

MEMORANDUM

Date: November 15, 2024

Re: Proposition A Summary

QUESTION PRESENTED

How will Proposition A (“Prop A”) impact union workplaces? Is there a difference for workers, such as in the construction industry, who work for multiple contractors in a single year?

BRIEF ANSWER

Prop A will not have any immediate impact on unionized workplaces. Under § 290.633, no provisions of Prop A will apply to people covered by an existing valid collective bargaining agreement (“CBA”) until the CBA expires. Prop A provisions will apply when negotiating the CBA’s renewal, extension, amendment, or modification just as other existing laws such as minimum wage, workers’ compensation, and FMLA apply.

For unionized employees work for only one employer, such as industrial, and service industries, Prop A’s provisions are relatively straight forward. Employees who work with multiple contractors in a given year, but under the same CBA, such as entertainment or construction industry workers will have a unique analysis in accruing and transferring paid sick time. However, because of Proposition A defines “employer;” and because Prop A provides a floor to the benefits, not a ceiling, those industries’ employers worried about implementation should have little concern.

DISCUSSION

A. General application to all Missouri workers

Prop A provides “earned paid sick time” as “compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee....” RSMo § 290.600(4). Further, Prop A

defines “employee” as “any individual employed in this state by an employer.” RSMo §290.600(5). An “Employer” for Prop A’s purposes is “any person acting directly or indirectly in the interest of an employer in relation to an employee.” RSMo §290.600(6). Prop A further defines “person” to be “any individual, partnership, association, corporation, business, business trust, legal representative, or any organized group of persons.” RSMo §290.600(9).

Nothing in Prop A is to interfere, impede, or otherwise diminish the right to bargain over earned paid sick time or other conditions of work in excess of the applicable minimum standard provided in Prop A. *Id.*

Earned paid sick time for Missouri works will begin to accrue on May 1, 2025. RSMo § 260.603(4)(A). Where there is a CBA in place paid, sick time will begin to accrue at the later of May 1, 2025, or when the CBA’s term ends.¹

Workers will accrue one hour of paid sick time for every thirty hours worked. While there is no cap in annual sick leave **accrual**; people working for an employer with 15 or more employees are capped at **using** 56 hours of earned paid sick time per year. Those who work for employers with fewer than 15 employees are capped at **using** 40 hours per year. RSMo § 260.603(1)-(2). In both instances, higher limits can be bargained. *Id.*

At the end of the year, a worker can carry over up to 80 hours of unused earned paid sick time to the following year. RSMo § 260.603(4)(C). For example, if an employee works full time starting May 2, 2025, and accrues 70 hours of earned paid sick time in 2025 and does not use any earned paid sick time in 2025 can carry over all 70 hours to begin 2026. That same employee will then start 2026 with 70 hours earned paid sick time. If they accrue an additional 70 hours by the end of 2026, they will start 2027 with 140 hours accrued paid sick time.

¹ This assumption is not in the regulation, but what I think would most likely occur given RSMo §260.603(7) which provides “[e]mployees shall not accrue earned paid sick time before May 1, 2025.” *See also* RSMo §290.633.

However, if that same employee works in 2028 and continues not to use any earned paid sick time, at the end of 2028 will accrue 150 hours, because the max is capped at 80 hours carrying over. Regardless of the paid sick time hours carried over, an employee can only use a maximum of either 56 or 40 hours (depending on the size of the employer), unless otherwise agreed upon. Moreover, a maximum of 80 earned paid sick hours is carried over each year, even if more than 80 were earned in the prior year.

Alternatively, in lieu of a carryover, at the employer's discretion, the employer can pay out the unused earned paid sick time from year to year. *Id.* Even if an employee is transferred to a separate division, entity, or location or if a different employer succeeds or takes the place of an existing employer, previously accrued earned paid sick time that has not been used will remain with the employee. RSMo §260.603(D)-(E). In case of a temporary lay-off a worker will also maintain their earned sick time hours if rehired by the same employer within 9 months of separation by the same employer. RSMo §260.603(D). Earned paid sick time can be used for the following:

- A. An employee's mental or physical illness, injury or health condition
- B. An employee's need for a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition.
- C. An employee's need for preventative medical care.
- D. Care of a family member with a mental or physical illness, injury, or health condition
- E. Care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition.
- F. Care for a family member who needs preventative medical care.
- G. Closure of the employee's place of business; closure of the child in the employee's care school; or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of their exposure to a communicable disease
- H. Absence necessary due to domestic violence, sexual assault, or stalking provided the leave to allow the employee to obtain for the employee or the employee's family member: (i) medical attention needed to recover from physical or psychological injury or disability caused by the domestic violence, sexual assault, or stalking; (ii) services from a victim

services organization, (iii) psychological or other counseling, (iv) relocation or taking steps to secure an existing home, or (v) legal services

Requesting to use earned paid sick time varies, but, ideally, the employee should request in advance by reasonable means, including the expected duration and return date. If advance notice is not possible, the employee should provide notice as soon as practicable. RSMo §290.606(2)-(3). If an employee is requesting earned paid sick time for three or more consecutive workdays, the employer may require reasonable documentation showing the request is for a purpose covered by Prop A. RSMo § 290.606(7).

B. Specific Concerns for workers with multiple employers within the same employer's association, such as the construction industry

While the above applies to all Missouri workers, there is a question about how individuals who work for multiple employers but under a single multi-employer collective bargaining agreement. The problem is best described as follows:

In a non-unionized workplace, if Kelly works for grocery store A and has 30 hours of earned sick leave, Kelly can use those paid sick leave hours while calling in sick to grocery store A. However, if Kelly quits, or is fired from grocery store A with 30 hours of earned sick leave banked and goes to work for grocery store B; grocery store A does not pay those hours out, and Kelly starts at B with zero (0) hours of earned sick leave as none have yet been accrued.

However, in some industries like construction, one person may work for multiple employers throughout a year all under the same collective bargaining agreement. Assume Local Union 123 has a CBA with Association that covers companies D, E, F, G, and H? What happens if Kelly works for company D under the Local 123/CBA for a number of weeks and accrues 10 hours of earned sick time, but does not use it, and then goes to work for company G under the Local

123/CBA but after 10 hours of work wishes to hours accrued sick time? Does Kelly have accrued hours from working with D, or does Kelly not have hours because Kelly is now working for G?

In this scenario, Prop A's definition section is important. Remember, an "**Employer**" for Prop A's purposes is "any **person** acting **directly or indirectly in the interest of an employer** in relation to an employee" and a "**person**" is "any individual, partnership, **association**, corporation, business, business trust, legal representative, or any organized group of persons." RSMo §290.600(6), (9).

Therefore, while not definitive, Union's should take the position because the employer's Association bargained the Local 123/CBA for both company D and G, the Association is the 'employer' for Prop A purposes and Kelly can use the accrued hours. Individual contractors and employers may balk at this result, but from a common-sense and associational perspective, it is correct. Ultimately, bargaining or, barring successful negotiations, the Missouri courts will have to clarify this scenario.

FAQs

A link to Prop A can be found at: <https://www.sos.mo.gov/CMSImages/Elections/Petitions/2024-038.pdf>

Does Prop A apply to unionized workplaces?

Yes, Prop A applies to unionized workplaces. However, it does not begin until the next contract or a revision to a current contract, if a contract is in effect on November 5, 2024.

When does Prop A go into effect?

For all workplaces, earned sick time begins to accrue on May 1, 2025 – unless a CBA is ongoing without modification. Employers are required to post notices and provide employees with information on their earned sick time policies beginning on April 15, 2025. If an employee is hired after April 15, 2025, an employer shall give employees written notice about earned paid sick time within 14 calendar days of the commence of employment.

What can earned paid sick time be used for?

- A. An employee's mental or physical illness, injury or health condition
- B. An employee's need for a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition
- C. An employee's need for preventative medical care.
- D. Care of a family member with a mental or physical illness, injury, or health condition
- E. Care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition.
- F. Care for a family member who needs preventative medical care.
- G. Closure of the employee's place of business; employee's child in their care school; or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of their exposure to a communicable disease
- H. Absence necessary due to domestic violence, sexual assault, or stalking provided the leave to allow the employee to obtain for the employee or the employee's family member: (i) medical attention needed to recover from physical or psychological injury or disability caused by the domestic violence, sexual assault, or stalking; (ii) services from a victim services organization, (iii) psychological or other counseling, (iv) relocation or taking steps to secure an existing home, or (v) legal services

Does Prop A limit a collective bargaining representative's ability to bargain overpaid sick time?

No, Prop A will act as a floor, not a ceiling so that bargaining representatives can bargain for even better earned paid sick time provisions.

How are hours carried over each year?

A maximum of 80 hours earned paid sick time can be carried over year by year. Therefore, if an employee works full time starting May 2, 2025, and accruing 70 hours of earned paid sick time in 2025 and does not use any earned paid sick time in 2025 can carry over all 70 hours. That same employee will start 2026 with 70 hours earned paid sick time. If that same employee accrues an additional 70 hours at the end of 2027, they will have 140 hours accrued paid sick time. However, if that same employee works in 2028 and continues not to use any earned paid sick time, at the end of 2028 will accrue 150 hours, as the max is capped at 80 hours carrying over. Regardless of the amount of paid sick time carried over, an employee can only use a max of either 56 or 40 hours (depending on the size of the employer), unless otherwise agreed upon. Moreover, a maximum of 80 earned paid sick hours is carried over each year, no matter how many hours have been earned.

