

Management Alert



If Pain, Yes Gain—Part XXVII: Maryland Close to Catching Paid Sick Leave Bug

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Seyfarth Synopsis: After several years of failed legislative attempts to pass a statewide paid sick leave law, Maryland is nearing the finish line following the state Senate's approval of the Maryland Healthy Working Families Act on March 16, 2017.

The 2017 calendar year very well may be the year that Maryland joins the ranks of states that have passed a statewide mandatory paid sick leave law.¹ On March 16, 2017, the Maryland Senate voted on and passed the Maryland Healthy Working Families Act (“HWFA”) by a 29-18 vote. Less than two weeks earlier, on March 3, 2017, the Maryland House of Delegates approved a proposed paid sick leave bill, also titled the Maryland Healthy Working Families Act, by a vote of 88 to 51.

Despite these developments, the two chambers must resolve and reconcile distinctions between the bills before they can formally place a paid sick leave proposal before Governor Larry Hogan. The deadline to reconcile these differences is April 10, 2017, the final day of the state's current legislative session. Notably, if the state legislature can compromise on a single paid sick leave proposal, Governor Hogan has indicated that he will veto any such bill. However, the Governor's veto may not cure Maryland businesses' sick leave woes as the votes from March 3rd and 16th were by sufficient margins to overcome a Governor veto.

Here are some key areas of overlap and discrepancy between the Senate and House versions of the HWFA:

- **Effective Date:** One important similarity between the Senate and House sick leave bills is that they both indicate that the HWFA would go into effect on January 1, 2018.
- **Preemption of Local Paid Sick Leave Laws:** Both bills state that the HWFA would not preempt or otherwise affect any other law that provides more generous paid sick leave benefits than that provided under the HWFA. However, the bills also clarify this provision with an exception, namely that local Maryland jurisdictions would be preempted from passing ordinances on or after January 1, 2017 that impose sick and safe leave obligations on private employers.

¹ The seven states that have passed paid sick leave laws are Connecticut, California, Massachusetts, Oregon, Vermont, Arizona and Washington. The Arizona law becomes effective on July 1, 2017 and the Washington law becomes effective on January 1, 2018. The current municipal paid sick leave laws include: (1) San Francisco, CA; (2) Washington, D.C.; (3) Seattle, WA; (4) Long Beach, CA; (5) SeaTac, WA; (6) New York City, NY; (7) Jersey City, NJ; (8) Newark, NJ; (9) Passaic, NJ; (10) East Orange, NJ; (11) Paterson, NJ; (12) Irvington, NJ; (13) Los Angeles, CA; (14) Oakland, CA; (15) Montclair, NJ; (16) Trenton, NJ; (17) Bloomfield, NJ; (18) Philadelphia, PA; (19) Tacoma, WA; (20) Emeryville, CA; (21) Montgomery County, MD; (22) Pittsburgh, PA; (23) Elizabeth, NJ; (24) New Brunswick, NJ; (25) Spokane, WA; (26) Santa Monica, CA; (27) Plainfield, NJ; (28) Minneapolis, MN; (29) San Diego, CA; (30) Chicago, IL; (31) Berkeley, CA; (32) Saint Paul, MN; (33) Morristown, NJ, and (34) Cook County, IL. A number of these laws, including Minneapolis, Chicago, Saint Paul, Berkeley, Cook County, and Pittsburgh, are not yet in effect. The Los Angeles law for private employers became effective for most companies on July 1, 2016. There is also a separate Los Angeles paid sick leave law that has been in effect since late-2014 and applies to certain hotel employers. Similarly, the Long Beach and SeaTac ordinances only apply to hospitality or transportation employers.

Significantly, this language would not apply to the Montgomery County, MD Earned Sick and Safe Leave Act, which was passed on October 1, 2016 and amended in November 2016.²

- **Employee Eligibility:** While both bills exclude several of the same types of workers from paid sick leave eligibility, such as individuals under the age of 18, there are at least a few discrepancies between the bills on this point. First, the Senate version generally does not apply to workers who are employed by temporary services agencies, while the House version is silent on this point and thus presumably would apply to such workers. Second, the House version does not apply to employees who regularly work less than eight hours each week or construction employees who are covered by a CBA that waives the HWFA's requirements. By comparison, the Senate version lacks any exemption for employees who work less than eight hours per week, and instead excludes employees who (a) regularly work less than 12 hours per week, (b) are employed in the construction industry, and (c) are covered by a CBA that expressly waives compliance with the HWFA.
- **Covered Employers:** The Senate and House bills both state that employers with 15 or more employees must provide paid sick leave benefits to eligible employees, while employers with fewer than 15 employees must provide their employees with unpaid sick leave benefits.
- **Start of Accrual:** Under both bills employees would begin to accrue paid sick leave on January 1, 2018 or their hire date if hired after January 1, 2018.
- **Paid Sick Leave Accrual, Usage, and Carryover:** The bills both state that employees must accrue paid sick leave at a rate of at least one hour for every 30 hours worked. Both bills also contain annual and "point in time" accrual caps. However, the amount of these accrual caps and the amount of the bills' annual usage and year-end carryover caps vary.
 - Annual Accrual Cap: House Bill - 56 hours; Senate Bill - 40 hours.
 - "Point in Time" Accrual Cap: House Bill - 80 hours; Senate Bill - 72 hours.
 - Annual Usage Cap: House Bill - 80 hours; Senate Bill - 72 hours.
 - Year-End Carryover Cap: House Bill - 56 hours; Senate Bill - 40 hours.
- **Frontloading:** Both bills note that employers can award employees the full amount of paid sick leave that they would earn over the course of the year at the start of each year instead of following an accrual system. Moreover, adopting a frontloading system will absolve employers' year-end carryover obligations under both bills.
- **Usage Waiting Period:** Another aspect of the two bills that must be reconciled is the paid sick leave usage waiting period imposed on new hires. The House bill states that new hires can begin using paid sick leave after 90 calendar days or 480 hours worked, whichever is shorter, from their date of hire. By comparison, the Senate bill states that new hires must wait 106 calendar days from the start of their employment to begin using paid sick leave.
- **Protected Reasons for Use:** Under both bills employees can use paid sick leave for (a) their own or a covered family member's mental or physical injury, illness or condition, or need for preventive medical care, and (b) certain absences related to domestic violence, sexual assault or stalking of the employee or the employee's covered family member. Importantly, unlike the House Bill, the Senate bill also allows employees to use paid sick leave for maternity or paternity leave.
- **Covered Family Members:** Both bills define "family member" to include children, parents, spouses, grandparents, grandchildren, and siblings.
- **Employer Ability to Prohibit Abuse of Sick Leave Rights:** Both bills expressly allow employers to adopt and enforce a policy that prohibits employees from improperly using paid sick leave, including prohibiting a pattern of abuse of paid sick leave.

² See our [prior alert](#) for more information on Montgomery County, MD paid sick leave requirements.

- **Notice of Available Paid Sick Leave:** Both bills mandate that employers provide employees with a statement of their available paid sick leave balance each time wages are paid. This requirement can be met under both bills through the use of an online system.
- **Existing Paid Leave Policies:** Neither bill requires employers to modify existing paid leave policies if employees can accrue and use paid leave under terms and conditions that are equivalent to paid sick leave provided under the HWFA. The Senate bill takes this provision a step further and explicitly notes that “existing paid leave” includes vacation days, sick days, short-term disability benefits, floating holidays, parental leave, and other PTO.
- **No Payout on Termination:** Neither bill requires employers to compensate employees for earned, unused paid sick time upon separation of employment.

We will continue to monitor and provide updates on Maryland paid sick leave developments as the April 10th deadline approaches and any changes that take place thereafter. To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth’s Paid Sick Leave mailing list.

If you would like further information, please contact your Seyfarth attorney, [Joshua D. Seidman](#) at jseidman@seyfarth.com, or [Tracy M. Billows](#) at tbillows@seyfarth.com.

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