termination of employment, employers will be required to pay out for any sick days actually used by the departing employee, but not for any remaining unused days that may have been accrued.

### Proposed Federal Bill — The “Healthy Families Act”

In addition to the pending Massachusetts legislation described above, Congressional Democrats have also recently introduced the Healthy Families Act at the federal level. This Act, introduced on May 25, 2009 by Massachusetts Senator Edward Kennedy and Connecticut Representative Rosa DeLauro, is similar to proposed legislation pending in both Massachusetts and Connecticut (H.B. 6187) and would require employers to provide at least seven paid sick days per year to all employees. The other requirements and restrictions on employers found in the Massachusetts Act are also present in the proposed Healthy Families Act, except that the federal legislation provides a

minimum number of employees, fifteen or more, in order for an employer to be subject to its requirements.

The Healthy Families Act also provides further penalties against employers who seek to interfere with an employee's exercise of paid sick days under the Act. These penalties include:

- Damages equal to the amount of any wages or other benefits denied or lost. If there are no such losses, then actual monetary losses sustained as a result of the interference;
- Other equitable relief that the court may deem appropriate; and/or
- Administrative action by the Secretary of Labor to recover damages or institute an injunction.

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### **Client Alert**

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