

What are reasons to take sick time?

The Earned Sick Time Law, M.G.L. c. 149, § 148C, provides Earned Sick Time to full-time and part-time employees in Massachusetts under the following definitions.

Earned Sick Time. Time off from work accrued by an employee during hours worked and provided by an employer to allow 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;
- (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;
- (3) attend a routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse;
- (4) address the psychological, physical or legal effects of domestic violence; or
- (5) travel to and from an appointment, a pharmacy, or other location related to the purpose for which the time was taken.

How does Berklee HR policy implement state law?

The Berklee Human Resources Policy Manual, Section 5.0, Leaves of Absence and Pay Continuation Policy, asserts that the above are allowable reasons to stay out from work. The state law mandates that employers either A) keep records of accrued and used sick time or B) provide time off with another policy that complies with the law. Berklee uses option B. The HR manual states "Faculty members and Chairs pay continues during leave taken for reasons covered by the Massachusetts paid sick leave law."

But while the Berklee Human Resources Policy Manual is consistent with the MA paid sick leave law, the behavior of some department chairs may not be.

Though the Massachusetts Attorney General says that "an employer shall not require an employee to make up time off from work as a condition of using earned sick time" (940 CMR, 33.03, 20), some departments don't make a distinction between being absent for a reason covered by the MA paid sick time law versus other types of absences. Some faculty members report that they are required, expected, or pressured by their department chairs to make up all classes missed for any reason.

From Voice Department student handbook: "*Lessons missed or cancelled due to a teacher absence will be made up at a time that is convenient for both you and your instructor*" <https://www.berklee.edu/attendance-and-make-lesson-policies>

From Bass Department student handbook: "*Make-up lessons are only given when the instructor finds it necessary to cancel a lesson.*" <https://www.berklee.edu/bass/handbook#cancellation>

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Berklee Faculty Union Executive Committee, Sick Time Working Group

Teacher story: "We have been told that if we are sick, we need to pay subs to cover and the going rate is \$70/hr.... We can't cancel classes without getting them covered, unless we plan to make them up. [Our department office administrator] was helping me find people who were available to sub. She let me know who was available during the class times... There were several people sick and [the chair] wrote that he was waiting to hear if the school would cover \$subs for us. He never wrote back with further notice, so evidently nobody got back to him about paying for our subs, or the answer was no."

Many faculty members report working while sick so they don't have to hold makeups or hire subs.

What about the learning outcomes for the course?

Berklee faculty are professional educators and their expertise in teaching must be respected. When a faculty member has to miss a class for a reason covered by the MA paid sick time law, that faculty member is the best judge of how to achieve the learning outcomes for the course. Some faculty use a rule of thumb, "make up the work, not the time," which is appropriate in some types of classes.

If a department chair decides that a class missed for a reason covered by the MA paid sick time law should be taught by a sub or made up at a later date, the department must bear that expense. To require the teacher to pay for the sub or make up the missed class is not consistent with the HR manual or state law.

Is anyone outside HR aware of the MA Earned Sick Time Law?

Of the faculty we surveyed, only two had ever heard of the MA Earned Sick Time Law. But the Massachusetts Attorney General says that "Employers shall post a notice of the M.G.L. c. 149, § 148C, prepared by the Attorney General, in a conspicuous place accessible to employees in every location where eligible employees work." (940 CMR, 33.09, 3).

What consequences could an employee face for using sick time?

The Attorney General says it is unlawful for any employer to interfere with the exercise of sick time, including using it as "a negative factor in any employment action such as evaluation, promotion, disciplinary action, or termination." (940 CMR, 33.08,1)

What are employer penalties for violating the MA Earned Sick Time Law?

Violations of the Earned Sick Time law are be subject to M.G.L c. 149, § 27C(b) (1), (2), (4), (6) and (7) and to § 150. Penalties can include a civil citation requiring "that the infraction be rectified, that restitution be made to the aggrieved party, or that a civil penalty of not more than \$25,000 for each violation be paid to the commonwealth."