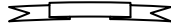


MARYLAND HEALTHY WORKING FAMILIES ACT

FREQUENTLY ASKED QUESTIONS



What is the Maryland Healthy Working Families Act?

The Maryland Healthy Working Families Act is a law that went into effect on February 11, 2018 and permits certain employees to use earned “sick and safe leave” for certain specified reasons.

What is “sick and safe leave”?

Sick and Safe leave is paid leave away from work that is provided by the State, as an employer, to employees for the following reasons:

- 1) To care for or treat the employee’s mental or physical illness, injury, or condition;
- 2) To obtain preventative 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; or
- 5) If the absence from work is necessary due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family member and the leave is being used by the employee to obtain for the employee or the employee’s family member:
 - a) Medical or mental health attention that is related to the domestic violence, sexual assault, or stalking;
 - b) Services from a victim services organization related to the domestic violence, sexual assault, or stalking; or
 - c) Legal services or proceedings related to or resulting from the domestic violence, sexual assault, or stalking; or
 - d) During the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking.

Who is covered by the Act?

The Act applies to all permanent and temporary State employees, except that it does not apply to an employee who regularly works less than 12 hours per week (i.e., is in a position that is less than 30% full time equivalent or “FTE,”).

We have seasonal employees. Are they covered by the Act?

Yes, if the employee works at least 12 hours in a week (or 24 hours in a pay period). As with all other temporary employees, if the seasonal employee is reinstated within 37 weeks of being separated, the employee is entitled to have any earned and unused sick and safe leave reinstated.

As an employer, do I have to notify employees about this new type of leave?

While the Department of Budget and Management will post information concerning the Act on the Department's website that meets the notification requirements of the Act, it is an employer's obligation to notify employees about sick and safe leave. Additionally, the Department of Labor, Licensing and Regulation has a poster that provides general information about the Act. This poster may be viewed by clicking on the following link:

<https://www.dllr.state.md.us/paidleave/paidleaveposter.pdf>.

The Act requires employees to be informed about how sick and safe leave is accrued and the purposes for which it may be used, and should be advised that there is a prohibition against the employer taking adverse action against an employee who exercises a right to take the leave, or to make a complaint, bring an action, or testify in an action brought to enforce rights under the Act.

Who is considered a "family member" of the employee?

For the purposes of sick and safe leave, "family member" is defined differently than "immediate family member" is defined in the Code of Maryland Regulations. Under the Act, a family member is:

- 1) A biological child, an adopted, child, a foster child, or a stepchild of the employee;
- 2) A child for whom the employee has legal or physical custody or guardianship, or a child for whom the employee stands in loco parentis, regardless of the child's age;
- 3) A biological parent, an adoptive parent, a foster parent, or a stepparent of the employee or of the employee's spouse;
- 4) The legal guardian of the employee;
- 5) 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;
- 6) The spouse of the employee;
- 7) A grandparent of the employee (whether biological, adopted, foster, or a step-grandparent);
- 8) A grandchild of the employee (whether biological, adopted, foster, or a step-grandchild); or
- 9) A sibling of the employee (whether biological, adopted, foster, or a step-sibling).

When does this leave begin to accrue?

On the latter of February 11, 2018 or the date an eligible employee becomes employed, permanent part-time (i.e., less than 50% employed) and temporary employees shall accrue at least 1 hour of sick and safe leave for every 30 hours that an employee works as long as the employee regularly works 12 hours in a week (or 24 hours in a pay period); even if the employee, on occasion, works less than 12 hours in a week, the employee will earn leave in accordance with the Act.

Permanent State employees who are at least 50% employed already earn leave that meets or exceeds the requirements of the Act. Additionally, temporary employees who work 30 or more hours a week already earn leave that meets the requirements of the Act as a result of the Governor's Executive Order 01.01.2017.09, *Sensible Paid Leave in the Executive Branch of State Government*.

What will be the effective (implementation date) for sick and safe leave in the Statewide Personnel System?

The implementation date will differ based on the type of employee. It must be implemented at the beginning of a pay period. Regular/TE and contractual employees have different pay cycles. Therefore, for employees who are earning leave pursuant to the Act, the effective date for leave accruals to begin for Regular/TEs is January 31, 2018 and for Contractuals it is February 7, 2018.

Are contractual and temporary employees who already earn leave pursuant to the Governor's Executive Order (E.O.), Sensible Paid Leave in the Executive Branch of State Government (E.O. 01.01.2017.09), limited to using their leave now to only "sick and safe" reasons?

No, a contractual or temporary employee who already earns leave as a result of the Governor's Executive Order is not limited to using the employee's earned leave for sick and safe reasons, but if the employee is using leave for a sick and safe purpose, the employee should properly designate the leave usage on the employee's timesheet.

What about regular State employees whose percentage of employment is greater than 30% FTE, but less than 50% FTE? Will these employees be limited to using their earned leave to sick and safe purposes?

Yes. Since these employees are earning leave pursuant to the Maryland Healthy Working Families Act, these employees will be able to use their earned leave only for sick and safe purposes.

When can employees start using earned sick and safe leave?

Although the Act requires a 106 day waiting period from the date of hire for employees to use “sick and safe leave”, the Administration has opted for a more generous approach. Therefore, employees may use accrued sick and safe leave as it is needed, once it has accrued, except that permanent State employees are not permitted to use annual leave for any purpose during the first six months of employment.

What type of notice is required for an employee to take sick and safe leave?

An employer may require an employee to provide reasonable notice of the need to use sick and safe leave if the need to use the leave is foreseeable. If your current notice requirements for foreseeable leave use are reasonable, there is no need to change them, except that in no event may an employer require such notice more than 7 days before the use of the leave.

If the need to use the leave is not foreseeable, the employee is required to provide notice as soon as possible and comply with the employer’s standard notice or procedural requirements for requesting or reporting other leave, as long as those requirements do not interfere with the employee’s ability to use earned sick and safe leave.

An employer may deny a request to use earned sick and safe leave if the employee failed to provide notice and the employee’s absence will cause a disruption to the employer.

Is there a limit on the number of hours an employee may earn in a calendar year?

Yes, a temporary employee and a part-time permanent employee (i.e, one whose percentage employed is less than 50%) may earn up to 40 hours of sick and safe leave in a year.

How much sick and safe leave may an employee use in a calendar year?

An employee is not permitted to use more than 64 hours of sick and safe leave or any other form of leave for sick and safe purposes in a calendar year.

Can a supervisor set a minimum amount of leave to be used by an employee for an absence?

The law provides that an employer may establish a minimum increment for leave use (as long as that increment does not exceed 4 hours). We strongly recommend that agencies permit the use of leave in any increment that the employee requests as long as the employee does not request to use more than 64 hours, which is the maximum number of hours an employee may use in a calendar year.

May an employee use sick and safe leave before the employee has accrued the amount needed?

Employees in the State Personnel Management System are not allowed to use leave before it has accrued.

As a supervisor, can I require the employee to provide verification of the need to use sick and safe leave?

It depends. An employer may require an employee who uses earned sick and safe leave to provide verification that the leave was used appropriately only if the leave was used for more than two consecutive scheduled shifts.

If an employee is required to provide verification, but fails to do so, what can the supervisor do?

If an employee fails or refuses to provide verification when properly requested to do so, the employer may deny a subsequent request to take earned sick and safe leave for the same reason.

How will sick and safe leave accruals be tracked?

Employees will have access to up-to-date information concerning their balances of earned sick and safe leave within the Statewide Personnel System (Workday).

What happens to accrued, but unused sick and safe leave at the end of the calendar year?

If an employee has unused earned sick and safe leave at the end of the year, the employee may carry over the balance of the earned sick and safe leave to the following year, except that an employer is not required to allow an employee to carry over more than 40 hours of earned sick and safe leave.

We have an absence control policy. Can leave that the employee designated as sick and safe leave be considered when determining if an employee should be subject to discipline or other adverse action for excessive absenteeism?

No, an employer should not consider sick and safe leave absences.

If a permanent State employee believes that the employer has violated his or her rights under the Act, what can the employee do?

A permanent State employee who believes that an employer has violated the employee's rights under the Act may file a grievance in accordance with State Personnel and Pensions Article, Title 12. However, a regular State employee whose percentage of employment is greater than 30% FTE but less than 50% FTE who believes that an employer has violated the employee's rights under the Act may file a written complaint with the Commissioner of Labor and Industry in accordance with the Act. See <http://www.dllr.state.md.us/paidleave/> for additional information concerning this process.

What happens if a temporary employee feels that the employer has violated his or her rights under the Act?

A temporary employee may file a grievance using the procedure established in the Guidelines for the Provision of Paid Leave to Certain Temporary Employees as a result of the 2017 Executive Order, 01.01.2017.09. The grievance process permits the employee to file a grievance using the ***Temporary Employees' Paid Leave Grievance Form*** issued by the Office of Personnel Services and Benefits.

There is a two-step process starting with the filing of the grievance at the appointing authority level within 20 days after the occurrence of the alleged act that is the basis of the grievance, or the employee first knew of or reasonably should have known of the alleged act that is the basis of the grievance. The second and final step in the grievance process is to appeal to the Secretary of Budget and Management or designee.

What happens to accrued, unused sick and safe leave when an employee leaves State service?

An employer is not required to compensate an employee for unused earned sick and safe leave when the employee leaves the employer's employment, but records concerning the balance of accrued sick and safe leave must be kept for three years. If an employee is rehired by the State within 37 weeks, the employee is entitled to have the unused earned sick and safe leave reinstated.

As an employer, what is my obligation to keep records relating to the administration of the Act?

A covered employer is required to keep a record of earned and used sick and safe leave for at least three years.

What if an employee works less than 12 hours, is the employee still eligible to earn sick and safe leave?

It depends. The law requires an employee to earn sick and safe leave if the employee “regularly” works 12 hours or more in a week. If an employee, on occasion, works fewer than 12 hours in a week (or less than 24 hours in a pay period), the employee is an eligible employee and those hours still count toward the employee’s sick and safe leave accrual.