

Maryland's Montgomery County Is the Latest Jurisdiction to Require Paid Sick and Safe Leave

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On July 2, 2015, Montgomery County, Maryland, became the latest jurisdiction to mandate paid sick and safe leave ("Sick Leave"). The "Earned Sick and Safe Leave" law, [Bill No. 60-14](#) ("Act"), requires *all* employers operating and doing business in Montgomery County to provide at least some paid Sick Leave to employees performing work in the county. The Act takes effect on October 1, 2016 (or upon expiration of a bona fide collective bargaining agreement in effect on that date).

Employees working for employers with five or more employees accrue at least one hour of paid Sick Leave for every 30 hours worked in the county, up to 56 hours a year. Employees of employers with fewer than five employees in the county must accrue Sick Leave at the same rate, but only the first 32 hours must be paid and the remaining 24 may be unpaid.

All employees must be allowed to use up to 80 hours of earned Sick Leave in a calendar year.¹ Employers that already have a general paid leave policy that meets the minimum requirements of the Act (including the amount of leave, the purposes for which leave is available, and the accrual and carryover requirements) need not provide any additional benefits.

Who Is Eligible?

Any person working for compensation for an employer in Montgomery County is eligible to accrue and use Sick Leave, including domestic workers. However, the Act excludes from coverage individuals who regularly work eight hours or less each week, certain individuals who do not have a regular work schedule, and independent contractors.

What Types of Leave Are Covered?

An employee may use earned Sick Leave:

¹ Under Montgomery County law, the Act does not apply to employers in five municipalities—Barnesville, Chevy Chase Village, Glen Echo, Laytonsville, and Poolesville—unless they expressly opt into the law.

- to care for or treat the employee’s mental or physical illness, injury, or condition;
- to obtain preventive medical care for the employee or employee’s family member;
- to care for a family member with mental or physical illness, injury, or condition;
- if the employer’s place of business or a 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 quarantined because of exposure to a communicable disease; and
- if the absence is due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family members, and leave is used to obtain medical attention, services from a victim services organization, or legal services, or while temporarily relocated.

“Family member” is defined expansively to include all types of children as well as grandparents, parents, guardians, caregivers, grandchildren, and, in most cases, their spouses.

How Does Sick and Safe Leave Accrue?

Earned Sick Leave accrues at a rate of at least one hour for every 30 hours that an employee works in the county. Accrual begins on the first day of work, but the employer may prohibit its use during an initial 90-day probationary period. An employer is not required to allow an employee to earn more than 56 hours of Sick Leave in a calendar year or use more than 80 hours of earned Sick Leave in a calendar year. For accrual purposes, exempt employees must be assumed to have worked the number of hours worked in a normal week, up to 40 hours each week.

For employers with fewer than five employees, the paid Sick Leave of up to 32 hours accrues before the unpaid Sick Leave of up to 24 hours. An employer must provide an employee with a written statement of available earned Sick Leave each time the employer pays wages to the employee. This may be satisfied through an online system where an employee can access his or her own balances.

An employer may award earned Sick Leave as it accrues during the calendar year or award the full amount at the beginning of the year. An employer also may allow Sick Leave to be used before it is accrued.

What Are the Carryover and Payout Provisions?

Unless an employer awards employees the full 56 hours of Sick Leave at the beginning of the year, it must permit the employee to carry the balance of unused earned Sick Leave over to the next calendar year, up to 56 hours.

If an employee is allowed to use Sick Leave before it has accrued (or, if Sick Leave is front-loaded before it would have been earned), the employer may deduct the amount paid from wages due on termination if the employer and employee mutually consented in a signed document. There is no obligation to pay a departing employee for unused earned Sick Leave, or to allow an employee to use such leave if the employee begins working outside the county. However, an employee rehired within nine months is entitled to have unused Sick Leave reinstated unless the employee left voluntarily without "good cause," as defined in the state unemployment law. This includes seasonal workers.

What Are the Requirements for Using Accrued Sick and Safe Leave?

Employees must request Sick Leave as soon as practicable, notify the employer of the anticipated duration, and comply with the employer's reasonable procedures for requesting and taking leave. An employer may not require disclosure of specific details of illness, injury, or condition, or other protected medical information, but may require an employee who uses more than three consecutive days to provide reasonable documentation. An employer may, but need not, require Sick Leave to be taken in increments of no less than four hours.

An employee who requests Sick Leave may not be required to search or find an individual to take his or her place while on leave. However, the employee may be allowed to work additional hours or trade shifts with another employee during a pay period to make up the hours for which the employee could have used Sick Leave.

How Are Employees Paid for Sick and Safe Leave?

Employees using Sick Leave must be paid at the same rate and with the same benefits as the employee normally earns. A tipped employee must be paid at least the county minimum wage for each hour that the employee uses earned Sick Leave.

Are There Notice or Recordkeeping Requirements?

An employer is required to notify its employees that they are entitled to earned Sick Leave. The notice, a model of which is to be published by the Director of the Office of Human Rights, must include:

- a statement of how earned Sick Leave is accrued,
- the permitted uses of earned Sick Leave,
- a statement that the employer must not retaliate against an employee for exercising his or her rights to earned Sick Leave, and
- information regarding the employee's right to file a complaint with the Director of the Office of Human Rights if any rights have been violated under the Act.

Notice may be provided by posting, inclusion in a handbook or similar written guidance, or distribution upon hire. Employers must maintain a record of earned Sick Leave accrued and used by each employee for at least three years.

How Will the Act Be Enforced?

The Act is enforced through the filing of a complaint with the Director of the Office of Human Rights. Thereafter, the procedure is the same as for alleged violations of the county's employment discrimination laws. Employees can seek lost wages, compensatory damages, and attorney's fees, and employers could be fined up to \$500 per violation.

What Montgomery County Employers Should Do Now

As noted above, the Act takes effect October 1, 2016 (or upon expiration of a bona fide collective bargaining agreement in effect on that date). The delay is designed to give employers sufficient time to prepare for all the necessary adjustments. Employers should consider the following compliance measures:

- Review existing paid Sick Leave or other paid time off policies to ensure that they align with the minimum requirements of the Act. For many employers, this may only mean clarifying that leave for which employees already are eligible may be used for all the reasons required by the Act and/or making sure that employees earn the required 56 hours of Sick Leave as fast as under the Act.
- Train management on policies and procedures regarding the practicalities and requirements of the Act.
- Plan to provide notice of the Act, including updating employee handbooks or other written guidance distributed to all employees to reflect the Act, watching for issuance of the model notice, and considering distribution of the notice to all new hires.
- Train payroll personnel on the requirements of the Act, including creating systems for tracking the accrual and use of Sick Leave and/or making sure that any payroll service utilized is aware of the Act and prepared to apply it to eligible employees.

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