

# MARYLAND-NATIONAL CAPITAL HOMECARE ASSOCIATION

Preparing for Montgomery County's Sick and Safe Leave Law  
and Changes in Minimum Wage/Exempt Status  
September 7, 2016 Webinar

Presented by



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## MONTGOMERY COUNTY SICK AND SAFE LEAVE LAW - SUMMARY

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- All employers operating and doing business in Montgomery County, effective October 1, 2016.
- Employers with five or more employees: employees accrue at least one hour of paid sick and safe leave (“sick leave”) for every 30 hours worked in the county, up to 56 hours per year (7 eight-hour days).
- Employers with fewer than five employee: employees accrue at the same rate, but only the first 32 hours must be paid. 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.
- Need not provide any additional benefits if already a general paid leave policy that meets the Act’s minimum requirements (amount of leave, purposes for which available and accrual and carryover requirements).

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## WHO IS ELIGIBLE?

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- Generally, any person working for compensation for an employer in Montgomery County is eligible to accrue and use sick leave, including domestic workers.
- Excluded from coverage are individuals who regularly work eight hours or less each week, and independent contractors.
- Also excluded: an individual who:
  - Does not have a regular work schedule with the employer;
  - Contacts the employer for work assignments and is scheduled to work the assignments within 48 hours after contacting the employer;
  - Has no obligation to work for the employer if the individual does not contact the employer for work assignments; and
  - Is not employed by temporary placement agency.
  - E.g., on call employees.

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## TYPES OF LEAVE COVERED

- An employee may use earned sick leave:
  - 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 (broad definition);
  - 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...

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## TYPES OF LEAVE COVERED (CONT'D)

- 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:
  - By the employee to obtain for the employee or the employee's family:
    - medical attention needed to recover from a physical or psychological injury due to domestic violence, sexual assault, or stalking;
    - services from a victim services organization, or legal services related to the domestic violence, sexual assault, or stalking; or
    - legal services, including preparing for or participating in a civil or criminal proceeding related to the domestic violence, sexual assault, or stalking; and
  - While the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking.

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## TYPES OF LEAVE COVERED (CONT'D)

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- "Family member" is defined expansively to include:
  - All types of children (biological, adopted, foster, step, for whom the employee has legal or physical custody or guardianship, or for whom the employee is the primary caregiver).
  - All types of parents (biological, adoptive, foster, or step of the employee or the employee's spouse, legal guardian of the employee, or individual who served as primary caregiver when the employee was a minor).
  - Spouse.
  - Grandparents of the employee (including their spouse).
  - Grandchildren.
  - Siblings (biological, adopted or foster) and their spouses.

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## HOW SICK AND SAFE LEAVE ACCRUES

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- 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 (any 12-month period) 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.

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## HOW SICK AND SAFE LEAVE ACCRUES & NOTICE OF ACCRUED AMOUNT

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- 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.
- 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.
  - Presumably also on a pay stub, similar to annual leave balances.

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## CARRYOVER, RECOUPMENT AND PAYOUT

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- 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.

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## REQUIREMENTS FOR USING ACCRUED SICK AND SAFE LEAVE

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- Employees must request sick leave as soon as practicable, notify the employer of the anticipated duration, and comply with the employers 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 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.

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## PAYMENT FOR SICK AND SAFE LEAVE

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- An employee must be allowed to take sick leave in four-hour increments or the smallest increment the payroll systems uses to account for absences or work time, whichever is smaller
- 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.

## NOTICE AND RECORDKEEPING REQUIREMENTS

- An employer is required to notify its employees that they are entitled to earned sick leave. The notice, a model of which the Director of the Office of Human Rights just published, <http://www.montgomerycountymd.gov/humanrights>, 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.

Montgomery County, Maryland  
**EARNED SICK AND SAFE LEAVE LAW**  
 Montgomery County Code  
 Chapter 27 Human Rights and Civil Liberties, Article XIII

**EFFECTIVE OCTOBER 1, 2016**

#### How is Earned Sick and Safe Leave Accrued?

An employee must accrue paid leave before accruing unpaid leave in a calendar year. Earned paid sick and safe leave must accrue at a rate of at least 1 hour for every 30 hours an employee works in the County.

#### An Employer with FEWER THAN 5 EMPLOYEES:

- ✓ Must provide each employee with both paid and unpaid sick and safe leave for work performed in the County.
- ✓ Must provide up to 32 hours of earned paid sick and safe leave and 24 hours of unpaid earned sick and safe leave in a calendar year.
- ✓ Is not required to allow an employee to use more than 80 hours of earned sick and safe leave in a calendar year.

#### An Employer with 5 OR MORE EMPLOYEES:

- ✓ Must provide each employee with paid sick and safe leave for work performed in the County.
- ✓ Must provide up to 56 hours of earned paid sick and safe leave in a calendar year.
- ✓ Is not required to allow an employee to use more than 80 hours of earned sick and safe leave in a calendar year.

#### Permitted Uses of Earned Sick and Safe Leave:

- ✓ To care for or treat the employee's own illness (mental or physical), injury, or health condition.
- ✓ To obtain preventative medical care for the employee or their family member.
- ✓ To take care of a family member with an illness (physical or mental), injury, or health condition.
- ✓ When the employee's place of business or when the employee's family member's school or child care center has been closed by order of a public official due to a public health emergency.
- ✓ To care for a family member if a health official or health care provider determined the family member's presence in the community, due to exposure to a communicable disease, would jeopardize the health of others.
- ✓ Due to domestic violence, sexual assault, or stalking against the employee or the employee's family member. Leave must be used for medical attention, services from a victim services organization, legal services, or during the time that the employee has temporarily relocated.
- ✓ An employer may not retaliate against an employee for exercising the rights granted by the Earned Sick and Safe Leave Article.



If you think you have been subjected to a violation of any rights granted by the Earned Sick and Safe Leave Article, please contact:  
 Montgomery County Office of Human Rights  
 21 Maryland Avenue, Suite 330, Rockville, Maryland, 20850  
 240-777-8450, [www.montgomerycountymd.gov/humanrights](http://www.montgomerycountymd.gov/humanrights)



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## ENFORCEMENT

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- 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, equitable relief, and attorney's fees, and employers could be fined up to \$500 per violation.

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## IMMEDIATE EMPLOYER TASKS

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- 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.



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## IMMEDIATE EMPLOYER TASKS

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- Plan to provide notice of the Act, either using or following the published model notice. Consider distribution of the notice to all new hires. Update employee handbooks or other written guidance distributed to all employees to reflect the Act.
- 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, and regular notice to employees of amounts accrued.

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## PENDING AMENDMENTS

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- Bill No. 27-16 (public hearing 7-19-16)
  - Would provide that an employee paid exclusively by commission on sales only earns unpaid sick and safe leave
  - Also would exempt seasonal employees who work less than 120 days for an amusement or recreational program that operates less than 120 days each year in the County, e.g. summer camps, swimming pools.
- Bill No. 32-16 (public hearing 9-20-16)
  - Would provide that an employee may use sick and safe leave for the birth of a child, placement of a child for adoption or foster care, or to care for newborn, newly adopted, or newly placed child within one year of birth, adoption or placement.

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## AREA MINIMUM WAGE INCREASES

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- **Current Minimum Wages:**
  - **Federal** - \$7.25
  - **Maryland** - \$8.75 (as of July 1, 2016)
  - **Montgomery County** - \$10.75 (as of July 1, 2016)
  - **Prince George's** - \$9.55 (as of Oct. 1, 2015), but \$10.75 (as of Oct. 1, 2016).
  - **D.C.** - \$11.50 generally, \$13.95 for home health care (per Living Wage Act for government contractors)
- **Current Maryland, Montgomery County and Prince George's County posters available at**  
<https://www.dlir.state.md.us/labor/wages/wagehrfacts.shtml>;  
 DC at <http://does.dc.gov/page/wage-hour-compliance-involves-administering-wage-laws-district-columbia>

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## Area Minimum Wage Increases

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- **Enacted Future Increases:**
  - **Maryland** - \$9.25 (July 1, 2017); \$10.10 (July 1, 2018).
  - **Montgomery County** - \$11.50 (July 1, 2017)
  - **Prince George's** - \$10.75 (Oct. 1, 2016); \$11.50 (Oct 1, 2017)
  - **D.C.** – annual increments to \$15.00 by July 1, 2020, to be indexed thereafter; rate for home health care already indexed

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## AREA MINIMUM WAGE INCREASES

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- Proposed Future Increases:
  - **Baltimore** – Bill 16-0655 would increase to \$15.00 in annual increments each July 1 (\$9.50 in 2017, \$10.50 in 2018, \$11.50 in 2019, \$12.50 in 2020, 13.50 in 2021, \$15.00 in 2022).
    - Bill already passed once on August 15 but was then returned to committee for apparently technical changes.
  - **Montgomery County** – Bill 12-16 would increase to \$12.50 in 2018, \$13.75 in 2019, \$15.00 in 2020, and index starting in 2021. (Committee work session 7-11 & 12-16.)

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## NEW FEDERAL WHITE COLLAR EXEMPTION SALARY THRESHOLD RULE

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- Effective December 1, 2016!
- Executive, Administrative and Professional Exemption: \$913 per week (\$47,476 per year).
  - Currently \$455 per week, or \$23,660 per year.
  - Non-discretionary bonuses and incentives such as commissions may satisfy up to 210% of salary threshold.
- Highly Compensated Employee Threshold: \$134,004 per year.
  - Currently \$100,000 per year.
- Both to be updated every three years to remain at 40<sup>th</sup> percentile of full time salaried workers in lowest-wage census region

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## BAN-THE-BOX LAWS

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### ■ Montgomery County:

- May not ask about criminal arrests or conviction on applications or otherwise, or perform a criminal background check, until after the conclusion of a first interview.
- Must provide prior notice to an applicant and opportunity to respond when rescinding a conditional offer based on a prior arrest or criminal conviction.
- Applies to an applicant for employment in the County or employee being considered for promotion with an employer with 15 or more full time employees in the County.
- Enforcement by Office of Human Rights; civil penalty of up to \$1,00 for each violation.
- **Does not apply to an employer that provides programs, services, or direct care to minors or vulnerable adults, or where inquiry expressly authorized by any law or regulation.**

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## BAN-THE-BOX LAWS

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### ■ Prince George's County –

- Similar to Montgomery County – may not ask about an arrest or conviction or conduct a criminal record check on an applicant until after the conclusion of a first interview, must conduct an individualized assessment, must give prior notice and opportunity to respond before rescinding an offer based on arrest or conviction record. Applies to applicants for positions with the County with an employer with 25 or more full time employees in the County. **Same exemptions.**

### ■ Baltimore:

- Slightly broader scope – may not ask about an arrest or conviction or conduct a criminal record check on an applicant until after a conditional offer of employment has been extended. Applies to applicants for positions within the City of Baltimore with employers of ten or more full time equivalent employees in the City of Baltimore. **Same exemptions.**

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## Questions?

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## EBG RESOURCES

Stay Up To Date and In Compliance with FLSA and  
State W&H Laws

With the Help of:



<http://www.wagehourblog.com>

&

Epstein Becker Green's Free App:

[Wage & Hour Guide](#)