



## **Sick & Safe Leave Guidance for Employers with Workers in Montgomery County**

As of February 11, 2018, employers with workers in Montgomery County must be aware of both state and local laws pertaining to Sick and Safe leave for their employees. The State law does not preempt the County law, except where the State law provides for sick and safe leave benefits that are more generous than the local law.

This document is intended to help employers understand which provisions of the law apply to employees working in Montgomery County. Ultimately, however, it is incumbent on employers to have a full understanding of both laws so that they understand which provisions apply to them specifically.

References:

[Montgomery County Code Chapter 27, Article XIII](#)

[Maryland Healthy Working Families Act](#)

Throughout this document, **text that is highlighted in red** indicates provisions of the Maryland Healthy Working Families Act that are more generous than those in the Montgomery County Sick & Safe Leave Law.

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Provision	Language
Enforcement	Montgomery County Office of Human Rights/Maryland Commissioner of Labor
Effective date	County Law: October 1, 2016. State law: February 11, 2018
Excluded Employees+	<ol style="list-style-type: none"> <li>1. Employees who regularly work less than 8 hours per week.</li> <li>2. An individual who: <ol style="list-style-type: none"> <li>a) Does not have a regular work schedule with the employer;</li> <li>b) Contacts the employer for work assignments and is scheduled to work the assignments within 48 hours after contacting the employer;</li> <li>c) Has no obligation to work for the employer if the individual does not contact the employer for work assignments, and</li> <li>d) Is not employed by a temporary placement agency.</li> </ol> </li> <li>3. Independent contractors.</li> </ol>
Covered Employees	An employer must provide each employee earned sick and safe leave for work performed in the County
Employer	<p>Employer means any person, individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity operating and doing business in the County that employs 1 or more persons in the County in addition to the owners.</p> <p><b>A person that acts directly or indirectly in the interest of another employer with an employee.</b></p>
Amount of Leave Accrued (paid or unpaid) by Business Size	<p>Employers with 5 or more employees – paid leave.</p> <p>Employers with less than 5 employees – 32 hours of paid leave, 24 hours of unpaid leave.</p>
Calculating Business Size	<p><b>For the purpose of determining whether an employer is required to provide paid or unpaid earned sick and safe leave [...], the number of employees of an employer shall be determined by calculating the average monthly number of employees employed by the employer during the immediately preceding year.</b></p> <p><b>Each employee of an employer shall be included in the calculation [...] without regard to whether the employee is a full-time, part-time, temporary, or seasonal employee or would be eligible for earned sick and safe leave benefits under this subsection.</b></p>
Accrual, Amount Earned and Limit on Amount Used	<ol style="list-style-type: none"> <li>1. 1 hour for every 30 hours worked.</li> <li>2. Earn up to 56 hours in a year.</li> </ol>

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	3. Can use up to 80 hours in a year.
Probationary Employee	Cannot use leave for first 90 days.
Amount of Leave Carryover	Can carryover 56 hours.
Rehire	Reinstate unused leave if rehired within 9 months.
Employer Acquired	Acquiring employer must permit retention of unused leave if employee stays on.
Family Member -- Definition	<p>(1) a biological child, adopted child, foster child, or stepchild of the employee;</p> <p>(2) a child for whom the employee has legal or physical custody or guardianship;</p> <p>(3) a child for whom the employee stands in loco parentis, regardless of the child's age;</p> <p>(4) a biological parent, adoptive parent, foster parent, or stepparent of the employee or the employee's spouse;</p> <p>(5) the legal guardian of the employee;</p> <p>(6) An individual who acted as a parent or stood in loco parentis to the employee or the employee's spouse when the employee or the employee's spouse was a minor;</p> <p>(7) the spouse of the employee;</p> <p>(8) a biological grandparent, an adopted grandparent, a foster grandparent, or a stepgrandparent of the employee;</p> <p>(9) the spouse of a grandparent of the employee;</p> <p>(10) a biological grandchild, an adopted grandchild, a foster grandchild, or a stepgrandchild of the employee;</p> <p>(11) a biological sibling, an adopted sibling, a foster sibling or a stepsibling of the employee;</p> <p>(12) a biological, adopted, or foster sibling of the employee; or</p> <p>(13) the spouse of a biological, adopted, or foster sibling of the employee.</p>
Tipped Employees	A tipped employee must be paid at least the County minimum wage required for each hour the employee uses earned sick and safe leave.
Requesting Leave	<p>To use earned sick and safe leave, an employee must:</p> <ol style="list-style-type: none"> <li>(1) request leave from the employer as soon as practicable after the employee determines that the employee needs to take leave;</li> <li>(2) notify the employer of the anticipated duration of the leave; and</li> <li>(3) comply with any reasonable procedures established by the employer when requesting and taking leave.</li> </ol>

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	<p>An employer must not require an employee who requests earned sick and safe leave to search for or find an individual to take the employee's place while the employee takes leave.</p> <p>An employer must not require an employee to:</p> <ol style="list-style-type: none"><li>(1) disclose specific details of the mental or physical illness, injury, or condition of the employee or the employee's family member; or</li><li>(2) provide as certification any information that would violate the Federal Social Security Act or the Federal Health Insurance Portability and Accountability Act.</li></ol> <p>By mutual consent of the employee and the employer, the employee may work additional hours or trade shifts with another employee during a pay period, <b>or the following pay period</b>, to make up the amount of work hours that the employee missed for which the employee could have used earned sick and safe leave.</p> <p><b>An employee is not required to offer or to accept an offer of additional work hours or a trade in shifts.</b></p> <p><b>If an employee works additional hours or trades shifts [...], the employer may not deduct the absence from the employee's accrued earned sick and safe leave.</b></p> <p>An employee may take earned sick and safe leave in the smallest increment that the employer's payroll system uses to account for absences or work time, except that an employee must not be required to take earned sick and safe leave in an increment of more than 4 hours.</p> <p>An employer must provide an employee with a written statement of available earned sick and safe leave each time the employer pays wages to the employee. An employer may satisfy this requirement through an online system where the employee can access their own earned sick and safe leave balances.</p> <p>An employer may require an employee who uses more than 3 consecutive days of earned sick and safe leave to provide reasonable documentation to verify that the leave was used appropriately.</p>
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Adverse Action	<p>“Adverse action” includes:</p> <ul style="list-style-type: none"> <li>(1) Discharge;</li> <li>(2) Demotion;</li> <li>(3) Threatening the employee with discharge or demotion; and</li> <li>(4) Any other retaliatory action that result in a change to the terms or conditions of employment that would dissuade a reasonable employee from exercising a right under this subtitle.</li> </ul> <p>An employer may not:</p> <ul style="list-style-type: none"> <li>(1) Take adverse action or discriminate against an employee because the employee exercises in good faith the rights protected under this subtitle;</li> <li>(2) Interfere with, restrain, or deny the exercise by an employee of any right provided for under this subtitle; or</li> <li>(3) Apply an absence control policy that includes earned sick and safe leave absences as an absence that may lead to or result in an adverse action being taken against an employee.</li> </ul>
Allowable Uses	<p>An employee may use earned sick and safe leave:</p> <ul style="list-style-type: none"> <li>(1) to care for or treat the employee’s mental or physical illness, injury, or condition;</li> <li>(2) to obtain preventive medical care for the employee or the employee’s family member;</li> <li>(3) to care for a family member with a mental or physical illness, injury, or condition;</li> <li>(4) for maternity or paternity leave; or</li> <li>(5) if the employer’s place of business has closed by order of a public official due to a public health emergency;</li> <li>(6) 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;</li> <li>(7) 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</li> <li>(8) 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:             <ul style="list-style-type: none"> <li>(A) by the employee to obtain for the employee or the employee’s family;                 <ul style="list-style-type: none"> <li>(i) medical or mental health attention needed to recover from a physical or psychological injury due to domestic violence, sexual assault, or stalking;</li> </ul> </li> </ul> </li> </ul>

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	<ul style="list-style-type: none"><li>(ii) services from a victim services organization related to the domestic violence, sexual assault, or stalking; or</li><li>(iii) legal services, including preparing for or participating in a civil or criminal proceeding related to the domestic violence, sexual assault, or stalking; or</li></ul> <p>(B) during the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking.</p>
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### Contacts:

Montgomery County Contacts for Information

[Montgomery County Office of Human Rights](#)

21 Maryland Avenue, Suite 330

Rockville, Maryland 20850

[Montgomery County Business Solutions Group](#)

101 Monroe St., 2<sup>nd</sup> Floor

Rockville, MD 20850

[Montgomery County Intake/Inquiry Form](#)

State of Maryland Contact for Information:

[small.business@maryland.gov](mailto:small.business@maryland.gov)

State of Maryland Contact for Written Complaints:

Department of Labor, Licensing and Regulation

Commissioner, Division of Labor and Industry

1100 North Eutaw Street, Room 600

Baltimore, MD 21201