

# PUBLICATION

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## Montgomery County, MD Earned Sick and Safe Leave Act: Coming October 1, 2016 [Ober|Kaler]

Authors: Donna M. Glover  
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**In less than 30 days on October 1, 2016, the Montgomery County, Maryland Earned Sick and Safe Leave Act ("ESSLA") will become effective. The ESSLA's broad reach encompasses those employers who have physical locations in Montgomery County, as well as those employers who do not have a physical location but whose employees perform work in the County.**

Under the ESSLA, employees who work nine (9) hours or more each week are eligible to accrue paid time off in order to provide care for themselves or for family members in cases of illness, preventative medical care, or in response to sexual violence or stalking. Small employers must provide the same amount of time off, however, some of the time is unpaid

### Covered Employers and Employees

All employers who employ one (1) or more persons to work within the county are covered by the ESSLA. Covered employees are those persons who regularly work in the County nine (9) hours or more each week, including a domestic worker. 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.

### Sick and Safe Leave Requirements

An employee must earn one (1) hour for every 30 hours worked in the County up to 56 hours in a year. Although the law uses the term "calendar year," an employer may use any 12-month period beginning on any date during the year. 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.

An employer with five (5) or more employees must provide paid leave. An employer with less than five (5) employees must provide 32 hours of *paid* leave and 24 hours of *unpaid* leave. Employees exempt from overtime requirements under federal and state wage and hour laws earn leave pursuant to their normal workweek, up to 40 hours each week.

Employers may either accrue the required leave throughout the calendar year or grant the full amount of leave at the beginning of each calendar year. Employers who choose the accrual method must permit earned, unused leave to carry over from year to year, however, an annual carryover cap of 56 hours is allowed. Notwithstanding the carryover requirement for accrued leave, employers may limit the use of leave to 80 hours in a calendar year. Employers are not required to pay the value of earned leave to employees at the time of their termination.

Leave taken by employees under the ESSLA must be paid at the employee's usual rate and with the same benefits as the employee normally earns. Notably, tipped employees must be paid at the county's minimum

wage rate, which is currently \$8.40, however, it will increase to \$9.55 on October 1, 2015 and \$10.75 on July 1, 2016.

## Reasons for Use of Sick and Safe Leave

Employees may elect to use leave in the smallest increment available under the employer's payroll system, and employers may not require employees to take leave in increments of more than four (4) hours. Earned leave does not have to be paid upon termination.

Earned leave may be used for any of the following circumstances:

- to care for or treat the employee's mental or physical illness, injury, or condition;
- to obtain preventive medical care for the employee or the employee's family member;
- to care for a family member with a mental or physical illness, injury, or condition;
- if the employer's place of business has closed by order of a public official due to a public health emergency;
- 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;
- 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
- 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:
  - by the employee to obtain for the employee or the employee's family;
  - medical attention needed to recover from a physical or psychological injury due to domestic violence, sexual assault, or stalking;
  - services from a victim services organization related to the domestic violence, sexual assault, or stalking;
  - legal services, including preparing for or participating in a civil or criminal proceeding related to the domestic violence, sexual assault, or stalking; or
  - during the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking.

"Family member" is defined as:

- A biological, adopted, foster, stepchild or grandchild of the employee.
- A child that the employee has legal or physical custody of or for whom the employee is the primary caregiver.
- A biological, adoptive, foster or step parent of the employee or the employee's spouse.
- The legal guardian of the employee or who served as the primary caregiver of the employee when s/he was a minor.
- A spouse.
- A grandparent or the spouse of a grandparent of the employee.
- A biological, adopted or foster sibling or spouse of a sibling of the employee.

Employers are required to permit employees who transfer to worksites outside the County to use the earned sick and safe leave accrued while working in the County, although employers are not required to continue accruing or granting additional ESSLA leave. Additionally, unused accrued or granted leave must be reinstated

to any employee who, after leaving employment, is rehired within nine (9) months after leaving by an employer to work in the county.

## Employee Notice Requirements

Employees must request leave as soon as is practicable, notify the employer of the anticipated duration of required leave, and comply with all reasonable procedures that the employer has established for requesting and taking leave.

Employers may require an employee who uses more than three (3) consecutive days of leave to provide reasonable documentation supporting the absence. Employers may permit employees to work additional hours or trade shifts in lieu of using earned sick and safe leave, but employers may not make that a requirement of taking leave.

## Employer Notice Requirements

Under the ESSLA, covered employers must notify covered employees that they are entitled to earned sick and safe leave. The notice must inform the worker:

- How earned sick and safe leave is accrued
- Permitted uses of earned sick and safe leave
- Right to file complaints for violations or retaliation by employers

On September 6, 2016, the Montgomery County Office of Human Rights, posted the sick and safe leave poster on its website. The poster is found [here \[PDF\]](#). The new poster covers these notice requirements, and employers may:

- Display the notice or another notice containing the same information in conspicuous and accessible area at each work location in the county
- Include the notice or another notice in an employee handbook
- Provide the notice to each employee at the time employment commences

Employers must also provide employees with a written statement of earned leave. This requirement may be accomplished by indicating on employee's pay check or statements their leave balance. Employers may also satisfy this requirement through an online system where employees can access their leave balances.

## ESSLA Recordkeeping Requirements

An employer must keep records for at least 3 years, including amount of earned sick and safe leave accrued and used by each employee.

## What Should Employers Do Now?

If they have not already started, covered employers should immediately review their current leave policies to determine whether changes to those policies are necessary to comply with the ESSLA. Employers should also ensure that they have mechanisms in place to comply with the ESSLA's notice and recordkeeping requirements.

