



FEBRUARY 2018

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## Everything Employers Need to Know About Maryland's New Sick and Safe Leave Law

### SUMMARY

On February 11, 2018 the Maryland Healthy Working Families Act (the "MHWFA") will become effective unless the Maryland Legislature passes a bill to extend the effective date. As of this writing, the chances of the extension passing appear highly unlikely – the Senate twice delayed its vote to approve the extension, with no floor vote currently scheduled. Even if the Senate were to pass the extension, it is doubtful that the House of Delegates will have sufficient time to pass the measure. Details are below, and we will continue to keep you posted of any developments.

Under this new law, employers who employ 15 or more employees must allow their eligible employees to accrue and use up to five days of paid "sick and safe" leave each year. Employers who employ fewer than 15 employees must permit their eligible employees to accrue and use up to five days of unpaid leave each year. Current employees begin accruing leave as of January 1, 2018.

Employers without existing paid leave policies will have to quickly prepare to implement a policy by February 11, 2018, which is when employees can begin taking accrued leave under the new law. Employers that already have leave policies will need to review them for compliance with the new law's requirements and modify the policies, as necessary.

This Information Sheet describes how the MHWFA affects Maryland employers.

### WHICH EMPLOYEES ARE ELIGIBLE TO ACCRUE AND USE SICK AND SAFE LEAVE?

- **Eligible Employees.** Employees who regularly work at least 12 hours per week are eligible to accrue and use sick and safe leave under the law.
- **Ineligible Employees** The following employees are not covered by the law:
  - ▶ Employees who regularly work less than 12 hours per week;
  - ▶ Employees under 18 years of age before the beginning of the year;
  - ▶ Certain health or human services industry employees who are called to work by the employer on an as-needed basis and are not employed by a temporary staffing agency;

- ▶ Certain employees employed by a temp agency to provide temporary staffing to another person if the agency does not have day-to-day control over the work assignments and supervision of the employee while s/he is providing the service;
- ▶ Certain construction industry employees who are covered by a bona fide collective bargaining agreement; and
- ▶ Certain agricultural sector employees.

## WHAT IF PAID LEAVE IS ALREADY OFFERED?

No modifications need to be made to an employer's existing paid leave policy if the policy:

- Permits an employee to accrue and use leave under terms and conditions at least equivalent to the MHWFA, including for all of the reasons provided for in MHWFA (See below, *Permissible Reasons To Use Sick and Safe Leave*); or
- Does not reduce employee compensation for an absence due to sick or safe leave.

Existing policies that do not provide paid leave for all MHWFA sick and safe reasons need to be modified.

## ACCRUING SICK AND SAFE LEAVE

- Employees earn or “accrue” one hour of leave for every 30 hours worked up to a maximum of 40 hours of leave/year. An employer may award employees their entire annual leave at the beginning of the year rather than have employees accrue leave during the year.
- Employees do not accrue any leave during a two-week period in which the employee works less than 24 hours or a bi-monthly pay period in which the employee works less than 26 hours.
- **Leave accrual began on January 1, 2018 for existing employees.** Accrual begins on first day worked for new employees.
- **What is a “Year” For Leave Accrual and Usage?** A “year” includes any regular and consecutive 12-month period (such as a calendar, anniversary, or fiscal year), as determined by the employer.

## USE OF SICK AND SAFE LEAVE

### When can employees begin using their accrued leave?

- ▶ Existing Employees who have been employed for at least 107 days can begin using accrued leave on the effective date of the MHWFA, currently February 11, 2018.
- ▶ New Employees - after the employee has completed 106 days of employment.

**Incremental Use of Leave.** Employers must allow employees to use leave in no more than four-hour increments.

**Limits on Amount of Leave Used During the Year.** An employer may limit the amount of leave an employee holds at any one time to 64 hours and an employee's use of accrued leave to no more than 64 hours in a year.

**Carry-over of Unused Leave.** Employers must allow employees to carry-over up to 40 hours of unused leave each year, unless the employer chooses to pay employees for unused leave.

### Unused Leave Upon Termination of Employment.

Employers are not required to pay employees for their unused leave upon termination of employment. However, if a former employee is rehired within 37 weeks of termination, the employer must reinstate the employee's unused accrued leave.

**Permissible Reasons To Use Sick and Safe Leave.** Employees may use leave for the following reasons:

- To care for or treat a mental or physical illness, injury, or condition of the employee or employee's family member;
- To obtain preventative medical care of the employee or employee's family member;
- For maternity or paternity leave;
- For absences made necessary due to domestic violence, sexual assault, or stalking committed against the employee or an employee's family member, where the leave is being used to obtain medical or mental health attention that is related to the domestic violence, sexual assault, or stalking; or services from a victim services organization related to the domestic violence, sexual assault, or

stalking; or legal services or proceedings related to or resulting from the domestic violence, sexual assault, or stalking; and

- For absences during the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking.

**An Employee's Family Member Includes:** the employee's child including a child for whom the employee stands in loco parentis, regardless of age (or for whom the employee has legal or physical custody or guardianship), parent, legal guardian, spouse, grandparent, grandchild, and sibling, including such relations established by marriage (step relations and, for "parents" only, in-laws) or legal guardianship.

## PROCEDURES FOR REQUESTING AND USING SICK AND SAFE LEAVE

- **Required Notice.** An employer may require employees to follow the employer's policy for requesting/reporting leave, such as who to contact, how to contact, and to provide notice. An employer may also require employees to request use of leave as follows:
  - ▶ **For Foreseeable Leave:** No more than 7 days' prior notice
  - ▶ **For Unforeseeable Leave:** As soon as is practicable
- **Denying Leave.** An employer may deny a leave request if the employee fails to provide the required notice and the employee's absence will cause a disruption to the employer.
- **Verifying Validity of Leave Usage.** Employers can require employees to provide verification that leave was used in accordance with a permissible reason if:
  - ▶ The employee used the leave for more than two consecutive shifts; or
  - ▶ The employee used the leave during days 107 and 120 of employment, and agreed to provide verification at the time of hire.

**Alternatives to Using Accrued Leave.** An employee and employer may mutually consent to the employee

working additional hours or trading shifts with another employee during the same or next pay period to make up the hours the employee will miss while using leave. Employees are not required to accept an offer to trade shifts. Employers cannot require an employee requesting to use leave to find a replacement for their absence.

## EMPLOYER NOTICE AND RECORD KEEPING REQUIREMENTS

- **Notice of Leave Entitlement.** Employers must provide employees a notice of their entitlement to earn sick and safe leave, including:
  - ▶ an explanation of how leave is accrued;
  - ▶ a statement that the employer is prohibited under MHWFA from taking adverse action against an employee who exercises a right under the law, and from retaliating against employees who file a complaint, bring an action or testify in an action in good faith; and
  - ▶ information regarding the right of employees to report alleged violations by filing a complaint with the Commissioner of Labor and Industry ("Commissioner") or a civil action in court.
- When wages are paid to employees, the employer must include in employee's pay stub or through an online system, the amount of the employee's available accrued leave; and
- Employers must maintain at least three years of records of accrued and leave usage by employees.

## COMPLAINTS AND ENFORCEMENT

If an employee believes that an employer has violated the MHWFA, the employee may file a written complaint with the Commissioner. If, following an investigation, it is determined that a violation has occurred, the employer can be ordered to pay to the employee the full monetary value of any unpaid leave and any actual economic damages, plus an additional amount of up to three times the employee's hourly wage for each violation, as well as a civil penalty of up to \$1,000 per violation. If the employer fails to comply with the order the Attorney General or the employee may bring a civil action to enforce the order. If the employee prevails in

the action, the court may award up to three times the value of the employee's unpaid leave, plus punitive damages, reasonable attorneys' fees and costs, and injunctive relief. Employees who are found to have brought a complaint under the MHWFA in bad faith can be guilty of a misdemeanor.

## RESTAURANT INDUSTRY PROVISIONS

The Act includes special alternative leave arrangements applicable to tipped restaurant employees who are paid under the tip credit provisions of the state wage and hour law. If the tipped employee needs to take sick and safe leave and is willing to work additional hours or trade shifts in the same or next pay period, the employer has discretion, but is not obligated, to offer the employee the choice of:

- Being paid the applicable standard minimum wage (currently \$9.25/hour) during the leave; or
- Working an additional shift of the same hours in the same or next pay period.

## TAKEAWAY

The MHWFA grants up to five days of paid or unpaid sick and safe leave to a vast majority of Maryland employees. For employers without existing leave poli-

cies, particularly those with minimum wage or tipped employees, the MHWFA will require a revision of existing policies and an intentional effort to adjust to the new compliance obligations. Importantly, because of the MHWFA's reporting and notification requirements, employers should pay particular attention to adjusting their accounting systems to provide employees an updated statement in each pay stub regarding their available accrued leave balance. Even for employers with existing paid leave policy, it is important to review the policy to ensure that it meets the minimum requirements of the new law.

Attorneys in Saul Ewing Arnstein & Lehr's Labor and Employment Practice are available to assist employers in preparing for the MHWFA's implementation by drafting policy and/or reviewing existing policies to determine compliance, and revising as necessary. Because of the MHWFA's effective date of February 11, 2018, combined with its penalties for noncompliance, it is important for employers to immediately begin reviewing their policies for compliance with the MHWFA. For more information or questions on this matter, please contact the authors Harriet E. Cooperman or Michael Cianfichi, or any member of Saul Ewing Arnstein & Lehr's Labor and Employment Practice.

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