

Maryland's Healthy Working Families Act Requires Employers in the State to Provide Sick/Safe Leave



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Executive Summary: On January 12, 2018, the Maryland Legislature overrode Governor Hogan's 2017 veto of the Maryland Healthy Working Families Act (the "Act"). As a result, Maryland employers with 15 or more employees are now required to provide for five hours of paid sick leave to eligible employees, and employers with 14 or fewer employees must provide five hours of unpaid sick/safe leave to eligible employees. In addition to the sick leave requirement, the Act imposes notification and recordkeeping requirements and sets out a significant enforcement scheme that includes the potential imposition of treble damage penalties for violations.

Eligible employees under the Act include any employee who is over 18 years of age and regularly works 12 hours or more in the week. This includes full-time, part-time and temporary employees, if they meet the 12-hour work requirement. Certain workers are excluded from the Act's coverage including, for example, independent contractors; individuals who work on as-needed or PRN basis in the health or human services industries who can reject or accept a shift offered by an employer, are not guaranteed any set hours and are not employed by a temporary agency; and some workers in the construction industry who are covered by a collective bargaining agreement, as well as others.

Employees may take the leave for their own physical or mental illness or their family members' physical or mental illness, as maternity or paternity leave, and in cases of domestic violence or sexual assault against the employee or a family member. An employee's use of sick/safe leave cannot be counted as an absence under an employer's absenteeism policy.

Under the Act, employees accrue paid sick/safe leave at the rate of one hour for every 30 hours worked, up to 40 hours of sick/safe leave in a year. The sick/safe leave must be paid at the employee's regular wage rate. In the case of tipped employees, the leave must be paid at the prevailing minimum wage rate, either the state or the county, whichever is higher, and not at the sub-minimum wage rate that may be paid to tipped workers. Employees are allowed to carry over up to 40 hours of paid leave from year to year.

Covered employers must notify employees of their rights under the Act, and the state Commissioner of Labor, Licensing and Regulation is expected to develop a model notice that employers can use. Additionally, employees must be given a detailed statement each pay period explaining the status of the accrued and used sick/safe leave. Further, employers are required to maintain the records of individual employee leave accrual and usage for three years, and the records are subject to government inspection.

Employers can impose some restrictions on employee use of the sick/safe leave. For example, employers can ban the use of such leave during an employee's first 106 calendar days of employment. Also, employers can require seven days' advance notice when the need for the leave is foreseeable and can refuse to pay out accrued, but unused, leave at the time of termination or resignation. Employers can also limit the amount of sick/safe leave that an employee can carry over to the next year to 40 hours and can cap the yearly use of the sick/safe leave to 64 hours. Further, in certain circumstances, employers can require verification of the use of the sick/safe leave if abuse of the leave is suspected.

While the Maryland Act preempts Maryland counties from passing sick/safe leave acts prospectively, employers in Montgomery County will still need to comply with the county ordinance on sick/safe leave, as well as with the state Act.

Employees can file complaints alleging violations of the Act with the Department of Labor, Licensing and Regulation (DLLR), and can also bring civil actions for alleged violations, including retaliation for using accrued leave. Potential awards include treble damages, punitive damages, attorney fees and injunctive relief.

To prepare for the February 12, 2018, effective date of the Act, employers must review their current leave policies to determine whether revisions are required. Payroll systems will need to be reviewed to ensure that the systems account for the accrual, usage and carry over of sick/safe leave and that the leave records are maintained. Notices of employee rights must be developed, in the absence of one from DLLR, and provided to employees.

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