



Maryland's Montgomery County Enacts First Paid Sick and Safe Leave Law in State

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Montgomery County is the first county in Maryland to enact a paid sick and safe leave law. The Earned Sick and Safe Leave Law (“the Law”) requires employers operating and doing business in Montgomery County, that employ one or more employees, to provide paid sick and safe leave to their employees who perform work in the County. It becomes effective on October 1, 2016, or, for employees covered by a collective bargaining agreement (“CBA”) in effect, on October 1, 2016, after the expiration of the CBA. The Maryland General Assembly had considered a similar bill during the 2015 legislative session, but the bill failed in session.

Employers should take advantage of the Law’s delayed effective date to assess the impact of the Law on their businesses and on their paid leave policies. The Law provides that an employer may comply with the Law with a general paid time off (PTO) policy, provided that the PTO policy complies with all of the Law’s provisions, which are summarized below.

Eligibility and Leave Accrual

The Law requires employers to provide each employee with paid sick and safe leave for work that the employee performs in Montgomery County. Employees who regularly work eight hours or less per week and independent contractors are not eligible for sick and safe leave.

Employers with at least five employees must provide each employee with sick and safe leave at a rate of one hour for every 30 hours of work an employee performs in Montgomery County, up to 56 hours of leave in a calendar year.

Employers with fewer than five employees must provide leave at a rate of at least one hour for every 30 hours an employee performs works in the County, up to 32 hours of leave in a calendar year.

In calculating the accrual of leave for employees who are exempt under the federal Fair Labor Standards Act, an employer must assume that the exempt employee worked the number of hours worked in a “normal” workweek, up to 40 hours each workweek. In all cases, employers may restrict an employee’s use of accrued leave to 80 hours per calendar year.

Employers must allow an employee to earn sick and safe leave beginning on the first date of employment; however, an employer may prohibit use of leave during an employee’s initial 90-day probationary period.

Employers may grant sick and safe leave at the beginning of a calendar year, or they may allow an employee to accrue leave during the calendar year. If an employer uses the accrual method, it must permit an employee to carry the balance of accrued, unused leave to the next calendar year, up to a maximum carryover of 56 hours of accrued, unused leave. Under the grant method, the carryover provision does not apply.

Employers must provide employees with a written statement of available sick and safe leave each time wages are paid. The Law does not mandate payment of unused sick and safe leave at the time an employee separates from employment. An employer must reinstate unused leave if an employee is rehired by the employer to work in the County within nine months after leaving employment, unless the employee voluntarily left work without good cause as defined under Maryland's unemployment statute, Md. Code Ann., Labor & Empl., § 8-1001.

Use of Sick and Safe Leave

An employer may require that leave be taken in up to four-hour increments.

Employees may use sick and safe leave for the following reasons:

- To care for or treat an employee's or a family member's illness or injury, or for preventive care;
- If the employer's place of business has closed by order of a public official due to a public health emergency;
- If the school or child care center for the employee's family member is closed by order of a public official due to a public health emergency;
- To care for a family member if a health official or healthcare provider has determined that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease; or
- If the absence from work is due to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member and the leave is used by the employee to obtain medical or legal services or to participate in a civil or criminal proceeding related to domestic violence, sexual assault, or stalking.

"Family member" is broadly defined to include:

- A child (biological, adopted, foster, stepchild, a child for whom the employee has legal or physical custody or guardianship, or a child for whom the employee is the primary caregiver);
- A parent (biological, adoptive, foster, or stepparent of the employee or the employee's spouse);
- The legal guardian of the employee;
- An individual who served as the primary caregiver of the employee when the employee was a minor;
- A spouse;
- A grandparent or spouse of a grandparent of the employee;
- A grandchild; and

- A sibling and the sibling's spouse (biological, adopted, or foster).

Employees must request leave as soon as practicable, notify their employer of the anticipated duration of leave, and comply with any reasonable procedures established by their employer. Employers are prohibited from requiring employees to disclose the specific details of their illness, injury, or condition or provide any certification that would violate the Health Insurance Portability and Accountability Act (HIPAA).

Employers may require an employee who uses more than three consecutive days of sick and safe leave to provide "reasonable documentation" to verify that the leave was used for appropriate reasons. Employers should consider the Family and Medical Leave Act, the Americans with Disabilities Act, and the Genetic Information and Nondiscrimination Act, as applicable, when an employee requests use of sick and safe leave for the employee's or employee's family member's medical condition.

If an employee begins working outside the County for the same employer, the employer must permit the employee to use the sick and safe leave that was earned while the employee performed work in the County.

Employer Notice Requirements and Enforcement

Employers must notify employees of their sick and safe leave entitlement by posting a notice and include a notice in an employee handbook "or other written guidance distributed to all employees."

The notice must include the following information:

- A statement of how sick/safe leave is accrued;
- The permitted uses of the sick/safe leave;
- A statement that retaliation is prohibited; and
- Information about an employee's rights to file a complaint for violation of the Law.

The Law requires the Executive Director of the Montgomery County Office of Human Rights ("OHR") to publish a model notice of employee rights under the Law.

Employers may not retaliate against an employee for reporting a violation of the Law or for accessing his or her rights under the Law.

Any employee who believes he or she did not receive sick and safe leave in violation of the Law may file a complaint with the OHR. If the OHR finds that a violation has occurred, it may order the payment of damages, equitable relief, or any other relief necessary to effectuate the purposes of the Law.