



Whiteford|Taylor|Preston^{LLP}

An Overview of Maryland's Paid Sick and Safe Leave Law

DELAWARE

DISTRICT OF COLUMBIA

KENTUCKY

MARYLAND

MICHIGAN

NEW YORK

PENNSYLVANIA

VIRGINIA

Peter D. Guattery, Partner
Whiteford, Taylor & Preston L.L.P.
7 St. Paul Street | Baltimore, MD | 21202
410.347.9431 | pguattery@wtplaw.com



Existing Leave Laws in Maryland

- In general, most leave requirements imposed by statute have called for unpaid leave
 - Federal law: Family and Medical Leave Act
 - 50 or more employees
 - 2014 Maryland Parental Leave Law
 - 15 to 49 employees; 6 weeks of leave following birth or adoption
- 2016 – Montgomery County implements paid sick leave ordinance



MHWFA – Who is Covered?

- Key distinction is between employers with 15 or more employees and those with 14 or fewer
 - Employer must provide same amount of leave in either case, BUT:
 - 15 or more employees – Paid Leave
 - 14 or fewer employees – Unpaid Leave
- Counting employees:
 - Average monthly number of employees during immediately preceding calendar year
 - Include full-time and part time employees when counting



Exclusions From “Employee”

- Independent Contractors.
- Employees of Temporary Staffing Agency (TSA) who provide services to another person but TSA does not have day-to-day control over work assignments and supervision.
- Persons directly employed by a TSA to provide part-time or temporary services to another person.



Exclusions From Leave Accrual

- Employees who regularly work 12 hours a week.
- Employed in the construction industry and covered by a collective bargaining agreement which clearly waives leave requirements.
- Health or Human Services Industry employee called to work on an “as needed basis” where the employee:
 - Can accept or reject the offered shift
 - Is not guaranteed to be called on to work, and
 - Is not employed by a temporary staffing agency.



How Much Leave?

- At least 1 hour of leave must be earned for every 30 hours worked
- Employer can impose cap of 40 hours earned per year, and a cap of 64 hours accrued at any given time
- Employees who have carried over leave from a prior year may use up to 64 hours in a year



Special Accrual Rules

- Employers are not required to allow an employee to accrue leave during:
 - A two week pay period in which the employee worked fewer than 24 hours
 - A 1 week pay period if the employee worked fewer than a combined total of 24 hour in the current and immediately preceding pay period, or
 - Pay periods where the employee is paid 2x per month regardless of number of weeks in pay period and employee works fewer than 26 hours.



Awarding and Tracking Leave

- The Act gives employers two options:
 - Option 1: On an annual basis, award the employee the full amount of leave that employee would earn over the course of the year
 - Meaning the 40 hour maximum for employees who regularly work a full-time schedule
 - Option 2: Award leave as it is accrued

Note: The Act provides employers an incentive to choose Option 1 by providing that employers who award the full amount at the start of each year do not have to allow employees to carry over unused leave from year to year



Permissible Uses of Leave

- Employee's own medical condition
- Obtaining preventative medical care for employee or family member
 - Note: "Family member" is broadly defined in the Act
- To care for a family member with a mental or physical injury or condition
- Maternity/paternity leave
- Obtaining treatment or services in connection with domestic violence, sexual assault, or stalking



9

Mechanics of Requesting and Using Leave

- Employers may require employees to provide seven days' notice prior to use of leave, IF the need for leave is foreseeable
- If the need for leave is not foreseeable, then the employee is required to give notice "as soon as practicable"
 - Employee must also comply with the employer's general notice and procedural requirements for requesting or reporting leave, provided that those requirements do not operate to interfere with using the leave provided by the Act
- Employers may deny a request for leave if the employee fails follow the appropriate notice procedures AND the absence would cause a disruption to the employer



10

Mechanics of Requesting and Using Leave

- Key point: Employer may not require employee who is using leave provided by the Act to find another employee to fill his or her shift
- An employee and employer may agree – by mutual consent – for the employee to work additional hours or trade shifts with coworker during a pay period or following pay period to make up work hours – will not deplete paid leave balance.
- Special rules for tipped employees in restaurants.
- Special rules for services to dev. disabled or mentally ill.



Mechanics of Requesting and Using Leave

- How is leave time tracked for purposes of the Act?
 - General rule: Employee may take leave in the smallest increment that the employer's payroll system uses to track absences
 - Caveat: Employer may require employee to take leave in an increment of up to 4 hours



Mechanics of Requesting and Using Leave

- Waiting period:
 - Employer does not have to permit employee to begin using leave for the first 106 days of employment
- What happens if the employee has a leave balance at termination?
 - The Act provides that the leave required by the Act is not payable at termination
 - Reinstatement of accrued leave if employee leaves employment and then returns w/in 37 weeks (unless paid out).



13

Employer's Notice and Recordkeeping Obligations

- Employees must be provided with written notice of their accrued paid leave balance each payday
 - This may be done electronically
- Employers must provide notice to employees of their rights under the Act
 - The Act calls for DLLR to create a poster and model notice
- Employers must keep for 3 years a record of the amount of leave that is accrued by each employee, as well as the amount of leave the employee has used



14

What if my company already offers paid leave?

- The Act states that it may not be construed to require an employer to modify an existing paid leave policy IF:
 - (I) the existing policy permits an employee to accrue and use leave under terms and conditions that are at least equivalent to those described in the Act; OR
 - (II) the employer's existing policy does not reduce employee compensation for an absence due to sick or safe leave



What if I think my employees are abusing the leave entitlement?

- The Act provides that it may not be construed to prohibit an employer from adopting and enforcing a policy that prohibits improper use of leave, including a policy prohibiting a pattern of abuse of leave

BUT:

- The Act also contains a provision stating that an employer may require verification that the leave was used for a proper purpose if the leave was used for more than two consecutive scheduled shifts
 - This suggests that an employer may not request verification if the absence is for only one shift



Anti-Retaliation Provisions

- The Act provides that an employer may not terminate an employee or otherwise retaliate due to the employee's exercise of rights provided by the Act
- The Act expressly provides that an employer may not apply an attendance policy in such a manner that an employee's use of leave under the Act is treated as an absence that counts toward the potential imposition of discipline against the employee



17

Enforcement Procedure

- An employee may file an administrative complaint for a violation of the Act
- Commissioner is to investigate the complaint and attempt to mediate within 90 days
- If mediation is not successful, the Commissioner can issue an order directing the payment of the value of any unused leave, as well as "any actual economic damages" and a civil penalty of up to \$1,000
- If the employer does not comply with the order, either the Attorney General or the affected employee may seek enforcement of the order in court
 - If the employee does so and prevails, the employee may be awarded attorney's fees and punitive damages



18

QUESTIONS?

Peter D. Guattery
Whiteford, Taylor & Preston L.L.P.
7 St. Paul Street | Baltimore, MD | 21202
410.347.9431 | pguattery@wtplaw.com

