

Layers of Paid Sick Leave Law in Montgomery County, Maryland

Article By:

Kathleen A. McGinley

On October 1, 2016, Montgomery County's Earned Sick and Safe Leave law became effective. This law allows all employees, with few exceptions, that work in Montgomery County, Maryland, to accrue paid and/or unpaid sick and safe leave, depending on the size of their employer, to use for their own illness, an illness of a family member and (originally) five other specific reasons. Since its passage the Montgomery County Council has amended the law once and is considering a further amendment.

Amendment Effective November 2016

Effective November 9, 2016, the Montgomery County Council amended the law to allow eligible employees to use earned sick and safe leave for parental purposes. Specifically, the amendment allows earned sick and safe leave to be used for "the birth of a child or the placement of a child with the employee for adoption or foster care" and "to care for a newborn, newly adopted, or newly placed child within one year of birth, adoption or placement." These two additional reasons for leave bring the total number of permitted uses of earned leave under the law to nine specified reasons.

Such an amendment to paid sick leave laws, which essentially turn the laws into paid family leave laws, could begin trending in the counties, cities and states that have passed their own sick leave laws.

Potential Future Amendment

The Montgomery County Council is also considering an amendment, introduced in 2016, which would exempt certain seasonal employees from the law completely and also require that employees paid on a commission-only basis earn only unpaid sick leave.

Under this potential amendment, seasonal employees would not be eligible to earn sick and safe leave if they work less than 120 days per year for an amusement or recreational employer that operates for less than 120 days per year in the County. The introduction included with a version of the bill explains that under the current law, which allows employers to prohibit the use of earned sick and safe leave in the first 90 days of employment, "a summer camp counselor employed for an 8-week camp season will never be able to use the earned sick and safe leave earned during the

8-week season unless the individual is rehired within 9 months,”—which is typically not the case. Therefore, a total exemption for this type of seasonal employee makes sense given the current law’s parallel practical effect.

The current law also requires that an employee who uses earned sick and safe leave be paid “at the same rate and with the same benefits as the employee normally earns.” Commission-only employees are not paid a base rate and the commissions they earn fluctuate according to their work, so calculating a “normally earned rate” would be challenging. To reconcile this payment requirement in the current law against the realities of commission-only sales employees, under this amendment, commission-only employees would earn only unpaid sick and safe leave.

This potential amendment has not yet been voted into law leading to the question—how should commission-only employees in Montgomery County be paid when using earned sick and safe leave now?

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