



# Massachusetts Bay Transportation Authority

## Human Resources POLICY/PROCEDURE

<b><u>SUBJECT:</u></b> Attendance Policy	<b><u>DATE OF ISSUE:</u></b> January 1, 2016	<b><u>POLICY/PROCEDURE #</u></b> 7.16
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### I. PURPOSE

The purpose of this policy is to set forth rules and guidelines with respect to attendance, absenteeism, and tardiness.

### II. POLICY

All employees are required to report for duty on time and remain on duty for the duration of their scheduled work shifts. Regular attendance and punctuality are critically important for the efficient operation of the Massachusetts Bay Transportation Authority (“the Authority”). Unscheduled absences disrupt service and impact ridership, therefore Authority employees are expected to attend work consistently, and, are subject to discipline if they have more than one Unexcused Absence, or more than two Tardies, or a single AWOL in a three month period. Employees who fail to comply with this policy are subject to discipline.

### III. SCOPE

This policy applies to all full-time and part-time affiliated Authority employees. Executive, unaffiliated, and any other unrepresented employees are not subject to this policy but are employees at-will and may earn and use Earned Sick Time (EST) pursuant to the terms set forth in the Massachusetts Earned Sick Time law, MGL c. 149, § 148C, and accompanying regulations, 940 CMR Part 33.00 et seq.

### IV. DEFINITIONS

*Absent from Duty*      Absent from Duty is the failure of an employee to be present at the assigned location at any time during his or her scheduled work hours, including scheduled overtime and biddable trippers.

*Administrative Suspension*      An Administrative Suspension is an entry recorded in an employee’s service/discipline record. Employees are required to report to work and employees shall be paid during Administrative Suspensions.

*Absent Without Leave (AWOL)*      An employee shall be considered AWOL when the employee:

- (1) Fails to appear at his or her scheduled starting/reporting time and fails to notify his or her immediate supervisor or designee at least two hours before the employee’s scheduled starting/reporting time that he or she will be Absent from Duty or Tardy (“no call/no show”);
- (2) Notifies his or her supervisor at least two hours before the scheduled starting/reporting time that he/she will be late for work, but fails to report to work within two hours of the scheduled start time; and/or

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- (3) Fails to report to any assigned location or leaves work without the proper authorization of his or her immediate supervisor or designee.

AWOL is an Unexcused Absence, unless it is Excused by the Authority through the Waiver process. AWOL is a particularly serious attendance-related violation and will not be tolerated; each AWOL occasion will result in a step being skipped on the Attendance Discipline Track.

*Concurrent Usage of Leave* The Authority requires Concurrent Usage of Leave, meaning employees must "substitute" or run concurrently their accrued *paid* leave, including Massachusetts Earned Sick Time (EST), Contractual Sick Leave (including Sick Paid Protected or SPP where available), personal, and vacation leave, during any *otherwise unpaid* leave, including but not limited to leave under the Family and Medical Leave Act (FMLA); Americans with Disabilities Act (ADA); the Massachusetts Parental Leave Act (MPLA); Domestic Violence Leave Act (DVLA); and/or the Small Necessities Leave Act (SNLA), to the extent applicable, until (1) the exhaustion of the employees' accrued paid leave, or (2) the exhaustion or termination of the approved unpaid leave, whichever comes first.

*Contractual Sick Leave* Contractual Sick Leave is paid sick leave provided by the Authority through an employee's applicable collective bargaining agreement. Contractual Sick Leave is not an Excused Absence, unless it has been approved by the Authority as an Excused Absence.

*Earned Sick Time ("EST")* Employees may earn and use a maximum of 40 hours of EST per calendar year (January 1 – December 31), which shall be considered an Excused Absence under this Policy, in order to:

- (1) 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;
- (2) 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;
- (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.

Consistent with the required Concurrent Usage of Leave, the Authority shall concurrently designate as EST the first 40 hours of Contractual Sick Leave (including SPP, where available) utilized by an employee in any calendar year and/or the first 40 hours of leave under: the Family and Medical Leave Act (FMLA); Americans with Disabilities Act (ADA); the Massachusetts Parental Leave Act (MPLA); Domestic Violence Leave Act (DVLA); the Small

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Necessities Leave Act (SNLA), to the extent applicable.

The Authority will provide employees with at least one year of service with a lump sum allocation of 40 EST hours on January 1 each year; such employees are not permitted to carryover unused EST into the next year.

On their first day of work, newly hired employees start accruing EST, at a rate of one hour of EST for every 30 hours worked, including overtime hours, up to a maximum of 40 hours per calendar year, and may begin to use their accrued EST 90 days later. (Employees do not accrue EST on hours paid when not working, e.g., employees do not accrue EST during vacation, paid time off, or while using EST.) On January 1 following an employee's first year anniversary, the employee will transition to the lump sum allocation of EST.

EST banks are capped at 40 hours; no combination of EST hours (lump sum, accrued, or carried-over) shall exceed 40 hours. Employees who exhaust all of their EST hours in a calendar year, and who are on Step 3 or above on the Attendance Discipline Track, will not receive a lump sum allocation of 40 EST hours the next calendar year and will have to accrue EST like new employees, meaning they will begin the year on January 1 with no EST and can only use EST as it accrues, one hour for every 30 hours worked; if these employees have unused EST at the end of the calendar year, they may carry over up to 40 hours of unused EST into the next calendar year. No employee can use more than 40 hours of EST in a calendar year; and employees' EST banks are capped at 40 hours of accrued EST.

Employees separated from employment are not entitled to be paid for unused EST.

*Excused Absence* An Excused Absence is an Absence from Duty which the Authority excuses, under certain, defined circumstances, because (1) the employee timely provides the required notice, (2) the employee timely supplies any required supporting documentation, and (3) the absence is not subject to discipline as a matter of law, pursuant to the terms of this policy, or pursuant to the terms of the employee's collective bargaining agreement. An Excused Absence may be an *Excused Sick Absence* or an *Excused Non-Sick Absence*.

*Excused Sick Absence* An Excused Sick Absence is an Absence from Duty to care for an illness, injury, or medical condition or the illness, injury, or medical condition of the employee's child, spouse, or parent<sup>1</sup> which the Authority excuses as a matter of law, pursuant to the terms of this policy, or pursuant to the terms of the employee's collective bargaining agreement. Excused Sick Absences are available for the purposes permitted under EST, the FMLA, and other applicable laws that provide job-protected leave. Specifically, an Excused Sick Absence is *only* when an employee is: (1) using EST; (2) using SPP Contractual Sick Leave, running concurrently with EST; (3) on an approved

<sup>1</sup> An employee may use EST time to care for the parent of a spouse, an in-law, but an employee cannot use FMLA to care for an in-law.

sick leave under the FMLA, ADA, MPLA, DVLA, and/or, in some instances, using time under the SNLA; or (4) using SPP Contractual Sick Leave, beyond the 40 hours of EST, pursuant to the terms of the employee's collective bargaining agreement.

EST and all Excused Sick Absences run concurrently.

*Excused Non-Sick Absence* An Excused Non-Sick Absence is an Absence from Duty, for purposes other than caring for an illness, injury or medical condition, which the Authority excuses (1) pursuant to applicable law (including the SNLA, MPLA, or FMLA, for non-sick reasons, such as child bonding time and military exigency), (2) pursuant to the applicable collective bargaining agreement (such as holiday, bereavement, compensatory/in lieu of days, vacation, union business, jury duty, military leave, personal day, and/or court-ordered appearance with acceptable documentation), or (3) for a dire emergency, pursuant to the terms of the Waiver Process in this policy.

*Medical Documentation* In this policy, the term Medical Documentation is used to describe the documentation required for the Authority's approval of leave under various laws, including FMLA and EST, as well as the documentation required under the terms of the applicable collective bargaining agreements for Contractual Sick Time. The required Medical Documentation varies depending on the applicable law or collective bargaining agreement. All Medical Documentation should be submitted to the Authority's Leave Unit in Human Resources.

*Pattern Absenteeism* Pattern Absenteeism is any pattern of Absence from Duty, including without limitation, (1) Absences from Duty on more than one holiday, (2) Absences from Duty before or after scheduled days off, vacations, or holidays, and (3) Absences from Duty that occur on the same day or at a certain time of year (e.g., summer, holiday season).

*Reduced Discipline* After having used all of his or her EST or other statutorily job-protected leave and SPP, if available, an employee who has a multi-day sick Unexcused Absence from Duty may request Reduced Discipline to avoid having that Unexcused Absence treated as multiple steps on the Attendance Discipline Track. An employee who is not at Step 3 or above on the Attendance Discipline Track may request Reduced Discipline by providing notice and appropriate supporting documentation to the Human Resources Leave Unit within ten days of the first day of the multi-day sick Unexcused Absence from Duty; that documentation will be reviewed by Human Resources and shared with the employee's Department Head as needed for the Department Head to approve or deny, subject to review by Labor Relations.

Department Heads will not grant more than two requests for Reduced Discipline from an employee in a calendar year.

*Tardy* An employee shall be considered Tardy when the employee notifies his or her

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supervisor at least two hours (but no more than four hours) in advance of his or her scheduled starting/reporting time that he or she will be late for work and reports for work within two hours of his or her scheduled starting/reporting time. Tardy is an Absence from Duty and it may be Excused or Unexcused, depending on the circumstances, as defined in this policy.

*Time Served Suspension* A Time Served Suspension is an entry recorded in an employee’s service/discipline record; an employee shall not report to work and shall not be paid during a Time Served Suspension.

*Unexcused Absence* An Unexcused Absence is any period of time the employee is Absent from Duty that is not an Excused Absence. An Unexcused Absence may be an *Unexcused Sick Absence* or an *Unexcused Non-Sick Absence*, depending on the purposes of the absence.

*Unexcused Sick Absence* An Unexcused Sick Absence is an Absence from Duty for purposes of caring for an illness, injury, or medical condition and for which the employee is not excused by law, by collective bargaining agreement, or by the Waiver Process in this policy.

*Unexcused Non-Sick Absence* An Unexcused Non-Sick Absence is an Absence from Duty for any reason other than to care for an illness, injury, or medical condition which is not Excused.

*Waiver Process* In the rare event of a dire and unforeseen emergency situation, e.g., a major fire in the employee’s home, an employee may request a Waiver to excuse the resulting Absence from Duty, provided: (1) the employee is not at Step 3 or above on the Attendance Discipline Track; (2) the employee brings the situation to the attention of the Authority and provides appropriate supporting documentation within ten days of the occurrence, and (3) the Waiver request is reviewed and approved by the employee’s Department Head, subject to review by Labor Relations.

Employees will not be granted more than two Waivers in a calendar year.

## V. GENERAL RULES AND GUIDELINES

### A. Reporting for and Remaining on Duty

Employees are required to report for duty on time at their assigned location, and remain on duty for the full shift, unless advance authorization from the respective supervisor is received.

### B. Notice and Documentation Requirements

1. An employee is required to provide a minimum of seven days’ notice to his/her immediate supervisor if the need to be Absent from Duty is foreseeable (e.g., a pre-scheduled doctor’s appointment, or a Parent/Teacher Conference), and, an employee is required to provide a minimum of 30 days’ notice if the employee is seeking foreseeable leave under the FMLA. Failure to do so may result in the absence being marked Unexcused.

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2. Where an employee learns of the need to use Contractual Sick Leave, EST, or leave for other Excused Absence reasons within seven days, the employee shall notify his/her immediate supervisor personally as soon as practicable or reasonable under the circumstances, but no less than two hours before the start of his/her scheduled shift if he/she is going to be Tardy or Absent from Duty.
3. If an employee is unable to contact his or her supervisor, he or she shall report an Absence or Tardiness to the supervisor's designee.
4. For multi-day Absences, the employee is required to notify his or her supervisor of the expected duration of the leave. The employee must call in to his or her supervisor daily until the absence has been approved by the Authority as an Excused Absence, then the employee is required to call in once a week. Multi-day Unexcused Absences may trigger a more rapid application of discipline, and the Authority may require an employee to come in for an interview and possible discipline.
5. Written documentation is required when an employee's use of EST
  - (a) Exceeds 24 consecutively scheduled work hours;
  - (b) Exceeds three consecutive days on which the employee was scheduled to work;
  - (c) Occurs within two weeks prior to an employee's final scheduled day of work before termination of employment, except in the case of temporary employees (i.e. "temp workers");
  - (d) Occurs after four unforeseeable and undocumented absences within a three-month period; or
  - (e) Occurs during a severe weather event, or other emergency;

That written documentation must indicate (i) the need for sick time signed by a health care provider or (ii) the need for leave related to domestic violence, and must be submitted within ten days of the absence, unless, for good cause shown, the employee requires more time to provide documentation. (An employee utilizing EST shall not be required to explain the nature of the illness or the details of the domestic violence.) If the employee fails to comply, without reasonable justification, with the documentation requirements for an Absence from Duty which falls under this sub-section V.B.5(a)-(d), the MBTA may recoup the sum paid for EST from future pay, as an overpayment. If the employee fails to comply, without reasonable justification, with the documentation requirements for an Absence from Duty which occurs during a severe weather event or other emergency, the Absence is Unexcused and the employee is subject to discipline.

6. After an employee exhausts his or her EST for the calendar year, the employee must provide any documentation required by his or her collective bargaining agreement within the stated time frame. If no such time frame is stated in the applicable collective bargaining agreement, documentation must be provided within ten days after the taking of such time.

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### C. Job Abandonment

Any employee who is Absent from Duty for more than five consecutive scheduled workdays without notification to Authority officials as to the reason for the absence will be considered to have abandoned his or her position, and will also be considered to have voluntarily resigned. For those employees of the Authority who have civil service rights under MGL c. 31, § 41 et seq. this section does not alter those rights.

## VI. DISCIPLINE

### A. Progressive Discipline – Attendance Discipline Track

1. Employees who have *more than one* Unexcused Absence in any three-month period shall be subject to discipline, as set forth on the Attendance Discipline Track in sub-section VI.A.4 below.
2. Employees who have *more than two* Unexcused Tardies in any three-month period shall be subject to discipline, as set forth on the Attendance Discipline Track in sub-section VI.A.4 below.
3. AWOL is a particularly serious attendance-related violation, consequently, one progressive discipline step shall be skipped for each AWOL. For example, a single occasion of AWOL for an employee with no attendance-related discipline will skip Step 1 and the AWOL employee will be disciplined at Step 2 on the Attendance Discipline Track. If the employee is AWOL again within 24 months of the preceding AWOL, the second AWOL in the 24 month period would be disciplined at Step 4.
4. Attendance Discipline Track: Violations of this Policy shall result in the following progressive discipline:
  - Step 1:** Written Warning
  - Step 2:** One Day Administrative Suspension
  - Step 3:** Three Day Administrative Suspension and not allowed to work any overtime for 45 calendar days
  - Step 4:** Five day Time-Served Suspension and Final Warning and not allowed to work any overtime for 90 calendar days.<sup>2</sup> Employee will be referred to EAP for participation.
  - Step 5:** 70 day Time-Served Suspension and Recommendation for Discharge

### B. Discipline for Pattern Absenteeism and Fraud, Abuse, or Misuse

When an employee is in violation of this policy, exhibits Pattern Absenteeism, is Absent from Duty during a severe weather or emergency without the requisite medical or domestic

<sup>2</sup> Overtime restrictions commence on the date of discipline; however, the Authority may require an employee to work overtime during this period based on operational needs.

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violence leave documentation, and/or when the Authority otherwise has reason to suspect fraud, abuse, or misuse, the employee may be subject to discipline. If an employee is committing fraud, abuse, or misuse by engaging in an activity that is not consistent with allowable purposes for any contractual or statutory leave, including EST, the employee will be subject to discipline up to and including discharge for that fraud, abuse, or misuse.

EST, FMLA, ADA, MPLA, DVLA, and SNLA cannot be used as an excuse to be late for work without an authorized purpose under the applicable law.

**C. Procedures for Administering Attendance Discipline**

1. Employee attendance records will be reviewed at least monthly by area supervisors.
2. When a supervisor identifies an employee who is in violation of this policy, exhibits Pattern Absenteeism, is Absent from Duty during a severe weather or emergency without the requisite medical or domestic violence leave documentation, and/or when the supervisor otherwise has reason to suspect fraud, abuse, or misuse, the supervisor shall interview the employee.
3. Supervisors shall not include Excused Absences as defined in this policy when determining the appropriate level of discipline on the Attendance Discipline Track.
4. Progressive discipline shall be calculated on a 24-month rolling basis. If after reaching Step 1, 2, or 3 on the Attendance Discipline Track, the employee has 12 months free of attendance-related discipline from the date of the last discipline issued under this policy, future progressive discipline shall start over at Step 1, except that discipline for AWOL skips to Step 2. If the employee is at Step 4 or 5 on the Attendance Discipline Track, the employee needs to have 24 months free of attendance-related discipline from the date the last discipline issued under this policy before future progressive discipline starts over at Step 1, or, for an AWOL, Step 2.
5. Supervisors are responsible for monitoring employee attendance and applying the provisions of this Policy fairly and consistently.

**VII. RELATED POLICIES**

*Family & Medical Leave Act Policy*  
*Small Necessities Leave Act Policy*  
*Discipline Policy*

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