

# Montgomery County, Maryland Passes Mandatory Sick Leave Law

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The ***Earned Sick and Safe Leave Act***, which becomes effective on October 16, 2016, requires certain Montgomery County employers with one or more employees within the county to provide paid sick leave.

On June 24, ***Maryland's*** Montgomery County Council joined the nationwide paid sick leave trend by enacting the ***Earned Sick and Safe Leave Act (ESSLA)***. The ESSLA requires certain employers in Montgomery County that employ one or more employees within the county to provide paid sick leave to those employees.

Under the ESSLA, which becomes effective on October 16, 2016, all employees in Montgomery County will accrue paid "sick and safe" leave, as described below, at the rate of one hour for every 30 hours worked, up to a maximum of 56 hours per year.<sup>[1]</sup> Employers with fewer than five employees, however, need only provide up to 32 hours of paid sick and safe leave and 24 hours of unpaid sick and safe leave. No employer is required to permit an employee to use more than 80 hours of earned sick and safe leave in a calendar year.

## Permissible Use of Sick and Safe Leave

Permissible uses of sick and safe leave under the ESSLA are

- (1) for an employee's own illness, injury, or condition or to obtain preventive medical care;
- (2) to address a family member's illness, injury, or condition or to obtain preventive care;
- (3) if an employer's place of business or the school or child care center for an employee's family member has been closed by order of a public official due to a public health emergency;
- (4) 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 due to exposure to a communicable disease; or
- (5) for absence from work due to domestic violence, sexual assault, or stalking against an employee

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or an employee's family member where the employee uses leave to seek medical attention; services from a victim services organization; legal services, including preparing for or participating in a civil or criminal proceeding for the employee or family member; or during the time that the employee has temporarily relocated due to domestic violence, sexual assault, or stalking.<sup>[2]</sup>

## **Accrual, Caps, and Carryover**

All employees accrue sick and safe leave at a rate of one hour for every 30 hours worked, subject to accrual caps. Employers with five or more employees must provide up to 56 hours per calendar year of paid sick and safe leave to employees. Employers with fewer than five employees are required to provide up to 32 hours of paid sick and safe leave and 24 hours of unpaid sick and safe leave per calendar year. Employees who accrue both paid and unpaid sick and safe leave accrue paid leave first.

To calculate the accrual rate for exempt employees, employers are required to assume that an employee worked the number of hours in a normal workweek for that employer, up to 40 hours per workweek.

Employers can decide whether to award earned sick and safe leave as the leave accrues during the calendar year or to award the full amount at the beginning of the calendar year. If an employer chooses the accrual method, it must allow employees to carry over the balance of unused accrued sick and safe leave to the next calendar year up to 56 hours. However, employers are not required to permit employees to use more than 80 hours of accrued sick and safe leave in a calendar year.

Paid sick and safe leave begins to accrue on the ESSLA's effective date (October 16, 2016), except for employees covered by a bona fide collective bargaining agreement, who will not begin to accrue leave under this law until after such collective bargaining agreement expires.

## **Usage and Compensation**

Employees may use accrued sick and safe leave time in the smallest increment that an employer uses to account for absences or use of other time. However, an employer may not require employees to take leave in an increment of more than four hours.

Employers must provide employees with earned sick and safe leave that is paid at the same rate and with the same benefits as an employee normally earns. Tipped employees must be paid at least the county's minimum wage for each hour that the employee uses earned sick and safe leave.

An employer may not require an employee who requests sick and safe leave to search for or find an individual to take the employee's place while the employee is on leave. If an employer and employee mutually agree, however, an employee may work additional hours or trade shifts with another employee during a pay period to make up the work hours that the employee missed for which an employee could have used sick and safe leave.

## **Employee Notice and Certification**

Employees are generally required to provide advance notice of the need for sick and safe leave and its anticipated duration and to comply with any reasonable procedures for requesting and taking leave. If an employee takes more than three consecutive sick and safe leave days, his or her

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employer may require documentation to verify that the sick time is covered by the ESSLA.

## **Leave Upon Termination and Reinstatement**

If an employee is allowed to use sick and safe leave in excess of what he or she has accrued and later leaves employment with a negative sick and safe leave balance, an employer may deduct the amount paid for sick and safe leave from the wages paid to the employee upon termination, as long as the employer and the employee mutually agree in writing to the deduction. For an employer that chooses to provide all sick and safe leave at the beginning of the calendar year, what this means is that if an employee has used more sick and safe leave at the time of termination than he or she would have accrued up to that point, the employer may deduct the amount that was not accrued upon termination, if the employee has agreed in writing to such deduction.

Employers are not required to pay employees for unused, accrued sick and safe leave upon termination.

Unless an employee voluntarily leaves work without good cause, an employer must reinstate any unused sick and safe leave if the employee is rehired within nine months of leaving employment.

## **Effect of Existing Leave Policies**

Employers that already provide employees with paid leave that may be used for the same purposes as sick and safe leave (e.g., sick days, personal leave, or paid time off) and that meet or exceed the amount mandated by the ESSLA (including carryover) are not required to provide additional sick leave.

## **Employer Notice and Recordkeeping Requirements**

Employers are required to notify their employees that they are entitled to sick and safe leave. Montgomery County will publish a model notice for employers to use. An employer may provide notice by displaying the model notice (or a notice that contains the required information), including the model or similar notice, in an employee handbook or other written guidance to employees or by distributing the model or similar notice to each employee upon hire.

Employers must keep records for three years that document sick and safe leave that employees earned and used and allow the agency reasonable access to such records with appropriate notice.

In addition, employers must provide employees with a written statement documenting available sick and safe leave each time that they pay wages to employees. To provide the required notice, employers may use an online system through which an employee may access his or her sick and safe leave balances.

## **Antiretaliation and Enforcement**

Employers are prohibited from retaliating against any employees who lawfully oppose violations of the ESSLA or who exercise their rights under the ESSLA, including filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing. The ESSLA also prohibits obstructing or preventing enforcement or compliance with the ESSLA.

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Employees may file written complaints with the director of the Human Rights Commission, who must investigate to determine whether reasonable grounds exist to believe that an employer violated the ESSLA.

## Recommendations for Employers

To ensure compliance with the ESSLA, employers should take the following actions on or before October 16, 2016:

- Review, create, or modify existing leave policies to ensure compliance with the ESSLA's requirements. Employers must ensure that they are not only providing sufficient sick and safe leave to employees, but also that employees are permitted to take leave under the ESSLA's terms. Employers should also specify whether or not sick and safe leave is paid out at termination in their policies.
- Train human resources and supervisory personnel on the ESSLA's new sick and safe leave requirements, including, for example, the reasons that employees may use sick and safe leave time, how much sick and safe leave time they may use, and the documentation that employers may request when employees use accrued sick and safe leave time. Employers should also train human resources and supervisory personnel on the antiretaliation provisions under the ESSLA.
- To comply with the ESSLA's recordkeeping provisions, ensure that time and payroll records are sufficiently detailed to reflect the hours that employees work and the amount of sick and safe leave that covered employees accrue.
- Display the notice that will be provided by the county (or similar notice) where employees can easily read it, or provide the notice in any employee handbook distributed to employees. For newly hired employees, supply each employee with the model notice or similar notice.

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[1]. The definition of "employee" under ESSLA excludes (1) independent contractors; (2) individuals who regularly work eight or fewer hours each week; and (3) individuals who do not have a regular work schedule, contact the employer for assignments and are scheduled to work within 48 hours of

contacting the employer, are not obligated to work for the employer unless the employee contacts the employer for work assignments, and are not

employed by temporary placement agencies.

[2]. "Family member" means an employee's biological child, adopted child, foster child, or stepchild; a child for whom an employee has legal or physical custody or guardianship; a child for whom an employee is the primary caregiver; a biological parent, adoptive parent, foster parent, or

stepparent of an employee or an employee's spouse; an employee's legal guardian; an individual who served as the primary caregiver of an employee

when the employee was a minor; an employee's spouse; an employee's grandparent; the spouse of a grandparent of an employee; an employee's

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