

# Montgomery County Employers Required to Provide Employees Paid Sick Leave

By Hope Eastman, James Hammerschmidt, Jessica Summers

On Tuesday, June 23, 2015, Montgomery County joined the growing number of jurisdictions (including the District of Columbia) that require employers to provide employees with paid sick leave.

**Bill 60-14** (the “**Earned Sick and Safe Leave Act**”), which was passed unanimously by the Montgomery County Council, will require virtually every employer in the County to provide paid sick leave to employees working in the County. This law, which will go into effect on October 1, 2016, will require many employers in the County to adjust their policies, processes, and potentially their budgets, to provide for the additional leave.

The Earned Sick and Safe Leave Act applies to any entity doing business in Montgomery County that employs at least one non-owner in the County, apparently without regard to where the Company is headquartered. Likewise, the bill covers any employee who is “permitted or instructed to work or be present by an employer in the County.” Covered employees expressly includes certain types of domestic workers. We will address the domestic worker issue further in a future blog. The law excludes certain types of workers from the definition of a covered employee under the bill, including, but not limited to, independent contractors and individuals who work less than 8 hours per week. **It is important to note that, unlike many other employee benefits that may be limited to full-time employees, part-time employees in the County who work at least 8 hours per week are entitled to accrue paid sick leave under the Earned Sick and Safe Leave Act.**

Under the new law, all covered employers must provide each of their covered employees with at least one hour of paid leave for every thirty hours that the employee works in the County. In the case of exempt employees, the law permits the employer to assume a work week of 40 hours for the purposes of determining the employee’s rate of accrual. Of course, employers who want to offer a more generous accrual rate are free to do so.

For employers with five or more employees, the maximum amount of leave that an individual employee must be permitted to earn in a calendar year is 56 hours or seven days for full-time or exempt employees. For businesses with fewer than five employees, employees must be first permitted to accrue up to 32 hours of paid sick leave and then accrue up to 24 hours of unpaid sick leave. Employer may opt to prohibit employees from using paid leave during their first 90 days of employment, but must still permit the employee to accrue leave during that period.

In accordance with the Earned Sick and Safe Leave Act, employees can use accrued paid leave:

- to care for or treat the physical or mental illness or injury of the employee or an immediate family member;
- to obtain preventative medical care for the employee or an immediate family member;
- if the employer’s place of business is closed due to a public health emergency;
- if the school or child care center that the employee’s family member attends is closed due to a public health emergency; or
- to seek medical attention or services or relocate temporarily due to domestic violence, sexual assault or stalking suffered by the employee or the employee’s family member.

Employers have the option to award the paid leave only as the employee accrues it or to award all the leave that the employee would earn in a given year up-front at the beginning of the calendar year. In the case of employers who choose to provide leave up front, the law does allow them to deduct from an employee’s final wages if the employee leaves before the employee would have accrued the amount of

sick leave that they used in the year and the employee consented to the deduction in writing. Employers who do not provide the leave up-front at the beginning of the calendar year must permit employees to rollover up to 56 hours of unused leave to the following year and employees must be permitted to use up to 80 hours of leave in any given calendar year.

If an employee is transferred to work outside the County, the employer must allow him or her to use the paid sick leave that he or she accrued while working in the County. Similarly, if an employee is rehired by an employer within 9 months of leaving employment, the employer must, with some exceptions, reinstate any earned but unused paid leave that the employee had at the time he or she left. However, employers are not required to compensate employees for earned but unused sick leave when the employment relationship ends.

Employers must provide employees with written notice of the new law, plus a written statement of available earned sick and safe leave each time the employer pays wages to the employee.

This law is certain to have significant implications for Montgomery County employers, even those whose current paid time off policies already provide for 7 days or more of leave. Stay tuned for more updates as we continue to analyze how this law will apply in practice and identify the most significant issues that employers need to consider before the law goes into effect.