

What Employers in Montgomery County Need to Know About Mandatory Paid Leave if Schools Close Due to COVID-19

By Scott Mirsky

Summary: Montgomery County's Earned Sick and Safe Leave Act covers closures of schools and child care centers. If schools are closed due to the spread of COVID-19, then employers must allow employees to use their earned sick and safe leave.

Under Montgomery County's Earned Sick and Safe Leave Act ("Act"), employers whose employees work in Montgomery County (Maryland) must allow employees to use earned leave if the 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. While the Act itself does not define the term "public health emergency," certainly a closure of schools to reduce the potential exposure to and spread of COVID-19 fits the description.

The amount of leave that a particular employee may have available under the Act will vary, depending on the size of the employer and the number of hours worked by a particular employee. Generally speaking, employees earn one (1) hour of paid leave for every thirty hours (30) worked in the County. For employers with five or more employees, the maximum amount of leave that an individual employee must be permitted to earn in a calendar year is 56 hours. For businesses with fewer than five employees, employees must be first permitted to accrue up to 32 hours of paid sick leave and then accrue up to 24 hours of unpaid sick leave.

Employees are also permitted to carry-over 56 hours of leave from one year to another and can use up to 80 hours of leave in a year. Thus, it is possible that some workers in Montgomery County are entitled to use up to 80 hours of paid leave if their child's school closes due to COVID-19. Of course, some employers may have even a more liberal policy.

Of important note:

1. Montgomery County's Act covers (a) all industries (including the service industry where teleworking is not an option) and (b) both full-time and part-time employees who work a regular schedule of over 8 hours a week. The Montgomery County Act does not apply to contractors.
2. While the State of Maryland recently passed its own version of a sick and safe leave law, the state act does not provide coverage for school and childcare closures.
3. Montgomery County employers cannot retaliate against employees for using leave under the Act.

If you have questions regarding how to handle leave issues during the current spread of the Coronavirus, please contact the employment attorneys at Paley Rothman.