



MEMBER OVERVIEW

AOBA GUIDE TO MONTGOMERY COUNTY'S SICK AND SAFE LEAVE LAW

Effective Date: OCT. 1, 2016

In 2015, Montgomery County adopted legislation mandating sick and safe leave for employees. The **Earned Sick and Safe Leave law** will require an employer operating and doing business in the County to provide earned sick and safe leave to each employee for work performed in the County. The following is an overview of key provisions in the law that will assist members in preparing for the **Oct. 1, 2016 effective date**. AOBA will continue to update the membership on steps by the County to implement the new law. Members with questions can also contact Nicola Whiteman by calling (202) 296-3390 or via e-mail at **NWhiteman@aoba-metro.org**.

MEMBER RESOURCES/RECENT UPDATES

Contact Information - Montgomery County Office of Human Rights (OHR), the agency charged with administering the law:

Phone: (240) 777-8490

Email: Human-Rights.Administration@montgomerycountymd.gov

Website: <https://www.montgomerycountymd.gov/humanrights/>

OHR has posted an Earned Sick and Safe Fact Sheet on its website. The fact sheet is designed to assist businesses with preparing for the Oct. 1 compliance date.

NEW!! Required Employer model notice - [2016 Montgomery County Earned Sick And Safe Leave Poster](#): The law requires OHR to publish a model notice that employers must use to notify their employees that they are entitled to sick and safe leave. See below for a summary of the employer notification requirements.

- **General notice/posting requirements:** Employers must notify employees that they are entitled to accrue sick and safe leave. The County is required to publish the model notice in English, Spanish and other languages deemed necessary for employer compliance. The model notice/poster included above is currently only available in English. AOBA will update the membership when the Spanish version is available.
 - **Content of Model Notice:** Per County law, the notice must include:
 - How leave is accrued; o Permitted uses of leave;
 - Statement that employers cannot retaliate against employees for using leave and exercising rights under the law; and
 - Information about filing a complaint with the OHR director.
 - **Employer Notification methods:**
 - Display notice in conspicuous and accessible areas; o Include in employee handbook or other written guidance distribute to all employees; or
 - Distribute model or other notice to new employees when hired.
-

OVERVIEW OF THE SICK AND SAFE LAW: WHAT YOU NEED TO KNOW TO BE IN COMPLIANCE

Who will be subject to the sick and safe leave law?

- **Employers:** Public and private employers that employ 1 or more persons in the County.
- **Employees:** Any person working in the County.
 - **Excludes persons who:** (1) work 8 hours/week or less; and are (2) independent contractors. **Part-time employees:** The new law will apply to those persons who work more than 8 hours per week.

Minimum leave for employers with 5 or more employees:

- **Rate of accrual:** Employees will accrue sick and safe leave at the rate of at least 1 hour for every 30 worked in the County.
- **Maximum leave accrued in a calendar year:** 56 hours unless full amount awarded at the beginning of the calendar year.
- **Maximum leave that can be used in a calendar year:** 80 hours.

Awarding earned sick and safe leave:

- Employers can award the full amount at beginning of calendar year or as the leave accrues.
- Employers may also permit employees to use leave before it is accrued.

Use of sick and safe leave: Employees can use sick and safe leave for a variety of reasons including for their own physical or mental illness or that of a family member. Specific examples in the law include:

- To care for or treat the employee's mental or physical illness, injury or condition;
- To obtain preventive medical care for the employee or the employee's family member;
- To care for a family member with a mental or physical illness, injury or condition;
- If the employer's place of business has closed by order of a public official due to a public health emergency;
- If the school or child care center for the employee's family member is closed by order of a public official due to a public health emergency;
- To care for a family member if a health official or health care provider has determined that the family member's presence would jeopardize the health of others because of the family member's exposure to a communicable disease; or
- If the absence from work is due to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member and the leave is used; or
 - o By the employee to obtain for the employee or the employee's family:
 - Medical attention needed to recover from a physical or psychological injury due to domestic violence, sexual assault or stalking;
 - Services from a victim services organization related to the domestic violence, sexual assault or stalking; or
 - Legal services, including preparing for or participating in a civil or criminal proceeding related to the domestic violence, sexual assault, or stalking; or
 - During the time that the employee has temporarily relocated due to the domestic violence, sexual assault or stalking.

Probationary period: Allows for employee to accrue but not use leave during the initial 90-day probationary period.

Paid Time Off (PTO): Allows for a PTO system with at least 56 hours of accrued leave pro-rated. The law does not prohibit an employer from adopting or retaining a general leave policy that meets the minimum requirements.

Deducting leave from wages: If an employee is allowed to use leave before it has accrued, or received the full amount, and uses more than would have earned, an employer can deduct the leave from wages if:

- Employer/employee mutually consented to deduction as evidenced by documentation signed by the employee; and
- Employee leaves employment before accruing leave that was used.

Reinstatement of leave: Requires unused leave to be reinstated if an employee is rehired within **9 months** of quitting or being laid off except for when the employee voluntarily leaves work without good cause as defined under Maryland state law.

Employer administrative requirements:

- **General notice/posting:** Notify employees that they are entitled to accrue sick and safe leave. The County has prepared a model notice, [2016 Montgomery County Earned Sick And Safe Leave Poster](#), in English and is expected to publish the Spanish version soon.

Notice must include:

- How leave is accrued; o Permitted uses of leave;
- Statement that employers cannot retaliate against employees for using leave and exercising rights under the law; and
- Information about filing a complaint with the OHR director.

Notification methods:

- Display notice in conspicuous and accessible areas; o Include in employee handbook or other written guidance distribute to all employees; or o Distributed model or other notice to new employees when hired. □ Notification of available leave/Recordkeeping: Employers must provide a written statement to employees of available earned sick and safe leave each time the employee is paid. Employers can satisfy this requirement by creating an online system which employees can utilize to access leave balances.

- **Recordkeeping:** Maintain for three years records of leave accrued and used by each employee. Records are subject to inspection by OHR upon notice and mutually agreeable time.
- **Employee notification of employer:** To use leave, the employee must:
 - Request leave as soon as practicable; Notify employer of anticipated duration of leave; and Comply with employer’s reasonable leave procedures.
- **Increments of leave:** Employees can take leave in the smallest increment an employer’s payroll system uses to account for leave, but cannot be required to take leave in increments of more than four hours.

- **Documentation to employer:** Employer can require persons using more than 3 consecutive days of leave to provide reasonable documentation to verify appropriate use of leave.

- **Employer cannot require employee to:**
 - Find a replacement while employee is on leave;
 - Disclose specific details of the employee or family member's mental, physical illness or condition; or
 - Provide certification that would violate the Federal Social Security Act or Federal Health Insurance Portability and Accountability Act.

- **Additional/trading of shifts:** Employee/employer can agree for employee to work additional hours or trade shifts to make up work hours missed for which they could have used leave.

- **No compensation for unused leave:** Employers are not required to compensate employees for unused leave when employment ends.

Enforcement/penalties:

- Employee can file complaint with the OHR Director.
- Director must determine whether reasonable grounds exist to believe a violation occurred and must attempt conciliation if such grounds exist.
- Employee can appeal Director's determination that no such grounds exist to the Commission on Human Rights.
- Penalties: Damages other than punitive damages, equitable relief, other relief necessary to eliminate effects of prohibited discrimination.

Prohibited conduct: Employers cannot retaliate against any person for opposing any violation participating in an investigation or administrative proceeding.