

Bill No. 60-14
Concerning: Human Rights and Civil Liberties – Earned Sick and Safe Leave
Revised: June 23, 2015 Draft No. 8
Introduced: November 25, 2014
Enacted: June 23, 2015
Executive: July 2, 2015
Effective: October 1, 2016
Sunset Date: None
Ch. 29, Laws of Mont. Co. 2015

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council Vice President Leventhal and Councilmembers Navarro, Branson, Elrich, Riemer, and Hucker

AN ACT to:

- (1) require certain employers in the County to provide earned sick and safe leave to certain employees working in the County;
- (2) provide enforcement by the Office of Human Rights and the Human Rights Commission or the appropriate State agency;
- (3) authorize the Human Rights Commission to award certain relief; and
- (4) generally regulate the 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
Sections 27-7 and 27-8

By adding

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

Boldface	<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:

1 **Sec. 1. Sections 27-7 and 27-8 are amended and Chapter 27, Article**
 2 **XIII is added as follows:**

3 **27-7. Administration and enforcement.**

4 (a) *Filing complaints.* Any person subjected to a discriminatory act or
 5 practice in violation of this Article, or any group or person seeking to
 6 enforce this Article or Articles X, XI, [or] XII, or XIII may file with the
 7 Director a written complaint, sworn to or affirmed under the penalties of
 8 perjury, that must state:

- 9 (1) the particulars of the alleged violation;
- 10 (2) the name and address of the person alleged to have committed the
- 11 violation; and
- 12 (3) any other information required by law or regulation.

13 * * *

14 (f) *Initial determination, dismissal before hearing.*

15 (1) The Director must determine, based on the investigation, whether
 16 reasonable grounds exist to believe that a violation of this Article
 17 or Articles X, XI, [or] XII, or XIII occurred and promptly send
 18 the determination to the complainant and the respondent.

19 (2) If the Director determines that there are no reasonable grounds to
 20 believe a violation occurred, and the complainant appeals the
 21 determination to the Commission within 30 days after the
 22 Director sends the determination to the complainant, the Director
 23 promptly must certify the complaint to the Commission. The
 24 Commission must appoint a case review board to consider the
 25 appeal. The board may hear oral argument and must:

- 26 (A) dismiss the complaint without a hearing;
- 27 (B) order the Director to investigate further; or

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(C) set the matter for a hearing by a hearing examiner or the board itself, and consider and decide the complaint in the same manner as if the Director had found reasonable grounds to believe that a violation of this Article or Articles X, XI, [or] XII, or XIII occurred.

(3) If the Director determines that there are reasonable grounds to believe a violation occurred, the Director must attempt to conciliate the matter under subsection (g).

* * *

27-8. Penalties and relief.

(a) *Damages and other relief for complainant.* After finding a violation of this Article or Articles X, [or] XI, or XIII, the case review board may order the payment of damages (other than punitive damages) and any other relief that the law and the facts warrant, such as:

* * *

(2) equitable relief to prevent the discrimination or the violation of Articles X, [or] XI, or XIII and otherwise effectuate the purposes of this Chapter;

* * *

(4) any other relief that furthers the purposes of this Article or Articles X, [or] XI, or XIII or is necessary to eliminate the effects of any discrimination prohibited under this Article.

* * *

ARTICLE XIII. Earned Sick and Safe leave.

27-76. Findings and Definitions.

(a) Findings.

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- (1) Many persons employed in the County do not receive earned sick and safe leave.
- (2) The absence of earned sick and safe leave often results in the unnecessary spread of disease in the County when:
 - (A) an employee without earned sick and safe leave is forced to work while ill; or
 - (B) a parent without earned sick and safe leave is forced to send a sick child to day care or school.
- (3) Minimum standards for earned sick and safe leave in the County are necessary to:
 - (A) promote the health and welfare of County residents;
 - (B) safeguard employers and employees against unfair competition;
 - (C) increase the stability of industry in the County; and
 - (D) decrease the need for the County to spend public money for the relief of employees who also live in the County.

(b) Definitions. As used in this Article:
Abuse has the meaning defined in Section 4-501 of the Family Law Article of the Maryland Code, as amended.
Director means the Executive Director of the Office of Human Rights and includes the Executive Director's designee.
Domestic violence means abuse against a person eligible for relief.
Earned sick and safe leave means paid leave away from work that is provided by an employer under §27-77 and can be used for the purposes described in §27-79. Earned sick and safe leave includes paid time off that can be used by the employee for any purpose.
Employ means to engage a person to work for compensation.

81 Employee means any person permitted or instructed to work or be
 82 present by an employer in the County, including a domestic worker as
 83 defined in Section 11-4B(b). Employee does not include:

84 (1) an individual who:

85 ~~[(1)]~~ (A) does not have a regular work schedule with the
 86 employer;

87 ~~[(2)]~~ (B) contacts the employer for work assignments and is
 88 scheduled to work the assignments within 48 hours after
 89 contacting the employer;

90 ~~[(3)]~~ (C) has no obligation to work for the employer if the
 91 individual does not contact the employer for work
 92 assignments; and

93 ~~[(4)]~~ (D) is not employed by a temporary placement agency;

94 ~~[[or]]~~

95 (2) an individual who regularly works 8 hours or less each week; or

96 (3) an individual who is an independent contractor.

97 Employer means any person, individual, proprietorship, partnership,
 98 joint venture, corporation, limited liability company, trust, association,
 99 or other entity operating and doing business in the County that employs
 100 1 or more persons in the County in addition to the owners. Employer
 101 includes the County government, but does not include the United States,
 102 any State, or any other local government.

103 Family member means:

104 (1) a biological child, adopted child, foster child, or stepchild of the
 105 employee;

106 (2) a child for whom the employee has legal or physical custody or
 107 guardianship;

- 108 (3) a child for whom the employee is the primary caregiver;
- 109 (4) a biological parent, adoptive parent, foster parent, or stepparent of
- 110 the employee or the employee's spouse;
- 111 (5) the legal guardian of the employee;
- 112 (6) an individual who served as the primary caregiver of the
- 113 employee when the employee was a minor;
- 114 (7) the spouse of the employee;
- 115 (8) a grandparent of the employee;
- 116 (9) the spouse of a grandparent of the employee;
- 117 (10) a grandchild of the employee;
- 118 (11) a biological, adopted, or foster sibling of the employee; or
- 119 (12) the spouse of a biological, adopted, or foster sibling of the
- 120 employee.

121 Health care provider means an individual licensed under State law to
 122 provide medical services.

123 Person eligible for relief has the meaning stated in Section 4-501 of the
 124 Family Law Article of the Maryland Code, as amended.

125 Sexual assault means:

- 126 (1) rape, sexual offense, or any other act that is a sexual crime under
- 127 Title 3, Subtitle 3 of the Criminal Law Article of the Maryland
- 128 Code, as amended;
- 129 (2) child sexual abuse under Section 3-602 of the Criminal Law
- 130 Article of the Maryland Code, as amended; or
- 131 (3) sexual abuse of a vulnerable adult under Section 3-604 of the
- 132 Criminal Law Article of the Maryland Code, as amended.

133 Stalking has the meaning stated in Section 3-802 of the Criminal Law
 134 Article of the Maryland Code, as amended.

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Tipped employee means an employee who:

- (1) is engaged in an occupation in which the employee customarily and regularly receives more than \$30 each month in tips;
- (2) has been informed by the employer about the provisions of this Section; and
- (3) has kept all of the tips that the employee received.

27-77. Earned Sick and Safe Leave Required.

- (a) Earned sick and safe leave. An employer must provide each employee earned sick and safe leave for work performed in the County paid at the same rate and with the same benefits as the employee normally earns. A tipped employee must be paid at least the County minimum wage required under Section 27-68 for each hour the employee uses earned sick and safe leave. An employer with fewer than 5 employees must provide each employee with both paid and unpaid sick and safe leave for work performed in the County as required in subsection (c). An employee must accrue paid leave before accruing unpaid leave in a calendar year.
- (b) Rate of accrual for an employer with 5 or more employees. The paid earned sick and safe leave provided under subsection (a) must accrue at a rate of at least 1 hour for every 30 hours an employee works in the County, except an employer with 5 or more employees must not be required to allow an employee to:
 - (1) earn more than 56 hours of earned sick and safe leave in a calendar year; or
 - (2) use more than 80 hours of earned sick and safe leave in a calendar year.

161 (c) Rate of accrual for an employer with fewer than 5 employees. The
 162 earned sick and safe leave provided under subsection (a) must accrue at
 163 a rate of at least 1 hour for every 30 hours an employee works in the
 164 County, except an employer with fewer than 5 employees must not be
 165 required to allow an employee to:

- 166 (1) earn more than 32 hours of paid earned sick and safe leave and 24
 167 hours of unpaid earned sick and safe leave in a calendar year; or
- 168 (2) use more than 80 hours of earned sick and safe leave in a
 169 calendar year.

170 (d) Retaliation prohibited. A person must not:

- 171 (1) retaliate against any person for:
 - 172 (A) lawfully opposing any violation of this Article; or
 - 173 (B) filing a complaint, testifying, assisting, or participating in
 174 any manner in an investigation, proceeding, or hearing
 175 under this Article; or
- 176 (2) obstruct or prevent enforcement or compliance with this Article.

177 **27-78. Minimum Earned Sick and Safe Leave Standards.**

178 (a) An employer may award earned sick and safe leave as the leave accrues
 179 during the calendar year or may award the full amount that an employee
 180 would earn over the entire calendar year at the beginning of a calendar
 181 year.

182 (b) To calculate the rate of accrual of earned sick and safe leave for an
 183 employee who is exempt from the overtime provisions of the Federal
 184 Fair Labor Standards Act, the employer must assume the employee
 185 worked the number of hours worked in a normal workweek up to 40
 186 hours each workweek.

187 (c) Unless an employer awards the full amount of earned sick and safe
 188 leave that the employee would earn over the entire calendar year at the
 189 beginning of a calendar year,[[An]] an employer must permit an
 190 employee to carry the balance of any unused earned sick and safe leave
 191 over to the next calendar year, but an employer must not be required to
 192 permit an employee to carry over more than 56 hours of unused earned
 193 sick and safe leave.

194 (d) [[If an employee begins working outside the County for the same
 195 employer, the employer must permit the employee to use the earned
 196 sick and safe leave that accrued while working for the employer in the
 197 County.]] If an employee is allowed to use earned sick and safe leave
 198 before it has accrued, or if an employee who receives the full amount of
 199 earned sick and safe leave at the beginning of the year and uses more
 200 than would have been earned up to that time, the employer may deduct
 201 the amount paid for the earned sick and safe leave from the wages paid
 202 to the employee on the termination of employment if:

- 203 (1) the employer and employee mutually consented to the deduction
- 204 as evidenced by a document signed by the employee; and
- 205 (2) the employee leaves the employment of the employer before the
- 206 employee has accrued the amount of earned sick and safe leave
- 207 that was used.

208 ~~[[e]]~~ (e) If an employee is rehired by an employer to work in the County
 209 within ~~[[12]]~~ ~~[[6]]~~ 9 months after leaving the employment, the employer
 210 must reinstate any unused earned sick and safe leave that the employee
 211 had when the employee left the employment except for when the
 212 employee voluntarily leaves work without good cause as defined in
 213 MD. LABOR & EMPL. CODE ANN. §8-1001.

214 ~~[(f)] [(e)]~~ (f) An employer may permit an employee to use earned sick
 215 and safe leave before the amount needed by the employee accrues.

216 ~~[(f)]~~ (g) An employer must permit an employee to earn sick and safe
 217 leave during an initial 90-day probationary period, but may prohibit an
 218 employee from using earned sick and safe leave during an initial 90-day
 219 probationary period.

220 ~~[(g)]~~ (h) This Article must not be construed to:

221 (1) require an employer to compensate an employee for unused
 222 earned sick and safe leave when the employee leaves the
 223 employer's employment;

224 (2) prohibit an employer from adopting or retaining a general paid
 225 leave policy that meets the minimum requirement of this Article;

226 or

227 (3) affect a provision of a contract, a collective bargaining
 228 agreement, an employee benefit plan, or any other agreement that
 229 requires the employer to provide general paid leave benefits that
 230 meet the minimum requirements of this Article.

231 **27-79. Use of Earned Sick and Safe Leave.**

232 (a) An employee may use earned sick and safe leave:

233 (1) to care for or treat the employee's mental or physical illness,
 234 injury, or condition;

235 (2) to obtain preventive medical care for the employee or the
 236 employee's family member;

237 (3) to care for a family member with a mental or physical illness,
 238 injury, or condition;

239 (4) if the employer's place of business has closed by order of a
 240 public official due to a public health emergency;

- 241 (5) if the school or child care center for the employee's family
- 242 member is closed by order of a public official due to a public
- 243 health emergency;
- 244 (6) to care for a family member if a health official or health care
- 245 provider has determined that the family member's presence in the
- 246 community would jeopardize the health of others because of the
- 247 family member's exposure to a communicable disease; or
- 248 (7) if the absence from work is due to domestic violence, sexual
- 249 assault, or stalking committed against the employee or the
- 250 employee's family member and the leave is used:
- 251 (A) by the employee to obtain for the employee or the
- 252 employee's family;
- 253 (i) medical attention needed to recover from a physical
- 254 or psychological injury due to domestic violence,
- 255 sexual assault, or stalking;
- 256 (ii) services from a victim services organization related
- 257 to the domestic violence, sexual assault, or stalking;
- 258 or
- 259 (iii) legal services, including preparing for or
- 260 participating in a civil or criminal proceeding related
- 261 to the domestic violence, sexual assault, or stalking;
- 262 or
- 263 (B) during the time that the employee has temporarily
- 264 relocated due to the domestic violence, sexual assault, or
- 265 stalking.
- 266 (b) To use earned sick and safe leave, an employee must:

- 267 (1) request leave from the employer as soon as practicable after the
268 employee determines that the employee needs to take leave;
269 (2) notify the employer of the anticipated duration of the leave; and
270 (3) comply with any reasonable procedures established by the
271 employer when requesting and taking leave.
- 272 (c) An employer must not require an employee who requests earned sick
273 and safe leave to search for or find an individual to take the employee's
274 place while the employee takes leave.
- 275 (d) An employer must not require an employee to:
- 276 (1) disclose specific details of the mental or physical illness, injury,
277 or condition of the employee or the employee's family member;
278 or
- 279 (2) provide as certification any information that would violate the
280 Federal Social Security Act or the Federal Health Insurance
281 Portability and Accountability Act.
- 282 (e) By mutual consent of the employee and the employer, the employee
283 may work additional hours or trade shifts with another employee during
284 a pay period to make up the amount of work hours that the employee
285 missed for which the employee could have used earned sick and safe
286 leave.
- 287 (f) An employee may take earned sick and safe leave in the smallest
288 increment that the employer's payroll system uses to account for
289 absences or work time, except that an employee must not be required to
290 take earned sick and safe leave in an increment of more than [[1 hour]]
291 4 hours.
- 292 (g) An employer must provide an employee with a written statement of
293 available earned sick and safe leave each time the employer pays wages

294 to the employee. An employer may satisfy this requirement through an
 295 online system where the employee can access their own earned sick and
 296 safe leave balances.

297 (h) An employer may require an employee who uses more than 3
 298 consecutive days of earned sick and safe leave to provide reasonable
 299 documentation to verify that the leave was used appropriately.

300 **27-80. Notice.**

301 (a) An employer must notify the employees that they are entitled to earned
 302 sick and safe leave under this Article.

303 (b) The notice must include:

- 304 (1) a statement of how earned sick and safe leave is accrued;
- 305 (2) the permitted uses of earned sick and safe leave;
- 306 (3) a statement that the employer must not retaliate against an
 307 employee for exercising the rights granted by this Article; and
- 308 (4) information about the employee's right to file a complaint with
 309 the Director for a violation of any rights granted by this Article.

310 (c) The Director must create and publish a model notice in English,
 311 Spanish, and any other language that the Director finds is necessary that
 312 may be used by an employer to comply with subsection (b).

313 (d) An employer may provide notice by:

- 314 (1) displaying the model notice or another notice containing the same
 315 information in a conspicuous and accessible area at each of the
 316 employer's work locations in the County;
- 317 (2) including the model notice or another notice containing the same
 318 information in an employee handbook or other written guidance
 319 distributed to all employees; or

320 (3) distributing the model notice or another notice containing the
 321 same information to each employee when the employee is hired.

322 **27-81. Records.**

- 323 (a) An employer must keep, for at least 3 years, a record of:
 324 (1) earned sick and safe leave accrued by each employee; and
 325 (2) earned sick and safe leave used by each employee.
 326 (b) After giving the employer notice and determining a mutually agreeable
 327 time for the inspection, the Director may inspect a record kept under
 328 subsection (a) for the purposes of determining whether the employer is
 329 complying with this Article.

330 **27-82. Enforcement.**

- 331 (a) A covered employee [[who was]] who did not receive earned sick and
 332 safe leave in violation of this Article may file a complaint with the
 333 Director under Section 27-7.
 334 (b) The County Executive may delegate the authority to enforce this Article
 335 to a State agency that is legally authorized to enforce the County earned
 336 sick and safe leave requirements.

337 **Sec. 2. Transition.**

338 Notwithstanding Section 27-77, as added in Section 1, earned sick and
 339 safe leave must begin to accrue for all work performed in the County on or after
 340 October 1, ~~[[2015]]~~ 2016. An employer must not be required to permit an employee
 341 to accrue earned sick and safe leave for hours worked before October 1, ~~[[2015]]~~
 342 2016.

343 **Sec. 3. Effective Date.**

344 This Act takes effect on October 1, ~~[[2015]]~~ 2016~~[[, or for an employee~~
 345 covered by a bona fide collective bargaining agreement in effect on October 1, 2016,
 346 after the expiration of the collective bargaining agreement]].

347 *Approved:*

348 George Leventhal 6/24/2015
George Leventhal, President, County Council Date

349 *Approved:*

350 Isiah Leggett July 2, 2015
Isiah Leggett, County Executive Date

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

352 Linda M. Lauer July 7, 2015
Linda M. Lauer, Clerk of the Council Date