



Sick and Safe Leave Comes to Alert: Montgomery County This October

The following information has been provided by Andrew Schwartz, Esq. of Stein Sperling. If your practice would like to have a review of your personnel policies, call 301.340.2020.



Montgomery County, Maryland's new "Sick and Safe Leave" law takes effect October 1, 2016. The law applies to all private businesses and individuals who employ one or more workers within the county, including domestic service workers. Below is a rundown of the law's provisions.

How much leave must an employer provide to its employee(s)?

Employers with five or more employees must provide one hour of paid leave for every 30 hours worked, not to exceed 56 hours of earned paid leave in a year. Employers with 4 or fewer employees must also provide one hour of paid leave for every 30 hours worked; however the employer is only required to pay each employee for the first 32 hours of leave and the remaining 24 hours may be unpaid.

There are a few exceptions to this provision. As such, the law does not apply to workers who:

1. Work eight or fewer hours each week;
2. Do not maintain a regular work schedule with the employer;
3. Initiate contact with the employer for work assignments;
4. Are not obligated to work for the employer unless they initiate contact;
5. Are employed by a temporary staffing or placement agency; or
6. Are independent contractors.

Employers must permit employees to earn Sick and Safe leave during an initial 90-day probationary period, but can require employees to use such earned leave after they complete their probationary period. In addition, exempt employees (i.e., those to whom the Fair Labor Standards Act minimum wage and overtime provisions do not apply) should earn leave according to their normal work week – up to 40 hours per week.

Montgomery County employers may decide whether to award the full bank of Sick and Safe leave hours available to employees at the start of the calendar year or to offer employees leave as it accrues during the calendar year. If employers use the accrual method, then employees are permitted to carry over their leave from year to year with an annual cap of 56 hours. Even with this carryover, employers are allowed to cap total paid Sick and Safe leave used within a calendar year at 80 hours.

When can employees use their earned Sick and Safe leave?

Employees may elect to use earned Sick and Safe leave under any of the following circumstances.

1. If the employee is caring for his or her own mental or physical condition, illness or injury
2. If the employee is caring for a family member's mental or physical condition, illness or injury
3. If the employee is obtaining preventive medical care for himself or herself, or for a family member
4. If the employer's place of business has closed by order of a public official due to a public health emergency
5. If the school or child care center for the employee's family member is closed by order of a public official due to a public health emergency
6. If the employee is caring for a family member if a health official or health care provider has determined that the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease
7. If the employee is seeking medical attention, legal services or any other services provided by victims' organizations
8. If the employee has temporarily relocated due to domestic violence, sexual assault or stalking.

Continued on Page 2



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(Continued from Page 1)

Employers maintain the authority to use their discretion when allowing an employee to use earned Sick and Safe leave before he or she has accrued the amount requested. Employees must request leave as soon as practicable, notifying the employer of the anticipated duration of leave and otherwise complying with the employer's policy for requesting and taking leave. Employers may require employees using more than three consecutive days of Sick and Safe leave to submit reasonable documentation regarding their absence to verify that leave was used appropriately.

Any employee who, after leaving an employer, is rehired within nine months by the same or a different employer within the county is entitled to have his or her Sick and Safe leave reinstated. However, Sick and Safe leave an employee has earned is not payable upon termination unless employer has a written policy to the contrary.

What notice is an employer required to provide to employees?

Employers are required to notify workers of their entitlement to Sick and Safe leave, specifically addressing:

1. How leave is accrued;
2. How leave may be used;
3. The employer's commitment to not retaliate against employees for using the leave; and
4. The employee's right to file a complaint for violations of his or her right to earn and use Sick and Safe leave.

Each pay period, employers must also provide employees a written statement of their earned Sick and Safe leave. Alternatively, employers may choose to maintain a system through which employees may access their own earned leave balances.

What record-keeping obligations does an employer have?

Employers must maintain records regarding each employee's accrual and use of leave for the past three years.

Action Items

To ensure compliance with Montgomery County, Maryland's new Sick and Safe leave policy, employers may wish to:

1. Review current sick leave policies for compliance with the new policy.
2. Notifying employees of the introduction of any changes to existing workplace policies.
3. Devise a mechanism for continually notifying employees of (or allowing employees access to) their accrued leave balance.