

# **Maryland's New Healthy Working Families Act**

## **What Employers Need to Know**

For the last five consecutive years, Maryland business owners, managers, proponents, opponents and advocates all along the continuum have talked with elected officials about whether and/or how to craft a paid leave law that would balance employers' and employees' needs. On January 12, 2018, the Maryland General Assembly enacted House Bill 01, the Healthy Working Families Act (HWFA), overriding Governor Hogan's veto of the law as it was passed in 2017. Effective February 11, 2018 nearly all Maryland employers became covered under this new law. Most employers that employ 15 or more employees, must provide paid Sick and Safe Leave (SSL) for their employees who regularly work at least 12 hours per week. Employers that employ fewer than 15 employees must provide the same leave, in the same manner with the exception that the leave may be unpaid. Employers on the cusp of the 15-employee threshold (at, above or below) may be wise to adhere to the formula in the law for determining on which side they fall. So, what does the law require? Here are some highlights:

1. If the employer uses a leave accrual system, SSL must begin to accrue from an eligible employee's first day of work at a rate of not less than one hour of SSL for every 30 hours worked.
2. Eligible employees are those who regularly work at least 12 hours per week, including temporary employees.
3. An employer is not required to permit an employee to accrue more than 40 hours of SSL in one year but, must permit an eligible employee to accrue up to 64 hours at any time. EX: An employee accrues 40 hours of SSL in year one and uses none. The 40 hours must roll over and the employer may stop the accrual once the employee has accrued a total of 64 hours of SSL.
4. An employee must be permitted to use his or her accrued SSL by not later than the employee's 107<sup>th</sup> day of employment.
5. At least 40 hours of accrued SSL must roll over from year to year, unless the employer front-end loads at the beginning of the year the amount of SSL the employee would earn over the course of the year.
6. An employee must be permitted to use at least 64 hours of accrued SSL in a year.
7. If an employee separates from employment and is rehired within 37 weeks, the balance of the accrued, unused SSL that was not paid out, if any must be reinstated.
8. An employer may not require an employee to search for or find a replacement for any shift or time missed from work while using SSL.
9. With some exceptions, an employer may not require an employee to provide medical certification of a covered absence of fewer than three consecutive work days.
10. An employer may not retaliate against an employee for using SSL or take any adverse employment action that would dissuade a reasonable employee from taking SSL.
11. ...to name a few.

The HWFA does pre-empt the Earned Sick and Safe Leave law passed by the Prince George's County Council; it does not pre-empt Montgomery County's Earned Sick and Safe Leave law. But wait. Even if you are an employer whose business operations are outside of Montgomery County, you may still have one or more employees covered by Montgomery County's law. Take one employer in Anne Arundel county that offers work-flex options for its employees, including telecommuting or working from home. The employer has one employee that telecommutes from the employee's home in Montgomery County. That one employee may be covered under that County's law, which requires that leave be provided at the rate of at least one hour for every 30 hours an eligible employee works "in the County." This may be an unintended consequence but, today that is the interpretation by some.

Prepare now. Ensure your current leave policies and payroll practices will comply with all the requirements of Maryland's new law. Post the [sample notice](#) to employees published by Maryland's Department of Labor, Licensing and Regulation (DLLR). Read the recent [FAQ's published](#) by DLLR to provide guidance for employers trying to comply with this new law. Bookmark [DLLR's webpage](#) dedicated to this new law and watch for more guidance and regulations.

Stay tuned. Be patient. DLLR recently announced that it has received more than 1,300 emails from employers and employees asking questions about the new law. It will take time to work through all of those and more. As of this writing, some anticipate the preliminary regulations may not be published for notice and comment until after the 438<sup>th</sup> session of the Maryland General Assembly is adjourned on April 9, 2018.

Have Questions? If so, you're not alone. Shortly after the law was passed, the Governor announced the creation of a new Office of Small Business Regulatory Assistance within DLLR and named Randall Nixon as Executive Director. The Office is working to shape the regulations referenced above while simultaneously trying to respond to the deluge of incoming questions. The Office encourages business owners and others to submit to them any questions about how the law should be interpreted or administered. This author has sent just shy of 20 questions to that office and appreciates their time and responsiveness to date. Here are two of the direct responses received from DLLR to date:

- How is an employer to determine whether an employee "regularly" works at least 12 hours per week? DLLR's response explained, "While the word is not defined in the law, the Department suggests using the everyday meaning of the word which is 'normal or customary.' Thus, an employee who normally or customarily works less than 12 hours per week would not be covered by the law."
- Some guidance recently published by DLLR refers to eligible employees as those working more than 12 hours per week. But, the law defines eligible employees as those working **12 or more hours** per week. Which definition should be followed? DLLR's response explained, "[the guidance] should read 12 or more." This will be changed in future publications.

You can submit your questions to the Office at [Small.Business@Maryland.gov](mailto:Small.Business@Maryland.gov). In the interim, practice patience and be prepared as the interpretations unfold.

***\*This article does not constitute the rendering of legal advice.***

***\*\*You should consult with your company's employment counsel for guidance on any matter.***



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