

Paid Sick Leave & Other Employment Legislation Pending in Montgomery County, Maryland

By James Hammerschmidt

Montgomery County, Maryland is among a growing number of local jurisdictions across the country seeking to fill perceived gaps in protections for employees where federal or state legislators are gridlocked and unable to do so. Currently pending before the County Council is Bill 60-14, Earned Sick and Safe Leave Act, as well as Bill 59-14 to accelerate phased in minimum wage increases in Montgomery County. Both bills are likely to pass and employers should be working with their payroll processing departments and vendors now to prepare for the changes.

The Earned Sick and Safe Leave Act

Bill 60-14 requires nearly all County employers operating and doing business in Montgomery County to provide earned sick and safe leave at a rate of at least 1 hour for every 30 hours that an employee works in the County – up to 56 hours in a calendar year. The goal, according to the Council, is to reduce the number of employees who are forced to come to work when ill or to send sick children to school or daycare because the employees have no paid leave. A public hearing is scheduled for January 29. If passed, the new law will take effect on October 1, 2015.

Earned sick and safe leave is paid leave (unlike the FMLA, which only provides for unpaid leave) away from work that can be used for injury or illness of the employee or the employee's immediate family member or due to domestic violence suffered by the employee or the employee's immediate family member. In addition to the persons typically considered immediate family, under the bill, an immediate family member also includes a grandparent, a spouse of a grandparent, and individuals who served as the primary caregiver of an employee when the employee was a minor. Permitted uses of such leave include, among other things, temporary relocations due to domestic violence, sexual assault or stalking.

An employee will have to be paid for earned sick and safe leave at the same rate and with the same benefits as the employee normally earns. A tipped employee will have to be paid at least the County minimum wage (see below) for each hour the employee uses earned sick and safe leave. Earned sick and safe leave also includes paid time off that an employer allows an employee to use for any purpose so that it will apply where employers have PTO policies versus separate policies for vacation time and sick leave.

The bill will require significant modifications to payroll processes. For example, it allows up to 56 hours of unused sick and safe leave to be carried over to the next calendar year but prohibits more than 80 hours of such leave to be used per year. An employee who earns leave while working in the County gets to keep it even if the employee is transferred out of the County and, if an employee is rehired within 12 months after leaving employment, all accrued and unused leave must be reinstated. An employee may take leave in the smallest increment used by the employer's payroll system to account for absences, but may not be required by an employer to take leave in increments of more than 1 hour. Importantly, employers must provide employees with a written statement of available earned sick and safe leave each time the employer pays wages to the employee, as well as providing written notice of the law to employees either by conspicuous posting, in the employee handbook or in the on-boarding information.

Similar bills have been introduced in the Maryland legislature over the past several years but have not passed. The District of Columbia enacted the Accrued Sick and Safe Leave Act of 2008, which was amended in 2013. Depending on its size, an employer in the District of Columbia must provide an employee with 1 hour of leave per 37 hours worked (100+ employees), 43 hours worked (25-99 employees) or 87 hours worked (less than 25 employees).

Change to Montgomery County's Minimum Wage Law

In November, 2013, Montgomery County enacted its own minimum wage, departing from the federal and state standards. The new law provided for phased increases on October 1 of each year through 2017. In its 2014 session, the Maryland General Assembly also enacted a state minimum wage with phased increases on July 1 of each year through 2018. County Bill 59-14 proposes to change the effective dates of future increases in the County minimum wage from October 1 to July 1 of years 2015, 2016 and 2017.

Interestingly, however, Bill 59-14 does not plan to synchronize the amount of the minimum wage with the state. On October 1, 2014, the County minimum was raised to \$8.40/hour. It is set to increase to \$9.55/hour in 2015 and \$10.75/hour in 2016, which are slightly higher than state levels in Maryland.

References

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