

SCHWARTZ, METZ & WISE, P.A.

ATTORNEYS

20 WEST STREET
ANNAPOLIS, MARYLAND 21401

TEL: 410-244-7000

FAX: 410-269-5443

2017 Maryland Healthy Working Families Act Summary (HB1)

NOTE: On January 12, 2018, the General Assembly successfully overrode Governor Hogan's veto of this bill. Therefore, the bill will take effect in 30 days. The bill may be reviewed at:

<http://mgaleg.maryland.gov/2017RS/bills/hb/hb0001E.pdf>

This document provides general information related to the provisions in House Bill 1. Although we go to great lengths to make sure our information is accurate and useful, we recommend you carefully review the bill in its entirety at mgaleg.maryland.gov.

General Applicability to Employers:

- Companies with 15 or more employees must offer **paid sick and safe leave**.
- Companies with 14 or less employees must offer **unpaid sick and safe leave**.

Definition of sick and safe leave:

- Leave away from work that can be used for:
 - An employee's own medical care, illness or injury; preventive care.
 - A family member's care (exhaustive list of who is considered a family member).
 - Medical or mental health attention, services from a victim services or organization, legal services or proceedings or temporarily relocated due to cases involving domestic violence, sexual assault, stalking, other related services.
 - Maternity or paternity leave.

Employee Does Not Include Individuals Who:

- Work under a contract of hire that is determined not to be covered employment under 8-205 of the Labor Article (owner operator driver exceptions are in 8-206).
- Are real estate salespeople and brokers.
- Are under the age of 18 years before the beginning of the year.
- Are employed in the agricultural sector on an agricultural operation.
- Are employed by a temporary services agency to provide temporary staffing services to another person if the temporary services agency does not have day-to-day control over the work assignments and supervision of the individual while the individual is providing the temporary staffing services.
- Are directly employed by an employment agency to provide part-time or temporary services to another person.

Additional Employee Exemptions:

- Regularly works less than 12 hours a week.
- Employed in the construction industry under certain professionals (janitor, building cleaner, building security officer, concierge, doorman, handyperson or building superintendent) and is covered under a collective bargaining agreement.

- Is called to work by the employer on an as-needed basis in a health or human services industry; can reject or accept the shift offered by the employer; is not guaranteed to be called on to work by the employer; and is not employed by a temporary staffing agency.
- Employed in the agricultural sector.
- Covered under a collective bargaining agreement entered into before June 1, 2017 for the duration of the contract terms.
- Employed by a unit of State or local government and their policy meets or exceeds the sick and safe leave provided under the law under certain circumstances.

Calculating Earned Sick or Safe Leave:

- Begins to accrue January 1, 2018 or, if the employee is hired after January 1, 2018, the date the employee begins employment.
- Covered employees can accrue 1 hour for every 30 hours of work to be used in accordance with the purposes in the bill; however, employers may be more generous or give all leave at beginning of year.
- Covered employees includes employees who are full-time, part-time, temporary or seasonal.
- An employer may have or maintain a paid time off policy.
- An “existing paid leave” policy includes vacation days, sick days, short-term disability benefits, floating holidays, parental leave and other paid time off that may be used under the terms and conditions as paid sick and safe leave. A paid leave policy must comply with the terms and conditions in the bill, such as accrual, wait times, carryover, etc.

Using Earned Sick or Safe Leave:

- Employers are not required to allow an employee to:
 - Earn more than 40 hours of earned sick and safe leave in a year.
 - Carryover more than 40 hours of unused sick and safe leave in a year unless the employer awards the full amount of leave at the beginning of the year or unless the employee is employed by a nonprofit entity or a governmental unit in accordance with a grant the duration which is limited to one year and is not subject to renewal.
 - Use more than 72 hours of earned sick and safe leave in a year or accrue a total of more than 72 hours at any time.
 - Use earned sick and safe leave during the first 106 calendar days the employee works for the employer, however, an employee begins to accrue the leave immediately (January 1, 2018 or the date the employee begins employment);
 - Accrue earned sick and safe leave during a two week pay period in which the employee worked fewer than 24 hours total; a one week pay period if the employee worked fewer than a combined total of 24 hours in the current and the immediately preceding pay period; or in a pay period in which the employee is paid twice a month regardless of the number of weeks in a pay period and the employee worked fewer than 26 hours in the pay period.
- Employers are not required to compensate an employee for unused earned sick and safe leave when the employee leaves the employer’s employment.
- If employer gives an advance of leave and the employee leaves the company before it is all earned, the employer may deduct the amount owed from the employee’s wages providing a signed statement was obtained when the leave advance was made.
- If an employee leaves your employment and returns within 37 weeks, he/she must be reinstated for leave previously earned unless the employer voluntarily paid it out when the employee departed.
- Earned leave from old company must transfer to new company.

Notification by Employee for Taking Leave:

- If leave is foreseeable, an employer can request reasonable, advance notice of not more than 7 days before the date the leave would begin.

- If leave is not foreseeable, the employee must provide notice to an employer as soon as practicable and must generally comply with the employer's notice or procedural requirements for requesting or reporting other leave if those requirements do not interfere with the employee's ability to use earned sick and safe leave.
- An employer may deny a request if the employee fails to provide the required notice and the employee's absence will cause a disruption or the employer provides services to DD or mentally ill individuals and the leave is foreseeable but the employer is unable to provide a suitable replacement and the employee's absence will cause a disruption of service to at least one individual with a DD or mental illness.

Tracking:

- Employees can take leave in smallest increment payroll system allows and may be required to take earned sick and safe leave in an increment not exceeding 4 hours.
- Employees using leave for more than 2 consecutive shifts may be required to provide verification that it was used for the purposes allowed or the leave is used during the period between the first 107 and 120 calendar days that the employee was employed by the employer and the employee agreed to provide verifications under terms mutually agreed to by the employer and the employee at the time the employer was hired by the employer.
- Amount of leave must be tracked and provided in writing to employees when paid.
- Special rules apply for tip employees in the restaurant industry.

Notice & Recordkeeping:

- Employers must advise employees of leave entitlement, how they can use it, accrual rate, prohibition against adverse actions, and right to bring civil action. Can be accomplished with a labor law poster developed by DLLR.
- DLLR must develop a model paid sick and safe leave that an employer may use as a policy in an employee handbook or other written guidance to employees and must provide technical assistance to an employer regarding implementation of the provisions of this subtitle.
- Recordkeeping requirement is 3 years. Failure to keep records is a rebuttable presumption that a violation has occurred.

Damages:

- No adverse actions may be taken against an employee for use of the leave.
- Civil actions – full monetary value of unpaid leave; actual economic damages; up to 3 times the economic value of the hourly wage; attorney's fees; injunctive relief.
- \$1,000 fine per violation may be assessed by the Commission.
- Employees acting in "bad faith" who file a complaint, bring an action against an employer, or testify against the employer may be fined a maximum of \$1,000 (misdemeanor).
- An employer cannot be assessed a civil penalty due to an unintentional payroll error or written notice error caused by a third-party payroll service provider with whom the employer contracted for services. If an employer contracts with a third-party payroll service provider and the employer is found in violation of this subtitle as a result of the payroll service provider's actions, the payroll service provider is liability for any penalties and costs incurred by the employer.

Preemption:

- Local jurisdictions are preempted from enacting their own laws on or after January 1, 2017. Montgomery County would not be preempted given that its law went into effect October 1, 2016.