


APRIL 20, 2017 | STATE & LOCAL TRENDS

## Maryland on Track to Join Growing Trend of Paid Sick Leave

On April 5, 2017, the Maryland General Assembly passed a paid sick leave bill – the Maryland Healthy Working Families Act (the “Act”) – that is now waiting for Republican Governor Larry Hogan’s approval. Governor Hogan has opposed the Act and publicly vowed to veto the bill if it passed – stating that the bill would be “dead on arrival.” However, the bill is likely to become law in the next legislative session, even if Governor Hogan does veto it, because the bill garnered enough votes in both chambers of the legislature to override a veto. 

Governor Hogan had introduced an alternative sick leave bill that would have required businesses with 50 or more employees to provide five paid sick days a year and offered tax incentives to smaller businesses that voluntarily agreed to do so. He had urged lawmakers to negotiate with him and create a bill more like the version he proposed, stating he would not support a sick leave law unless it provides flexibility and support for smaller businesses. However, no negotiation occurred and Governor Hogan’s bill never made it out of committee.

If the law does pass, Maryland will join Arizona, California, Connecticut, Massachusetts, Oregon, Vermont and Washington as states with laws requiring employers to offer paid sick leave, in addition to the District of Columbia, Montgomery County in Maryland, and several other localities across the country. Maryland employers, particularly those that operate in Montgomery County and other locales in Maryland, must pay close attention to the details of the Act because it is significantly different from the more employee friendly provisions of Montgomery County’s Earned Sick and Safe Leave Act, as well as other local sick leave laws.

### APPLICATION AND EXEMPTIONS

Under the Maryland Healthy Working Families Act, employers with 15 or more employees will be required to provide their employees with 40 hours of paid sick and safe leave annually beginning on January 1, 2018. Smaller employers with 14 employees or less would be required to provide their employees with 40 hours of unpaid sick and safe leave annually.

As has been seen in similar paid leave laws developing throughout the country, leave can be used 1) to care for or treat the employee’s mental or physical illness, injury, or condition; 2) to obtain preventive medical care for the employee or employee’s family member; 3) to care for a family member with a mental or physical illness, injury, or condition; 4) for maternity or paternity leave; and 4) for specified circumstances due to domestic violence,

sexual assault, or stalking committed against the employee or the employee's family member.

However, the Act does not apply universally to all employees and there are special rules for certain types of employees. For example, employers are required to provide paid sick and safe leave to tipped employees but employers are only required to pay a tipped employee the applicable minimum wage when leave is taken. Additionally, the Act does not apply to certain employees, such as employees who work less than 12 hours a week, workers employed in the agricultural sector on an agricultural operation, workers employed by a temporary service agency to provide temporary staffing services to another person if the agency does not have day-to-day control over their work and supervision, and workers directly employed by an employment agency to provide part-time or temporary services to another person. The Act also does not require employers to provide paid sick and safe leave to workers employed in the construction industry who are covered by a bona fide collective bargaining agreement that expressly waives the requirements of the Act, or to certain employees in the health care industry who are employed on an "as-needed" basis.

## **ACCRUAL**

Employees that are eligible to accrue paid sick and safe leave would accrue leave at a rate of at least one hour for every 30 hours worked with a maximum benefit of 40 hours per year (or 5 full days of leave per calendar year). However, there would be certain limits on accruing leave. An employer would not be required to allow an employee to accrue earned sick and safe leave during (1) a two-week pay period in which the employee worked fewer than 24 hours total; (2) a one-week pay period if the employee worked fewer than a total of 24 hours in the current and immediately preceding pay period; or (3) a pay period in which the employee is paid twice a month and the employee worked fewer than 26 hours in the pay period.

Similar to DC's and Montgomery County's paid leave laws, employees would begin accruing sick and safe leave on their first day of employment. However, unlike those laws where employers can only prohibit employees from using paid sick and safe leave during their first 90 days of employment, employers covered under the Act may prohibit employees from using earned sick and safe leave during the first 106 calendar days of employment.

Finally, the Act permits employers to provide limits on the total amount of leave that an employee can accrue, carry-over, and use per year. Employers may limit the amount of sick and safe leave that employees earn to 40 hours per year, and a maximum accrual of 64 hours of leave at any given time. Likewise, employers can limit employees to using 64 hours of leave per year. Employers may also choose to limit carry-over of unused earned leave to a maximum of 40 hours per year. This limitation on carry-over provides an additional benefit for private employers who offer leave on a lump-sum basis rather than using an accrual method. Private sector employers may prohibit the carrying over of unused earned leave if the employer awards the employee the full amount of leave at the beginning of each year – i.e. providing 40 hours of sick and safe leave in a lump sum.

## **MULTIPLE PAID LEAVE LAWS FOR MARYLAND EMPLOYERS**

Maryland's Healthy Working Families Act has been debated in the Maryland General Assembly for approximately five years. As originally written, it was very similar to the paid leave law passed in Montgomery County that went into effect on October 1, 2016. However, the Act that was ultimately passed differs in many significant ways, and employers that operate in Montgomery County and other locales in Maryland should be prepared to comply with

at least two different paid sick leave laws.

Specifically, Montgomery County's Earned Sick and Safe Leave Law provides more paid leave for employees and it applies to all private businesses and individuals who employ one or more persons to work within the county. All employees are covered (including domestic service workers), except for:

1. Individuals who: (a) do not have a regular work schedule with the employer; (b) contact the employer for work assignments and are scheduled within 48 hours after contact; (c) have no obligation to work for the employer unless they initiate contact; and (d) are not employed by a temporary placement agency;
2. Individuals who regularly work eight or fewer hours each week; and
3. Independent contractors.

Employees who work for employers with 5 or more employees earn sick and safe leave at a rate of one hour for every 30 hours of work in Montgomery County, up to 56 hours or approximately 7 days of paid sick leave per calendar year. Additionally, small employers in Montgomery County must still provide employees with paid leave – albeit a small amount. Specifically, employees who work for employers in Montgomery County with fewer than 5 employees still earn one hour of paid sick and safe leave for every 30 hours worked in Montgomery County, but only up to 32 hours or approximately 4.5 days per calendar year.

Unlike the Maryland Healthy Working Families Act which would prohibit employees from using leave during the first 106 days of employment, employees working in Montgomery County are only prohibited from using leave during the first 90-days of employment. Additionally, employers must permit employees to carry over more leave at the end of the year – up to 56 hours – unless, like the state law, the employer awards the full amount of leave that the employee would earn over the entire calendar year at the beginning of that calendar year. Finally, employees are permitted to use up to 80 hours of sick and safe leave in a calendar year.

### **CONSIDERATIONS FOR EMPLOYERS**

One reprieve for employers is that if they already have a paid leave policy that permits employees to accrue and use leave under the same terms and conditions of the Act, they will not have to modify their policies or provide any additional leave. Nonetheless, if the law is passed, all Maryland employers must ensure that they have a paid leave policy that satisfies the terms and conditions of the Maryland Healthy Working Families Act, and the Montgomery County Earned Sick and Safe Leave Act or other local law, if applicable. This is especially true for many employers who may not have provided paid leave for tipped, hourly, or part-time employees. Employers should pay close attention to the status of this bill and, if passed, take appropriate steps to update existing leave policies to ensure they comply with the terms and conditions of the Act.