CLIENT ALERT: Massachusetts Earned Sick Time Law Expanded to Include Reproductive Loss Events

A change to the Massachusetts Earned Sick Time Law went into effect November 21, 2024, that expands the permissible usage of earned sick time to include care for an employee or the employee's spouse in the event of pregnancy loss or failed assisted reproduction, adoption, or surrogacy. The change was brought forth by a larger bill passed by the Massachusetts Legislature earlier this year, An Act Promoting Access to Midwifery Care and Out-Of-Hospital Birth Options, and will require Massachusetts employers to review their sick time policies to ensure that their employees can use earned sick time for these purposes.

Prior to the new update to the Massachusetts Earned Sick Time Law, an employee could use earned sick time for the following reasons: (1) to care for the employee's own or their family member's physical or mental illness, injury, or medical condition that requires care; (2) to attend the employee's own or their family member's routine medical appointments; or (3) to address the psychological, physical, or legal effects of domestic violence. Although the permissible use of Massachusetts Earned Sick Time Law provisions may have previously encompassed instances of pregnancy loss or failed assisted reproduction, adoption, or surrogacy under the physical or mental illness, injury, or medical condition provisions, the new changes now make this right explicit.

The change to the Massachusetts Earned Sick Time Law is the latest example of a growing trend of expansions to the rights of employees impacted by pregnancy and child loss. For example, the Equal Employment Opportunity Commission has clarified that miscarriages are included in the Pregnant Workers Fairness Act's mandate that employers provide reasonable accommodations to qualified employees affected by pregnancy, childbirth, or related medical conditions. In addition, California employers are already required to provide employees up to five days of bereavement leave following a reproductive loss event, Illinois employers are required to provide employees up to ten days of bereavement leave due to similar reasons as the updated Massachusetts Earned Sick Time Law, and a bill is currently pending in Oregon that would also provide employees leave to grieve the loss of a pregnancy.

MBJ will continue to monitor future developments concerning pregnant employees and employees who experience pregnancy loss or failed reproduction, adoption, or surrogacy. In the meantime, please contact your MBJ attorney to review any required changes regarding earned sick time policies.

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