

Maryland's New Sick and Safe Leave Law Goes Into Effect February 11

By Jessica Summers

Summary: On February 11, 2018, Maryland will become the ninth state to require employers to provide employees with sick leave. Except in the cases of very small employers, this sick leave must be paid. This will be a big change for many businesses and all Maryland employers are well advised to consider the new law and their existing policies and procedures to ensure that they are in compliance by February 11.

During their 2017 sessions, the Maryland Senate and House of Delegates both passed the Maryland Healthy Working Families Act to establish mandatory sick leave in the state. However, the bill was vetoed by Governor Larry Hogan. As one of their first orders of business in 2018, both chambers successfully voted to override the veto. Accordingly, **the new law will now go into effect on February 11, 2018.**

The new law applies to all private employers in Maryland as well as local and state government. However, it is important to note that, as discussed further below, for employers in Montgomery County, this new law does not eliminate the continued need to comply with the County's sick and safe leave law (which is more rigorous than the new state law).

The Act requires that employers with an average of 15 or more employees (including full-time, part-time, temporary or seasonal) in the prior year provide their employees with paid sick and safe leave. On the other hand, employers with an average of 14 or fewer employees (including full-time, part-time, temporary or seasonal) in the prior year need only provide unpaid sick and safe leave. The amount of sick and safe leave that the employer must provide and the other requirements surrounding the leave are the same regardless of the employer's size, and whether they must provide the leave paid or unpaid.

Accrual of Leave

In general, under the new law, all employees, including full-time, part-time, temporary and seasonal employees are eligible to receive sick and safe leave. There are however, a few exceptions. The most broadly applicable are that employees who work less than 12 hours per week, employees who are under age 18, and employees who are employed by an employment or temp agency to provide temporary or part-time services to another person, are not entitled to sick and safe leave. There are also more niche exceptions for certain employees who work in the construction industry under the terms of a collective bargaining agreement, who take on ad hoc/as-needed shifts for an employer in the health and human services industry, or who are employed in the agricultural sector on certain agricultural operations. Individuals who are properly classified as independent contractors (as opposed to employees) are also not eligible for sick and safe leave.

As to employees who are eligible for sick and safe leave, the basics of leave accrual under the new law are as follows:

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| <p>What is the minimum amount of sick and safe leave that an eligible employee must accrue or be provided?</p> | <p>Eligible employees must accrue 1 hour of sick and safe leave for every 30 hours worked, up to 40 hours leave per year, OR be given 40 hours of sick and safe leave up-front at the beginning of the year. For the purposes of calculating accrual, exempt employees may be assumed to work 40 hours per week.</p> |
| <p>Are there any times when an eligible employee is not required to accrue sick and safe leave?</p> | <p>Eligible employees only need to accrue sick and safe leave on hours they actually work.</p> <p>Additionally, employees do not need to accrue leave if (1) the employer's pay period is every two weeks and the employee works fewer than 24 hours in the pay period; (2) the employer's pay period is every week and the employee works a total of fewer than 24 hours in the current pay period and the immediately preceding pay period; or (3) the employer's pay period is twice a month and the employee works fewer than 26 hours in the pay period.</p> |
| <p>When must an eligible employee start accruing sick and safe leave?</p> | <p>A new eligible employee must begin accruing (or be given up front) sick and safe leave on his or her first day of work. However, an employer can require that an employee work up to 106 days before he or she can use the accrued leave.</p> |
| <p>What is the minimum amount unused leave that an employee must have at any given time (before the employee can be required to draw down his or her balance before accruing more leave)?</p> | <p>64 hours.</p> |
| <p>What requirements apply to the carryover of unused leave from one year to the next?</p> | <p>If the employee has been accruing leave, the employee must be permitted to carryover up to 40 hours of accrued but unused leave from one year to the next. If the employer provided the leave up-front at the beginning of the year, there is no carryover required.</p> |

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| Must unused sick and safe leave be paid out upon termination or resignation? | There is no requirement that the employer pay the employee out for unused sick and safe leave when the employment relationship ends. |
| What happens if an employee leaves and then is rehired? | If an employee is rehired within 37 weeks, any accrued and unused sick and safe leave balance that he or she had at the time of separation must be reinstated unless the leave was voluntarily paid out by the employer, in which case, no reinstatement is required. |

Use of Leave

An employee who has accrued paid sick and safe leave must be permitted to use it for any of the following purposes:

- To care for or treat the employee's own, or a family member's mental or physical illness, injury or condition;
- To obtain preventative medical care for the employee or a family member;
- For maternity or paternity leave; or
- Where the employee or a family member is a victim of domestic violence, sexual assault or stalking and the absence is necessary for the employee or family member to obtain related medical or mental health attention, obtain services from a victim service organization, obtain legal services or participate in related proceedings, or relocate as the result of the situation.

The law provides that an employer may require an employee to present proof that they are using the sick and safe leave for a covered purpose if (1) the employee takes leave for two or more consecutive shifts or working days, or (2) if they use the leave between their first 107th and 120th day of employment and agreed to providing such verification at the time they were hired.

The new law sets forth the following rules with regards to employee use of sick and safe leave:

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| How much sick and safe leave is an employer required to permit an employee to use in a calendar year? | A minimum of 64 hours. |
| At what rate must sick and safe leave be paid? | Sick and safe leave must be paid at the employee's regular rate. However, tipped employees need only be paid minimum wage for sick and safe leave hours. |

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| How much notice can an employee be required to give if they need to take sick and safe leave? | <p>Where the need for leave is foreseeable, the employer can require the employee to provide up 7 days' advance notice but cannot require more advance notice.</p> <p>Where the need for leave is not foreseeable, the employer can only require the employee to provide notice as soon as practicable.</p> |
| Can an employer require the employee to find someone to cover for her while she takes sick and safe leave? | No. |
| Can the employer deny an employee's request to take sick and safe leave? | Typically, an employee's request must be granted. However, the leave request can be denied if employee fails to provide the required notice of the need for leave and the absence will cause a disruption to the employer. There are also special rules applicable to the denial of leave for employees who provide services to developmentally disabled or mentally ill individuals. |
| What is the minimum increment at which employees must be permitted to use sick and safe leave? | The smallest increment available in the employer's payroll system or 4 hours, whichever is smaller. |

If an employee prefers not to use sick and safe leave, the employer and employee can agree for the employee to trade shifts with another employee or work additional hours in the pay period or the following pay period instead of using sick and safe leave. However, this arrangement must be by mutual agreement and the employer can't require the employee to take on more time instead of using leave.

The law prohibits employers from retaliating against employees for exercising their rights to take sick and safe leave.

Interplay with Existing Leave Policies and Laws

Employers that already provide their employees with some form of leave, such as sick leave, vacation or PTO, do not need to offer separate sick and safe leave as long as the leave that is already provided meets the minimum accrual and use requirements of sick and safe leave under the new law. Moreover, employers are free to offer more leave, or leave under more generous terms, than required by the new law.

When it comes to local laws, the new Maryland law prevents any local jurisdictions within the state from enacting new laws regulating sick leave by providing that the Maryland law will preempt any local law regulating sick leave that was passed on or after January 1, 2017. However, the new law does not impact local sick leave laws passed prior to January 1, 2017.

Right now, there are only two localities in Maryland - Montgomery and Prince George's Counties - that have passed their own sick leave laws. Prince George's County just passed its law in December 2017, so it will be preempted by the new Maryland law. However, Montgomery County passed its law before January 1, 2017, so its law will continue to be effective. This means that employers in Montgomery County will need to comply with both the Montgomery County law and the new Maryland law. In practice, because the Montgomery County law is more rigorous than the Maryland law in virtually all respects, the policies of Montgomery County employers will continue to be dictated primarily by Montgomery County law. However, Montgomery County employers should still review their policies for compliance with the new Maryland law.

Notice and Enforcement

The law requires that employers notify employees of their rights under the new law. The law directs the Commissioner of Labor and Industry to publish a model notice for employers to post as well as a sample handbook policy on the required leave.

Employers will also be required to notify employees of their sick and safe leave balances in writing whenever the employee is paid. This requirement can also be satisfied by providing the employees with a portal or online system that allows them to view their current leave balance at any time.

Employers will need to maintain records of each employees' sick and safe leave accrual and use for at least three years back.

The law will be enforced by the Commissioner of Labor and Industry and has provisions regarding how employees can report violations.

Conclusion

Before February 11, each Maryland employer should take the time to review their leave offerings and policies to determine what, if any, changes they need to make to their benefits in order to comply with the new law.

Jessica Summers and Jim Hammerschmidt held a webinar on Thursday, February 1, 2018 that discussed the requirements on the new law in more detail. A recording can be found below.

**Webinar:
We've Got Chicken Soup For You: How to Comply with Maryland's New Sick & Safe Leave Law**