

# Montgomery County, Maryland Passes Earned Sick and Safe Leave Bill

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On June 24, 2015, the Montgomery County, **Maryland** Council unanimously approved the **Earned Sick and Safe Leave Bill** (the “Bill”). The Bill, which goes into effect on October 1, 2016, provides paid sick leave to **all** employees working in Montgomery County, Maryland (the “County”). Employers therefore have a little over a year to ensure they are in compliance with this new mandated benefit for their workers as well as its detailed set of rules and requirements.

Under the Bill, employers based in the Montgomery County or whose employees work in Montgomery county are required to provide sick and safe leave for work performed in the County. The Bill applies to all such employers, regardless of how many workers they employ.

## Permissible Uses of Sick and Safe Leave

The permissible uses of sick and safe leave under the Bill are very broad. Specifically, employees can use sick and safe leave for the following purposes:

1. Treating the employee’s physical or mental illness, injury, or condition;
2. Obtaining preventative medical care for the employee or a covered individual;
3. Caring for a covered individual with a mental or physical illness, injury, or condition;
4. Closing of the employer’s place of business or an employee’s child’s school or child care center due to a public health emergency;
5. Caring for a covered individual when a healthcare provider has determined that the family member’s presence in the community would endanger the public; or
6. Missing work due to domestic violence, sexual assault, or stalking of the employee or a covered individual, where the leave is used during temporary relocation of the employee/covered individual or to obtain legal or medical services for the employee/covered individual or the employee/covered individual’s family.

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As noted above, the Bill permits employees to take paid leave for their own conditions and circumstances, as well as those of covered individuals with some relationship to the employee. The Bill defines the group of covered individuals quite broadly to include: (1) a biological child, adopted child, foster child, or stepchild of the employee; (2) a child for whom the employee has legal or physical custody or guardianship; (3) a child for whom the employee is the primary caregiver; (4) a biological parent, adoptive parent, foster parent, or stepparent of the employee or the employee's spouse; (5) the legal guardian of the employee; (6) an individual who served as the primary caregiver of the employee when the employee was a minor; (7) the spouse of the employee; (8) a grandparent of the employee; (9) the spouse of a grandparent of the employee; (10) a grandchild of the employee; (11) a biological, adopted, or foster sibling of the employee; or (12) the spouse of a biological, adopted, or foster sibling of the employee.

## Accrual Rates And Caps

All employees based or working in the County are entitled to accrue safe and sick leave at a rate of one (1) hour for every thirty (30) hours worked, subject to caps. The Bill provides that employers with five (5) or more employees must provide up to 56 hours per year of **paid** sick and safe leave to employees. Employers with fewer than five (5) employees are only required to provide up to 32 hours of **paid** sick and safe leave and twenty-four (24) hours of **unpaid** sick and safe leave per year. To calculate the accrual rate for exempt employees, employers are required to assume the employee worked the number of hours in a normal workweek for that employer, up to 40 hours per workweek.

Employers are permitted to decide whether to provide the entire balance of sick leave to employees at the beginning of the year or whether to provide the leave as it accrues throughout the year. If an employer provides the full amount of sick and safe leave to an employee at the beginning of the calendar year, the employer need not allow an employee to carry over any leave remaining at the end of the calendar year. If, however, an employer does not provide the full amount of sick and safe leave at the beginning of the calendar year, the employer **must** allow the employee to carry their sick and safe leave balance, up to 56 hours, over to the next year.

Under the Bill, employees must begin accruing sick and safe leave from the start of their employment. However, employers need not permit employees to use sick and safe leave until they have been employed for 90-days.

## Sick and Safe Leave Compensation

Employers must compensate employees for time on qualifying leave at the same rate as normally earned by the employees. The Bill requires that tipped employees be paid for sick and safe time at a rate which is at least the equivalent of the County minimum wage.

## Rules For Using Sick and Safe Leave

The Bill provides standards for administering the use of sick and safe leave. The Bill requires employees to notify their employer of their need to use sick and safe leave as soon as practicable. The employee must inform the employer of the expected duration of the leave and comply with any reasonable procedures the employer establishes to administer use of leave. The Bill provides that employers are permitted to request documentation demonstrating the need for leave from employees for any sick and safe leave in excess of three consecutive (3) days. Under the Bill, employees are

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permitted to use sick and safe leave in the “smallest increment that the employer’s payroll system uses to account for absences or work time.” However, employers cannot set a minimum daily use of more than four (4) hours of safe and sick leave.

## **Record-Keeping and Notice Requirements**

The Bill requires employers to keep accrual and use records for each employee and maintain those records for three (3) years. The Bill also requires employers to provide employees with a statement of available earned sick and safe leave each pay period.

Additionally, employers are required to notify employees that they are entitled to sick and safe leave. The County will publish a model notice for employers to use. Notice can be communicated in any of the following ways: (1) posting the model notice in the workplace; (2) including the content of the model notice in the employee handbook; or (3) distributing the notice to employees when they are hired. Employers are permitted to create their own notice forms, so long as the notice contains accrual information, the permitted uses of sick and safe leave, the prohibition on retaliation, and information about filing a Complaint for a violation of any rights provided by the Bill.

## **Work Outside Montgomery County and Rehire After Termination**

Under the Bill, employees who accrue sick and safe leave while working in the County must be permitted to use that leave if they remain employed by the same employer but transfer to a location outside of the County. For example, if an employee works for a company in the County, but then is transferred to another company office outside of the County, the employer cannot take away the sick and safe leave that the employee had earned as of the date of the transfer. Additionally, after the transfer, the employer must still allow the employee to use the earned leave.

The Bill also provides that employees who are rehired by an employer in the County within nine (9) months of the termination of their employment with that employer, are entitled to reinstatement of any unused sick and safe leave that the employee had upon his or her departure. This rule does not apply where the employee voluntarily terminated his or her employment **without good cause** as defined by Maryland Labor and Employment Code § 8-1001.

## **Sick and Safe Leave Overdrafts**

The Bill provides that if an employee is permitted to use sick and safe leave in excess of the amount he or she has accrued up to a given date, and later terminates his or her employment with a negative sick and safe leave balance, the employer is permitted to deduct the amount paid for the sick and safe leave from the wages paid upon termination, so long as the employer and employee mutually agree in writing to this deduction. The same option is available to employers that provide all sick and safe leave benefits at the beginning of the calendar year. Specifically, if the employee uses more sick and safe leave than would have accrued by the time of the termination, the employee may deduct from the employee’s final wages the amount of leave paid that was not earned – provided the employer obtains agreement from the employee in writing.

## **Payment Upon Termination and General Paid Time Off Policies**

The Bill is clear that it does not require employers to pay out any unused earned sick and safe leave upon termination. Under existing Maryland law, employers are permitted to decide whether, and

under what circumstances, accrued but unused leave is paid out to departing employees upon termination. However, if the employer decides not to pay out leave upon termination it must put that policy in writing. Consistent with this law, employers would be wise to revise their written leave policies to explicitly state whether or not earned sick and safe leave will be paid out upon termination.

Additionally, the Bill does not prevent employers from enacting general paid time off policies (i.e., policies that provide a bank of leave that can be used for vacation as well as sick and safe leave). Employers must simply make sure that the terms and conditions of their paid time off policies align with the terms of the Bill. In other words, the paid time off policy must permit use of paid time off for any of the uses provided for in the Bill, the leave must accrue at a rate equal or greater to that provided by the Bill, and must allow for carryover consistent with the Bill's requirements.

## **Prohibition on Retaliation**

The Bill also contains protections against retaliation. Employers are not permitted to retaliate against any employee for opposing any violation of the Bill; or participating in any fashion in an investigation or proceeding pursuant to the protections offered by the Bill.

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