

## **MONTGOMERY COUNTY, MARYLAND HAS ENACTED AN EARNED SICK AND SAFE LEAVE LAW**

**By Susan Richards Salen  
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Montgomery County, Maryland has enacted an Earned Sick and Safe Leave Law (“Law”) effective October 1, 2016. Most employers in the County will have to provide most of their employees with up to 56 hours of paid sick and safe leave. The leave is accrued at the rate of one hour of paid leave for every 30 hours worked capped at not more than 56 hours of leave a year. Small employers (defined as employers with less than 5 employees) have to provide only 32 hours of paid leave and 24 hours of unpaid leave.

Employees may use this accrued sick and safe leave for their own illness, to care for a sick family member, for their own and their family member’s medical appointments. The leave may also be used by an employee seeking services (medical or legal) related to the employee’s suffering from domestic violence, sexual assault or stalking.

Employers must provide notice to its employees of this law. In addition, employers must keep three years of records reflecting employee leave accrual and use.

Most employers in the area offer either Sick Leave or Paid Time-Off that will meet the leave accrual requirements. However, existing employer sick leave policies will not generally meet the requirements of the new Law. For example, many policies do not permit employees to accrue leave prior to being employed for a 90-day period. The Law requires that employees accrue sick and safe leave upon commencement of employment. Employers should review their sick leave policies and revise as necessary to meet the Law’s Requirements.

Attached is Montgomery County’s Fact Sheet, which you should provide to your employees as soon as possible. Posters may be obtained from [complianceposter.com](http://complianceposter.com).

For more information on the Law and assistance in compliance, please do not hesitate to contact Susan Richards Salen or Maureen Carr.

## FACT SHEET

### **The Montgomery County Earned Sick and Safe Leave Law Montgomery County Code Chapter 27 Human Rights and Civil Liberties Sections 27-7 and 27.8 Effective October 1, 2016**

#### **1. What is earned sick and safe leave?**

Earned sick and safe leave means paid leave away from work that is provided by an employer and can be used for the purposes described in the law. Earned sick and safe leave includes paid time off that can be used by the employee for any purpose.

#### **2. What can earned sick and safe leave be used for?**

An employee may use earned sick and safe leave:

- (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 the employee's family member;
- (3) to care for a family member with a mental or physical illness, injury, or condition;
- (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) to care 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; or
- (7) if the absence from work is due to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member and the leave is used:
  - (A) by the employee to obtain for the employee or the employee's family;
    - (i) medical attention needed to recover from a physical or psychological injury due to domestic violence, sexual assault, or stalking;
    - (ii) services from a victim services organization related to the domestic violence, sexual assault, or stalking;
    - (iii) legal services, including preparing for or participating in a civil or criminal proceeding related to the domestic violence, sexual assault, or stalking; or
  - (B) during the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking.

#### **3. How much leave must an employee receive?**

An employee must earn 1 hour for every 30 hours worked in the County up to 56 hours in a year.

- (1) An employer with 5 or more employees must provide paid leave.

- (2) An employer with less than 5 employees must provide 32 hours of paid leave and 24 hours of unpaid leave.

**4. How much leave can an employer use in one year?**

An employee can use up to 80 hours in a year.

**5. Can an employee carryover unused leave into the next year?**

Yes, up to 56 hours of leave can be carried over, **unless** an employer awards the full amount of leave that the employee would earn over the year at the beginning of the year.

If an employee uses more leave than the employee has accrued when leaving employment, an employer may deduct the amount paid for the unearned leave from the employee's final wages if the employee signed a document agreeing to the deduction.

**6. Who is covered?**

A person who regularly works in the County more than 8 hours each week, including a domestic worker, for an employer that employs 1 or more persons in the County in addition to the owners. An employer includes the County government, but not the federal, state, or any other local government. The law does not cover an independent contractor or a person who does not have a regular work schedule.

An employer must permit a probationary employee to earn leave during an initial 90-day probationary period, but may prohibit the employee from using the leave during the 90-day probationary period.

**7. Can an employer provide more earned sick and safe leave than required in the law?**

Yes, these are minimum standards.

**8. If an employer currently provides more than 56 hours of vacation leave or paid time off each year, does the employer have to also provide additional earned sick and safe leave?**

No. As long as the leave can be used for the purposes described in question 2 above, an employer does not have to provide additional earned sick and safe leave.

**9. How much does an employer need to pay an employee for earned sick and safe leave used?**

The employee must be paid at the same rate and with the same benefits as the employee normally earns. A tipped employee must be paid at least the County minimum wage.

**10. What increments can the employee take leave?**

An employee must be permitted to take leave in 4-hour increments or the smallest increment that the employer's payroll system uses to account for absences or work time, whichever is smaller.

**11. Does an employer need to provide the employee with a written statement of earned leave?**

Yes, but an employer may satisfy this requirement through an online system where the employee can access his or her own leave balance.

**12. Can an employer require documentation for use of leave?**

Yes, if an employee uses more than 3 consecutive days.

**13. How long must an employer keep records of earned sick and safe leave?**

3 years.

**14. Must an employer pay an employee for unused leave when the employee leaves?**

No.

**15. Must an employer reinstate unused leave if the employee returns to service?**

Yes, if the employee returns within 9 months unless the employee would not be eligible for unemployment benefits due to leaving voluntarily without good cause.

**16. How does an employer calculate a year to determine leave earned and used if the employer's fiscal year is not set up on a calendar year basis?**

Although the law uses the term "calendar year," an employer can set up leave benefits on a 12-month period beginning on any date during the year. For example, if the employer begins a fiscal year on July 1, a leave earning year will be considered from July 1 to June 30.

**17. How is the law enforced?**

The County Office of Human Rights is responsible for enforcement. An employee can file a complaint with them.