

## Maryland Paid Sick Leave Effective February 11

By Emmett F. McGee, Teresa Burke Wright and Kathleen A. McGinley

January 16, 2018

Certain Maryland employers must begin offering *paid* sick and safe leave to their employees under the Maryland Healthy Working Families Act beginning February 11, 2018.

The Act requires Maryland businesses with at least 15 employees to offer *paid* sick and safe leave. Smaller businesses must provide *unpaid* sick and safe leave.

On January 12, the Maryland General Assembly overrode Governor Larry Hogan's veto and passed the Act. The Act will go into effect on February 11, 2018, unless the General Assembly passes legislation delaying implementation.

### Applicability

The Act applies to employers with at least 15 employees, regardless of whether those employees are full-time, part-time, temporary, or seasonal.

The Act does *not* apply to workers who:

- Regularly work fewer than 12 hours a week;
- Are under the age of 18;
- Are independent contractors;
- Work in the agricultural sector on an agricultural operation; or
- Work on an as-needed basis in the health or human services industry.

The Act also carves out exceptions for employers in the construction industry that are parties to collective bargaining agreements. In those instances, the employer and the union may agree expressly to waive the Act's requirements. The Act also does not impose any requirements on employers with existing collective bargaining agreements entered into before June 1, 2017, for the duration of the contract term.

Employers with up to 14 employees must provide *unpaid* earned sick and safe leave.

### Requirements

For eligible employees, the employer must provide paid leave allowing them to:

1. Care for the physical or mental health of the employee or a family member;
2. Take maternity or paternity leave; or
3. Obtain relief in response to domestic or sexual assault of the employee or a family member.

The Act requires employers to offer eligible employees the ability to accrue up to 40 hours of paid leave a year. Employers must offer leave accrual at the rate of one hour for every 30 hours worked or award the entire 40 hours at the beginning of each year.

Additionally, employees can carry over up to 40 hours of paid leave a year. Employers can cap use of paid leave at 64 hours per year.

Employers are not required to pay out unused, accrued sick leave upon an employee's termination. However, if the leave is not paid out and the employee is subsequently rehired within 37 weeks, the employer must reinstate the unused leave.

### Permissible Restrictions

Employers may set certain restrictions on the use of paid leave. For instance, an employer may:

- Forbid the use of paid leave until after the employee has worked 106 calendar days from his or her date of hire;
- Cap leave accrual at 64 hours total and 40 hours annually;
- Refuse to pay out unused, accrued leave upon an employee's termination or resignation;
- Require up to seven days' notice for the use of foreseeable leave; and

### Meet the Authors



[Emmett F. McGee](#)

Principal  
Baltimore 410-415-2003  
Email



[Teresa Burke Wright](#)

Principal  
Washington, D.C. Region 703-483-8310  
Email



[Kathleen A. McGinley](#)

Principal  
Baltimore 410-415-2085  
Email

### Practices

Disability, Leave and Health Management

### Industries

Chemicals  
Construction  
Energy and Utilities  
Financial Services  
Government Contractors  
Healthcare  
Higher Education  
Hospitality  
Insurance  
Life Sciences  
Manufacturing

- Implement policies designed to prevent the improper use of leave.

The Act expressly permits an employer to obtain verification of appropriate use of paid leave if leave:

1. Was used for more than two consecutive scheduled shifts; or
2. Was used between the first 107th and 120th calendar days of employment and the employee agreed to provide verification at the time of hire.

It is unclear what type of verification may be requested and whether employers can obtain verification other than as stated in the Act.

As an alternative, the employer and the employee may agree that the employee will work additional hours or trade shifts with another employee, rather than use paid leave. However, these policies must be strictly voluntary. An employee cannot be forced to offer or accept a shift trade or work additional hours.

## Notice and Recordkeeping

Employers must notify employees of their rights under the Act. The state Commissioner of Labor and Industry is directed to create a model notice. Further, employers must provide a written statement to their employees each pay period when wages are paid that details each individual employee's amount of earned leave available for use.

Employers also must keep a record, for at least three years, of all earned leave accrued and used by each employee.

## Enforcement

The Act permits aggrieved employees to file complaints with the Commissioner of Labor and Industry for alleged violations of the Act, including retaliation for using accrued leave. The Commissioner may issue an order instructing the employer to comply with the Act. The aggrieved employee also has a right to bring a civil action to enforce that order. Successful employees may receive an award of treble damages, punitive damages, attorneys' fees, and injunctive relief.

## Impact on Local Sick Leave Laws

The Act preempts Maryland localities from passing sick and safe leave laws of their own in the future. Preemption is retroactive to January 1, 2017. Therefore, employers must still comply with Montgomery County's paid sick and safe leave law, which was enacted in 2016. Prince George's County's new paid sick and safe leave law was passed in December 2017 and is preempted by the Act.

The Montgomery County law, which imposes more requirements on employers than the Act, requires employers with at least five employees to allow accrual of up to 56 hours of paid leave a year. Employers with fewer than five employees must allow accrual of up to 32 hours of *paid* leave a year, plus another 24 hours of *unpaid* leave. The permitted cap on use of leave is also higher in Montgomery County, at 80 hours.

Employers with workers in Montgomery County will have to ensure their policies comply with both county and state requirements.

## Next Steps for Employers

Given the short timeline for implementation, employers should immediately review and revise their sick, paid time off (PTO), and other paid leave policies to comply with the Act.

Particular areas of concern include:

- *Compliance with both county and state laws.* Employers with employees in Montgomery County must ensure they comply with all state and local requirements.
- *Recordkeeping practices.* Employers must keep records of leave accrual and use for three years.
- *Notice to employees.* If the Maryland Department of Labor, Licensing and Regulation (DLLR) does not issue a timely model notice, employers must prepare their own.
- *Payroll systems.* Employers must begin updating their payroll system to account for the Act's requirements, including reporting leave balances on employee pay stubs.
- *Carryover.* Employers must permit carryover of unused, accrued leave from year to year (even though the 64-hour annual cap on use applies).
- *Part-time employees.* The Act applies to all part-time employees who do not fall into one of the exempt categories.

Employers should monitor closely whether the General Assembly delays implementation of the Act even as they prepare for implementation.

In an effort to help employers with compliance, Governor Hogan on January 15 issued an Executive Order creating the Office of Small Business Regulatory Assistance to assist small employers with the Act. The Legislature has 50 days to respond. The DLLR may issue regulations or a model notice before the law takes effect.

Please contact your Jackson Lewis attorney to discuss the Act and your specific organizational needs.

©2018 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

---

©2022 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

\*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.