

Compliance



Provided by BB&T Insurance Services, Inc., McGriff, Seibels & Williams, Inc., BB&T Insurance Services of California, Inc., and Precept Insurance Solutions, LLC

Maryland Enacts Paid Sick and Safe Leave

Legislative Alert 09-2018 February 9, 2018

Highlights:	<ul style="list-style-type: none">▪ Employees must accrue one hour of paid leave for every 30 hours of work, up to 40 hours per year.▪ Employers may require employees to wait up to 106 days before using accrued paid leave.▪ Employers with equivalent paid leave policies are not required to provide additional paid leave.	Important Dates:	<p>January 12, 2018</p> <ul style="list-style-type: none">▪ The general assembly votes to override the governor's veto. <p>February 11, 2018</p> <ul style="list-style-type: none">▪ The Act is scheduled to take effect. <p>April 12, 2018</p> <ul style="list-style-type: none">▪ The general assembly may approve a 60-day extension to the Act's effective date.
--------------------	--	-------------------------	---

OVERVIEW

On Jan. 12, 2018, the Maryland General Assembly voted to override Gov. Larry Hogan's veto of paid sick and safe leave legislation. As a result, the [Healthy Working Families Act](#) (Act) will require:

- Employers with **15 or more employees** to provide **paid** sick and safe leave to employees; and
- Employers with **fewer than 15 employees** to provide **unpaid** sick and safe leave.

Under state law, legislation is effective 30 days after the vote to override a veto. Thus, the Act is scheduled to take effect on **Feb. 11, 2018**. However, the general assembly has introduced an [emergency bill](#) that would give employers an extra 60 days, until **April 12, 2018**, to comply with the Act.

ACTION STEPS

Employers should review their leave and attendance policies and determine whether any changes must be made in order to comply with the Act. Also, employers should be prepared to provide the required employee notices and comply with the Act's recordkeeping requirements.

Covered Employers

Virtually all Maryland employers are required to comply with the Act. However, only employers that employ 15 or more employees must provide **paid** sick and safe leave. Employers with fewer than 15 employees must provide employees with the same amount of **unpaid** leave to be used for the same purposes.

An employer's size is determined by calculating the average monthly number of employees employed during the prior year. All employees must be included in this calculation, including full-time, part-time, temporary and seasonal employees.

If an employer maintains a paid leave policy that allows employees to access and accrue paid leave at an equivalent (or greater) rate as provided under the Act, and permits employees to use paid leave for the same purposes as provided under the Act, the employer is **not** required to modify its paid leave policy.

Covered Employees

Employees who regularly work **12 or more hours per week** are eligible to accrue and use sick and safe leave under the Act. The Act does not apply to certain types of employees, including:

- Employees who regularly work fewer than 12 hours per week;
- Employees who are under the age of 18;
- Employees who are employed in the construction industry and covered by a collective bargaining agreement that expressly waives the sick and safe leave requirements;
- Employees in the agricultural sector or on an agricultural operation;
- Certain individuals employed by a temporary staffing firm or individuals directly employed by an employment agency; and
- Certain employees who are called to work "as needed" in a health or human services industry.

Also, the Act does not impose any requirements on employers with collective bargaining agreements entered into before June 1, 2017, for the duration of the contract term, excluding any extensions, options to extend or renewals of the term of the original agreement.

Accrual of Earned Sick and Safe Leave

Employees accrue earned sick and safe leave at a rate of **one hour for every 30 hours worked**. Employers may cap employee sick and safe leave accruals to **40 hours per year**. The "year" is any regular, consecutive 12-month period determined by the employer. In addition, employers are not required to allow employees to accrue more than a total of **64 hours** of sick and safe leave at any time.

Exempt employees are assumed to work 40 hours per week for purposes of accruing sick and safe leave. However, if an exempt employee's normal workweek is fewer than 40 hours, the employee's normal workweek should be used.

Exceptions to Accrual

An employee does not accrue earned sick and safe leave during any two-week pay period when the employee worked fewer than 24 total hours. In addition, no sick and safe leave must be accrued during a one-week pay period if the employee

Employers are not required to modify existing paid leave policies if the policy permits employees to accrue and use leave under the same conditions as provided by the Act.

worked fewer than 24 total hours in the current and preceding one-week pay periods combined. For employees paid twice per month, an employee must have worked at least 26 or more total hours for the pay period to accrue sick and safe leave.

Front-loading Sick and Safe Leave

Rather than tracking accruals, employers may front-load the entire amount of sick and safe leave at the beginning of each year that employees would accrue during the year (using a rate of one hour for every 30 hours worked).

Use of Earned Sick and Safe Leave

Employees must be permitted to use earned sick and safe leave for any of the following reasons:

1	To care for or treat the employee's own mental or physical illness, injury or condition
2	To obtain preventive medical care for the employee or the 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
5	For certain reasons related to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member

An employer may disallow employees' use of accrued sick and safe leave during the **first 106 calendar days** of employment. Employers may also limit employees' use of sick and safe leave to **64 hours per year**.

In addition, the Act includes special rules that permit an employer and employee to mutually agree to the employee making up missed hours of work, or trading shifts with another employee, in lieu of using earned sick and safe leave. There are also special rules that apply to tipped employees who work in a restaurant.

The Act also permits, but does not require, employers to allow employees to use sick and safe leave before it is actually accrued.

Family Members

The term "family member" is broadly defined under the Act. For purposes of using earned sick and safe leave, an employee's family member includes:

- A biological, adopted, foster or stepchild of the employee, including a child for whom the employee has legal or physical custody or guardianship, or a child for whom the employee stands *in loco parentis* (in place of a parent), regardless of the child's age;
- A biological, adoptive, foster, or stepparent of the employee or the employee's spouse;
- An employee's legal guardian;
- An individual who acted as a parent or stood *in loco parentis* to the employee or the employee's spouse when the employee or the employee's spouse was a minor;
- The spouse of an employee;
- Grandparents, including biological, adopted, foster or stepgrandparents;
- Grandchildren, including biological, adopted, foster or stepgrandchild of the employee; or
- Siblings, including biological, adopted, foster or stepsibling of the employee.

This Compliance Bulletin is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. Design ©2017-2018 Zywave, Inc. All rights reserved.

The information provided should not be considered tax or legal advice. Please consult with your individual tax advisor and/or attorney regarding your individual circumstances. Insurance products are offered by BB&T Insurance Services, Inc., BB&T Insurance Services of California, Inc., F.B.P. Insurance Services, LLC, DBA Precept Insurance Solutions, LLC, and DBA as Provview Advanced Administrators, LLC, and McGriff, Seibels & Williams, Inc., all subsidiaries of BB&T Insurance Holdings, Inc. BB&T Insurance Services, Inc., CA Lic #0C64544; BB&T Insurance Services of California, Inc., CA Lic #0619252; F.B.P. Insurance Services, LLC, CA Lic #0747466; McGriff, Seibels & Williams, Inc., CA Lic #0E83682.

© 2018, Branch Banking and Trust Company. All rights reserved.

Insurance.BBT.com

Page 3

Leave Increments

Employees may use earned sick and safe leave in the smallest increment that the employer's payroll system uses to account for absences or use of the employee's work time. Employers may require employees to use sick and safe leave in increments no greater than four hours.

Employee Notice Requirements

When the need to use sick and safe leave is foreseeable, employers may require employees to provide up to seven days advance notice of the leave. If the need for leave is not foreseeable, employees must provide notice "as soon as practicable" and comply with the employer's policy for requesting or reporting other leave, as long as these requirements do not interfere with an employee's ability to use sick and safe leave.

If an employee does not provide required notice of the need to use earned sick and safe leave, and the employee's absence will cause a disruption to the employer, the employer may deny an employee's request to take sick and safe leave.

Payment of Earned Sick and Safe Leave

For employers with 15 or more employees, sick and safe leave is generally paid at the same wage rate that the employee normally earns. For tipped employees, the employer is not required to pay more than the applicable minimum wage.

Documentation of Sick and Safe Leave Use

If an employee uses earned sick and safe leave for **three or more consecutive** scheduled shifts, the employer may require the employee to provide documentation that verifies the leave was used for an approved purpose under the Act. Employers may also require this verification for employees who use leave between the first 107 and 120 calendar days of employment (inclusive), if employees agree to provide this verification at the time of their hiring.

If an employee fails to provide this verification, the employer may deny a subsequent request from the employee to take sick and safe leave for the same reason.

Carry-over, Termination and Rehire Rules

Unless an employer chooses to front-load sick and safe at the start of each year, the employer must permit employees to **carry over up to 40 hours** of accrued, but unused sick and safe leave into the next year. However, employers are not required to allow employees to accrue more than a total of 64 hours of sick and safe leave at any time.

The Act explicitly states that **employers have no obligation to pay out** any accrued, but unused sick and safe leave upon an employee's separation from employment. However, if an employee is rehired by the same employer within 37 weeks after separation, the employer must reinstate any sick and safe leave the employee had earned prior to the separation. If an employer voluntarily chooses to pay out sick and safe leave upon separation of employment, the employer has no obligation to reinstate leave upon rehiring the employee.

Employee Protections

Employers are prohibited from:

- Interfering with, restraining or denying an employee's exercise (or attempt to exercise) of his or her rights under the Act;
- Taking adverse action (discharge, demotion, threat of discharge or demotion, or any other retaliatory action) against an employee who in good faith exercises his or her rights under the Act;
- Requiring an employee to find a replacement to cover for the employee's sick and safe leave absence; and
- Counting sick and safe leave absences against an employee under the employer's attendance policy.

Employer Notice Requirements

The Act requires employers to notify employees of their right to earned sick and safe leave. The Act directs the [Maryland Department of Labor and Industry](#) (Department) to provide a **model notice and workplace poster** that employers can use to satisfy this notification requirement. The Commissioner is also to develop a **model sick and safe leave policy** that employers may incorporate into their employee handbooks or other written leave communications.

In addition, each payday, employers must provide employees with a written statement detailing the employee's amount of earned sick and safe leave that is available for use. The employer may provide this statement by any reasonable method, including an online system that allows employees to review their available sick and safe leave balance.

Employer Recordkeeping

The Act requires employers to maintain records of the following for **three years**:

- The amount of earned sick and safe leave accrued by each employee; and
- The amount of earned sick and safe leave used by each employee.

The Commissioner may inspect an employer's records to determine if the employer is in compliance with these requirements.

Local Paid Sick Leave Ordinances

The Act pre-empts local jurisdictions from enacting any new laws regarding paid sick leave on or after Jan. 1, 2017. Sick and safe leave laws that were enacted before Jan. 1, 2017, such as Montgomery County's [earned sick and safe leave law](#), are not pre-empted by the Act.