

# Maryland's New Sick and Safe Leave Law Scheduled to Take Effect in February

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On January 12, 2018, the Maryland General Assembly overrode Republican Governor Larry Hogan's May 25, 2017 veto of legislation requiring Maryland employers to provide sick and safe leave to their employees. By overriding the governor's veto, the general assembly made Maryland the ninth state to adopt a mandatory sick leave statute. Maryland's legislation, known as the Maryland Healthy Working Families Act, provides employees with up to 40 hours of sick and safe leave annually. Unless the general assembly delays the Act's effective date, employers will need to conform their leave policies on or before February 11, 2018.

## Covered Employers: Paid and Unpaid Leave

All employers with one or more Maryland employees are covered by the requirement to provide sick and safe leave. The leave must be provided on a paid basis if the employer had 15 or more employees during the preceding year, including full-time, part-time, temporary, and/or seasonal workers. For employers with 14 or fewer employees, the leave can be unpaid.

## Eligible Employees

The Act does not apply to employees in the construction industry who are covered by a collective bargaining agreement. It also excludes employees who:

- regularly work fewer than 12 hours per week;
- are under the age of 18;
- are independent contractors, part-time or otherwise;
- perform work on an as-needed basis in a health or human services industry; or
- are employed in the agricultural sector on an agricultural operation.

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## **Use of Leave**

Eligible employees may request earned sick and safe leave for one of the following purposes:

- To care for the mental or physical health of themselves or a family member, including preventative health
- For maternity or paternity leave
- For an absence due to sexual assault, domestic violence, or stalking against themselves or a family member

The statute allows employers to require eligible employees to provide reasonable notice up to seven days in advance of the date on which the leave is to be used. If the leave is not foreseeable, an employee must provide notice as soon as practicable.

## **Accrual Requirements**

Eligible employees must accrue one hour of sick and safe leave per every 30 hours worked up to a maximum of 40 hours per year. Under the Act, employers also have the option of providing 40 hours to each eligible employee all at once at the beginning of the year. Employees may carry over up to 40 hours of unused leave from one year to the next. Employers can cap usage at 64 hours per year.

## **Other Requirements**

Under the Act, employers must notify employees of their paid sick and safe leave rights via written notice. Employers must additionally provide a written statement to each employee every pay period upon payment of wages that details his or her amount of earned leave available for use. Employers also must keep at least three years of records of all earned leave accrued and used by each employee.

## **Effective Date and Timing**

Although the Act is not scheduled to take effect until 30 days after the veto override (i.e., February 11, 2018), the actual terms of the legislation call for accruals to begin as of January 1, 2018. The required leave is supposed to be available for use 106 calendar days after the commencement of employment.

## **Parallel County Ordinances**

The Act's preemption provision will impact Beltway employers differently depending upon whether they are located in Montgomery County or Prince George's County, both of which previously adopted sick and safe leave laws of their own. The Act's preemption provision preempts local legislation enacted on or after January 1, 2017. The law therefore will preempt the Prince George's County ordinance, which was enacted on December 12, 2017. By contrast, the Montgomery County Earned Sick and Safe Leave Law was enacted in 2016, so it will not be preempted. Consequently, absent a legislative amendment, employers with employees in Montgomery County will need to

navigate both the county's sick and safe leave law and the Maryland Healthy Working Families Act.

## What Now?

The Maryland commissioner of labor and industry is supposed to have model notices available for employers to satisfy the law's notice requirements. With February 11 fast approaching, the commissioner's office will have to work quickly. There has been some speculation that the general assembly may act to postpone or amend the legislation. In the meantime, employers with Maryland employees may want to identify eligible and ineligible employees and develop plans to overlay the new paid and unpaid leave requirements onto their existing leave programs.

We will provide additional updates in the event of further action by the Maryland General Assembly or the commissioner of labor and industry. Stay tuned!

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