

Getting Started with the Maryland Healthy Working Families Act (MD Sick and Safe Leave)

When does the act begin?

On January 12, 2018, the Maryland legislators voted to override the Governor's veto of House Bill 1 entitled The Maryland Healthy Working Families Act. This act takes effect on February 11, 2018 (30 days after passage of the act).

Who is a Covered Employer?

An "employer" includes the state or local governments and a person who acts directly or indirectly in the interest of another employer with an employee.

Employers with 15 or more employees who are employed in the state of Maryland must provide paid sick leave. Employers with 14 or fewer employees who are employed in the state of Maryland must provide sick leave and it can be unpaid.

Who is a Covered Employee?

All employees, regardless of whether they are full-time, part-time, temporary, or seasonal.

The bill does not apply to employees who are:

- Regularly working less than 12 hours a week for an employer.
- Employed in the construction industry and is covered by a bona fide collective bargaining agreement. **Tip:** This does not include janitors, building cleaners, building security officer, concierge, doorperson, handyperson or a building superintendent. They must not be excluded.
- Called to work by the employer on an as-needed basis in a health or human services industry and can reject or accept the shift offered by the employer, is not guaranteed to be called on to work by the employer and is not employed by a temporary staffing agency.

- Certain independent contractors.
- Under the age of 18 before beginning of the year.
- An agricultural employee processing crops or working for a farmer in the production, harvesting or marketing of product.
- Certain associate real estate brokers and real estate salespersons.

Notification and Reporting Requirements

Employers must notify their employees that they are entitled to earned Sick and Safe Leave.

The notice must include the following:

- A statement of how earned Sick and Safe Leave is accrued.
- The purposes for which the employer is required to allow an employee to use Sick and Safe Leave.
- A statement regarding the prohibition of the employer taking adverse action against an employee who exercises a right under the act.
- Information regarding an employee's right to report an alleged employer violation.

In order to comply with this requirement, the employer may use a poster and model notice created by the Commissioner of Labor and Industry found on the Maryland website. A Sick and Safe Leave policy may also be provided in the employer's handbook.

Pay Statement Requirements

Each time wages are paid to an employee, the employer must provide in writing by any reasonable method a statement regarding the amount of earned Sick and Safe Leave that is available for use by the employee.

Employers may satisfy this requirement via an online system through which an employee can obtain the balance of their available earned Sick and Safe Leave.

Accrual Rules

- Employers with 15 or more employees must have a Sick and Safe Leave policy under which an employee earns at least 1 hour of paid Sick and Safe Leave, at the same rate as the employee normally earns, for every 30 hours an employee works.
- An employer with 14 or fewer employees must at least have a Sick and Safe Leave policy that provides an employee with at least 1 hour of Sick and Safe Leave for every 30 hours an employee works and it can be unpaid.
- An employee is entitled to accrue 40 hours of sick and safe leave, per year.
- An employee is entitled to carry over unused sick and safe leave unless it would provide more than 64 hours of accrued leave.
- New hires must begin to accrue on date of hire, but may be required to wait until the 106th day of employment to use sick and safe leave.

Important: Employers must base their number of employees on the average monthly number of employees who are employed in the state of Maryland during the preceding year.

- If an employee works primarily in another state but performs work in Maryland that is incidental to his or her work performed elsewhere, the employee would not be entitled to accrue Sick and Safe Leave for those incidental hours or work performed in Maryland.
- If an employee performs the majority of his or her work in Maryland, the employee is entitled to accrue Sick and Safe Leave for all time worked including any incidental work that is performed in another state.

An employee exempt from overtime wage requirements under the federal Fair Labor Standards Act is assumed to work 40 hours each workweek. If the employee's normal workweek is less than 40 hours, the number of hours in the normal workweek must be used.

An employer is "not required" to allow an employee to accrue earned Sick and Safe Leave during a:

- Two-week pay period in which the employee worked fewer than 24 hours total;
- One-week pay period if the employee worked fewer than a total of 24 hours in the current and immediately preceding pay period; or
- Pay period in which the employee is paid twice a month and the employee worked fewer than 26 hours in the pay period.

Frontloading Rules

In the beginning of each year an employer may choose to provide the full amount of leave an employee will earn over the course of the year.

- Front loaded leave would be available for immediate use by the employee.
- Carry over of unused Safe and Sick Leave is not required if the frontloading method was used.

An employee exempt from overtime wage requirements under the federal Fair Labor Standards Act is assumed to work 40 hours each workweek. If the employee's normal workweek is less than 40 hours, the number of hours in the normal workweek must be used.

Rehiring an Employee

An employer who rehires an employee within 37 weeks after leaving employment is required to reinstate any unused earned Sick and Safe Leave, paid or unpaid, that had accrued at the time of separation unless the employer voluntarily paid out the unused earned Sick and Safe Leave.

Wages for commissioned and tipped employees

- Employers with commission only employees can impute an average hourly wage to each employee based on commissioned earned during a fixed period of time (6 months for example) and pay at that rate for absences due to Sick and Safe Leave use.
- Tipped employees who do not wish to work an equivalent shift in the same or following pay period, but rather use sick and safe leave must be paid the current minimum wage for the those hours.

Setting up a front load sick leave plan for your company

Follow these instructions, if you want to set up a sick plan for your company without Accruals. You must make sure that the sick earning is set up for the company. **Tip:** In order to determine eligibility, you can use the PTO report to list employee's Hire Date and PTO sick plans.

Starting Point: Company > Paid Time Off

1. Under the PTO Plan, click the check box next to the Sick plan that you want to set up, such as **Sick** or **Sick 2**.
2. Set up a Sick or Sick 2 plan by selecting Allowed and Taken in the Accrual Method field. If you select Allowed and Taken, the Clear Balances at Year End slider is automatically turned on.
3. If you choose to allow carry over on a front loaded employee, click the slider to turn off **Clear Balances at Year End**. **Tip:** When the space in the slider control is green, the feature is turned on and when it's gray it's turned off.

Setting up a sick plan for your company using the accrual method

Company > Paid Time Off

1. Select your accrual method, **Per Hour**. You need to enter the number of PTO hours, or fraction of hours, an employee accrues for each hour worked.
2. Click the **Earnings** link to select all earnings to be used in the calculation of Sick and Safe Leave. Example: Regular, Overtime, Overtime 2, Overtime 3, Doubletime, Doubletime 2, Doubletime 3, Halftime, Reg Tip and Overtime Tip.

Maryland requires hours to accrue on all hours "worked."
3. Select your 12 month **Accrual Period**, based on the Calendar year or Hire date.
4. Be sure to click the slider for **Clear Balances at Year End**, to turn off the option, since Maryland requires carry over.

Tip: When the space in the slider control is green, the feature is turned on and when it's gray it's turned off.
5. Enter at least 40 in the **Max Number of Hours Earned** (in accrual period). More than 40 hours can be entered if the employer chooses to offer more generous amounts than required by law.
6. Enter at least 40 in the **Max Number of Hours Carried Over** (in accrual period). More than 40 hours can be entered if the employer chooses to offer more generous amounts than required by law.

Important: Whether you choose the accrual method or front load method, select **Yes** for the **Include Accrual Information on Pay Stub** field to assist in satisfying the Pay Statement requirement. The sick leave available and taken amounts will also be displayed on your pay stub.

Setting up a sick leave plan for your employee

Before You Begin: To set up a paid time off (PTO) plan for an employee, you must first set up the plan for your company.

Starting Point: Employees > Directory

1. Click the employee to open the Employee Info page.
2. In the left menu, click **Payroll > Paid Time Off**.
3. Click the check box next to **Sick**.
4. If using a Frontloading plan enter the estimated hours calculate they employee would earn in that accrual year in the Available field.
5. In the **Taken** field, enter the amount of sick hours that your employee has taken to date, prior to setting up your plan.

Override accruals

If you have employees that have not worked the required number of hours in the week/pay period and you chose NOT to allow them to accrue for that pay period, then you need to select:

- The drop down next to the employee name, when entering payroll.
- One Time Override.
- The Sick plan *that you don't want to accrue* for this pay period, at the top of the page.

FAQs

For more information about hourly wages, employee exemptions and other frequently asked questions, go to

<https://www.dllr.state.md.us/paidleave/>.