

## Publications

### *Labor and Employment Alert: Maryland's New Sick Leave Law Affects All Employers*

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Adam J. Rocco

Michael C. Griffaton

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#### CLIENT ALERT | 1.18.2018

Maryland is now the eighth state (behind Arizona, California, Connecticut, Massachusetts, Oregon, Vermont and Washington) to require sick leave for employees. The Maryland Healthy Working Families Act was enacted last year, but vetoed by the governor. Last week, the Maryland Legislature overrode that veto – paving the way for the law to become effective in 30 days. The act requires small employers to provide unpaid sick days and large employers to provide paid sick days.

### General Leave Requirements

An employer with 15 or more employees must provide employees at least 1 hour of **paid** leave for every 30 hours an employee works. An employer with 14 or fewer employees must provide employees with at least 1 hour of **unpaid** sick and safe leave for every 30 hours an employee works. Certain employees are excluded from coverage, including those who regularly work less than 12 hours a week, individuals younger than age 18 before the beginning of the year, and specified independent contractors, employees who work on an as-needed basis in a health or human services industry, and employees of a temporary services or employment agency.

### Use and Accrual of Leave

Earned leave begins to accrue on January 1, 2018, or the date an employee begins employment, whichever is later. An employer is not required to allow an employee to earn or carry over more than 40 hours of leave in a year, use more than 64 hours of leave in a year, accrue more than 64 hours at any time, or use earned during the first 106 calendar days worked.

An employer must allow an employee to use leave (1) to care for or treat the employee's mental or physical illness, injury, or condition; (2) to obtain preventive medical care for the employee or employee's family member; (3) to care for a family member with a mental or physical illness, injury, or condition; (4) for maternity or paternity leave; and (5)

for specified circumstances due to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member. "Family member" is broadly defined to include children, parents, stepparents, legal guardians, spouse, grandchildren, grandparents, and siblings.

An employer is not required to compensate an employee for unused leave when the employee leaves the employer's employment. An employer who rehires an employee within 37 weeks after leaving employment must reinstate unused leave unless the employer voluntarily paid out that leave.

### Existing Leave Policies

An employer may retain an existing paid leave policy if it is at least equivalent to the act, or if the policy does not reduce employee compensation for an absence due to sick or safe leave. The act does not affect laws enacted before January 1, 2017, that provide more generous leave benefits (such as the Montgomery County sick leave law). An employer may prohibit the improper use or abuse of leave.

### Notice Requirements

The act specifies notice and verification requirements under which an employee may accrue and use leave. If an employee fails to provide notice for foreseeable leave, an employer may deny a request to take earned leave related to the disruption of the employer's business.

An employer must notify its employees that they are entitled to leave by providing a specified notice to employees and must post a notice concerning the act's provisions. The state's Commissioner of Labor and Industry will create model leave policies, forms, and posters for employer to use.

### Special Provisions for Tipped Restaurant Employees

An employer is not required to pay a tipped restaurant employee more than the applicable minimum wage for taking leave. If a tipped employee needs to take leave, prefers and is able to work additional hours or trade shifts with another employee, and requires the employer to arrange coverage of the shift, the employer may pay the employee the minimum wage for the absence or may offer the choice of being paid the minimum wage for the absence or working an equivalent shift. An employer is not required to consent to an employee's request to work additional hours or trade shifts if it would result in overtime pay. An employer may deduct an absence taken from the employee's accrued leave.

### Enforcement

An employer must keep relevant records for at least three years, and there is a rebuttable presumption that an employer has violated the law if it fails to do so. An employee may file a complaint with the labor commissioner and may then bring a civil action for treble damages, punitive damages, and attorney's fees.

The act will impact 100,000 businesses employing more than 790,000 employees and employers must immediately prepare to comply with its requirements. Contact your Vorys lawyer if you have questions about complying with Maryland's leave laws.