


**MEMORANDUM**

July 15, 2016

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 27-16, Human Rights and Civil Liberties – Earned Sick and Safe Leave – Eligibility

Bill 27-16, Human Rights and Civil Liberties – Earned Sick and Safe Leave - Eligibility, sponsored by Lead Sponsor Councilmember Leventhal and Co-Sponsors Vice President Berliner and Councilmember Rice, was introduced on June 28, 2016. A Health and Human Services Committee worksession is tentatively scheduled for August 1, 2016 at 10:15 am.

Bill 27-16 would exempt a seasonal employee who works for less than 120 calendar days in a year at an amusement or recreational program that operates for less than 120 calendar days each year in the County from the earned sick and safe leave law. It would also provide that an employee working in the County who is paid exclusively on a commission basis accrues only unpaid sick and safe leave.

**Background**

Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave, enacted on June 23, 2015 and signed into law on July 2, 2015, requires an employer doing business in the County to provide each employee with 1 hour of earned sick and safe leave for every 30 hours worked in the County up to 56 hours in a year. Bill 60-14 was enacted with a delayed effective date of October 1, 2016 to give employers time to adapt their payroll systems to the new law. The County Office of Human Rights has been meeting with County businesses over the past year to explain the new law and answer questions.

*Seasonal Employee*

Bill 27-16 would amend eligibility requirements in the law to exempt a seasonal employee who works for less than 120 calendar days in a year at an amusement or recreational program that operates for less than 120 calendar days each year in the County from the earned sick and safe leave law. This exemption would apply to workers at a seasonal business, such as a summer camp or swimming pool, which operates for less than 120 days each year. It would also exempt a seasonal worker in a summer camp or other seasonal program open for less than 120 days each year that is operated by an organization or business that operates other programs throughout the year. However, the exemption would not apply to an individual who works for the organization or business for more than 120 days in a year. It would also not exempt an employee who works for less than 120 days each year for an amusement or recreational program that is open for more than 120 days each year. The exemption would also not apply to an employee who works for less than 120 days each year for a program that is not providing amusement or recreational services.

The current law will require an employer to provide earned sick and safe leave for an employee during an initial 90-day probationary period, but prohibits the employee from using the leave until after the initial 90-day probationary period is over. The current law will also require an employer to reinstate any unused earned sick and safe leave that the employee had when the employee left employment if the employee is rehired within 9 months. Therefore, under current law, a summer camp counselor employed for an 8-week camp season will never be able to use the earned sick and safe leave earned during the 8-week season unless the individual is rehired within 9 months after leaving. Bill 27-16 would simply exempt this employee from the earned sick and safe leave law.

*Commission Employee*

One of the questions that arose from discussions with employers was how to treat an employee who is paid exclusively by a commission on sales. Bill 60-14 is silent on this issue. Bill 27-16 would provide that an employee who is paid exclusively by commission on sales would earn only unpaid sick and safe leave. An employee who is paid a base salary and earns a commission on sales would be eligible to earn paid sick safe leave paid at the rate of their base salary. An employee who is paid no base salary and only earns a commission on sales would be eligible for unpaid sick and safe leave.

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Bill No. 27-16  
Concerning: Human Rights and Civil Liberties – Earned Sick and Safe Leave - Eligibility  
Revised: July 8, 2016 Draft No. 5  
Introduced: June 28, 2016  
Expires: December 28, 2017  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: October 1, 2016  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Leventhal  
Co-Sponsors: Vice President Berliner and Councilmember Rice

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**AN ACT** to:

- (1) exempt certain seasonal employees who work for certain amusement or recreational establishments in the County from the earned sick and safe leave law;
- (2) provide that certain employees who are paid exclusively on a commission basis accrue only unpaid sick and safe leave; and
- (2) generally regulate the eligibility for sick and safe leave benefits provided to an employee working in the County for certain employers.

By amending

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Article XIII, Earned Sick and Safe leave  
Sections 27-76 and 27-77

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



28 \* \* \*

29 **27-77. Earned Sick and Safe Leave Required.**

30 (a) *Earned sick and safe leave.* An employer must provide each employee

31 earned sick and safe leave for work performed in the County paid at the

32 same rate and with the same benefits as the employee normally earns. A

33 tipped employee must be paid at least the County minimum wage

34 required under Section 27-68 for each hour the employee uses earned sick

35 and safe leave. A commission employee must accrue only unpaid sick

36 and safe leave. An employer with fewer than 5 employees must provide

37 each employee with both paid and unpaid sick and safe leave for work

38 performed in the County as required in subsection (c). An employee must

39 accrue paid leave before accruing unpaid leave in a calendar year.

40 \* \* \*

41 **Sec. 2. Effective date.**

42 This Act takes effect on October 1, 2016.

43 *Approved:*

44 \_\_\_\_\_  
Nancy Floreen, President, County Council

\_\_\_\_\_ Date

45 *Approved:*

46 \_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_ Date

47 *This is a correct copy of Council action.*

48 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

\_\_\_\_\_ Date

## LEGISLATIVE REQUEST REPORT

Expedited Bill 27-16

*Human Rights and Civil Liberties – Earned Sick and Safe Leave - Eligibility*

<b>DESCRIPTION:</b>	Bill 27-16 would exempt a seasonal employee who works for less than 120 calendar days in a year at an amusement or recreational program that operates for less than 120 calendar days each year in the County from the earned sick and safe leave law. It would also provide that an employee working in the County who is paid exclusively on a commission basis accrues only unpaid sick and safe leave.
<b>PROBLEM:</b>	Questions have arisen as to how to apply the Earned Sick and Safe Leave Law to a seasonal employee who works for an operation that is open less than 120 days each year and an employee who is paid exclusively by a commission on sales.
<b>GOALS AND OBJECTIVES:</b>	The goal is to resolve questions that have been asked since the Earned Sick and Safe Leave Law was enacted.
<b>COORDINATION:</b>	Office of Human Rights
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Senior Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	To be researched.
<b>PENALTIES:</b>	None.