

# CLIENT ADVISOR

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## **Municipal Employers Face Costly Problems If New Paid Sick Leave Law Applies**

Whether the Earned Sick Leave Law approved by voters in Tuesday's election will actually apply to municipal employers is yet to be determined. The statute takes effect July 1, 2015, but one of its provisions reads, "...[C]ities 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." Article CXV provides that a law is subject to local acceptance (Town Meeting or a City Council) "...unless such law has been enacted by a two-thirds vote of each house of the general court present and voting thereon, or unless the general court, at the same session in which such law is enacted, has provided for the assumption by the commonwealth of such additional cost."

Do not take this law lightly. At first blush, municipal employers may believe they have nothing to worry about because the law does not trump generous employer plans which provide more extensive benefits. However, there are some areas of grave concern. For example, the law requires that employers provide paid sick leave to all part time employees, regardless of how many hours they regularly work. For every 30 hours worked, employers must grant employees 1 hour of paid sick leave. Also, employees may take any accrued sick leave after their 90<sup>th</sup> day of employment—much sooner than provided by most policies and contracts. Further, employees may use the earned sick leave to:

- Care for a physical or mental illness, injury or medical condition affecting the employee or the employee's child, spouse, parent, or parent of a spouse;
- Attend a routine medical appointment for the employee, or the employee's child, spouse, parent or parent of a spouse; or
- Address the psychological, physical or legal effects of domestic violence.

The law also appears to tie an employer's hands when it comes to abuse of the newly granted sick leave. Employers may only require medical documentation after an employee uses 24 consecutive hours of sick leave, and there is nothing to indicate that an employer has any other power to address abuse. In fact, there is an express provision that prohibits any repercussions against employees who take advantage of the new benefit. Does this mean that employees who benefit from the new law are immune from being disciplined for sick leave abuse? Worse yet, where the new law adds sections 148C and 148D to M.G.L. c. 149, and c. 149 is not one of the statutes that can be changed in bargaining, do not be surprised if an employee or a union already benefitting from an existing, and more generous, sick leave plan argues that the new law also overrides the employer's existing right to control and discipline for abuse of that sick leave.

In our view, this law is not only unnecessary to provide reasonable sick leave benefits to municipal employees, but will cause costly problems for employers where enacted.

For a summary of this law and an extended version of this article, please see our [Employment Blog](http://collinslabor.com/category/employment/), at <http://collinslabor.com/category/employment/>. If you have questions, please contact your CLP attorney.

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## **Speaking Engagements**

**Tim Norris** will be speaking on the Public Safety Overtime Exemption to the Fair Labor Standards Act at the Massachusetts Municipal Managers Association Fall Conference on Friday, November 14, 2014, in Amherst, MA.

**Josh Coleman** will be presenting on Friday, November 14, 2014, at a Suffolk University Masters of Public Administration (MPA) Certificate Program lecture sponsored by the MMA for municipal officials in Duxbury, MA on Discipline and Conducting Investigations.



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