

PUBLICATION

Maryland Healthy Working Families Act: The DLLR Updates FAQs, Poster and Issues Model Policies

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According to the Maryland Department of Labor, Licensing and Regulation's (DLLR) website, the Office of Small Business Regulatory Assistance has received more than 2,000 emails from employers and employees with questions about complying with the Healthy Working Families Act (HWFA).

In light of all those questions, the DLLR has issued an updated [poster](#) for employers to use, and it has updated its [FAQs](#). Notably, the FAQs clarify that the HWFA does *not* apply to employees covered by a collective bargaining agreement (CBA) that was entered into *before* June 1, 2017 for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original agreement. But, the HWFA covers employees under CBAs entered into *on or after* June 1, 2017, unless the CBA contains terms which clearly and expressly waive the requirements of the HWFA. (See FAQs 9 and 10). The DLLR also addresses questions regarding the interface of the HWFA and Maryland Prevailing Wage Projects. (See FAQs 15 and 16).

Although the FAQs do not specifically address the question of whether an employer may pay a 100 percent commission employee the prevailing minimum wage rate when they use sick and safe time, the answer is "no." The HWFA provides that if an employee's pay is not reduced for use of sick and safe time, then the employer would be in compliance, or an employer may impute an average hourly wage for an employee based on commissions earned for a fixed period and pay the employee at that rate for absences due to sick and safe leave. Thus, using the prevailing minimum wage would not be permissible.

Finally, the DLLR has issued three [model policies](#) for employers' use – one for employers that choose to front load sick and safe time; one for employers using the accrual method, and one restaurant employers, which covers the special HWFA provisions governing tipped workers. Those model policies do not address considerations such as interface with the Family and Medical Leave Act or with the Maryland Parental Leave Act, or with an employer's own leave policies, including an existing PTO, vacation or sick time policies. Employers should take a close look at all leave policies to ensure that their leave programs work together seamlessly and are in compliance with the HWFA.

It to view our recent Coffee Chat on the HWFA, [click here](#).