

MEMORANDUM

June 9, 2015

TO: Health and Human Services Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 
Jacob Sesker, Senior Legislative Analyst 

SUBJECT: **Worksession:** Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave

Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave, sponsored by then-Council Vice President Leventhal and Councilmembers Navarro, Branson and Elrich, was introduced on November 25, 2014. A public hearing was held on January 29.

Background

FMLA and MFLA

Congress enacted the Family and Medical Leave Act (FMLA) in 1993. The FMLA requires an employer with 50 or more employees to provide 12 work weeks of unpaid leave in a 12-month rolling period. An employee must have worked at least 1250 hours during the preceding 12-month period to be eligible for unpaid leave under the FMLA. One of the reasons an employee may take unpaid FMLA leave is for the employee's "serious health condition" or to take care of an immediate family member with a "serious health condition." An employee must be unable to perform any one of the essential functions of the employee's position in order to use FMLA leave for a serious health condition. The U.S. Department of Labor FMLA Fact Sheet is at ©14-17.

In 2008, Maryland enacted the Flexible Leave Act (MFLA), codified at Labor & Employment Art. §3-802. This law requires an employer who has 15 or more employees to permit an employee to use paid leave earned by the employee under an employer's paid leave benefit for the illness of an immediate family member.

Both the FMLA and the MFLA were designed to permit an employee to miss work due to the employee's illness or the illness of an immediate family member without risking the loss of employment. However, both of these laws leave several large holes in employee protection. The FMLA does not apply to an employer with fewer than 50 employees, does not protect an employee who has not worked at least 1250 hours in the preceding 12 months, and requires an employee to have a "serious health condition." The FMLA does not require the employer to pay the employee for time missed under the FMLA. The MFLA does not mandate any leave. It requires an employer to permit an employee to use paid leave already provided by the employer for the illness of an immediate family member.

Local Paid Sick Leave laws

The District of Columbia enacted the Accrued Sick and Safe Leave Act of 2008, amended by the Earned Sick and Safe Leave Amendment Act of 2013. The mandatory employer poster for this law is at ©18. Under the DC law:

- (1) an employer with 100 or more employees must provide 1 hour of leave per 37 hours worked;
- (2) an employer with 25-99 employees must provide 1 hour of leave per 43 hours worked; and
- (3) an employer with less than 25 employees must provide 1 hour per 87 hours worked.

The DC law is enforced by the District of Columbia Department of Employment Services, Office of Wage and Hour.

In 2006, San Francisco enacted a Paid Sick Leave Ordinance (PSLO) pursuant to a voter referendum. The PSLO requires an employer with fewer than 10 employees to provide 5 days or 40 hours of paid sick leave. An employer with 10 or more employees must provide 9 days or 72 hours of paid sick leave. Leave must be earned at the rate of 1 hour for every 30 hours worked after an initial probation period of 90 days. The PSLO covers full-time, part-time, and temporary workers. In 2009, the Urban Institute published a study reviewing the effect of the PSLO on employers in San Francisco, *Employers' Perspectives on San Francisco's Paid Sick Leave Policy*, Boots, Martinson, and Danziger. See ©19-37.

Legislation to mandate earned sick leave was introduced in the Maryland General Assembly in 2014 and 2015, but was not enacted. The Fiscal Note for HB 385 at ©38-51 includes a summary of State-wide paid sick leave laws in California, Connecticut, and Massachusetts.

Labor market imperfections and government interventions

The market for labor matches employers' demand for labor, derived from the demand for the product or service offered by the employer, with the supply of suitable workers. Firms choose to pay for an additional unit of labor when the additional output of that unit of labor can be justified by the cost of the labor. The labor supply enters into the labor market when the compensation exceeds the value (opportunity cost) that the worker places on their time. Supply and demand of labor are both affected by prices—for example, the high cost of labor may discourage firms from hiring additional workers, but the high cost of labor may also encourage more individuals to participate in the market for labor.

The compensation offered to employees may be limited to wages, but many employers offer and many employees (individually or collectively) negotiate for other non-wage compensation or benefits. If the market for labor functioned perfectly, all of the actors in the labor market would behave rationally, have accurate information to use in setting a price for labor, and the costs and benefits of the employer-employee relationship would be internalized in the price (i.e. wage plus non-wage) of labor.

Of course, the labor market like other markets is not perfect. Imperfections in the labor market that might justify government intervention include the following:

- **Some actors in the labor market behave irrationally.** Individuals in the labor market may undervalue paid sick leave or underestimate the odds that they will need to take paid sick leave. Similarly, firms may choose not to offer paid sick leave because they undervalue the self-imposed quarantine of sick employees or underestimate how frequently their employees experience illness.
- **Some actors in the labor market do not have accurate or complete information.** Individuals in the labor supply may not know which employers are hiring, let alone have information about the wages and non-wage compensation/benefits offered by those employers. At the same time, firms that hire workers do not know how likely those workers are to use paid sick leave (or any other employment benefit). It is possible that employees who are likely to use a lot of paid sick time will take the time to identify employers that offer paid sick leave.
- **Some benefits and costs associated with the labor are not internalized.** Most of the benefits associated with preventing or minimizing the spread of contagious disease accrue to society at large and not just to the employer. Some of the costs of contagious disease already accrue to society rather than just the employer.

Types of government interventions

Government intervention in the labor market could theoretically address each of the labor market imperfections identified above. Generally speaking, those interventions tend to fall into the following categories:

- **Taxing and spending:** A strength of any “taxing and spending” response to labor market imperfections is that the benefits are spread broadly across society. The weaknesses of taxing and spending include that it is an awkward and inefficient way to pay for personal/individual benefits, and that frequently the intended beneficiaries (who often are unable to bear any additional financial strain) end up bearing some portion of the cost of the tax.
- **Employer mandates:** A strength of an employer mandate is that the total cost of implementing the program is often reduced because some employers are able to achieve compliance with no change or small tweaks to their current practices. A weakness of an employer mandate is if the employer’s cost is disproportionate to the benefits that accrue to the employer, then employers may be bearing what would otherwise be a societal cost.

Employer mandates and the social safety net

The social safety net in this country relies on a mix of government spending, government subsidies and government-mandated programs (employer and individual mandates). Relying on government mandates for a portion of the social safety net has allowed this country to impose generally lower tax burdens than those imposed by comparably wealthy democracies. However, that reliance has not reduced the cost of social welfare programs, but simply has redistributed a portion of those costs through other economic channels.

As a result of employer mandates, many employed individuals in this system enjoy access to very good health and social welfare coverage, while other individuals (especially those who are either unattached or less attached to an employer) frequently lack access to benefits such as paid sick or parental leave. If, as expected, the nature of work continues to move away from the exclusive employer-employee relationship that became the norm in the 20th century, the social safety net programs that mandate employer-provided benefits will reach an ever-shrinking portion of the labor force.

Bill 60-14

Bill 60-14 would 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. Earned sick and safe leave is paid leave away from work that can be used for the injury or illness of the employee or the employee's immediate family or due to domestic violence suffered by the employee or a member of the employee's immediate family. An employer could provide paid time off that can be used by the employee for any purpose to satisfy the earned sick and safe leave requirement of the Bill.

Bill 60-14 would require an employer to provide earned sick and safe leave at a rate of at least 1 hour for every 30 hours an employee works in the County up to 56 hours in a calendar year. An employee would have to be paid for earned sick and safe leave at the same rate and with the same benefits as the employee normally earns. A tipped employee would have to be paid at least the County minimum wage for each hour the employee uses earned sick and safe leave.

Public Hearing

Nineteen of the 28 speakers at the January 29 public hearing supported the Bill. The other 9 speakers opposed the Bill. Representatives of the County Commission on Aging (©60) and the County Commission for Women (©61-63) supported the Bill as a much needed benefit for low wage workers in the County. The Job Opportunities Task Force (©64-67), the Public Justice Center (©68-70), Montgomery County Young Democrats (©71-72), Jews United for Justice (©73), SEIU Local 32BJ (©74-75), UFCW Union Local 400 (©76), MomsRising.org (©77), Business and Professional Women of Maryland (©78-79), and National Nurses United (©80-81), each had a representative testify in support of the Bill.

Representatives from the Greater Silver Spring Chamber of Commerce (©82-89), the Gaithersburg/Germantown Chamber of Commerce (©90-91), The Greater Bethesda-Chevy Chase

Chamber of Commerce (©92-93), the Montgomery County Chamber of Commerce (©94-95), the Community Services for Autistic Adults and Children (©96-97), the Maryland Motor Truck Association (©98), the Mid-Atlantic Petroleum Distributors, the Restaurant Association of Maryland (©99-100), and ConTemporaries, Inc. (©101-104) each opposed the Bill as an additional burden on small County businesses. Several of the business groups urged the Council not to enact a paid sick leave law for the County because competitors located in the rest of Maryland would not have to provide this benefit.

Wendy Chun-Hoon, Andy Kirschner (©105), Rabbi Charles Arian (©106), Fran Rothstein (©107-108), Laura Wallace (©109), and Marcellina Flores (©110-111) supported the Bill as individuals. Two small business owners in the County, Mimi Hassanein (©112) and Gabriela Miller also supported the Bill. Rachel Metz (©113) and Equality Maryland (©114) sent in written testimony supporting the Bill. Century Distributors, Inc. (©115-116), the Maryland Retailers Association (©117), the Sheet Metal and Air Conditioning Contractors' Mid-Atlantic Chapter (©118-120), and The Arc Montgomery County (©121) sent in written testimony opposing the Bill.

Many of the individuals and community groups supported mandatory paid sick leave as an important benefit that would permit low wage workers to stay home without losing pay or their job. Small businesses and chambers of commerce generally opposed the Bill, with special emphasis on the application of the Bill to very small employers and part-time workers with a flexible schedule. Finally, several County non-profit human services providers opposed the Bill because it would raise their cost of providing these services to the community.

Discussion

1. What is the fiscal and economic impact of the Bill?

OMB estimated a cost to implement the Bill at between \$628,946 and \$636,701 in FY16.¹ See ©52-59. Most of these costs would continue each year. The Bill would have a fiscal impact for both increased benefits for some County employees and cost to administer and enforce the new law. Although regular County employees accrue sick leave at a rate greater than required by the Bill, County employees are not currently eligible to use sick leave for some of the categories of safe leave. In addition, temporary and seasonal County employees would start earning paid sick leave at the rate required in the Bill. OMB estimated a need to add up to 18.6 new FTEs to cover the work not performed by employees taking advantage of the new paid sick and safe leave benefit. In addition, OMB estimated that the Office of Human Resources would need one additional position at either Grade 23 or Grade 25 to administer this new benefit.

OMB also estimated that changes to the MCTime and ERP systems to accommodate the new benefit would cost an additional \$165,906 in FY16. The Office of Human Rights would be responsible for enforcement. OMB estimated that no extra staff would be necessary to handle complaints and violations. However, this could change quickly if the number of complaints is

¹ The estimated fiscal impact did not assume creation of a new Montgomery County Department of Labor Regulation. However, it is possible that continued local regulation of labor will create a need for a cabinet-level department capable of enforcing local labor regulation.

greater than expected. Without additional staff, the time for investigating and resolving all complaints by the Office of Human Rights is likely to increase.²

Finance was unable to find survey data on how many employees working in the County do not have paid sick leave. However, using national data and looking at both size of businesses and industry sectors in the County, Finance estimated that between 89,217 and 91,051 employees are working in the County without paid sick leave. Assuming that each employee earns the County minimum wage of \$8.40 per hour and uses the maximum of 56 hours of paid leave each year, Finance estimated the cost to County businesses would be between \$41.95 million and \$42.82 million per year.³ These costs could have a positive economic impact on low wage workers and a negative impact on County business income. To the extent businesses are able to pass these increased costs on to customers, the Bill could have a negative economic impact on the County.

2. What portion of workers have paid sick leave?

The U.S. Bureau of Labor Statistics reported, in 2014, that 61% of workers in private-industry businesses have paid sick leave, while 89% of workers in state and local governments have paid sick leave.⁴ Private-industry businesses with fewer than 100 workers provide 52% of workers with paid sick leave; in contrast, private employers with more than 100 employees provide 72% of employees with paid sick leave. Private industry provides 74% of full time workers with paid sick leave, whereas only 24% of part time workers receive the benefit. Nonunion employees are less likely to have paid sick leave than union employees. Low wage workers are much less likely than high wage workers to benefit from paid leave. See *National Compensation Survey, March 2014* at © 122-127.

3. What are the expected benefits of a paid sick leave law?

The absence of paid sick leave inevitably forces part-time and low wage employees to choose between working sick, and thereby spreading contagious diseases, or losing much needed pay.⁵ An employee who comes to work with a contagious illness increases the risk of spreading the disease to fellow workers, customers, and the general public. A part-time or low wage employee who has significant contact with the public or the food supply and who chooses to work while sick can contribute to the spread of contagious disease.

A paid sick leave law will increase the number of workers with paid sick leave. The effect of a paid sick leave law depends upon both the coverage of the bill and also the compliance by employers. The DC Auditor's 2013 review of the Accrued Sick and Safe Leave Act of 2008 found

² Without adding more investigators to the Office of Human Rights, enforcement is likely to be sporadic and ineffective.

³ Finance assumed that all of the cost to provide paid sick leave accrues to the employer. However, it is likely that some employers already have a paid vacation or paid time off benefit that could be converted to paid sick leave to comply with the Bill at little or no cost.

⁴ Workers in private industry are much more likely to have paid vacation time (77%) and paid holidays (76%) than paid sick leave (61%).

⁵ According to the White House Council of Economic Advisors (*The Economics of Paid and Unpaid Leave, 2014*), 23% of workers took paid or unpaid leave during a typical week. An additional 4.1% of workers reported they wanted to take leave but could not do so. The most common reasons reported for not being able to take leave included "too much work" (26%) and "could not afford loss in income" (19%) and "feared losing job" (12%).

that of surveyed employers, the percentage of employers providing paid sick leave only increased from 50% in 2007 to 68% in 2012.

A review of Seattle's paid sick leave ordinance indicates that overall, the percentage of employers providing paid sick leave increased from 67% in 2012 to 76% in 2013, though coverage by employers in the food and accommodation sector increased from 14% providing the benefit when the requirement was imposed to 78% providing the benefit one year later. Overall, about 61% of surveyed employers in Seattle offer leave as required one year after the law went into effect. *Implementation and Early Outcomes of the City of Seattle Paid Sick Time Ordinance*. See Executive Summary at ©128.

4. What is the cost to an employer of providing paid leave?

Nationally, the average total cost of compensation for workers in private industry is \$31.32 per hour. Bureau of Labor Statistics National Compensation Survey (December, 2014). Of that amount, \$21.72 is wage and salary compensation, and \$2.16 is paid leave (sick leave, vacation leave, holiday leave, and personal leave). Of the \$2.16, paid sick leave is \$0.26 compared to \$1.13 for paid vacation leave. Since both paid sick leave and paid vacation leave are generally tied to wages, this difference probably indicates that many more employers offer paid vacation time than paid sick time, and may also reflect that among employers that offer both benefits, it is common to offer more paid vacation leave than paid sick leave.

The employer cost of paid leave (sick leave, vacation leave, holiday leave, personal leave) is related to the wage and salary compensation for the employer's employees. Occupations or industries with higher wages or salaries are associated with higher employer costs of paid leave. According to the Bureau of Labor Statistics (BLS), private industry paid leave benefit costs were highest in management and professional occupations, with an average hourly cost of \$4.67 per hour worked (8.4% of total compensation). In contrast, the employer cost of paid leave for service occupations was only \$0.56 per hour worked, or 3.9% of total compensation. Similarly, the employer costs ranged from a high of \$4.82 per hour worked in the information industry (8.7% of total compensation), to a low of \$0.41 per hour worked in leisure and hospitality (3.1% of total compensation).

Private industry employees in bargaining units not only have higher wage and salary compensation, but also have benefits that comprise a significantly larger share of total compensation costs (40.3% of total compensation for union employees, versus 29.2% for nonunion employees). However, that cost difference is mostly attributable to retirement and insurance. The cost associated with paid leave (per hour of work) in private industry is \$3.25 for union labor (7.0% of total compensation) as compared to \$2.05 for nonunion labor (6.9% of total compensation).

Establishment size is also a factor. In private industry establishments with 49 or fewer employees, paid leave costs \$1.43 per hour worked (of which \$0.16 is the cost of paid sick leave), whereas in private industry establishments with more than 500 employees paid leave costs \$3.87 per hour worked (\$0.52 of which reflects the cost of paid sick leave).

5. How have employers responded to sick leave mandates in other jurisdictions?

Some employers may seek to cover any costs associated with paid sick leave by increasing consumer prices or reducing the cost of non-labor inputs, while other employers may seek to cover the costs of paid sick leave by reducing labor costs (e.g. by reducing the size or frequency of wage increases or by reducing other employment benefits).

The Urban Institute's study *Employers' Perspectives on San Francisco's Paid Sick Leave Ordinance* (see ©19-37) represents the most informative study to date of a local paid sick leave ordinance. Among the relevant findings are the following:

- Generally speaking, the employer experience in San Francisco indicated that the cost of the requirement was relatively small in comparison to other labor-related mandates (such as the increase in the minimum wage). Reasons for the minimal impact included having few affected employees or adjusting only slightly the total number of paid days off (through substituting sick days for vacation days or making relatively minor adjustments to accrual rates).
- About half of the employers interviewed tried to offset or minimize their increased labor costs—for example, canceling or delaying planned wage increases, eliminating end of year payout for unused vacation time, reducing paid vacation time or reducing bonuses.
- Small and medium sized employers were more affected by the mandate than larger employers, and also reported more difficulty administering the law (because, for example, they were less likely to have sophisticated payroll systems). Larger employers were better able to absorb the cost and track or administer the mandated benefit.
- In terms of offsetting benefits, few employers reported any early benefits from reduced absenteeism, lower turnover, or improved employee morale as a result of the paid sick leave ordinance.⁶

Seattle employers surveyed reported modest but non-negligible impacts on their businesses. “Most believed the Ordinance had little to no effect on customer service, employee relations, or profitability. A minority (17%) thought the Ordinance made them less profitable.”

6. How would the paid sick leave law affect small businesses?

The public hearing testimony from the Chambers of Commerce focused on the problems the Bill would cause small businesses with employees working in the County. Large businesses are more likely to have leave policies that comply with the Bill and, more importantly, a central personnel system that is already established to track leave earned and used. A small business that does not have an electronic tracking system for timesheets and leave would have to set up a system to comply with the Bill. Although we do not have any statistics showing the number of businesses of different sizes that do not have paid leave policies already, it is logical to assume that smaller businesses are less likely to provide paid leave for their employees. To the extent that this

⁶ When all or most employers are required to provide paid sick leave, then paid sick leave ceases to be a factor affecting employee turnover/loyalty.

assumption is true, the Bill would have an adverse effect on the competitive costs incurred by a small business compared to a large business that already complies with the Bill.

7. How would the paid sick leave law affect restaurants?

The Restaurant Association of Maryland testified (©99-100) that the restaurant industry has developed a system of using part-time employees with a flexible schedule. If an employee needs to take a sick day, the employee is often scheduled to work another day as a substitute. Since most restaurant jobs are coverage jobs where an absent employee must be replaced on the shift, a restaurant would be forced to pay for two people to cover one shift if one employee calls in sick. This differs from many office jobs where an absent employee simply makes up the work when the employee returns to work. The Bill would require a restaurant to pay a tipped employee the full County minimum wage for hours missed while on sick or safe leave. This would, essentially, require the employer to pay the employee for tips not received by the employee or the employer when the employee is on sick or safe leave. However, a tipped employee who regularly earns significantly more than the County minimum wage in tips may prefer to be rescheduled for a different shift rather than be paid the County minimum wage.

One of the underlying reasons for the Bill is concern that a food service worker would be forced to come to work sick and thereby spread disease because the employer does not provide sick leave. The Restaurant Association pointed out that COMAR already prohibits a food service handler from working with food while sick. See COMAR §10.15.03.14.

8. How would the paid sick leave law affect the construction industry?

The Sheet Metal and Air Conditioning Contractors' Mid-Atlantic Chapter (©118-120) opposed the application of the Bill to their industry. They argued that the one-size-fits-all approach in the Bill does not fit the skilled construction labor market. Most work performed on large commercial construction projects is done by small subcontractors who hire skilled labor for various jobs in the local area. A skilled worker is often employed at different job sites in different jurisdictions on the same day. The Chapter argued that keeping track of the hours worked in the County by a worker assigned to different job sites throughout the day or week would be difficult and time consuming. They pointed out that many of these workers are covered by a collective bargaining agreement and routinely earn significantly more than the County minimum wage. Any worker on a Federal, State, or County project would already be covered by either the Federal Davis-Bacon Act or the State or County Prevailing Wage Law that establishes minimum wages and benefits for each classification of skilled labor.

If the Committee wants to exempt construction workers, it could be done either by industry, or more effectively, by limiting the Bill to employees who earn a lower hourly wage.

9. How would the County enforce the law?

The new law would be enforced by the County Office of Human Rights (OHR). There is no equivalent Federal or State law. Bill 60-14 would authorize a person to file a complaint with the Office of Human Rights. The complaint would be handled in the same manner as a complaint alleging a violation of the County employment discrimination laws. The Director has authority to issue subpoenas and investigate the complaint. If the Director finds reasonable cause to believe a violation occurred, the Director must try to settle the case. If unable to settle the case, the Director must certify the complaint to the Human Rights Commission, which must appoint a case review board to consider and decide the complaint. If the Director does not find reasonable cause to believe a violation has occurred, the complainant may appeal the Director's decision to the Commission. An adjudicatory hearing may be conducted by the Commission case review board or a hearing examiner.

The Commission has the authority to award compensatory damages to the complainant, including reasonable attorney's fees. The Commission also has the authority to order the defendant employer to pay a civil fine to the County of up to \$500 for each violation. The Commission's final decision is subject to judicial review on the record by the Circuit Court.

OHR has made progress in recent years to reduce the time to close a case from 48 months to 24 months. However, the Council did not add any new investigator positions for OHR in the FY2016 operating budget. The Office currently has 4 investigators and 1 manager who performs some investigations to handle all employment, housing, and public accommodation discrimination claims, along with claims involving, displaced service workers, the new Fair Criminal Records Standard law, the new Retaliation for Wage Disclosure law, and the County Minimum Wage law.⁷

An investigation of a sick and safe leave claim would be complicated. An investigator would have to determine if the employee worked in the County, if the employer properly calculated the sick leave earned based upon the number of hours worked in the County, and the circumstances surrounding the employee's absence from work. If the employee was disciplined or fired, the investigator would need to determine if the adverse employment action was due to a failure to comply with this law or some other legitimate reason. An investigator might also need to determine if the employer retaliated against the employer for exercising the employee's right to earned sick and safe leave or for simply advocating for compliance with the law.

Proper enforcement should also include a public information campaign to inform employers and employees of the new law and periodic surveys of employers to determine compliance. For example, a recent survey of the Seattle law one year after it was enacted found that 39% of the employers *who responded to the survey* still did not provide sick and safe leave for part-time employees. See ©128. Four years after the District of Columbia law was enacted, the District's auditor found that the District Government had not complied with the law for its own employees and that the percentage of employers providing paid sick leave only increased from 50% in 2007 to 68% in 2012. See ©129-130.

⁷ Minimum wage claims can be referred to the State Department of Labor, Licensing, and Regulation.

10. Would the County sick and safe leave law apply in municipalities?

As with most County laws, the County sick and safe leave law would not automatically be applicable in certain municipalities. Md. Local Gov't Code, §4-111 provides that a municipality can exempt itself from certain types of County laws. The County Attorney's Office created a chart that lists the Chapters of the County Code from which each municipality has exempted itself.⁸ According to the most recent chart, there are 5 municipalities in which the Bill would **not** apply unless they expressly opt in: Barnesville, Chevy Chase Village, Glen Echo, Laytonsville, and Poolesville.⁹ The Bill would apply in all of the other municipalities unless they expressly opt out, including Rockville and Gaithersburg. We would note that with the possible exception of Poolesville, there are few large employers located in these municipalities.

The State law does permit the County to enact a law that applies in each municipality under a specific emergency procedure with 6 votes. However, the Council would have to hold a new public hearing after giving each municipality 30 days actual notice, and make a legislative finding that "there will be a significant adverse impact on the public health, safety, or welfare affecting residents of the County in unincorporated areas if the law does not apply in all municipalities." This finding by the Council would be subject to judicial review in the Circuit Court. Furthermore, the County Code contains the following provision in §1-203:

- (f) *Emergency override authority.* The County declares that it will not exercise the authority granted to it by the General Assembly under section 2B(b)(3), article 23A, Annotated Code of Maryland 1957, as amended.¹⁰

Therefore, in order for the Bill to apply in all municipalities, the Council would either need to amend §1-203 of the County Code or add a section to Bill 60-14 expressly voiding this provision for this Bill only to use the emergency override authority granted under State law.

11. Would the Bill apply to workers who work in the County for an employer located outside of the County or who work outside the County for an employer located in the County?

To be a valid local law, the Bill must apply only to work performed in the County by an employer who is located in the County. The dual requirement that the employer be located in the County and the work be performed in the County would apply to any municipality that has exempted itself from this law as well as other counties inside and outside of Maryland. This could result in confusion among employers and employees. As suggested by some of the testimony, an employer with locations inside and outside the County may have to create a system to track hours worked by each employee in the County to properly calculate the amount of earned sick and safe leave.¹¹

⁸ The Chart can be found at: <http://www.montgomerycountymd.gov/cat/services/index.html>

⁹ Although the County Attorney's chart indicates that Takoma Park exempted itself from Chapter 27, the Takoma Park City Attorney told Council staff that the City agreed to be bound by Chapter 27 of the County Code and therefore this minimum wage Bill.

¹⁰ This code section was recently re-codified as Md. Local Gov't Code §4-111.

¹¹ Of course, an employer can avoid this confusion by providing the minimum sick and safe leave to all of its employees without regard to place of employment.

Issues for Committee Action

1. The County Attorney's Bill review memorandum.

The County Attorney's Bill review memorandum (©131-133) makes several suggested amendments.

(a) The Bill should address potential conflicts between the requirements of the law and an employment contract or a collective bargaining contract. **Council staff recommendation:** add the following after line 181:

(g) This Article must not be construed to:

- (1) require an employer to compensate an employee for unused earned sick and safe leave when the employee leaves the employer's employment;
- (2) prohibit an employer from adopting or retaining a general paid leave policy that meets the minimum requirement of this Article; or
- (3) affect a provision of a contract, a collective bargaining agreement, an employee benefit plan, or any other agreement that requires the employer to provide general paid leave benefits that meet the minimum requirements of this Article.

(b) Lines 214-216 permit an employee to use safe leave "during the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking."

This provision is copied from the State law that was not enacted. It could cause significant hardship for a small employer, but it would be limited to the amount of paid sick or safe leave an employee may take in one year – 80 hours. **Council staff recommendation:** no change necessary.

(c) Change the phrase "disclose details" on line 227 to "disclose specific details" to avoid a conflict with the employer's right to request verification of the use of the leave if an employee uses more than 3 consecutive days. **Council staff recommendation:** add the language suggested on line 227.

(d) Technical changes. Add an "or" at the end of line 266 and delete "who was" on line 278. **Council staff recommendation:** make the technical changes suggested.

2. Should the paid sick leave law apply to workers earning high wages?

The primary purpose of the Bill is to ensure that an employee working in the County may earn paid leave to be used to miss work for specific reasons. Most of the workers in the County who cannot afford to miss work when sick (or for other reasons described in the Bill) are low wage workers. The Bill mandates a one-size-fits-all paid leave program that works well for a typical

retail store worker or an office worker. However, it could create unique problems in certain industries, such as for skilled construction labor, or for certain types of highly paid employees who do not need or require paid leave, such as professional consultants who are paid based upon billable hours. One solution would be to exclude an employee who is paid more than 3 times the County minimum wage, which would be \$25.20 per hour, or some other multiple of the County minimum wage. **Council staff recommendation:** amend the Bill to exclude an employee who earns more than 3 times the County minimum wage as follows:

Amend lines 83-91 as follows:

Employee does not include an individual who:

- (1) (A) does not have a regular work schedule with the employer;
 - ~~[(2)]~~ (B) contacts the employer for work assignments and is scheduled to work the assignments within 48 hours after contacting the employer;
 - ~~[(3)]~~ (C) has no obligation to work for the employer if the individual does not contact the employer for work assignments; and
 - ~~[(4)]~~ (D) is not employed by a temporary placement agency; or
- (2) is paid more than 300% of the County minimum wage established under Section 27-68.

3. Should the paid sick leave law apply to workers covered by a collective bargaining agreement?

Federal law permits private sector employees to organize and bargain collectively with their employers. These labor laws are designed to even the bargaining power between the employer and the workers when negotiating wages and benefits. Paid leave is a mandatory subject of bargaining. Should the government step in and mandate this benefit if the parties do not negotiate it?

The Bill would make minimum paid sick and safe leave similar to the County minimum wage. The same public policy reasons for covering workers who are not governed by a collective bargaining agreement would apply to a worker covered by a collective bargaining agreement who does not earn any paid leave. While Council staff recommends limiting the Bill to low wage workers, it is these same low wage workers who are unlikely to be able to bargain for adequate leave even if they belong to a union. **Council staff recommendation:** do not exclude employees covered by a collective bargaining agreement.

4. Should the paid sick leave law apply to employers with fewer than 10 employees?

HB 385, as introduced, would have required an employer with more than 9 employees to provide paid sick and safe leave. An employer with fewer than 10 employees would only be required to provide unpaid sick and safe leave. Bill 60-14 would require an employer with 1 or more employees to provide paid sick and safe leave. The District of Columbia law requires an employer with fewer than 25 employees to provide less sick leave per hour worked (1 hour for every 87 hours worked). An employer with 25-99 employees must provide 1 hour for every 43 hours worked, and an employer with 100 or more employees must provide 1 hour for every 37 hours worked.

These lower requirements for small employers recognize the additional accounting and coverage problems that Bill 60-14 may create for an employer with very few employees. However, creating a lower standard for small employers would add the issue of how many employees an employer has at any time to the investigation of a complaint. Requiring unpaid sick and safe leave for very small employers does not relieve them from the accounting problem of tracking the leave earned and used, but would avoid the problem of paying 2 people to cover the same shift. It would reduce, but not eliminate, the cost of the new benefit on these employers. One size does not fit all here. Requiring unpaid leave for an employer with fewer than 10 employees is a reasonable compromise. **Council staff recommendation:** amend the Bill to require only unpaid leave for an employer with fewer than 10 employees.

5. Business requests.

We received several requested amendments from businesses that have not already been addressed. We will address them here:

- (a) Several businesses asked for a clarification that an employer's paid time off (PTO) policy that provides the minimum number of hours of paid leave required by the Bill would be sufficient as long as the PTO could be used for the same reasons as sick and safe leave. Council staff believes that the language in the definition of earned sick and safe leave on lines 78-79 at ©4 already makes this clear. In addition, the language Council staff recommended under Issue 1a above would also clarify this. **Council staff recommendation:** no additional language needed.
- (b) The Bill would permit an employee to carry over up to 56 hours of earned sick and safe leave to the next calendar year. Several businesses requested that this number be reduced to 40 hours.
- (c) The Bill would require an employer to give an employee a written statement of leave earned and used with each pay stub in lines 241-243. Several businesses requested an amendment that would permit an employer to provide notice through an online system that can be accessed by the employee. This is reasonable. **Council staff recommendation:** amend lines 241-243 at ©11 as follows:

(g) An employer must provide an employee with a written statement of available earned sick and safe leave each time the employer pays

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

- (d) The Bill would require 1 hour of leave for every 30 hours worked without a mandatory minimum hours worked during the year. Several businesses requested an amendment that would exclude an employee who works less than 80 hours during the calendar year or less than a certain number of hours per week. HB385 would have excluded an employee who regularly works 8 hours or less per week. An employee with this type of schedule is less likely to be forced to work when sick. **Council staff recommendation:** amend the Bill to add these exclusions.
- (e) Lines 172-175 at ©8 would require an employer to permit an employee who begins working outside of the County to use earned sick and safe leave accumulated for time worked in the County. Several businesses questioned the legal authority of the County to control the benefits provided to an employee working outside of the County. This is part of the problem with enacting a law of this type on a County-wide basis. The County's authority is limited to enacting a local law affecting work performed in the County. The leave would be earned for work in the County. Although it is not free from doubt, Council staff believes this requirement is within the County's authority.
- (f) The Bill would require an employer to permit an employee to take leave in the smallest increment permitted by the employer, but must not require the employee to take leave in increments of more than 1 hour. See lines 237-240 at ©10-11. Several businesses requested an amendment to permit an employer to require an employee to take leave in increments of at least 4 hours.
- (g) The Bill, as introduced, would take effect on October 1, 2015. Several businesses requested that the effective date for an employee covered by a collective bargaining agreement that provides the minimum number of hours of leave take effect after the termination of the collective bargaining agreement. This change would avoid requiring an employer to renegotiate a collective bargaining agreement during its term to comply with the Bill.
- (h) The Bill would require an employer to reinstate any unused earned sick and safe leave that the employee had when the employee left the employment upon rehire. See lines 176-179 at ©8. Several businesses requested an amendment to eliminate this provision. This would require an employer to track unused leave for employees who are no longer with the company and could discourage an employer from hiring back a former employee.

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Andy Kirschner	105
Rabbi Charles L. Arian	106
Fran Rothstein	107
Laura Wallace	109
Marcellina Flores	110
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Bill No. 60-14
Concerning: Human Rights and Civil Liberties – Earned Sick and Safe Leave
Revised: June 2, 2015 Draft No. 6
Introduced: November 25, 2014
Expires: May 25, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

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:

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

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

36 * * *

37 **27-8. Penalties and relief.**

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

42 * * *

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

46 * * *

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

50 * * *

51 **ARTICLE XIII. Earned Sick and Safe leave.**

52 **27-76. Findings and Definitions.**

53 (a) Findings.

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

70 (b) Definitions. As used in this Article:

71 Abuse has the meaning defined in Section 4-501 of the Family Law
 72 Article of the Maryland Code, as amended.

73 Director means the Executive Director of the Office of Human Rights
 74 and includes the Executive Director's designee.

75 Domestic violence means abuse against a person eligible for relief.

76 Earned sick and safe leave means paid leave away from work that is
 77 provided by an employer under §27-77 and can be used for the purposes
 78 described in §27-79. Earned sick and safe leave includes paid time off
 79 that can be used by the employee for any purpose.

80 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 an individual
 84 who:

- 85 (1) does not have a regular work schedule with the employer;
 86 (2) contacts the employer for work assignments and is scheduled to
 87 work the assignments within 48 hours after contacting the
 88 employer;
 89 (3) has no obligation to work for the employer if the individual does
 90 not contact the employer for work assignments; and
 91 (4) is not employed by a temporary placement agency.

92 Employer means any person, individual, proprietorship, partnership,
 93 joint venture, corporation, limited liability company, trust, association,
 94 or other entity operating and doing business in the County that employs
 95 1 or more persons in the County in addition to the owners. Employer
 96 includes the County government, but does not include the United States,
 97 any State, or any other local government.

98 Family member means:

- 99 (1) a biological child, adopted child, foster child, or stepchild of the
 100 employee;
 101 (2) a child for whom the employee has legal or physical custody or
 102 guardianship;
 103 (3) a child for whom the employee is the primary caregiver;
 104 (4) a biological parent, adoptive parent, foster parent, or stepparent of
 105 the employee or the employee's spouse;
 106 (5) the legal guardian of the employee;

- 107 (6) an individual who served as the primary caregiver of the
 108 employee when the employee was a minor;
 109 (7) the spouse of the employee;
 110 (8) a grandparent of the employee;
 111 (9) the spouse of a grandparent of the employee;
 112 (10) a grandchild of the employee;
 113 (11) a biological, adopted, or foster sibling of the employee; or
 114 (12) the spouse of a biological, adopted, or foster sibling of the
 115 employee.

116 Health care provider means an individual licensed under State law to
 117 provide medical services.

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

120 Sexual assault means:

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

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

130 Tipped employee means an employee who:

- 131 (1) is engaged in an occupation in which the employee customarily
 132 and regularly receives more than \$30 each month in tips;

133 (2) has been informed by the employer about the provisions of this
 134 Section; and

135 (3) has kept all of the tips that the employee received.

136 **27-77. Earned Sick and Safe Leave Required.**

137 (a) Earned sick and safe leave. An employer must provide each employee
 138 earned sick and safe leave for work performed in the County paid at the
 139 same rate and with the same benefits as the employee normally earns.
 140 A tipped employee must be paid at least the County minimum wage
 141 required under Section 27-68 for each hour the employee uses earned
 142 sick and safe leave.

143 (b) Rate of Accrual. The earned sick and safe leave provided under
 144 subsection (a) must accrue at a rate of at least 1 hour for every 30 hours
 145 an employee works in the County, except an employer must not be
 146 required to allow an employee to:

147 (1) earn more than 56 hours of earned sick and safe leave in a
 148 calendar year; or

149 (2) use more than 80 hours of earned sick and safe leave in a
 150 calendar year.

151 (c) Retaliation prohibited. A person must not:

152 (1) retaliate against any person for:

153 (A) lawfully opposing any violation of this Article; or

154 (B) filing a complaint, testifying, assisting, or participating in
 155 any manner in an investigation, proceeding, or hearing
 156 under this Article; or

157 (2) obstruct or prevent enforcement or compliance with this Article.

158 **27-78. Minimum Earned Sick and Safe Leave Standards.**

- 159 (a) An employer may award earned sick and safe leave as the leave accrues
 160 during the calendar year or may award the full amount that an employee
 161 would earn over the entire calendar year at the beginning of a calendar
 162 year.
- 163 (b) To calculate the rate of accrual of earned sick and safe leave for an
 164 employee who is exempt from the overtime provisions of the Federal
 165 Fair Labor Standards Act, the employer must assume the employee
 166 worked the number of hours worked in a normal workweek up to 40
 167 hours each workweek.
- 168 (c) An employer must permit an employee to carry the balance of any
 169 unused earned sick and safe leave over to the next calendar year, but an
 170 employer must not be required to permit an employee to carry over
 171 more than 56 hours of unused earned sick and safe leave.
- 172 (d) If an employee begins working outside the County for the same
 173 employer, the employer must permit the employee to use the earned
 174 sick and safe leave that accrued while working for the employer in the
 175 County.
- 176 (e) If an employee is rehired by an employer to work in the County within
 177 12 months after leaving the employment, the employer must reinstate
 178 any unused earned sick and safe leave that the employee had when the
 179 employee left the employment.
- 180 (f) An employer may permit an employee to use earned sick and safe leave
 181 before the amount needed by the employee accrues.
- 182 **27-79. Use of Earned Sick and Safe Leave.**
- 183 (a) An employee may use earned sick and safe leave:
- 184 (1) to care for or treat the employee's mental or physical illness,
 185 injury, or condition;

- 186 (2) to obtain preventive medical care for the employee or the
187 employee's family member;
- 188 (3) to care for a family member with a mental or physical illness,
189 injury, or condition;
- 190 (4) if the employer's place of business has closed by order of a
191 public official due to a public health emergency;
- 192 (5) if the school or child care center for the employee's family
193 member is closed by order of a public official due to a public
194 health emergency;
- 195 (6) to care for a family member if a health official or health care
196 provider has determined that the family member's presence in the
197 community would jeopardize the health of others because of the
198 family member's exposure to a communicable disease; or
- 199 (7) if the absence from work is due to domestic violence, sexual
200 assault, or stalking committed against the employee or the
201 employee's family member and the leave is used:
- 202 (A) by the employee to obtain for the employee or the
203 employee's family;
- 204 (i) medical attention needed to recover from a physical
205 or psychological injury due to domestic violence,
206 sexual assault, or stalking;
- 207 (ii) services from a victim services organization related
208 to the domestic violence, sexual assault, or stalking;
209 or
- 210 (iii) legal services, including preparing for or
211 participating in a civil or criminal proceeding related

212 to the domestic violence, sexual assault, or stalking;
213 or

214 (B) during the time that the employee has temporarily
215 relocated due to the domestic violence, sexual assault, or
216 stalking.

217 (b) To use earned sick and safe leave, an employee must:

218 (1) request leave from the employer as soon as practicable after the
219 employee determines that the employee needs to take leave;

220 (2) notify the employer of the anticipated duration of the leave; and

221 (3) comply with any reasonable procedures established by the
222 employer when requesting and taking leave.

223 (c) An employer must not require an employee who requests earned sick
224 and safe leave to search for or find an individual to take the employee's
225 place while the employee takes leave.

226 (d) An employer must not require an employee to:

227 (1) disclose details of the mental or physical illness, injury, or
228 condition of the employee or the employee's family member; or

229 (2) provide as certification any information that would violate the
230 Federal Social Security Act or the Federal Health Insurance
231 Portability and Accountability Act.

232 (e) By mutual consent of the employee and the employer, the employee
233 may work additional hours or trade shifts with another employee during
234 a pay period to make up the amount of work hours that the employee
235 missed for which the employee could have used earned sick and safe
236 leave.

237 (f) An employee may take earned sick and safe leave in the smallest
238 increment that the employer's payroll system uses to account for

239 absences or work time, except that an employee must not be required to
 240 take earned sick and safe leave in an increment of more than 1 hour.

241 (g) An employer must provide an employee with a written statement of
 242 available earned sick and safe leave each time the employer pays wages
 243 to the employee.

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

247 **27-80. Notice.**

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

250 (b) The notice must include:

251 (1) a statement of how earned sick and safe leave is accrued;

252 (2) the permitted uses of earned sick and safe leave;

253 (3) a statement that the employer must not retaliate against an
 254 employee for exercising the rights granted by this Article; and

255 (4) information about the employee's right to file a complaint with
 256 the Director for a violation of any rights granted by this Article.

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

260 (d) An employer may provide notice by:

261 (1) displaying the model notice or another notice containing the same
 262 information in a conspicuous and accessible area at each of the
 263 employer's work locations in the County;

- 264 (2) including the model notice or another notice containing the same
 265 information in an employee handbook or other written guidance
 266 distributed to all employees;
 267 (3) distributing the model notice or another notice containing the
 268 same information to each employee when the employee is hired.

269 **27-81. Records.**

- 270 (a) An employer must keep, for at least 3 years, a record of:
 271 (1) earned sick and safe leave accrued by each employee; and
 272 (2) earned sick and safe leave used by each employee.
 273 (b) After giving the employer notice and determining a mutually agreeable
 274 time for the inspection, the Director may inspect a record kept under
 275 subsection (a) for the purposes of determining whether the employer is
 276 complying with this Article.

277 **27-82. Enforcement.**

- 278 (a) A covered employee who was who did not receive earned sick and safe
 279 leave in violation of this Article may file a complaint with the Director
 280 under Section 27-7.
 281 (b) The County Executive may delegate the authority to enforce this Article
 282 to a State agency that is legally authorized to enforce the County earned
 283 sick and safe leave requirements.

284 **Sec. 2. Transition.**

285 Notwithstanding Section 27-77, as added in Section 1, earned sick and
 286 safe leave must begin to accrue for all work performed in the County on or after
 287 October 1, 2015. An employer must not be required to permit an employee to accrue
 288 earned sick and safe leave for hours worked before October 1, 2015.

289 **Sec. 3. Effective Date.**

290 This Act takes effect on October 1, 2015.

LEGISLATIVE REQUEST REPORT

Bill 60-14

Human Rights and Civil Liberties – Earned Sick and Safe Leave

DESCRIPTION:	Bill 60-14 would 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. Earned sick and safe leave is paid leave away from work that can be used for the injury or illness of the employee or the employee's immediate family or due to domestic violence suffered by the employee or the employee's immediate family. Earned sick and safe leave would also include paid time off that can be used by the employee for any purpose.
PROBLEM:	Many employees in the County are forced to come to work when they are ill because they do not have paid sick leave.
GOALS AND OBJECTIVES:	The goal is to reduce the number of employee who are forced to come to work when ill or send sick children to school or day care because they have no paid sick leave.
COORDINATION:	Office of Human Rights
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	Local paid sick leave laws have been enacted in several jurisdictions, including the District of Columbia and San Francisco.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Compensatory damages and equitable relief.

Fact Sheet #28: The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. This fact sheet provides general information about which employers are covered by the FMLA, when employees are eligible and entitled to take FMLA leave, and what rules apply when employees take FMLA leave.

COVERED EMPLOYERS

The FMLA only applies to employers that meet certain criteria. A **covered employer** is a:

- Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
- Public agency, including a local, state, or Federal government agency, regardless of the number of employees it employs; or
- Public or private elementary or secondary school, regardless of the number of employees it employs.

ELIGIBLE EMPLOYEES

Only eligible employees are entitled to take FMLA leave. An **eligible employee** is one who:

- Works for a *covered employer*;
- Has worked for the employer for at least *12 months*;
- Has at least *1,250 hours* of service for the employer during the 12 month period immediately preceding the leave*; and
- Works at a location where the employer has at least *50 employees within 75 miles*.

* Special hours of service eligibility requirements apply to airline flight crew employees. See Fact Sheet 28J: Special Rules for Airline Flight Crew Employees under the Family and Medical Leave Act.

The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count *unless* the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service. See "FMLA Special Rules for Returning Reservists".

LEAVE ENTITLEMENT

Eligible employees may take up to **12 workweeks** of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

An eligible employee may also take up to **26 workweeks** of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons. *See Fact Sheets 28F: Qualifying Reasons under the FMLA and 28M: The Military Family Leave Provisions under the FMLA.*

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

NOTICE

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. *See Fact Sheet 28E: Employee Notice Requirements under the FMLA .*

Covered employers must:

- (1) Post a notice explaining rights and responsibilities under the FMLA (and may be subject to a civil money penalty of up to \$110 for willful failure to post);
- (2) Include information about the FMLA in their employee handbooks or provide information to new employees upon hire;

- (3) When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA-qualifying reason, provide the employee with notice concerning his or her eligibility for FMLA leave and his or her rights and responsibilities under the FMLA; and
- (4) Notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employee's FMLA entitlement.

See Fact Sheet 28D: Employer Notice Requirements under the FMLA.

CERTIFICATION

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. See Fact Sheet 28G: Certification of a Serious Health Condition under the FMLA. For information on certification requirements for military family leave, See Fact Sheet 28M(c): Qualifying Exigency Leave under the FMLA; Fact Sheet 28M(a): Military Caregiver Leave for a Current Servicemember under the FMLA; and Fact Sheet 28M(b): Military Caregiver Leave for a Veteran under the FMLA.

JOB RESTORATION AND HEALTH BENEFITS

Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy. Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave. See Fact Sheet 28A: Employee Protections under the Family and Medical Leave Act .

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent or reduced schedule FMLA leave or the taking of FMLA leave near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under the FLSA regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an eligible employee's use of FMLA leave.

ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any

proceeding, related to the FMLA. *See Fact Sheet 77B: Protections for Individuals under the FMLA*. The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

For additional information, visit our Wage and Hour Division Website:
<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

OFFICIAL NOTICE
(Post Where Employees Can Easily Read)

Accrued Sick and Safe Leave Act of 2008

(This poster includes provisions of the Earned Sick and Safe Leave Amendment Act of 2013, effective February 22, 2014)

REQUIRES EMPLOYERS IN THE DISTRICT OF COLUMBIA TO PROVIDE PAID LEAVE TO EMPLOYEES FOR THEIR OWN OR FAMILY MEMBERS' ILLNESSES OR MEDICAL APPOINTMENTS AND FOR ABSENCES ASSOCIATED WITH DOMESTIC VIOLENCE OR SEXUAL ABUSE.

EMPLOYERS REQUIRED TO COMPLY WITH THE ACT

Pursuant to the Accrued Sick and Safe Leave Act of 2008, all employers in the District of Columbia must provide paid leave to each employee, including employees of restaurants and bars and temporary and part-time employees.

ACCRUAL START DATE

Paid leave accrues at the beginning of employment, provided that the accrual need not commence prior to November 13, 2008 and provided that an employer need not allow accrual of paid leave for tipped restaurant or bar employees prior to February 22, 2014.

Paid leave accrues on an employer's established pay period.

ACCESSING PAID LEAVE

An employee must be allowed to use paid leave no later than after 90 days of service with the employer. An employee may use leave on short notice if the reason for leave is unforeseeable.

NUMBER OF HOURS ACCRUED

Accrual of paid leave is determined by the type of business, the number of employees an employer has, and the number of hours an employee works. For tipped employees of restaurants or bars, regardless of the number of employees the employer has, each tipped employee must accrue at least one (1) hour per 43 hours worked, up to five (5) days per calendar year. For all other employers, use the following chart:

If an employer has...	Employees accrue at least...	Not to Exceed...
100 or more employees	1 hour per 37 hours worked	7 days per calendar year
25 to 99 employees	1 hour per 43 hours worked	5 days per calendar year
Less than 25 employees	1 hour per 87 hours worked	3 days per calendar year

UNUSED LEAVE

Under this Act, an employee's accrued paid sick leave carries over from year to year. Employers do not have to pay employees for unused paid sick leave upon termination or resignation of employment.

EMPLOYEE PROTECTION

Under the Act, employees who assert their rights to receive paid sick leave or provide information or assistance to help enforce the Act are protected from retaliation.

ENFORCEMENT

The DC Department of Employment Services, Office of Wage and Hour can investigate possible violations, access employer records, enforce the paid sick leave requirements, order reinstatement of employees who are terminated, as a result of asserting rights to paid sick leave, order payment of paid sick leave unlawfully withheld, and impose penalties.

An employer who willfully violates the requirements of the Act shall be assessed a civil penalty in the amount of one thousand dollars (\$1,000) for the first offense, fifteen hundred dollars (\$1,500) for the second offense, and two thousand dollars (\$2,000) for the third and any subsequent offenses.

TO FILE A COMPLAINT OR FOR ADDITIONAL INFORMATION

To request full text of the Act, to obtain a copy of the rules associated with this Act, to receive the Act translated into other languages, or to file a complaint, visit www.does.dc.gov, call the Office of Wage and Hour at (202) 671-1880, or visit at 4058 Minnesota Avenue, N.E., Suite 4300, Washington, D.C. 20019. Complaints shall be filed within three (3) years after the event on which the complaint is based unless the employer has failed to post notice of the Act.

AVISO OFICIAL

(Publicar en un lugar en que pueda ser leído fácilmente por los empleados)

Ley de Licencia por Enfermedad y Seguridad Generada (ASSLA) de 2008

(Este afiche incluye disposiciones de la Ley Modificativa de Licencia por Enfermedad y Seguridad Generada de 2013, vigente desde el 22 de febrero 2014)

OBLIGA A LOS EMPLEADORES DEL DISTRITO DE COLUMBIA A OTORGAR LICENCIA PAGA A LOS EMPLEADOS EN CASO DE ENFERMEDAD O CONSULTAS MÉDICAS PROPIAS O DE SUS FAMILIARES Y DE AUSENCIAS RELACIONADAS CON VIOLENCIA DOMÉSTICA O ABUSO SEXUAL.

LOS EMPLEADORES QUE DEBEN CUMPLIR CON LA LEY

De conformidad con la Ley de Licencia por Enfermedad y Seguridad Generada de 2008 (Accrued Sick and Safe Leave Act of 2008), todos los empleadores del Distrito de Columbia deben otorgar licencia paga a todos sus empleados, incluyendo a los empleados de restaurantes y bares y a los empleados temporarios y de tiempo parcial.

FECHA DE INICIO DE LA GENERACIÓN

La licencia paga comienza a generarse al inicio del empleo, siempre que no deba comenzar a generarse antes del 13 de noviembre de 2008 y siempre que el empleador no deba permitir la generación de licencia paga para empleados de restaurante o bar con propina antes del 22 de febrero de 2014.

La licencia paga se acumula en el período de pago establecido por un empleador.

FECHA DE INICIO DE LA LICENCIA ACUMULADA

Deberá permitirse utilizar la licencia paga al empleado a más tardar a los 90 días de su servicio con el empleador. Un empleado podrá utilizar la licencia con un aviso con poca anticipación si el motivo de la licencia es imprevisible.

NÚMERO DE HORAS ACUMULADAS

La acumulación de la licencia paga se determina de acuerdo al tipo de negocio, el número de empleados con que cuenta el empleador y el número de horas trabajadas por el empleado. Para empleados de restaurantes y bares con propina, independientemente del número de empleados con que cuente el empleador, cada empleado con propina deberá acumular al menos una (1) hora cada 43 horas trabajadas, con hasta cinco (5) días por año calendario. Para el resto de los empleadores, se deberá utilizar la siguiente tabla:

Si un empleador cuenta con...	Los empleados acumulan al menos...	Sin exceder...
100 o más empleados	1 hora por cada 37 horas trabajadas	7 días por año calendario
25 a 99 empleados	1 hora por cada 43 horas trabajadas	5 días por año calendario
Menos de 25 empleados	1 hora por cada 87 horas trabajadas	3 días por año calendario

LICENCIA NO UTILIZADA

De acuerdo a esta Ley, la licencia con goce de pago devengada por un empleado se transfiere de un año al siguiente. Los empleadores no deberán pagar a los empleados por las licencias por enfermedad no utilizadas al momento de la terminación del empleo o renuncia al mismo.

PROTECCIÓN DEL EMPLEADO

De acuerdo a la Ley, los empleados que hagan valer sus derechos a recibir licencia por enfermedad paga o proporcionen información o asistencia para ayudar a hacer cumplir la Ley están protegidos contra represalias.

CUMPLIMIENTO DE DICHA LEY

El Departamento de Servicios de Empleo del Distrito de Columbia, Oficina de Salarios y Horas (DC Department of Employment Services, Office of Wage and Hour) puede investigar posibles violaciones, acceder a los registros de los empleadores, hacer cumplir las obligaciones de licencia por enfermedad paga, ordenar el reintegro de empleados que hayan sido despedidos como resultado de la afirmación de los derechos de licencia por enfermedad paga, ordenar el pago de licencias por enfermedad paga negadas ilegalmente e imponer sanciones.

Un empleador que intencionalmente viole los requisitos de la Ley será objeto de una multa civil por el importe de mil dólares (\$1,000) por la primera infracción, mil quinientos dólares (\$1,500) por la segunda infracción, y dos mil dólares (\$2,000) para la tercera infracción y subsiguientes.

PARA PRESENTAR UNA RECLAMACIÓN O POR INFORMACIÓN ADICIONAL

Para solicitar el texto completo de la Ley, para obtener una copia de las reglamentaciones asociadas a esta Ley, para recibir la Ley traducida a otros idiomas, o para presentar una reclamación, visite www.does.dc.gov, llame a la Oficina de Salarios y Horas (Office of Wage and Hour) al (202) 671-1880, o concorra personalmente a 4058 Minnesota Avenue, NE, Suite 4300, Washington, DC 20019. Las reclamaciones deberán ser presentadas dentro de los tres (3) años después del evento en el que se basa la reclamación a menos que el empleador haya omitido publicar el aviso de la Ley.

Employers' Perspectives on San Francisco's Paid Sick Leave Policy

*Shelley Waters Boots, Karin Martinson,
and Anna Danziger*

Low-Income Working Families
Paper 12

March 2009



The Urban Institute
2100 M Street, NW
Washington, DC 20037

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This report is part of the Urban Institute's Low-Income Working Families project, a multiyear effort that focuses on the private- and public-sector contexts for families' success or failure. Both contexts offer opportunities for better helping families meet their needs.

The Low-Income Working Families project is currently supported by The Annie E. Casey Foundation and The John D. and Catherine T. MacArthur Foundation.

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The nonpartisan Urban Institute publishes studies, reports, and books on timely topics worthy of public consideration. The views expressed are those of the authors and should not be attributed to the Urban Institute, its trustees, or its funders.

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EMPLOYERS' PERSPECTIVES ON SAN FRANCISCO'S PAID SICK LEAVE POLICY

Over the past several years, paid sick leave has become an important issue on the policy stage.¹ A 2004 report by the Institute for Women's Policy Research helped thrust sick leave into the spotlight when it found that 49 percent of all workers were unable to take paid sick leave for themselves or for sick family members (Lovell 2004). Other research has confirmed that an even greater share of the workforce—54 percent—cannot take time off from work to care for sick children without losing pay or using vacation time (Galinsky, Bond, and Hill 2004). Eighty-three percent of workers go to work when they are ill, and 21 percent do so explicitly to save their sick leave to stay home when their children are sick (ComPsych Corporation 2007).

A key finding in much of this research is that low-income workers often lack access to paid time off. In fact, data from nationally representative samples show that high-wage employees are more than twice as likely as low-wage employees to be able to take time off without penalties to care for their sick children (Galinsky et al. 2004). According to the Labor Department, private-sector workers making less than \$15 an hour are less likely than higher-paid workers to have access to any paid sick time, paid vacation time, or paid personal time (U.S. Bureau of Labor Statistics 2007). Children in low-income families are also much less likely to have a parent with paid sick leave than children in higher-income families, even among families with two employed parents (Clemans-Cope et al. 2008).

To address this lack of paid sick leave, several jurisdictions have implemented or are considering a new labor standard that would require employers to provide paid sick leave. The city of San Francisco was the first to pass such a law in 2006, but it is by no means alone in its efforts. In March 2008, the District of Columbia became the second locality to pass a mandate on employers guaranteeing paid sick leave to

workers. The bill is modeled after the San Francisco ordinance, but it differs on several details. Milwaukee, Wisconsin, voters also passed a sick leave mandate in November 2008. In addition, the federal government as well as other states and localities have introduced legislation on this issue (box 1).

A growing body of research shows the benefits to employees of having access to paid sick leave. In particular, the public health benefits appear strong; paid sick leave helps reduce the spread of infectious diseases, such as influenza, and hospitalizations and health care costs for preventable chronic conditions (Bhatia 2007; Hartmann 2007). One analysis finds that workers with preventable chronic conditions have less access to paid sick leave, suggesting that workers with greater medical care needs face an additional barrier to addressing their illnesses (Bhatia et al. 2008).

Information on the business impacts of providing paid sick leave is more limited. To be sure, many employers already provide sick leave benefits to some of or all their employees, in part because of benefits to their business. For example, the availability of paid sick leave has been linked to reduced voluntary and involuntary job turnover for employers (Cooper and Monheit 1993; Dodson, Manuel, and Bravo 2002; Earle and Heymann 2002; Heymann 2000). In addition, the provision of paid sick leave appears to improve business productivity by limiting “presenteeism,” or when employees work while ill, and ensuring that workers are healthier while on the job (CCH Incorporated 2003; Goetzl et al. 2004; Hemp 2004; Lovell 2004).

However, mandated employer benefits increase labor costs for businesses, which can lead to employer actions to minimize or offset these costs. A large body of research on employer mandates shows that businesses will generally pass on any increased costs to their employees, through reduced wages and benefits, or to their customers, through increased prices. To minimize costs, employers may also reduce workers’ hours to avoid workers’ benefits from accruing, or maintain lower staffing levels than they otherwise would, for example by reducing the number of employees. This is particularly likely for employers with a minimum-wage labor force, who face wage rigidity (Summers 1989). An initial look at San Francisco’s employment rate in the year following implementation showed that the city “maintained a competitive job growth rate” (Lovell and Miller 2008, 1). However, a paid sick leave requirement has unknown longer-term implications. The Institute for Women’s Policy Research has analyzed potential costs and benefits of paid sick leave policies and predicts a net savings for employers, employees and their families, and society (Lovell and Miller 2005). The National Federation of Independent Business, on the other hand, estimates major job losses and lost sales revenue associated with sick leave requirements (Phillips 2008a, 2008b).

BOX 1. Paid Sick Leave Policy Initiatives, 2008

Local legislation introduced

Philadelphia, PA

State legislation introduced

Alaska, California, Connecticut, Illinois, Maine, Massachusetts, Minnesota, North Carolina, Ohio, Pennsylvania, Vermont, and West Virginia

Federal legislation introduced

The Healthy Families Act was introduced in March 2007 by Senator Kennedy in the Senate and Representative DeLauro in the House of Representatives.

Source: National Partnership for Women and Families, “In the States,” http://www.nationalpartnership.org/site/PageServer?pagename=psd_toolkit_map_states.

San Francisco Ordinance and Context

The San Francisco Paid Sick Leave Ordinance (PSLO) passed as Proposition F by a ballot initiative sponsored by the San Francisco Board of Supervisors in November 2006. It amended the city's administrative code by mandating that all employers grant their employees working in the city a minimum amount of paid sick leave. This law is notable in that it provides time off for health-related needs for the worker as well as the workers' family members or other "designated person." In addition, the law passed in San Francisco applies to all employers in the city, regardless of the size of the employer, and to all employees—part-time, full-time, and even temporary workers. The effective start date of the legislation was June 6, 2007. Additional details of the PSLO are explained in box 2.

The ordinance provided sick leave to an estimated 115,800 additional private-sector workers in San Francisco. These workers were eligible by the law's provisions but previously lacked access to any paid sick days. Overall, an estimated one-quarter of the city's private-sector workforce gained paid sick leave through the ordinance (Lovell 2006).

Two additional employer mandates implemented around the same time as the paid sick leave ordinance—a minimum wage increase (to \$9.36, a rate \$3.51 higher than the federal minimum wage, and \$1.36 higher than the state minimum wage, at the time the site visit was conducted) and a health insurance expenditure requirement—shaped employers' perspectives on San Francisco's business climate. It is important

BOX 2. San Francisco Paid Sick Leave Ordinance

The law: The San Francisco Paid Sick Leave Ordinance (PSLO) requires that all employers provide paid time for employees to take sick leave for themselves when they are ill or injured, or to receive medical care, treatment, or diagnosis. Employees can also take time to care for a family member or for a previously registered designated person if the employee has no spouse or registered domestic partner.

Employers with fewer than 10 employees must provide at least five days (40 hours) a year of paid sick leave; employers with more than 10 employees must provide nine days (72 hours) a year.

Sick leave accrues at 1 hour of paid time for every 30 hours worked, after an initial probation period of 90 days for new employees. There is a cap on the amount of hours an employee may accrue (40 hours for firms with fewer than 10 employees, and 72 hours for larger employers), but sick leave may carry over from year to year.

Effective date: PSLO went into effect on February 5, 2007, 90 days after the ballot vote. In March 2007, the Board of Supervisors established a 120-day transition period in which employees were still able to accrue paid sick leave, but employers were not required to pay for any sick time used. This transition period was created to provide some extra time for employers and city officials to address implementation questions.

Who is eligible: The law applies to all employees working within the city, including part-time and temporary employees.

Enforcement: PSLO is enforced through employee complaints that can be filed with the city's Office of Labor Standards and Enforcement.

Other issues: Employers who already have paid leave policies that meet the requirements of the law do not have to provide additional paid sick leave. Employers governed by collective bargaining agreements are exempt from any requirements if the collective bargaining agreement explicitly waives them.

Recordkeeping: The ordinance also requires employers to maintain records of employees' hours worked and the amount of paid sick leave accrued and used for four years.

to consider the effects of these additional mandates in interpreting the study findings. Box 3 describes these additional labor standards in San Francisco.

About This Study

Despite the body of research outlining the benefits of paid sick leave as well as research on employer and employment effects of benefit mandates more generally, none of the research to date has examined the experiences of employers implementing the new law. Given that San Francisco has passed the nation's first paid sick leave mandate, the results of this study should help other states and localities as they consider enacting this type of law.

To that end, we examined how the new paid sick leave law affected 26 employers during the initial implementation period. The study focused on how the law affected their costs, staffing, and overall operations; whether it caused them to alter wages or other benefits provided, or the costs of their services or products; and whether it had noticeably affected employee retention or morale. Interviews were conducted in March 2008, approximately nine months after the law became effective.

In selecting employers to include in the study, we focused on those that had changed their personnel policies to comply with the ordinance. We sought to include a wide range of employers with at least some low-wage workers (paying \$15 an hour or less). Participants were identified via employer associations and groups, nonprofit organizations, Internet searches, and discussions with local experts.

The study team conducted 20 in-person or telephone interviews and held two focus groups with 6 additional employers. Respondents were business owners, human resources managers, or public policy direc-

BOX 3. Additional California and San Francisco Employer Mandates

Minimum Wage

- As of January 1, 2008, the minimum wage in California is \$8.00 an hour. There is no separate minimum wage for tipped employees; an employer may not use an employee's tips as a credit toward its obligation to pay the minimum wage.
- San Francisco has its own minimum wage ordinance, which requires employers within the city to pay a minimum wage that is higher than the rest of the state. As of January 1, 2008, this rate is \$9.36 an hour. This rate has been raised incrementally each year since 2004, when it was \$8.50 an hour. In 2009, the minimum wage will be \$9.79 an hour, effective January 1.
- A separate minimum compensation ordinance (MCO) in San Francisco applies to employees of all businesses and organizations that have contracts with the city or lease property at San Francisco International Airport. The MCO hourly wage is \$11.03 an hour. In addition, these employees are guaranteed 12 paid and 10 unpaid days off a year.

Health Care Security Ordinance and Healthy San Francisco

- The Health Care Security Ordinance, effective as of January 2008, sets a minimum expenditure that employers must pay for their employees' health care. It applies to for-profit businesses with 20 or more employees and nonprofit businesses with 50 or more employees.
 - The ordinance also mandates the Department of Public Health to create a health care access plan, called *Healthy San Francisco*. Employers may also purchase private health insurance coverage for their covered employees or make payments to the city for the benefit of their covered employees.
- The expenditure rates and the date in which the ordinance goes into effect vary by employer size and for-profit or nonprofit status: Rates vary from \$1.17 per employee-hour worked for businesses with 20–100 employees to \$1.76 for those with more than 100 employees. Rates are due to increase in January 2009.

tors, or they were employed in a similar role and able to represent their firms' personnel policies. The employers included in the study represented different business sizes, from an employer with one part-time employee to a national company with 10,000 employees in San Francisco alone. We identified small businesses as those with 25 or fewer employees, medium businesses as those with 26 to 99 employees, and large businesses as those with more than 100 employees. The sample included a range of industries as well. The sectors represented were chosen to reflect the industries in San Francisco that employed high percentages of low-wage workers: the restaurant, retail, service, and health/human services industries. Table 1 breaks down the employers by size and industry.

This subset of the business community was chosen to highlight the operational experiences of those affected by the paid sick leave ordinance. The sample is not representative of San Francisco employers as a whole or of all employers that changed personnel policies to meet the requirements of the ordinance. This study also does not address the benefits or effects of the ordinance on workers themselves.

Employer Strategies for Implementing Paid Sick Leave

Employers in the study sample implemented the paid sick leave ordinance in various ways, from creating entirely new policies to tinkering with specific facets of previous policies in order to comply with the new requirements. The changes in their policies can be summarized into four broad categories: (1) expanding leave for all or some employees, (2) establishing a paid time off (PTO) policy, (3) replacing other benefits and compensation policies, and (4) changing accrual rates and probationary periods.

These strategies are not mutually exclusive, and a single employer can fall under more than one category. For example, an employer could change its policy from covering some employees to covering all workers, as well as change the probation period before new employees begin accruing sick time.

Expanding Leave for All or Some Employees

Four interviewed employers offered no paid sick or vacation leave to their employees before the law was passed and subsequently implemented a new paid sick leave policy and developed a new tracking system. These employers had allowed their workers to take sick leave, but it was unpaid and had limitations. One employer, the owner of a medium-sized restaurant, had in the past occasionally granted paid sick leave to workers informally and case by case, depending on the worker's circumstances. Several, particularly small business owners operated with more informal policies on leave before PSLO was passed, so meeting the requirements of the new law required them to formalize their policies. As one small business owner said, "Before, it was a courtesy—if someone wants to take a day off, I

TABLE 1. *Employers by Industry and Size*

Industry	Small	Medium	Large	Total
Restaurant	1	2	3	6
Retail	4	3	2	9
Service	2	2	2	6
Health and human services	1	1	3	5
Total	8	8	10	26

wouldn't dock their pay—you have to consider whether you want to be a strict boss or be more informal, like a family.”

Ten employers expanded their sick leave policies to some workers who had not been covered by former policies, resulting in increased time off for more workers at the business. In most of these cases, sick leave had only been available to full-time employees; the ordinance thus opened these companies' policies to part-time employees. In one small business, the employer had offered paid leave only to her two salaried, managerial employees; she began offering paid leave to her hourly employees as well to comply with the regulations. A large financial services company expanded its paid time off policy to previously ineligible on-call workers.

Establishing a Paid Time Off Policy

About one-quarter (seven) of the employers in the study enacted a paid time off system encompassing both sick and vacation leave to implement the paid sick leave ordinance, combining rather than separately tracking vacation and sick time accrual and use. Whether employees gained more paid days off depended on the employers' policies before the ordinance. For example, several employers went from granting some or none of their employees any paid vacation or sick leave to using PTO, thus increasing the overall amount of paid leave. Others reclassified what had previously been only vacation leave to encompass the sick leave requirement without providing any additional time off.

Employers switched to PTO for a range of reasons. Some employers believed PTO would be easier to track than separately calculating vacation and sick leave accruals, and thus switched out of convenience. Others didn't want to “police” their employees to ensure sick leave would be used for legitimate illnesses in employees' families. With PTO, the employee did not need to provide an explanation for taking the time off. For example, one dry cleaner changed what was a vacation policy to PTO to avoid the paperwork that would have been necessary for allowing workers to care for a “designated person” as specified by the city's regulations.

Several other employers were motivated to use a PTO system because they believed it would reduce unscheduled absences. For example, one small service-sector employee had a “historically bad pattern” of employees calling in sick on weekends and holidays even though she had not previously granted most of her employees any paid leave. She decided to implement a PTO policy because she preferred for her staff to give advance notice when they wanted time off and to pay for the leave rather than deal with the challenges of finding coverage for staff who called in at the last minute. Another employer, an owner of a medium-sized restaurant, described the switch to a PTO system as a way of providing a “disincentive” for workers to call in sick, as he assumes his workers prefer to save their paid leave for vacation.

Replacing Other Benefits and/or Compensation with Sick Leave

Ten employers adjusted alternate aspects of their personnel policy to compensate for providing sick leave. Common approaches included eliminating vacation time or other benefits or decreasing pay raises or bonuses. For these firms, implementing the paid sick leave ordinance led them to trade off previous benefits.

Three employers reclassified vacation time as sick leave to meet the new requirements. Sometimes the paid sick leave ordinance was more generous than the employers' previous policies and provided more paid

time off. This differs from PTO in that employees are typically not permitted to use their sick leave for non-health or caring purposes.

Interestingly, all three employers who replaced vacation time with sick leave were in the restaurant industry: two owned multiple restaurants or locations of the same restaurant and were classified as large employers, and one was a small restaurant. These employers explained that they could not afford to give their workers both forms of leave.

Three other employers eliminated or decreased benefits that they had supplied, such as end-of-year bonuses. Two small employers reported that they paid for sick leave with funds that had been allocated as bonus payments because no other funds coming into the business could be used to cover leave. Another medium-sized retail employer used to give her employees their unused sick leave at the end of the year as a time-and-a-half pay bonus; now, because paid sick leave can carry over to the next year, she does not provide the benefit as a bonus.

Three small retail and two restaurant employers felt they could no longer afford to maintain previous rates of incentive-based wage growth. One explained that as paid sick leave added another component to labor costs and each employee's net pay, he does not promote employees or provide wage raises as quickly as he otherwise would. In his words, "If you're at \$10, you're going to stay there that much longer to make up for [the additional expense]." Another employer reported that he had frozen wage growth because of the ordinance, locking in wages at their pre-ordinance level rather than stepping them up over time.

Changing Accrual Rates and Probationary Periods

Most employers in our study granted at least some of their employees some form of paid leave before the ordinance's passage, but they were required to change their policies to comply with the new regulations. Most commonly (as reported by 11 employers), they increased the rate at which sick leave or PTO accrues or shortened the probationary period before which new employees begin accruing leave.

Under the new law, employees accrue one hour of paid sick leave for every 30 hours worked. Eight interviewed employers who previously provided sick leave had a different formula for accrual (i.e., 1 hour for every 40 hours worked, etc.) or based the calculation on an alternative time unit such as calendar date rather than gradual, hourly accrual (i.e., six hours a month, eight days a year, one week a year, etc.). The employees working for these employers had a net gain in amount of paid leave they had access to per year.

According to the San Francisco ordinance, for employees hired after the implementation date, sick leave accrual begins after 90 calendar days. Nine employers in our sample had to change previous probationary policies to meet this regulation, resulting in newer employers having access to paid sick leave sooner than they would have had under prior policies. For example, accrual for paid sick leave for one large human services employer pre-implementation began after an employee had worked a total of 1,000 hours, which is significantly longer than 90 days, especially for a part-time employee.

Employer Experiences Implementing the Paid Sick Leave Ordinance

Several findings regarding employers' experiences with the paid sick leave ordinance and issues they faced in implementing the new law were identified through our interviews.

By and large, most employers were able to implement the paid sick leave ordinance with minimal to moderate effects on their overall business and their bottom line. Most respondents in our sample experienced some increased labor costs because of PSLO, either from expanding existing policy to cover all employees or increasing benefits. A few also noted additional minor costs in terms of accounting or tracking systems used to help monitor leave accrued and taken by their employees. Most employers reported they were able to absorb the cost of providing paid sick leave. Reasons for the minimal impact varied but included being a smaller employer with few employees affected by the law or adjusting only slightly the total number of paid days off (through substituting sick days for vacation days or making relatively minor adjustments to accrual rates or probationary periods).

As noted above, the paid sick leave ordinance was implemented at the same time two other employer mandates, a minimum wage increase and a health insurance mandate, were enacted. Many employers were focused on the “package” of these new requirements and what they meant for their business. Most employers were quick to say that of the three, the PSLO was the least costly to their bottom line. However, in a city where labor cost increases were piling up, the PSLO did not help. As one dry cleaning store owner said, “The paid sick leave, taken by itself, is not a big deal. But you get a triple whammy when you add that to the minimum wage increases and the health insurance.”

About half of the employers interviewed tried to offset or minimize their recent increased labor costs. Ten employers in our study reported that they passed on the costs of the PSLO to their workers through changes in other benefits or delayed wage increases to help defray costs. Because of the minimum wage requirement, employers were largely unable to significantly reduce wage rates. However, some delayed or cancelled planned wage increases for staff as a result of increased labor costs in general and the PSLO specifically. Some employers changed other benefit levels to help defray costs, such as eliminating end-of-year payouts for unused sick days or cancelling a planned extra week of vacation. Seven employers raised the prices or rates charged to their customers, but all noted that these increases were motivated by the impact of the three employer mandates and other economic conditions on their business, not just the paid sick leave ordinance. Rate increases were seen in restaurants, retail, and health care.

Among the businesses included in our study, small or medium-sized employers were more affected by the paid sick leave law than larger employers. Most medium-sized employers we interviewed had to expand benefits to a significant portion of their workforce, and their ability to both absorb the labor cost increases and to administer and track the leave was significantly affected. According to many owners, profit margins were tight, and the increased labor costs required companies to look for ways of decreasing costs in other areas of their business. Additionally, several companies lacked sophisticated payroll systems and therefore had trouble meeting the tracking requirements of the law. In our sample of businesses, small employers did not appear to be as significantly affected by the law in terms of increased labor costs because some usually provided some type of paid sick leave informally. However, some small businesses eliminated vacation or bonuses to reduce costs, and several had difficulties implementing a tracking system.

Larger employers, on the other hand, seemed better able to handle the tracking requirements of the law and to absorb the new labor costs into their business. Most had human resources departments and more formalized policies in place for significant portions of their workforce before PSLO. Many large employers had to expand their policies to additional workers, usually part-time or temporary workers. While this expansion was sometimes substantial—for example, one national retailer had to start providing paid sick

leave benefits to almost a quarter of its San Francisco workforce, all of whom worked part time—the overall increase to the business’s labor costs were small because the firm was very large.

Some industries faced more challenges with providing paid sick leave than others. In general, restaurants were more likely than other industries to respond to the increased labor costs, with many enacting some type of cost saving measure. Again, however, most restaurant owners said that these cost-cutting measures often were not related to PSLO itself but a combination of the PSLO and an increase in the minimum wage. Restaurant owners noted in particular that, unlike the federal minimum wage, San Francisco’s minimum wage did not allow for a tip allowance, or a decreased minimum wage for workers who receive tips. Paying this wage rate while staying competitive with restaurants outside the city and keeping prices “affordable” was a challenge.

Even within this industry, restaurants responded in different ways to reduce their labor costs. Some owners tightened shifts and schedules so they did not have to hire so many part-time employees. Others shifted part-time workers to full-time positions, mostly through attrition but occasionally by letting staff go and replacing them with full-time workers. Other restaurants found additional ways to cut labor needs. One local restaurant chain with facilities outside the city decided to have all its vegetables and fruit prepared and chopped in a nearby city and have the food driven to its San Francisco restaurants to reduce the amount of San Francisco–employee time preparing food. Another owner started purchasing precut pork chops and preprepared vegetables to reduce his need for “back of the house” workers.

Some restaurant owners stressed that the increased labor costs hit the medium-sized restaurants—those that require a large number of wait-staff—the hardest. As one restaurant owner said, “The fine dining places are being driven out. Now, the only way to stay in business here is to open pizzerias, sandwich shops, taquerias . . . out-the-door restaurants, with fewer than 15 staff. But these types of restaurants don’t provide as many jobs, and it cuts into our reputation as a food destination.”

Other industries also faced challenges. The health care industry employs on-call staff, many of whom work intermittently. Providing on-call staff paid sick leave is difficult, given that they are only called when needed and often are not guaranteed a certain number of hours each week or even each month. The wages of these workers, according to one health care employer, are typically higher given the nature of these positions (often at rates negotiated through a collective bargaining agreement), so adding a benefit onto this category of employee affects the employer’s bottom line.

Similarly, a nonmedical home care agency expressed concerns about its “at-will” employees. When the agency hires a caregiver, the employee agrees to take on a particular assignment, and he or she is expected to stay with that client until the client no longer requires the employee’s services. While the interviewed agencies allowed their workers to take unpaid leave before the ordinance to attend to their own or their families’ health needs, the employers were not able to guarantee caregivers their assignment upon their return. Caregivers thus risked losing their jobs when taking time off: if a client preferred a particular caregiver’s replacement, the client could switch caregivers. In addition, as employees’ hours were based on individual clients’ discretion and could be unpredictable, and as the work took place in clients’ homes, the employer faced challenges in implementing and tracking paid sick leave accrual.

Many businesses would prefer state or national employer mandates rather than a city mandate. For many employers, the fact that their competitors just over the city line were not subject to the city’s minimum wage, health insurance, or paid sick leave requirements made the cost of staying competitive

difficult. While six employers noted that they might consider relocating outside San Francisco in the future, most reported that they did not have much of an option, given that their business relied on either local residents (such as dry cleaners or pet care) or tourists (for restaurants and hotels) drawn to San Francisco.

Given these realities, most employers explained that if the government was going to pass paid sick leave mandates, it should be the state or national government. This was true regardless of the employer's personal opinion of the law. For example one small employer said, "Philosophically, [PSLO] is a good thing. I just wish it were more spread out—and that all businesses had to comply—that way it would level the playing field, so that we are not at a competitive disadvantage." Another, who did not support the law, noted, "If everyone in the state was doing it, then okay. Who cares if taxes go up? If everyone else is paying, who cares?"

One hardware company owner suggested that the city could help San Francisco employers by giving them preference in their contracting and bidding processes. "Right now, I'm competing against companies outside of San Francisco who don't have to comply with these city mandates. So, to win the city contract, you either make less or you lose the bid because these other companies have lower costs. The city should take the lead on business-friendly legislation to offer San Francisco businesses preference in bidding for city contracts. It would make a statement from the city that they're asking a tremendous amount from the businesses here, but that the city wants to help them however it can."

Larger employers did not worry as much about competitive disadvantages, since their operations and larger business decisions were not typically driven by policy changes in San Francisco. But, for different reasons, larger employers also said they would prefer a state or national law, if paid sick leave was going to be an increasingly common requirement. These respondents were primarily concerned about administering different policies for employees in different cities and, for national companies, in different states. For these larger national employers, mandates requiring nine days of paid sick leave in San Francisco, seven days in Dayton, and five days in Washington would be difficult for human resource administrators. As one company representative noted, "It is a mess to try to have specific rules for each city. We don't want a patchwork solution and want to see laws at the federal level, whether we like the laws or not. A patchwork just causes confusion on top of administrative burdens."

Few employers reported any early benefits from reduced absenteeism, lower turnover, or improved employee morale as a result of the paid sick leave ordinance. Employers noted that turnover and retention seem less relevant to a mandated benefit, since now the same sick leave benefits are available across companies. As one small business owner observed, "The policies I had in place before were there to reduce turnover and get better employees—and they did have an effect. But now, since the new ordinance, employees will have the same benefit no matter where they work. There's less of an incentive to stay and work for me."

Some employers reported that the law limits their ability to reward full-time or longer-tenure workers with higher benefits than part-time or new workers. As one small business owner said "Now my part-time employees are getting to be equal to my full-timers, those full-timers are upset that they're getting the same benefits—they feel mistreated. There needs to be some distinction for those that work full time and have been working for me for a while. But, I don't have the ability to add additional benefits to full-timers because all of my fixed costs are up."

Policymakers need to engage employers to inform the details of a paid sick leave law. Employers stressed the need for employers to be at the table early on when crafting a paid sick leave policy. Accord-

ing to many employers in our study, the development of San Francisco's policy did not include the employer perspective on critical issues, making implementation more difficult. As one employer noted, "When I have a problem, I go to the people who are going to be affected and ask their opinion. Here is a problem where they want to find a solution, and the stakeholders who should have been tapped weren't. No matter how you slice it, it is a cost, so business will still be against it—but HR folks and other businesses could have at least weighed in on how to get it right." Many employers noted that, from their perspective, the process seemed to have assumed an adversarial relationship between employers and employees. Employers stressed that this is not necessarily true and that involving employers in the conversation and viewing them as partners in crafting the policy would have been a better route to finding a mutually agreeable policy.

Employers noted an important area for their input was setting the sick leave accrual rates. Many noted that San Francisco's accrual rate of one hour of sick leave for every 30 hours worked was awkward to implement. Most human resource systems already account for benefits in increments of 20 or 40 hours, so the 30-hour accrual required additional calculations for most employers. In addition, the way the law was written, the sick leave caps at nine days a year (or five days for small businesses). But the cap is a rolling cap, so if an employee earns nine days in year one, then takes all nine days early in year two (say, in January), the employee can still accrue more sick leave time in year two and, theoretically, take more leave later in the year. The rolling cap is difficult to administer for many employers and runs counter to the way many businesses accrue and provide other benefits to their employees.

Employers also noted that a city or state should provide additional staffing and resources to the administering agency to help implement a PSLO, particularly technical assistance for employers to help them get their PSL systems up and running. Most employers, as well as city officials we spoke with, agreed that the administering agency lacked the staff and resources to meet the law's requirements and help employers implement the policy on time. In fact, the timeline for implementation was delayed by 120 days during which employees were able to accrue paid sick leave but employers were not required to pay for any sick time used. This transition period was created to give city officials and employers extra time to make the program operational and address implementation issues. Some major considerations worked out at this time included addressing exempt employees, further defining employers' "reasonable requests" for notice, and parameters for leave taking.

In addition to implementation, ongoing education and enforcement efforts are needed. Regulatory laws are only as good as the enforcement efforts that back them up. Yet, city officials and employers both noted the challenge of educating employers and employees about the benefit and ensuring compliance for the estimated 106,000 registered businesses in the city.² At the time of our interviews, officials were planning an employer education campaign to help tell people about the law and answer questions. As one small business owner said, "Many employers still don't know about this law. The city sent two fliers, and most people throw those out. They need some sort of acknowledgment from employers that they've read the law and have implemented it."

Enforcing PSLO is primarily driven by employer or employee complaints, which, employers and officials note, leaves the burden largely on employees to identify employers that refuse to comply with the law. In the words of one employer, "We keep passing more laws, and there's no enforcement. For the bad employers, employees will keep working quietly and not complain if they want to keep their jobs, and there's not an effort to go find the sweatshops in the city—the city doesn't have enough people to enforce labor laws in those places—this law won't be enforced either." When violations are reported and confirmed in San

Francisco, noncompliance penalties are limited to the dollar amount of the paid sick leave withheld from the employee multiplied by three or \$250, whichever is greater. If the violation resulted in other harm to the employee, including discharge from employment, then employers may face an additional charge of \$50 for each employee harmed, accumulated for each day that the violation occurred or continued. Thinking through these implementation issues before a law goes into effect would go a long way in easing employers' challenges in complying with the new legislation and ensuring that employers implement the law as intended.

Summary

This study of employer perspectives on implementing mandated paid sick leave in San Francisco provides useful insights for policymakers, advocates, and the business community to consider as these policies are debated. According to our study, most employers were able to implement this mandate with minimal impacts on their business in the first year. However, San Francisco's experience suggests that it is critical to consider the policy environment affecting employers, such as health insurance or other mandates, when debating the addition of new labor costs.

This study also finds that not all businesses respond the same way when addressing these increased labor costs, with some affected more than others. Considering the law's effects on employers of different sizes and across different industries is critical to understanding the larger business and employment effects of a paid sick leave mandate. Further, policymakers should consider specific implementation challenges and economic effects that result when mandated paid sick leave is established locally, rather than statewide or nationally. Finally, ensuring that the business community is engaged in the design of these policies at the outset would help ensure that a paid sick leave law is implemented smoothly and that unintended consequences are avoided or minimized.

NOTES

1. In this report, paid sick leave refers to the limited number of days off an employer provides employees for an illness or ill family member. Longer leaves can also be paid in California as part of the state's Paid Family Leave Insurance program.
2. San Francisco Planning and Urban Research Association, "Ballot Analysis November 2007: A Comprehensive Guide to San Francisco's Ballot Measures," http://www.spur.org/documents/1107_ballot_analysis.shtm.

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ABOUT THE AUTHORS

Shelley Waters Boots is a senior research associate in the Urban Institute's Center on Labor, Human Services, and Population. Her research focuses on understanding the intersection of work, family, and children's development and well-being. She is particularly interested in how employers and public policy supports affect the lives of working families. She also brings expertise on policy and communications issues, working to link solid research to current policy debates.

Karin Martinson is a senior research associate in the Urban Institute's Center on Labor, Human Services, and Population. Her research interests include welfare reform, employment and training programs, service delivery systems, and work supports. She has worked on numerous program evaluations in these areas, with a focus on implementation studies of programs and services for low-income families.

Anna Danziger is a research associate in the Urban Institute's Center on Labor, Human Services, and Population. Her research focuses on issues and policies that affect working families, particularly child care and workplace flexibility.

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 385
 Economic Matters

(Delegate Clippinger, *et al.*)

Labor and Employment - Maryland Healthy Working Families Act

This bill requires an employer with more than nine employees to have a sick and safe leave policy under which an employee of the employer earns at least 1 hour of *paid* sick and safe leave, at the same rate and with the same benefits as the employee normally earns, for every 30 hours an employee works. An employer with nine or fewer employees, based on the average monthly number of employees during the preceding year, must have a sick and safe leave policy that provides an employee with at least 1 hour of *unpaid* sick and safe leave for every 30 hours an employee works. An employer is not required to allow an employee to earn or carry over more than 56 hours of earned sick and safe leave in a year or use more than 80 hours of earned sick and safe leave in a year.

Earned sick and safe leave begins to accrue the later of October 1, 2015, or the date that an employee begins employment with the employer.

Fiscal Summary

State Effect: Expenditures increase (all funds) significantly due to contractual employees throughout State government receiving earned sick and safe leave. General fund expenditures increase by \$272,100 in FY 2016 due to additional staffing needs for the Department of Labor, Licensing, and Regulation (DLLR) to enforce the bill and conduct the required outreach program. Out-year expenditures reflect annualization, elimination of contractual staff and one-time start-up costs, and inflation. General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	-	-	-	-	-
GF Expenditure	\$272,100	\$320,800	\$272,500	\$263,100	\$275,100
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$272,100)	(\$320,800)	(\$272,500)	(\$263,100)	(\$275,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government expenditures increase significantly for certain local jurisdictions to allow temporary or part-time employees to earn sick and safe leave. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Eligibility

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. The bill does not apply to specified individuals who must contact the employer for work assignments, or employees who regularly work fewer than eight hours per week for an employer.

A “family member” includes:

- a biological child, an adopted child, a foster child, or a stepchild of the employee;
- a child for whom the employee has legal or physical custody or guardianship;
- a child for whom the employee is the primary caregiver;
- a biological parent, an adoptive parent, a foster parent, or a stepparent of the employee or the employee’s spouse;
- the legal guardian of the employee;
- an individual who served as the primary caregiver of the employee when the employee was a minor;
- the spouse of the employee;
- a grandparent of the employee;
- the spouse of a grandparent of the employee;
- a grandchild of the employee;
- a biological sibling, an adopted sibling, or a foster sibling of the employee; or
- the spouse of a biological sibling, a foster sibling, or an adopted sibling of the employee.

Use and Accrual of Leave

An employer must allow an employee to use earned sick and safe leave:

- to care for or treat the employee's mental or physical illness, injury, or condition;
- to obtain preventive medical care for the employee or 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 of or child care provider for the employee's family member has 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 the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease; or
- for specified circumstances due to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member.

An employer is not required to compensate an employee for unused earned sick and safe leave when the employee leaves the employer's employment. The bill does not prohibit a general paid leave policy that meets the minimum requirements of the bill or affect workers' compensation benefits, including those under a provision of a contract, a collective bargaining agreement, an employee benefit plan, or any other agreement. The bill does not affect any other law that meets the minimum requirements of the bill. The bill does not prevent an employer from establishing a policy that allows employees to voluntarily exchange assigned work hours.

An employer may grant an employee the full amount of earned sick and safe leave in the beginning of a year rather than awarding the leave as it accrues during the year, and an employer may allow an employee to use earned sick and safe leave before the amount needed accrues. An employee who is exempt from overtime wage requirements under the federal Fair Labor Standards Act is assumed to work 40 hours each work week unless the employee's normal work week is less than 40 hours. An employer is not required to allow an employee to use earned sick and safe leave during the first three months the employee is employed.

The bill includes additional processes and conditions, including notice and documentation requirements, under which an employee may use earned leave.

Requirements for the Commissioner of Labor and Industry

The commissioner may adopt implementing regulations and investigate violations upon receiving a written complaint by an employee. The commissioner must, to the extent practicable, keep the complainant's identity confidential unless the employee waives confidentiality.

The commissioner must develop and implement a multilingual outreach program to inform individuals about the availability of earned sick and safe leave and distribute the materials to specified places and providers.

Notice to Employees

An employer must notify its employees that they are entitled to earned sick and safe leave by providing specified notice to employees. The Commissioner of Labor and Industry must create and make available a poster and a model notice that may be used by employers, which includes specified information on earned sick and safe leave and the rights of employees. If an employer fails to provide the proper notice to employees, an employer is subject to a civil penalty of up to \$125 for the first violation and \$250 for each subsequent violation. Employer notification to employees may be distributed electronically.

Enforcement

An employer must keep relevant records for at least three years. Upon giving the employer notice and determining a mutually agreeable time for the inspection, the commissioner may inspect an employer's records regarding earned sick and safe leave.

It is presumed that an employer has violated the earned sick and safe leave provisions if there is an allegation that the employer has failed to accurately accrue the amount of earned sick and safe leave available to an employee *and* the employer fails to keep records or allow the commissioner to inspect records. An employer may rebut the presumption of a violation by presenting clear and convincing evidence proving otherwise.

When the commissioner has determined that a provision of the bill has been violated, the commissioner may (1) try to resolve any issue informally by mediation; (2) with the employee's written consent, ask the Attorney General to bring an action on behalf of the employee; and (3) bring an action on behalf of an employee. An employee may bring a civil action against the employer for a violation of the bill, regardless of whether or not

the employee first filed a complaint with the commissioner. An action must be filed within three years after the occurrence of the act on which the action is based.

If the court finds that an employer violated the earned sick and safe leave provisions, the court may award the employee the full monetary value of any unpaid earned sick and safe leave, economic damages, an additional amount of up to three times the economic damages, reasonable legal fees, and any other relief that the court deems appropriate. If benefits of an employee are recovered, they must be paid to the employee without cost to the employee. If the action was brought by the Attorney General, the court may award a fine of \$1,000 per violation to the State.

A person may not interfere with the exercise of, or the attempt to exercise, any right given under the bill. An employer may not take adverse action or discriminate against the employee because the employee exercised in good faith the rights granted by the bill. Additionally, an employer may not take adverse action against the employee for appropriately using earned sick and safe leave. There is a rebuttable presumption that an employer violated the earned sick and safe leave provisions if the employer took adverse action against an employee within 90 days after the employee exercised specified rights. An employee who mistakenly, but in good faith, alleges a violation under the bill is protected. An employee may not, in bad faith, file a complaint with the commissioner alleging a violation, bring an action, or testify in an action regarding earned sick and safe leave. An employee who violates these provisions is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine.

Current Law: Maryland law does not require private-sector employers to provide employees with paid or unpaid sick leave.

Federal Family and Medical Leave Act of 1993 (FMLA)

FMLA requires covered employers to provide eligible employees with up to 12 work weeks of *unpaid* leave during any 12-month period under the following conditions:

- the birth and care of an employee’s newborn child;
- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.”

Generally, an FMLA-covered employer is an entity engaged in commerce that employs at least 50 employees. Public agencies and public or private elementary or secondary schools are considered to be covered employers regardless of the number of individuals they employ.

An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

Maryland Flexible Leave Act

A private-sector employer who provides paid leave to its employees must allow an employee to use earned paid leave to care for immediate family members, including a child, spouse, or parent, with an illness. An employer is prohibited from taking action against an employee who exercises the rights granted or against an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of these provisions.

An employer is considered a person that employs 15 or more individuals and is engaged in a business, industry, profession, trade, or other enterprise in the State, including a person who acts directly or indirectly in the interest of another employer. State and local governments are not included.

Employees who earn more than one type of paid leave from their employers may elect the type and amount of paid leave to be used in caring for their immediate family members.

Maryland Parental Leave Act

Firms with 15 to 49 employees are required to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental leave up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work. State and local governments are not included.

To be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. An eligible employee does not include an independent contractor or an individual who is employed at a work site at which the employer employs fewer than 15 employees if the total number

of employees employed by that employer within 75 miles of the work site is also fewer than 15. An eligible employee has to provide the employer with 30-day prior notice of parental leave. However, prior notice is not required if the employee takes leave because of a premature birth, unexpected adoption, or unexpected foster placement.

Background: According to the U.S. Bureau of Labor Statistics, in 2014, 61% of workers in private-industry businesses have paid sick leave, while 89% of workers in state and local governments have paid sick leave. Private-industry businesses with fewer than 100 workers provide 52% of workers with paid sick leave. Private-industry businesses provided on average seven days of paid sick leave per employee in 2014.

The Institute for Women's Policy Research reported in 2013 that 40% of Maryland private-sector employees do not have paid sick days. Data from the 2011 National Health Interview Survey revealed that, when workers are limited to a maximum of 7 days of work loss, workers with paid sick days miss an average of 1.8 days annually for illness and injury excluding maternity leave. The survey also found that about half of all workers who are covered by paid sick leave plans do not take any days off for illness or injury in a given year. The Institute for Women's Policy Research reports that workers use an average of 2.8 days out of 7 days annually to care for their own medical needs, their families' needs, and for doctors' visits; and victims of domestic violence are expected to take the maximum number of earned sick days.

Paid Sick Leave in Other Jurisdictions

San Francisco became the first city to require private-sector employers to provide paid sick leave to their employees. According to the Institute for Women's Policy Research, the typical worker with access to either five or nine paid sick days through San Francisco's paid sick leave ordinance only used three paid sick days in 2008.

Several other cities, such as the District of Columbia, Seattle, Portland, New York City, Jersey City, Newark, and San Diego, have also enacted paid sick day laws. In 2011, Connecticut became the first state to require private-sector employers to provide paid sick leave to their employees, followed by California and Massachusetts, whose leave policies become effective in July 2015. **Exhibit 1** summarizes the paid sick leave policies of the states and the District of Columbia. Recently, bills have been introduced in the U.S. Congress proposing for workers in businesses with 15 or more employees to earn 1 hour of paid sick leave for every 30 hours worked, up to 7 days of paid leave a year. Montgomery County introduced paid sick leave legislation in 2014, Montgomery County Bill 60-14, which would require employers in the county to provide 1 hour of earned sick and safe leave for every 30 hours an employee works in the county, up to 56 hours in a calendar year.

**Exhibit 1
Paid Sick Leave Policies**

	California	Connecticut	Massachusetts	Washington, DC
Who is covered?	Most workers who are employed in the state for at least 30 days. Home health care workers are exempt.	Hourly workers in certain service occupations if the business has at least 50 employees. Certain manufacturers, nonprofit organizations, and temporary and day laborers are exempt.	Most workers employed in the state. Employers with fewer than 11 workers provide only unpaid sick leave.	Most workers, except independent contractors, students, certain health care workers, unpaid volunteers, and casual babysitters.
Rate of paid sick time accrual?	1 hour for every 30 hours worked	1 hour for every 40 hours worked	1 hour for every 30 hours worked	1 hour for every 87 hours worked if business employs fewer than 25 employees; 1 hour for every 43 hours worked if business employs 25-99 employees; 1 hour for every 37 hours worked for businesses with 100 or more employees.
Amount of paid sick time that can be earned per year?	Up to 24 hours or 3 days	Up to 40 hours a year	Up to 40 hours a year	Up to 24 hours a year if business employs fewer than 25 employees; up to 40 hours per year if business employs 25-99 employees; up to 56 hours per year for businesses with 100 or more employees.
Private right of action to go to court?	No, but the labor commissioner or attorney general may bring a civil action against the violator	No, but the labor commissioner may assess a civil penalty against the violator	Yes, after filing with the attorney general	Yes

Source: California Division of Labor Standards Enforcement; Connecticut Labor Commission; District of Columbia Department of Employment Services; Secretary of the Commonwealth of Massachusetts

Domestic Violence in Maryland

According to the *2013 Uniform Crime Report*, 27,785 domestic violence crimes were reported in Maryland. Assault was by far the most frequently reported crime, with 25,188 incidents in calendar 2013. Of reported assaults, simple assaults comprised 20,422 incidents. Aggravated assaults totaled 4,760, or 19%, of the reported domestic violence assaults for the same period. In 2013, 54 homicides were attributed to domestic violence incidents.

State Revenues: General fund revenues increase – likely minimally – as a result of the bill’s monetary penalty provisions from cases heard in District Court.

State Expenditures:

Administrative Costs:

The Commissioner of Labor and Industry Employment Standards Service unit currently handles claims for unpaid sick leave. By creating a sick and safe leave policy for almost all employers, the bill creates additional enforcement responsibilities for DLLR’s Division of Labor and Industry. DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in inquiries and complaints prompted by a sick and safe leave policy.

The regular staff needed to respond to and manage the additional workload created by the bill includes a part-time assistant Attorney General, an administrator, one administrative officer, and one office clerk. For the first two years, DLLR needs two contractual administrative officers. DLLR advises that inquiries into sick and safe leave violations are expected to increase significantly due to the bill because the State has never had such a policy before. DLLR estimates it could receive as many as 20,000 additional inquiries each year and 800 complaints alleging violations. Based on prior experience, DLLR advises that the majority of employers in violation will voluntarily come into compliance with the bill’s provisions after being contacted by division staff. However, a significant number of new formalized complaints must likely be investigated and processed each year by the division.

In addition to analyzing employer leave policies and processing complaints, DLLR advises that the additional staff will develop employee notification materials and conduct outreach efforts to inform employers of the new sick and safe leave policy. Additional administrative support is needed to handle phone and email inquiries, prepare and file wage orders, handle equipment and supplies, and manage complaint files. Legal staff is needed to provide advice, review wage orders, and plead cases.

General fund expenditures increase for DLLR by \$272,086 in fiscal 2016, which assumes that DLLR staff are in place as of October 1, 2015, concurrent with the effective date of the bill. This estimate reflects the cost of hiring one regular and two contractual administrative officers, an office clerk, and a part-time assistant Attorney General as well as one regular administrator to investigate complaints and enforce the State's sick and safe leave policy. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	3.5
Contractual Positions	2.0
Regular Salaries and Fringe Benefits	\$165,834
Contractual Salaries and Fringe Benefits	62,533
One-time Start-up Costs	32,230
Operating Expenses	<u>11,489</u>
Total FY 2016 State Expenditures	\$272,086

Future year expenditures reflect elimination of the two contractual positions, annual increases, and employee turnover as well as annual increases in ongoing operating expenses. If the volume of inquiries or complaints exceeds expectations, one or both contractual positions could be extended or converted to regular status.

Labor Costs

The Department of Legislative Services (DLS) assumes the State will expand its existing sick leave policies to encompass the bill rather than implement sick and safe leave in addition to existing sick leave policies.

State employees in both the State Personnel Management System (SPMS) and the Maryland Department of Transportation (MDOT) Transportation Service Human Resources System currently accrue paid sick leave at the rate of 1.5 hours for every 26 hours worked in nonovertime status. Employees earn a maximum of 15 days or 120 hours of sick leave each year, which exceeds the bill's minimum requirement. Employees may use paid sick leave for the following:

- for illness or disability of the employee;
- for death, illness, or disability of the employee's immediate family member;
- following the birth of the employee's child;
- when a child is placed with the employee for adoption; or
- for a medical appointment of the employee or the employee's immediate family member.

The bill expands the possible uses of earned sick and safe leave and defines a “family member” more broadly. As a result of the expanded circumstances to use earned sick and safe leave for all SPMS employees, the Department of Budget and Management reports expenditures may increase significantly.

Providing earned sick and safe leave to State employees who currently do not receive any leave benefits increases expenditures (all funds) significantly. The actual impact depends on how many additional hours of earned sick and safe leave State employees take. *For illustrative purposes only*, **Exhibit 2** shows the potential increase in labor costs for employees in the various personnel systems, by the number of hours of earned sick and safe leave taken by employees. When provided with 56 hours of paid leave, employees on average take 24 hours of paid leave; so under this assumption, State expenditures could increase by \$2.6 million annually. If employees used the maximum amount of leave that they could earn in a year, 56 hours, State expenditures could increase by \$6.2 million annually. If employees do not use all of their leave in one year, but rather carry their leave over to the next year, they could use a maximum amount of 80 hours of leave in a year; so the costs could fluctuate, increasing State expenditures by as much as \$8.8 million in some years.

Exhibit 2
Potential Earned Sick and Safe Leave Costs for State Employees

Additional Staffing Costs	Employees Affected	Cost of 24 Hours of Paid Leave	Cost of 56 Hours of Paid Leave	Cost of 80 Hours of Paid Leave
DLS employees	48	\$16,000	\$36,000	\$52,000
SPMS employees	4,235	2,035,000	4,748,000	6,782,000
MDOT employees	347	209,000	488,000	698,000
Judiciary employees	819	385,000	899,000	1,284,000
Total	5,449	\$2,645,000	\$6,171,000	\$8,816,000

Source: Department of Legislative Services

The exhibit does not include any overtime costs or the increase in expenditures for 6,442 Contingent Category I and Contingent Category II employees within the University System of Maryland (USM). USM reports Contingent Category I employees, which consists of temporary adjunct faculty and student employees, do not receive any leave benefits and Contingent Category II employees who work 40 hours per week only receive three days of sick leave, so providing seven days of earned sick and safe leave to these employees increases USM expenditures – potentially significantly.

The impact is greater for agencies with 24/7 operations because the expanded leave opportunities may increase overtime costs. Agencies with 24/7 operations within SPMS include the Department of General Services, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Department of State Police, the Department of Natural Resources, and the Department of Public Safety and Correctional Services.

Additionally, administrative expenses associated with recordkeeping, documentation, and notification requirements may increase. The Judiciary is in the process of updating its human resource management system because the current system is outdated and labor intensive. Assuming the new human resource management system is in place by the implementation of the bill, the Judiciary can track earned sick and safe leave for the additional employees with existing resources. However, if the human resource management system is not set up by the implementation of the bill, the Judiciary incurs additional expense for a contractual employee to track earned sick and safe leave of contractual and part-time employees. USM incurs a one-time cost to modify its existing human resource management system to track earned sick and safe leave, which it should be able to absorb within its existing budget.

Local Expenditures: Many local jurisdictions do not offer seasonal, part-time, or contractual workers earned sick and safe leave, so many local jurisdictions incur significant increases in expenditures. Additionally, most local jurisdictions do not define family members as broadly as does the bill and may only allow a portion of earned sick days to be used to care for sick family members. Anne Arundel County estimates expenditures could increase by \$1.2 million annually if almost 1,900 temporary employees took the maximum earned sick and safe leave days. Dorchester County estimates expenditures could increase by approximately \$20,000 annually to provide 108 part-time employees with earned sick and safe leave. Montgomery County estimates expenditures increase between \$462,000 and \$694,000 to provide earned sick and safe leave for temporary employees, and Howard County expects expenditures to potentially increase significantly.

The Maryland Association of Counties notes providing earned sick and safe leave to essential personnel may strain response systems, overburden other employees, and create additional overtime expenses for local jurisdictions. Additionally, administrative expenses associated with recordkeeping, documentation, and notification requirements increase for providing earned sick and safe leave. For example, Anne Arundel County estimates incurring \$50,000 of information technology expenses in fiscal 2016 to set up and track earned sick and paid leave and spending \$10,000 annually thereafter for ongoing technical support.

However, some local jurisdictions only incur minimal or no fiscal impact for allowing earned safe leave, such as the cities of Frederick and Havre de Grace, and Baltimore and Garrett counties, since these counties provide the earned sick leave required by the bill.

Small Business Effect: The bill has a significant impact on small businesses. Based on U.S. Census data, DLS estimates approximately 220,000 employees work for Maryland employers with nine or fewer employees, so they could become eligible for unpaid sick leave under the bill, although half of these employees likely already receive paid sick leave.

DLS estimates about 550,000 employees work for Maryland employers with more than nine employees and do not receive paid sick leave. The U.S. Bureau of Labor Statistics reports the average employer cost to provide paid sick leave in 2012 was 25-cents per hour, or 0.9% of total compensation for private-industry workers. Assuming that providing earned sick and safe leave costs employers 0.9% of an employee's compensation, DLS estimates it could cost employers with more than nine employees up to \$230 million, which is approximately \$416 per employee, to provide new earned sick and safe leave to employees. To the extent that mandatory sick leave increases the cost to an employer of hiring an employee, employers may experience increased costs.

Businesses may benefit by experiencing reduced turnover, increased productivity, and reduced spread of illnesses. The Institute for Women's Policy Research estimates that a similar prior-year bill equates to a 26-cents-per-hour savings in wages for employees receiving new leave as a result of lower turnover and reducing the spread of illnesses in the workplace.

Employers in the service and construction industries are likely to be the most impacted by the bill because only 40% of service workers and 38% of construction workers in the private industry received paid sick leave in 2014. Additionally, employers who employ low-wage earners (average wage in the lowest 25%) are likely to be affected more than those employers who employ high-wage earners (average wage in the highest 25%) because only 30% of low-wage workers receive paid sick leave while 84% of high-wage workers receive paid sick leave in 2014.

Additional Information

Prior Introductions: Similar bills, SB 753 of 2014 and SB 698 of 2013, received a hearing in the Senate Finance Committee, but no further action was taken. HB 968 of 2014, a cross file, received a hearing in the House Economic Matters Committee, but no further action was taken. HB 735 of 2013, another cross file, received a hearing in the House Economic Matters Committee and was subsequently withdrawn.

Cross File: SB 40 (Senator Pugh, *et al.*) - Finance.

Information Source(s): Anne Arundel, Baltimore, Dorchester, Garrett, Howard, and Montgomery counties; cities of Frederick and Havre de Grace; Office of the Attorney General; Department of Budget and Management; Department of Human Resources; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Department of State Police; State's Attorneys' Association; Maryland Department of Transportation; University System of Maryland; Institute for Women's Policy Research; California Division of Labor Standards Enforcement; Connecticut Labor Commission; District of Columbia Department of Employment Services; Secretary of the Commonwealth of Massachusetts; U.S. Department of Labor; U.S. Bureau of Labor Statistics; U.S. Small Business Administration; Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2015
md/mcr

Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

B60-14



BD
cc
SBF
LL

ROCKVILLE, MARYLAND

MEMORANDUM

February 10, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
 Lisa Austin, Offices of the County Executive
 Joy Nurmi, Special Assistant to the County Executive
 Patrick Lacefield, Director, Public Information Office
 Joseph F. Beach, Director, Department of Finance
 James Stowe, Director, Office of Human Rights
 David Platt, Department of Finance
 Phil Weeda, Office of Management and Budget
 Helen Vallone, Office of Management and Budget
 Alex Espinosa, Office of Management and Budget
 Naeem Mia, Office of Management and Budget

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Fiscal Impact Statement

Council Bill 60-14, Human Rights and Civil Liberties-Earned Sick and Safe Leave

1. Legislative Summary.

- Require certain employers in the County to provide earned sick and safe leave to certain employees working in the County.
- Generally regulate the sick and safe leave levels benefits provided to an employee working in the County for certain employers.
- Provide enforcement by the Office of Human Rights and the Human Rights Commission or appropriate State agency.
- Authorize the Human Rights Commission to award certain relief.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The bill allows for damages and other equitable relief consistent with the prescribed remedies provided in the code, actual relief or revenue cannot be estimated at this time.

Office of Human Rights (HRC): Similar legislation has been enacted in Washington, D.C., San Francisco, California, Portland, Oregon, and Seattle, Washington. Many of these laws were enacted or expanded in the last several years. Jurisdictions began to see an increase in complaints 12-18 months after implementation of their laws. While there is no way to predict the number of complaints that may be filed, research suggests that the County may see an initial increase in the number of complaints following implementation of the law. HRC indicated that a minimal increase in the volume of complaints could be absorbed by existing staff without adverse impact on current services. However, the department has indicated that if the volume of complaints continues to increase over time, additional resources may be required.

Office of Human Resources (OHR): Regular County employees have many different forms of leave available to them (see MCPR Sections 16 through 25). The County's sick leave benefit for regular employees accrues at a faster rate than that available under the proposed legislation. Therefore, for regular employees it is not expected that total leave accumulations will change due to this legislation. However, there will be a new category of leave established – Safe Leave.

The impact on the County is the additional annual accumulation of approximately 36,595 hours of leave for employees in temporary positions. This new leave, characterized as the FTE cost, can take the form of either the hire of additional temporary employees or the opportunity cost of work that would have been done by those employees had they been working rather than on leave.

These costs are characterized as maximum costs, assuming full use of the annual accumulation of up to 56 hours of Earned Sick and Safe Leave. OHR estimates that it will require one new position to administer the program. That position will be either an

Administrative Specialist III (grade 23) or a Program Specialist II (grade 25), subject to further analysis of the work necessary to fully implement the new benefit.

The fully annualized cost to the County to implement Bill 60-14 is estimated at up to \$628,946 to \$636,701, and has the potential to result in the addition of 18.6 new FTE positions to cover the work that would have been performed by those who would now be able to take paid leave.

MCTime and ERP: It is estimated that the minimum necessary cost to implement is \$165,906. Implementation would involve the efforts not only of these two organizations, but also Payroll, MCERP and OHR. This cost estimate is only for ERP staff to implement the new plan. Additional ERP and other department costs not included are payroll home operations staff and OHR home operations staff costs that will be required for requirement gathering, testing, and change management. Changes required to the printed check/advices will need to be updated to include and new/additional leave bucket. This currently involves working with an outside vendor. The time for DTS and the outside vendor in testing and making necessary changes are NOT included.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

**Estimated County Cost to Implement Bill 60-14
Proposed Earned Sick and Safe Leave**

	FY16	FY17 - FY21 Annually	FY16 - FY21 Total
Temporary Positions			
Hours of Sick and Safe Leave	27,220	36,595	210,195
Opportunity or FTE Replacement	\$300,354	\$538,401	\$2,992,360
FTEs	9.8	17.6	
Cost to Administer the Program			
Minimum: Grade 23	\$67,908	\$90,545	\$520,632
Maximum: Grade 25	\$73,725	\$98,300	\$565,226
FTEs	0.8	1.0	
MCTime & ERP*			
Design, Development, Deployment	165,906	TBD	TBD
Total Cost			
Hours of Sick and Safe Leave	27,220	36,595	210,195
Minimum	\$534,169	\$628,946	\$3,678,898
Maximum	\$539,985	\$636,701	\$3,723,492
FTEs	10.6	18.6	

Source: Office of Human Resources, Montgomery County Government 2014 payroll data.

*This is a new program that will need to be supported on an on-going basis. The costs only represent the level of effort for initial implementation of the program.

Expenditures for HRC over the next 6 fiscal years are estimated to be flat and consistent with current budget projections.

- 4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

See #2

- 6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

HRC indicates that if the volume of complaints continues to increase over time, additional resources may be required.

- 7. An estimate of the staff time needed to implement the bill.**

See #2

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

HRC will utilize existing staff to absorb the additional workload. However, the additional responsibilities may impact the number of cases each investigator can manage effectively. This will depend on the complexity of the cases. HRC has a number of new responsibilities added to the office requiring a new knowledge base for its compliance staff and the possibility of increased caseloads. HRC will monitor its effectiveness in processing these complaints going forward.

Additional staff for OHR would require training and on-boarding.

- 9. An estimate of costs when an additional appropriation is needed.**

See #2 & #3

- 10. A description of any variable that could affect revenue and cost estimates.**

Variables that could affect HRC cost estimates include the number of enforcement actions in any given year and the scope of community education and outreach.

The degree to which Sick and Safe Leave is used has a significant impact on the County's costs.

- 11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Although the bill allows for damages and other equitable relief consistent with the prescribed remedies provided in the code, actual relief or revenue cannot be estimated at this time. Furthermore, not all enforcement activity results in complaints. In addition, the cost of any needed educational outreach cannot be estimated with any accuracy at this time.

The degree to which county employees would use the leave they have accumulated is unknown. The cost to the County accrues through the additional administrative burden and through the use of this new category of leave.

12. If a bill is likely to have no fiscal impact, why that is the case.

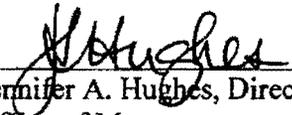
Not applicable

13. Other fiscal impacts or comments.

Not applicable

14. The following contributed to and concurred with this analysis:

James Stowe, Director, Office of Human Rights
Lori O'Brien, MIII, Office of Human Resources
Belinda Fulco, MII, Office of Human Resources
Heather Black, ERP MC Time
Amanda Hardy-Konkus, ERP Payroll
Phil Weeda, Office of Management and Budget
Helen Vallone, Office of Management and Budget
Amy Wilson, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

2/10/15
Date

Economic Impact Statement
Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave

Background:

This legislation would 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. Bill 60-14 also would require an employer to provide earned sick and safe leave at a rate of at least one (1) hour for every thirty (30) hours an employee works in the County up to fifty-six (56) hours in a calendar year.

1. The sources of information, assumptions, and methodologies used.

- Montgomery County Office of Human Rights
- Montgomery County Department of Economic Development (DED)
- Bureau of Labor Statistics, U.S. Department of Labor, Quarterly Census of Employment and Wages (QCEW)
- Maryland Department of Labor, Licensing and Regulation (DLLR)
- Institute for Women's Policy Research (IWPR)

Due to the lack of specific survey data for Montgomery County, it is difficult to determine with any degree of precision the number of businesses that provide and employees that receive paid sick leave. Therefore the economic impact statement is based on national data from a study conducted by IWPR and data collected from DLLR and QCEW and provided by DED. Finally, the economic impact statement assumes that the cost for paid sick leave incurred by Montgomery County businesses is based on the maximum of 56 hours and a minimum wage of \$8.40 per hour or \$470.40 per calendar year for each eligible employee.

Because of the lack of survey data, the Department of Finance (Finance) estimated the number of Montgomery County employees who do not receive paid sick leave and what the economic impact/cost would be for the provisions of Bill 60-14.

Finance utilized two approaches to estimate the number of employees that currently do not have paid sick leave – small business methodology and type of business (industry sector) methodology. In order to calculate the number of small businesses and types of businesses, Finance estimated that number based on data provided by DED. The first step was to incorporate national data from the IWPR Fact Sheet (#B337) dated July 2014 on the size of the business and industry classification that provides a percent of employees that do not receive paid sick leave. Those percentages range from a high of 85 percent for farmworkers, fishing, and forestry to 45 percent for health support system workers. Finance assumed that based on data in the IWPR Fact Sheet and data provided by DED, the selected industry classifications represent the majority of categories that employ workers at personal earnings at or below \$35,000 per year and most likely do not provide paid sick leave.

Economic Impact Statement

Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave

The second step was to estimate the number of employees in Montgomery County without paid sick leave by incorporating the national data in the IWPR Fact Sheet. According to the national data, small-sized businesses in the private sector with less than or equal to 100 employees are less likely to provide paid sick leave. Based on the data from DLLR and QCEW data files, Montgomery County has 32,610 small private-sector businesses with less than or equal to 100 employees. There are a total of 219,956 employees working in these establishments. Of the 32,610 businesses, 79.7 percent employ less than or equal to 9 employees (58,092 employees), and 95.9 percent of the 32,610 businesses employ less than or equal to 49 employees (168,898 employees). According to national study by IWPR, only 38 percent of small private-sector businesses with 1 to 9 employees provide paid sick leave. Second, 50 percent of those businesses with 10 to 24 employees provide sick leave and 58 percent of those businesses with 25 to 49 employees provide paid sick leave.

Because there are no specific data for Montgomery County that show the percent of small private-sector businesses providing paid sick leave, Finance used the data from the national study to estimate the number of employees in Montgomery County without paid sick leave. Applying the national percentages to Montgomery County businesses, only 38 percent of employees working in establishments that employ less than or equal to 9 employees have sick leave (22,075) and the remaining 36,017 do not. National percentages ranging from 50 to 66 of employees in establishments that employ 10 to 99 employees receive paid sick leave. Applying the maximum national percentage of 66 percent to Montgomery County data, 106,830 employees receive paid sick leave and 55,034 do not. Therefore Finance estimates that 91,051 employees in Montgomery County do not have paid sick leave. This estimate is based on the small business method.

The second methodology, employment by selected industry sector, is also used to estimate the number of employees without paid sick leave. The purpose of utilizing the second method is to provide a range of the number of employees with paid sick leave. With specific survey data from IWPR, using the second approach provides that range of employees without paid sick leave. According to the IWPR Fact Sheet and based on industry sectors, between 15 and 55 percent of employees do not have paid sick leave. Finance calculated the number of employees without paid sick leave for nine industry sectors. However, the industry sectors provided in the IWPR Fact Sheet are not identified by the North American Industry Classification System (NAICS) in contrast to the DLLR and QCEW data provided by DED that identifies job categories by NAICS code. Therefore, Finance aggregated the DLLR and the QCEW job categories into the IWPR industry sectors by similarity of job titles. Based on data from the DLLR and QCEW data files, Finance estimates that, of the 147,040 employees in those nine sectors, 89,217 do not have paid sick leave. That estimate is similar to the 91,051 employees estimated using the small business methodology.

Finally, assuming an employer pays the minimum wage for each hour of sick leave and 56 hours of maximum sick leave per calendar year, Finance estimates a

Economic Impact Statement

Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave

maximum annual cost of \$470.20 per employee. Based on that estimate and the number of employees without sick pay leave, the total cost to small private-sector businesses ranges from approximately \$41.95 million to \$42.82 million per year.

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact estimates are the number of employees eligible for paid sick leave, the number of eligible hours per calendar year (the EIS assumes the maximum of 56 hours), and the actual wage employees earn. Especially the scheduled increase in the minimum wage will raise the future economic impact noted in #1.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Based on the assumptions and calculations, Bill 60-14 could have a negative economic impact on business income but a positive economic impact on employee's personal income specifically income from wages. However, the impact estimated in paragraph #1 is based on the assumption that Bill 60-14 will have no effect on employment levels or a reduction in hours worked in small private-sector-businesses and that such businesses do not pass those additional labor costs onto the consumers in Montgomery County. If businesses elect to reduce employment and/or pass those additional costs to the consumer, such decisions would have a negative economic impact on the County.

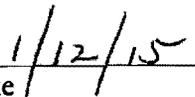
4. If a Bill is likely to have no economic impact, why is that the case?

This legislation will have an economic impact. See paragraph #3.

5. The following contributed to or concurred with this analysis: Mary Casciotti, David Platt and Rob Hagedoorn, Finance; and Nouna Sekhpossian, DED; James Stowe, Director, Office of Human Rights



Joseph F. Beach, Director
Department of Finance



Date

1

**Montgomery County Commission on Aging
Testimony in Support Statement of Paid and Safe Sick Leave Bill 60-14
February 29, 2015**

Introduction

My name is Rudolph Oswald and I am Co-Chair of the Montgomery County Commission on Aging Public Policy Committee. The Commission endorses the paid sick and safe leave bill 60-14. Our 2014 summer study of caregiver needs identified paid sick and safe leave as a gap in support for family caregivers in Montgomery County. While many county employees have paid or safe leave policies through employer benefit programs, union contracts, and legislation covering public employees, those employed elsewhere go without this benefit. Paid or safe leave would enable family caregivers and other county residents to care not only for themselves but also for their children and aging parents without the added fear and stress of potential job and income loss.

Background

US federal law requires large employers of 50 or more to provide employees up to 12 weeks of un-paid leave to attend to the serious health condition of the employee, parent, spouse or child, or for pregnancy or care of a newborn child, or for adoption or foster care of a child.

California, Connecticut, and the District of Columbia have passed legislation establishing paid or safe leave. The state of Massachusetts passed a referendum providing paid sick leave at the recent elections. The cities of San Francisco, Seattle, Portland, New York City, Jersey City, Newark, NJ, San Diego, Eugene, OR and Irvington NJ all have ordinances requiring paid or safe leave. Paid sick or safe leave referendums in Trenton and Montclair NJ were recently adopted by their citizens.

Studies of the impact of these laws noted beneficial effects for employees and their families with little or no harmful impacts on business or the community. For example, the District of Columbia's Accrued Sick and Safe Leave Act of 2008 extended paid sick days access to 307,000 private sector workers. A 2013 audit by the Office of the District of Columbia Auditor found no evidence that the law prompted businesses to leave the city or discourage employers from establishing new businesses in it. In 2013, the D.C. City Council passed the Earned Sick and Safe Leave Amendment Act, which expands the original law to cover an additional 20,000 tipped restaurant and bar workers.

Connecticut's paid sick days law took effect on January 1, 2012 and applies to about 287,000 workers. A recent survey of employers found that the law has had a minimal impact on costs, and few employers have made adjustments such as increasing prices or reducing employee hours because of it. Employers themselves identified positive effects of paid sick days, including improved employee productivity and morale, and more than three-quarters of employers expressed support for the law. Further, data from Connecticut's Department of Labor show job growth across industries since the law's implementation, including in the leisure and hospitality industry, which was most affected.

Position

The Commission on aging endorses and supports proposal 60-14 requiring employers operating and doing business in the County to provide employees at least 1 hour of leave for every 30 hours an employee, including tipped employees, works in the County up to 56 hours in a calendar year.



COMMISSION FOR WOMEN

Isiah Leggett
County Executive

Debra Bright Harris, Ed.D.
President

January 29, 2015

**TESTIMONY IN SUPPORT OF Bill 60-14:
Human Rights and Civil Liberties-Earned Sick and Safe Leave**

TO: The Honorable George Leventhal, President, and Members of the Montgomery County Council

FROM: Dr. Debra Bright Harris, President
Montgomery County Commission for Women

SUBJECT: Bill 60-14: Human Rights and Civil Liberties - Earned Sick and Safe Leave

The Montgomery County Commission for Women (CFW) is both an advisory board and a department of the Montgomery County Government. The advisory board is comprised of 15 county residents appointed by the County Executive and confirmed by the County Council and charged with the responsibility of advising the County Executive, the County Council, the public, and the agencies of the county, state and federal government on the issues of concern to women. In a five-pronged approach to advocating women's issues, the Commission for Women:

- Focuses primarily on identifying inequities in laws, policies, practices and procedures, and recommending and promoting remedies
- Conducts research and investigations, analyzes economic, political, and social trends, and provides education on women's issues in the community
- Holds hearings and publishes informational materials, and
- Holds an annual legislative briefing in partnership with many other women's organizations
- Sets priority projects annually

The positions put forward in this document are those of the Commission for Women alone, and do not necessarily reflect the position of the County Executive or the County Council.

Consistent with its mission and legislative mandate, the CFW supports the Bill 60-14: Human Rights and Civil Liberties - Earned Sick and Safe Leave, because it promotes the well-being and full participation of women in the work force as well as supports Maryland families' economic security and public health.

Council Members, in this turbulent economy, families are strapped for cash and crunched for time. Parents struggle everyday to create a better life for their children, and all too often, kids and their parents lack what they need to thrive. This is particularly true for children growing up in low- income families that are stressed by crises that disrupt the equilibrium of the entire household. Now more than ever, workers are struggling to balance the demands of their jobs and their families – in many cases with low wages. When a sickness or health problem arises, these challenges become insurmountable. Unfortunately, four in ten private sector workers don't have a single paid sick day that they can use to care for themselves or a sick family member.

According to the Maryland Budget and Tax Policy Institute, more than one of every 10 Marylanders live below the national poverty level. This rate doubles for families of single moms. At a time when Maryland families' finances are stretched thin, working people should not be forced to choose between being responsible employees and caring for family members. All hardworking Marylanders should be able to do what is right for their health and the health of their workplace, school, and community without risking the loss of their job or paycheck.

Bill 60-14: Human Rights and Civil Liberties - Earned Sick and Safe Leave, addresses this need that has been overlooked for many years—the safety and security of our community's culturally and economically diverse families and the well being of those who provide and care for them.

Policymakers, advocates, and the general public have embraced this initiative to improve the economic standing of families. A survey conducted by The Institute for Women's Policy Research and the Rockefeller Institute found that 69% of registered voters agreed that we need paid sick leave for family care and childbirth for all employees. Moreover, the benefits of paid sick leave legislation have been found to outweigh costs in a number of analyses conducted by the Institute for Women's Policy Research. Likely, additional benefits from paid sick days, include: reduced health care spending due to reduced public contagion and more timely and regular preventive care and treatment; improved economic security among families who receive pay on sick days and are less likely to be fired or disciplined for taking sick time; improved school outcomes and reduced contagion in school, when parents can avoid sending sick children to school or child care.

Mr. Councilman, families need the financial stability that Maryland's Healthy Working Families Act provides. The bottom line is about hard working Marylanders' – the jobs they need and the families they love. As you know, the vast majority of workers making minimum wage have no access to paid sick days. When these workers support dependent children or other family members, they face impossible choices and are forced to sacrifice their own health and welfare—and that of their children—in order to keep food on the table. The choice is appalling because for many families just 3.5 sick days without pay is equivalent to losing an entire month of groceries. Maryland's parents deserve the opportunity to work and live without the crippling weight of this choice on their shoulders.

The Montgomery County Commission for Women unequivocally supports this legislation and identifies the following benefits:

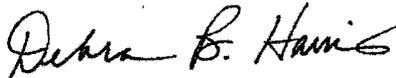
- Economic security for working women and families;
- Savings to public health insurance programs;
- Savings due to worker productivity;
- Improved school outcomes for students;
- Reduced workplace contagion; and
- Reduced school contagion.

The Montgomery County Commission for Women supports the passage of Bill 60-14 because every day, countless Maryland families face unexpected illness or injury.

Whether it's a child with an asthma attack or a parent with the flu, every small health crisis brings an impossible dilemma: to work, or to stay home? When an employee goes to work sick or sends a sick child to school, he or she risks becoming sicker and spreading the illness to others. But the current and shameful alternative is to lose a paycheck – or even jeopardize a job – in order to stay at home to recover or care for a loved one. Bill 60-14 will provide paid sick leave to all employees in Maryland so that no one is forced to choose between their jobs and maintaining their health or caring for their families. It is important legislation that will strengthen families, communities, and our economy in Maryland.

We respectfully urge passage of Bill 60-14.

Sincerely,



Dr. Debra Bright Harris, *President*
Montgomery County Commission for Women

JOTF JOB OPPORTUNITIES TASK FORCE

ADVOCATING BETTER SKILLS, JOBS, AND INCOMES

TESTIMONY IN SUPPORT OF BILL 60-14: Earned Sick and Safe Leave

TO: Hon. George Leventhal, President, and members of the Health and Human Services Committee
FROM: Melissa Broome, Senior Policy Advocate
DATE: January 29, 2015

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that develops and advocates policies and programs to increase the skills, job opportunities, and incomes of low-skill, low-wage workers and job seekers in Maryland. We support Bill 60-14, Earned Sick and Safe Leave, as a means to ensure that workers not have to lose income or risk job loss when illness strikes.

Everyone gets sick and everyone deserves time to recover without risking their economic stability, yet 40% of American workers are unable to earn a single paid sick day. In Maryland, more than 700,000 workers are forced to make impossible choices: go to work sick, send an ill child to school or daycare, or stay home and sacrifice much-needed income or, worse, risk job loss. Of these 700,000, approximately 100,000 reside in Montgomery County.

Bill 60-14 would allow workers to earn one hour of paid sick leave for every 30 hours worked, accruing up to a maximum of 7 full days – or 56 hours – per year. Employees would be able to use the paid sick days to recover from their own illness or to care for a family member. The safe time component of the legislation ensures that women who have been victims of domestic violence or sexual assault are able to use their accrued paid sick leave to care for their health after these incidents or to seek legal protections or new housing. The law in no way requires financial or other reimbursement to an employee for unused paid sick days upon termination, resignation, retirement or other separation from employment. Employers with existing paid leave policies such as PTO (paid time off) will not have to alter their current plans as long as they meet the minimum leave time requirements of the bill and allow the time to be used for the same purposes specified in the Act.

Marylanders' support for paid sick days is overwhelming:

In a December 2012 Hart Research poll, 82% of voters in three Maryland districts favored a proposal to allow workers to earn paid sick days based on the number of hours they work. Support was broad across key voting blocs with 93% of Democrats and 64% of Republicans expressing support. In addition, nearly four in five business households (households that include a business owner) favored the proposal.

126 organizations from throughout Maryland have officially expressed their support for earned sick time by joining *Working Matters*, a coalition formed to advance the Maryland Campaign for Paid Sick Days. As can be seen from the attached list, members include business owners, faith groups, educators, labor unions, as well as advocates for women, children, seniors, minorities, and low-income populations, amongst others.

Nearly 20,000 individual Marylanders have signed a petition in support of earned sick leave. Such widespread support is a clear indication that access to paid sick days is critical for all of Maryland's working families but especially for single-parent families, which are usually headed by women, and also for African American families, 28 percent of whom were living in poverty in 2011.

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For these families, the risk of job loss due to a common illness or the need for routine medical care is even more threatening to their financial security and well-being. Just a few days without pay is often equivalent to losing an entire month's grocery budget. The loss of precious income due to illness can mean the difference between getting by and financial devastation.

It is well established that lack of access to paid sick days disproportionately affects low-wage and service industry workers. Of full-time Maryland workers with annual earnings of less than \$35,000, 44% are unable to take a day off when they or their family members are sick. When considering those who earn less than \$15,000 annually, nearly 70% lack access. These workers prepare our food, supervise our children, and provide in home care to sick and elderly loved ones – all while sick.

The public health risks associated with a lack of paid sick days are clear. Only 35% of service workers – including food service and personal care workers – have access to paid sick days. Because these workers are the least likely to be able to afford a day without pay, they often go to work while sick, putting the health of all Marylanders at risk. A recent Center for Disease Control study found that more than half of all norovirus outbreaks can be traced back to sick food service workers. In addition, the Maryland Chapter of the American Health Association recently released the following statement:

“The Maryland Public Health Association joins the American Public Health Association in supporting paid leave legislation that would protect employees in the state of Maryland in the event of illness or unforeseen event. The United States is the only developed country that does not require an employer to provide paid leave so it is time to act upon this serious shortcoming and provide our citizens with the safeguards they deserve.”

In addition to the impact on working families overall, the harmful effects on Maryland's children cannot be ignored. Children inevitably get sick and they get better faster when their parents care for them. Parents without paid sick days are more than twice as likely as parents with paid sick days to send a sick child to school or day care, and five times more likely to report taking their child or a family member to the emergency room because they were unable to take time off work during normal work hours. Passage of Bill 60-14 will make it easier for workers to be good employees and good parents – and will let children lead healthier lives and be more successful in school. Seniors will also benefit when adult children can afford to take them to the doctor or care for them during an illness.

The establishment of an earned sick days standard will strengthen the county's economy. The cost benefits for businesses are undeniable. When working families have enough money in their pockets to cover the basics, the entire economy gains. Losing even a day's wages – or worse, a job - undermines families' ability to contribute to the economy and forces many to rely on public programs to keep their families afloat. In addition, “presenteeism,” or workers underperforming because of illness, is estimated to cost employers \$160 billion per year – twice as much as the cost of absenteeism. Paid sick days also benefit employers by reducing turnover. Put simply, workplaces are healthier when sick workers are able to stay home. The spread of disease slows, workplace injuries decrease, and workplaces are more productive.

In these fragile economic times when working people need to be able to keep their jobs and support their families, the ability to earn paid sick days is more important than ever. Workers are vulnerable and cannot afford to lose income or risk being fired simply because they have the flu or a child needs routine medical care. Rebuilding the middle class and strengthening families' economic security requires common-sense protections like earned sick leave. We respectfully urge a favorable report.

WORKING MATTERS

MARYLAND CAMPAIGN FOR PAID SICK DAYS



HEALTHY WORKING FAMILIES ACT – SENATE BILL 40

As of 1/29/15, the following organizations have committed their support to the Healthy Working Families Act:

1. 1199 SEIU
2. AARP
3. ACLU of Maryland
4. AFL-CIO
5. Advocates for Children and Youth
6. AFSCME Maryland
7. AFSCME Council 67
8. Alternative Directions
9. Alzheimer's Association
10. Amalgamated Bank
11. American Sustainable Business Council
12. Am Kolel - Jewish Renewal Community
13. Asbury United Methodist Church
14. Associated Black Charities
15. Baltimore Partnership to End Childhood Hunger
16. Baltimore Racial Justice Action
17. Baltimore TimeBank
18. Baltimore United Congregations
19. United Methodist Church, Baltimore-Washington Conference
20. Bedazzled
21. Busboys and Poets
22. Cancer Support Foundation
23. Capital Area Food Bank
24. Caroline Center
25. CASA de Maryland
26. Catholic Charities
27. Caucus of African American Leaders
28. Cecil County Domestic Violence Rape Crisis Center
29. Center for Law and Social Policy
30. Central Maryland Ecumenical Council
31. Charmington's
32. Chesapeake Climate Action Network
33. Chesapeake Sustainable Business Council
34. Civil Advocacy Clinic, University of Baltimore School of Law
35. Clearinghouse on Women's Issues
36. Church Women United of Maryland
37. Coalition to End Childhood Lead Poisoning
38. Communications Workers of America
39. Communities United
40. Community Action Council of Howard County
41. Community Law Center
42. D.C. Employment Justice Center
43. Education Association of St. Mary's County
44. Episcopal Diocese of Maryland
45. Equality Maryland
46. Family and Children Services
47. Family Crisis Resource Center, Inc.
48. Family League of Baltimore City
49. Family Values @ Work
50. Federally Employed Women
51. Food & Water Watch
52. Frederick County Teachers Association
53. Healthcare is a Human Right – Maryland
54. Health Care for the Homeless
55. Homeless Persons Representation Project
56. Interfaith Worker Justice
57. Interfaith Works
58. Jews United For Justice
59. Job Opportunities Task Force
60. Labor Project for Working Families
61. League of Women Voters – Maryland
62. Learning Center Management
63. Marian House
64. Maryland Alliance for the Poor
65. Maryland CASH Campaign
66. Maryland Center on Economic Policy
67. Maryland Coalition Against Sexual Assault
68. Maryland Commission for Women
69. Maryland Consumer Rights Coalition
70. Maryland Family Network
71. Maryland Federation of Business and Professional Women
72. Maryland Hunger Solutions
73. Maryland Interfaith Legislative Committee (MILC)
74. Maryland Legislative Agenda for Women
75. Maryland Network Against Domestic Violence
76. Maryland Out of School Time Network
77. Maryland Senior Citizens Action Network
78. Maryland State Conference of NAACP Branches
79. Maryland State Education Association
80. Maryland Women's Coalition for Health Care Reform
81. Maryland Working Families
82. Medicaid Matters
83. Mid-Atlantic Laborers' International Union of North America
84. Mid-Atlantic Regional Joint Board, Workers United
85. MomsRising
86. Montgomery County Commission for Women
87. Montgomery County Midlife & Older Women's League
88. Montgomery County Young Democrats
89. Montgomery Village Eye Center, Inc.
90. Moveable Feast
91. National Association of Social Workers, MD Chapter
92. National Conference of Puerto Rican Women – D.C. Metro Chapter
93. National Council of Jewish Women – Baltimore Section
94. National Council of Negro Women – Prince George's County Section
95. National Council on Alcohol & Drug Dependency – MD
96. National Lawyers Guild – Maryland Chapter
97. National Nurses United
98. National Organization for Women – Anne Arundel County
99. National Organization for Women – Baltimore Chapter
100. National Organization for Women – Maryland
101. National Organization for Women – Montgomery County Chapter
102. Policy Partners
103. Presbytery of Baltimore
104. Primary Care Coalition of Montgomery County
105. Prince George's County Commission for Women
106. Progressive Maryland
107. Public Justice Center
108. Safe and Sound Campaign
109. SEIU 32BJ
110. SEIU Local 500
111. Social Enterprise Alliance
112. Somali American Community Association
113. South Baltimore Learning Center

- 114. Southern Prince George's Business & Professional Women
- 115. Unitarian Universalist Legislative Ministry of Maryland
- 116. UNITE HERE Local 7
- 117. United Democratic Women of Maryland
- 118. United Food & Commercial Workers Union – Local 400
- 119. United Ministries
- 120. United Workers Association
- 121. U.S. Women's Chamber of Commerce
- 122. Welfare Advocates
- 123. Women's Action Coalition of Prince George's County
- 124. Woman's Democratic Club of Montgomery County, MD –
Board of Directors
- 125. Women's Law Center
- 126. YWCA Greater Baltimore



Testimony of Sally Dworak-Fisher

Public Justice Center

Hearing before the Montgomery County Council

Support for Earned Sick and Safe Leave

January 29, 2015

Sally Dworak-Fisher
Public Justice Center
One North Charles Street
Suite 200
Baltimore, Maryland 21201
410.625.9409
dworak-fishers@publicjustice.org

Good evening, President Leventhal, Councilmembers. My name is Sally Dworak-Fisher, and I am an attorney with the Public Justice Center (PJC). The PJC is a non-profit, social justice legal organization. Our Workplace Justice Project works to enforce the fundamental rights to be paid fully and fairly, to ensure that workers have opportunities to work and advance in an equitable environment, and to expand the right to just and safe working conditions. We are also one of the founding members of Working Matters Coalition. I am here tonight to urge your support for the Earned Sick and Safe Leave bill.

The bill before you is fairly straightforward. It does the following:

1) allows employees to earn 1 hour of sick and safe leave for every 30 hours worked in the County, up to 56 hours;

2) allows employees to carry over 56 hours of leave, but allows employers to cap the use of leave at 10 days per year,

3) allows leave to be used to take care of one's self or a family member in illness, domestic violence, or sexual assault,

5) allows employers to require documentation for absences of more than 3 days, and

6) allows employers to include other paid time off policies, such that employers can count general PTO policies toward the earned leave required under this bill.

We urge your support for the Earned Sick and Safe Leave bill because this bill fills a critical gap in existing legal protections, and it will improve the lives of Montgomery County workers and their families. Currently, there is no law in Maryland that is designed to provide short-term sick or safe leave, and none that requires employers to allow their employees to earn such leave. While there are other workplace laws and protections, none of them are designed to address the basic fact that we all get sick, and many of us cannot afford a pay cut when we do.

The Family and Medical Leave Act (FMLA) does not provide paid leave, nor does not it provide sick leave. It merely requires certain employers to provide *unpaid* leave to eligible

employees in limited circumstances. More specifically, the FMLA provides for job-protected leave for up to 12 weeks per year for *major life events*, not leave for short-term illnesses, such as the flu.

Likewise, the Americans with Disabilities Act (ADA) is not designed to address short term illness. The ADA is an anti-discrimination statute. It provides protection to employees with disabilities that limit their ability to engage in a “major life activity.” Qualified employees may request reasonable accommodations in order to perform their job. However, earned sick and safe leave is not a required accommodation. In short, the ADA only applies to instances of *disability*, and – similar to the FMLA – does not cover short term illness.

Finally, the Maryland Flexible Leave Act (MFLA) does require employers to allow employees to take paid leave to care for a family member. The Flexible Leave Act is a significant and important piece of protection for workers whose employers already voluntarily provide paid leave. However, it does not cover employees who have no paid leave of any kind. As a result, many hard-working Marylanders – including a majority of working moms and more than 80% of low-wage workers – are faced with having to choose between getting better or getting paid.

Because the Earned Sick and Safe Leave bill fills a critical legal gap and recognizes that everyone gets sick and deserves the time to recover without jeopardizing their economic stability, we urge your support.

Thank you.

Laurie Chin
Community Advocate
Montgomery County Young Democrats
laurie.a.chin@gmail.com | 240-994-2415



Good Evening. Thank you for the opportunity to testify in favor of **Bill 60-14 Earned Sick and Safe Leave**. I am speaking tonight on behalf of Montgomery County Young Democrats, whose members strongly support this bill. Earned sick days are so important to our organization that it was presented as one of our six legislative priorities for this year.

Earned Sick and Safe Leave would provide a floor, to allow all workers the ability to earn one hour of leave for every 30 hours worked. Under our current system, without paid sick days, there is no floor and wide variability in access. There are really two Montgomery Counties, the one whose workers are able to earn paid sick leave and the other whose workers cannot, no matter how many hours they work, for however many years, they will *never* be able to earn a day off.

This bill is not for those of us lucky enough to already have access to paid sick days. It is for the 40% of private sector-workers -- and more than 80% of low wage workers -- who are forced to choose between going to work sick or sacrificing income and risking their employment. It is for those who are living paycheck to paycheck, who just can't afford to lose a full day of wages because that might be money for groceries or a tank of gas. The workers who are least likely to have paid sick days are also those who can least afford to take an unpaid day off.

Paid sick days are especially important in the service industry. However, only 24% of food and service workers, 31% of personal care workers (as in child care workers), and 48% of workers in sales and related occupations have paid sick days. These are precisely the people who you don't want working while sick, the people who handle your food, your small children with undeveloped immune systems, the elderly who are one sickness away from death.

To quote state Senator Catherine Pugh, "We're not saying give sick leave. We're saying allow people to *earn* sick leave" Let people earn sick leave, so that they are able to stay home from work and not infect coworkers and customers. Let people take time off to care for a sick child or take care of necessary medical concerns. Let sexual assault or domestic violence survivors earn safe leave to obtain legal services or counseling. If you don't pass this crucial legislation, you deny survivors the opportunity to seek the help they need.

Now is the time to pass earned sick and safe leave. Montgomery County needs to join Washington DC which passed the Accrued Sick and Safe Leave Act seven years ago, in 2008, and even expanded the original law in 2013. This is a legislative priority for over 120 organizations which make up the Working Matters coalition, including MCYD. The President of the United States is calling on you, our local government, to expand access to earned sick days. We ask you to stand with us and support the majority of full time workers who earn less than \$35,000 and don't have access to paid sick days.

Paid sick days is something most of us with access to paid sick days take for granted. Let's rectify the two Montgomery Counties and expand access to earned sick days. Montgomery County Young Democrats urges a **favorable** report.

Montgomery County Council
Testimony for Bill 60-14, Sick and Safe Leave Act
1/29/2015

Holli Levinson
holli@jufj.org
404-823-2404
20 Maryland Ave, #204
Rockville, MD 20850

My name is Holli Levinson. I am a Montgomery County resident, and I'm also privileged to be the Montgomery County organizer for Jews United for Justice (JUFJ), a DC metro organization advocating for progressive values and local change.

First, I want to thank CM Leventhal for introducing this legislation that would allow all workers in Montgomery County to earn paid safe and sick days.

While it is true that I am here in part because of my professional role with JUFJ, this issue is in fact very personal for me. About 20 years ago I was diagnosed with Crohn's disease, a chronic autoimmune condition. Living with a chronic illness is of course challenging in and of itself. Ironically, earlier this week, I sat in my boss's office to talk to him about handling my sick days, because I have been dealing with a Crohn's flare up. I am fortunate to work for an organization that does in fact apply its values not just to the broader community but also to its employees.

Even with paid sick days, I live with a constant anxiety. I simply can't imagine how hard it is for someone who can't earn this benefit. The scary truth is, for me and for anyone with a chronic illness, we would not be able to hold a job without a paid and protected sick days.

And that just seems absurd—that someone who wants to work and should be able to work could end up unemployed, dependent on much more costly government social services, simply because too many employers don't provide workers a few days off.

Here's the real bottom line: We can do better.

We can do better here in Montgomery County, where we have such great affluence but also great poverty.

We can do better here in Montgomery County and make sure no one has to choose between their health and paying for groceries.

We can do better here in Montgomery County to make sure no one has to choose between their job and caring for their sick child or taking an elderly parent to a doctor's appointment.

We can do better here in Montgomery County by continuing to live up to our role as leaders in progressive policy so that we can also push the state to pass a strong bill this session.

We can do better here in Montgomery County by acting on shared values of family and community. In Judaism, we have the concept of *b'tzelem elohim*, the belief that we are all made in the image of g-d. I am here today because providing paid sick days is one more step toward treating each other that way.

We can do better, and Bill 60-14 is a start.

Thank you.

Testimony of Jaime Contreras

Vice President, 32BJ SEIU, Capital Area District



DATE: January 29, 2015
BILL NO.: Bill 60-14
TITLE: Montgomery County's Earned Sick Leave Bill
POSITION: Support

Good afternoon Councilmembers. My name is Jaime Contreras, and I am a Vice President at SEIU 32BJ and head the union's Capital Area District. On behalf of my union, and the 10,000 working men and women 32BJ represents in Maryland, I am here to testify in support of the Earned Sick Leave bill (60-14) and speak to the impact this would have on working families in Montgomery County.

Too many hard-working men and women in Montgomery County struggle to make ends meet and lack any paid sick leave. When low-wage workers or their children get sick, they are forced to make difficult choices—either to go to work, or to stay home without pay and risk losing their job.

Moreover, access to sick days is also vastly unequal. Nationally, higher-earning workers are nearly four times more likely to have sick days than the lowest paid workers.ⁱ According to the Economic Policy Institute, "only one-in-five low-wage workers have paid sick days, compared with 87 percent of high-wage workers."ⁱⁱ These low-income workers are the ones who can least afford to lose pay when they are sick when it's already a struggle to pay the bills and have families to take care of.

This is why 32BJ members have fought for and won the right to paid sick leave under their collective bargaining agreement. Like President Obama said in the State of the Union two weeks ago, workers deserve this, and we are happy to see that the Montgomery County council is taking steps to make this a reality for all workers in the county.

In addition to being engaged in the fight for paid sick days in Montgomery County, 32BJ has been active in paid leave victories in dozens of municipalities across our jurisdictions. Our neighbors in the District have already been enjoying paid sick and safe leave thanks to a strong, pro-working family City Council. We have also worked with elected officials in Connecticut, Massachusetts, New York City, and a number of cities and towns in New Jersey to provide paid sick leave to working families.

From these victories we have learned some important lessons and best practices that can help Montgomery County's paid sick leave reach the most workers as possible. This bill already has a number of best practices that should be passed into law. For instance, it covers all workers regardless of the size of the business they work for—something that we have also seen in towns in

New Jersey—and it includes provisions that support victims of sexual assault, stalking and domestic violence.

However, there is one important measure that is missing. This bill should be amended to address the specific concerns of a contracted workforce. In certain industries, like the property services industry, contractor flips are a common occurrence. Workers should be able to carry over the paid sick leave that they accrued under an employer that is succeeded by a new employer. For example, if a cleaning contractor is replaced by a new contractor and the new cleaning contractor hires the incumbent workers, those workers should be able to keep the paid sick leave that they accrued under their former employer. Newark, New Jersey's earned sick leave's successorship provisions provides a good model for the Montgomery County bill.

With this fix, we believe Montgomery County's bill will be very strong.

Low-wage workers are counting on Council Members to stand up for them - so that they never again have to choose between seeking medical attention and losing a day's pay or worse, losing their jobs.

The Council should continue its proud legacy of standing up for working families, by ensuring that men and women can exercise their right to take time off when they or their family members are sick. Thank you.

ⁱ <http://www.epi.org/publication/rich-people-have-paid-sick-days-poor-people-do-not/>

ⁱⁱ <http://www.epi.org/publication/rich-people-have-paid-sick-days-poor-people-do-not/>

**TESTIMONY IN SUPPORT OF Bill 60-14:
Human Rights and Civil Liberties- Earned Sick and Safe Leave**

TO: Hon. George Levanthal, President, and members of the Montgomery
County Council
FROM: Boaz Young-El, Political Representative, United Food and Commercial
Workers Local 400
DATE: Jan 29, 2015

Mr. President and members of the council, thank you for the opportunity to testify today on this important bill. My name is Boaz Young-El and I am the political representative for the United Food and Commercial Workers Local 400. We represent nearly 11,000 members in the state of Maryland, mostly in the retail and grocery industries. UFCW Local 400 strongly supports Bill 60-14, Human Rights and Civil Liberties- Earned Sick and Safe Leave and we urge you to favorably report it without amendment.

The vast majority of our members in Montgomery County have access to paid sick and safe days that they have negotiated through a collective bargaining agreement. Unfortunately, many retail workers do not have the benefits of a collective bargaining agreement and have no access to paid time off when they or a family member are sick. This puts these workers in a position where they have to choose between getting paid and taking care of themselves and their families. This leads many workers to go to work sick or send their children to school sick, spreading germs and disease and ultimately harming not only the individuals but the economy and the health care industry.

It does not help employers or workers when employees have no other option than to go to work sick or send their child to school sick. Employers would actually save money over the course of the year due to reduced turnover.

This is a fair and common sense policy that will benefit employers, workers, and the health of all Montgomery County residents. On behalf of all of our members in Montgomery County, we urge a favorable report on Bill 60-14. Thank you for your time.



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TESTIMONY IN SUPPORT OF EARNED SAFE AND SICK LEAVE

TO: Hon. George Leventhal, Montgomery County Council President & the Montgomery County Council
FROM: Ruth Martin, Senior Campaign Director, MomsRising
DATE: January 29, 2015

Thank you for having me here today. My name is Ruth Martin, and I am a Silver Spring mom of two small children, and the Senior Campaign Director for MomsRising.org. There are over one million members of MomsRising across the nation, and over 30 thousand in Maryland – and a significant portion of those live here in Montgomery County. We are deeply thankful that you are considering passing earned safe and sick leave legislation.

This issue is critically important to our members.

Claudia, a social worker for a mental healthcare provider in Montgomery County told us how one of her clients was put in an impossible position. Her four-year-old daughter was sick and unable to go to childcare. The mom wasn't able to earn sick days at her fast-food job. She had to choose between going to work and leaving her sick child at home alone, or losing her job and being unable to provide for her daughter. She made a calculated risk and left her daughter unattended for a few hours until her grandmother could come care for the child when the grandmother left work. No one wants to be in that position to make that choice. Nobody wins in this scenario.

Sarah, a guidance counselor at a public high school in Montgomery County shared that she's seen first hand what it means when parents are forced to send their sick kids to school: Kids aren't able to concentrate, they lose out on a day's learning and they put their classmates and teachers at risk of getting sick too.

Jim was a bartender at a small family owned restaurant in Bethesda. He lives paycheck to paycheck and has no health insurance or paid sick days. Despite being sick Jim couldn't afford to miss a shift. He ended up sneezing on a customer and the customer's food while at work. Even though he apologized, brought new food and paid for the check, the customer's weren't forgiving. They posted a negative Yelp review about Jim and the restaurant and ultimately cost Jim his job.

We also hear from members who DO have access to paid sick days. For example, Jenn who lives in Silver Spring and works here in Rockville for a private company, told us that having paid sick days means she didn't have to worry about her job or her paycheck when her 16 month old son was admitted to the hospital for two nights when he had an asthma attack, or when a peanut allergy sent him to the emergency room. Claudia, the social worker I mentioned earlier actually recently turned down a new, higher paying job, because that employer did not have a reasonable paid sick days policy. These are the kinds of stories our members send us about paid sick days. It's important. And I know you know it's important – and have also seen the data which shows that advancing paid sick days boosts our families and our economy. In short: Paid sick days are a win-win. They keep people in the jobs they desperately need and save employers money because offering earned paid sick days is much less expensive than the cost of replacing workers.

The members of MomsRising and I deeply appreciate the hard work you've been doing—and are doing tonight—to bring our public policies up-to-date with what women, working families, Montgomery County, and our economy, need now. Thank you.

Testimony by Susan Horst, President of Business and Professional Women of Maryland (BPW/MD) and member of Montgomery County Business and Professional Women, in support of the Earned Sick and Safe Leave Act,

Jan. 29, 2015

Good evening Council Members,

I am Susan Horst, president of the Maryland Federation of Business & Professional Women (BPW/MD), and a member of Montgomery County Business & Professional Women (MCBPW). I speak in support of the Earned Sick and Safe Leave legislation.

Founded in 1929, BPW is a not-for profit, non-partisan, and non-sectarian volunteer organization that promotes equity for all women in the workplace. For over 85 years, BPW has been the voice of working women. BPW members, who are working women, caregivers, and business owners, overwhelmingly support the Earned Sick and Safe Leave Act. While the majority of citizens that will benefit from this bill are women, our members see this issue as not only a “women’s” issue, but an economic and public health issue as well.

Working women need paid sick days.

Women make up nearly half of the Maryland workforce, and 2/3 of all family caregivers are female; yet women-dominated industries are among the least likely to offer paid sick days.

54% of working women lack access to paid sick days.

20% of working women report that they or a family member have been fired or disciplined for taking time off to cope with an illness or to care for a family member.

Women who do not earn paid sick leave, and have to miss work due to illness or while caring for an illness in the family, are severely impacted economically. Losing a day’s wages often means that money is short to pay essentials such as housing, utilities, food, transportation or medicine. The threat of job loss is especially damaging, and could force women and families into poverty, with severe ramifications.

Unfortunately, nearly one in four American women report physical or sexual abuse by a husband or boyfriend at some point in their lives. Paid safe days protect the paychecks and jobs of victims of domestic violence, stalking or sexual assault when they need time off to seek assistance. Victims are already so devastated, they don't need the added stress of losing precious income, or worse, their jobs.

Think about all of the people around you every day – preparing your food, caring for your children, riding next to you on the Metro, sitting in the cubicle next to you at work, the cashier in the grocery store – if they are sick, they need to take the time needed to get well and not be fearful of income loss, job loss or disciplinary action.

Paid sick and safe leave provides the security, the economic cushion that many women need to continue to be productive workers.

This bill is good for workers and employers – it is a win/win proposal and one that needs to be passed.

For all workers, but particularly working women, I urge you to pass the Earned Sick and Safe Leave Act.

Thank you.

Susan Horst

President, Business and Professional Women of Maryland (BPW/MD)

susanhorst@yahoo.com

240-498-8434



Testimony of Kendra Ziegler, Registered Nurse

On behalf of National Nurses United

Montgomery County Council, January 29, 2015

Thank you for the opportunity to testify today.

My name is Kendra Ziegler and I am a resident of Silver Spring. I have been a registered nurse since 2007 and I work at Washington Hospital Center.

I am a proud member of National Nurses United, the nation's largest professional organization and union of registered nurses with 195,000 members, including 4,400 in Maryland, DC and Virginia.

National Nurses United urges you to pass this legislation to ensure that all Montgomery County residents who work have paid sick days.

It's flu and cold season, so people need to take every precaution to keep themselves and their families healthy. That's why, as a nurse, I recommend to patients and friends, to stay home if they are sick.

Staying home from work due to one's own illness or because one's kids are sick is only possible when that person knows he or she won't lose pay or get fired because of it. For many Montgomery County residents, that's not the case.

Earlier this year, I cared for a man who requested a riskier and less effective procedure in an effort to avoid time away from work for surgical recovery. The patient was so adamant that the time off could cost him his career, he wanted to leave the hospital against medical advice - despite having multiple severe coronary artery occlusions and active chest pain.

He was so worried about how time off would hurt his family and his future that he endangered his life. Like my patient, too many people simply can't miss work because they can't lose the pay, or they fear they'll get fired if they take time to recover or stay home to care for their child.

By putting workers in that impossible situation, we not only impair their recovery, we risk infecting everyone they come in contact with – customers, co-workers, other children, teachers, and so many more.

For example, the Centers for Disease Control and Prevention found that more than 10 million cases of food-borne illness each year are caused by sick restaurant workers contaminating food.

As a registered nurse, I know that a great way to cut down on the spread of sickness, improve public health, and keep Montgomery County working is to require paid sick leave for all workers. National Nurses United thanks the council members who introduced this important legislation.

We urge every councilmember to do what is best for the health of county residents and workers by passing this paid sick leave bill without weakening it.

And please send a strong message to the General Assembly that they should pass strong statewide legislation.

Thank you.



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**Testimony of
The Greater Silver Spring Chamber of Commerce
Public Hearing – Bill 60-14 Human Rights and Civil Liberties – Earned Sick and Safe Leave
Montgomery County Council Public Hearing
Thursday, January 28, 2015**

Council President Leventhal, members of the Council, good evening. For the record, my name is Jane Redicker and I am President of the Greater Silver Spring Chamber of Commerce. I speak here today on behalf of almost 400 businesses – small and large, but mostly small – and several non-profit organizations, that are members of our Chamber and provide a significant number of jobs in Montgomery County.

Based on the feedback we have received from our members, the Greater Silver Spring Chamber of Commerce must oppose Bill 60-14 Human Rights and Civil Liberties – Earned Sick and Safe Leave.

Shortly after Councilmember Leventhal convened a discussion on earned sick leave for the Health & Human Services Committee last October, our Chamber joined with the our sister Chambers – the Gaithersburg-Germantown Chamber, the Greater Bethesda Chevy Chase Chamber, the Montgomery County Chamber, the Wheaton-Kensington Chamber – and other business groups, including the Maryland Restaurant Association and the Apartment and Office Building Association, to reach out and ask our members about this matter. I'm going to use my time to review a bit of what we learned. My colleagues will delve into more specifics.

Our outreach included business owners and employers ranging from companies having only a single staff member to one having more than 2,000 employees, and everything in between. In total, 156 businesses took the time to review the legislation and express their comments and concerns to us. 75 percent have fewer than 50 employees; more than half have 25 or fewer employees; and 41 percent have 10 or fewer employees.

Nearly all of the employers (97%) that responded already provide sick leave for their full time employees. 44 percent of those offer Paid Time Off (PTO) benefits instead of differentiated annual leave and sick leave. As they read the current language in the bill, these employers were concerned about how it would affect their PTO practices. Here's what one employer said:

“If employers are required to provide separate 'sick' leave or add more hours to PTO, because we use the PTO method, companies will cut back on the leave they're providing in order to accommodate the sick leave mandates. . . .Employees in our service industry (Information Technology) for the most part prefer the PTO, as it gives the healthy ones the flexibility to use what would otherwise be set aside for only 'sick' use and have extended vacations and time off where they don't have to play at 'sick' in order to use the sick leave, and won't be caught in a lie if they're out 'sick' and get involved in a skiing accident that day they supposedly had been out 'sick.’”

Another put it this way:

“This proposal is anti-employee for those who already provide sick leave via PTO. We are already generous in the PTO time we offer. We cannot add days overall if sick time is separately stated. We will have to reduce vacation days by the number of days we have to provide separately for sick days. This will be a detriment for healthy employees, and will likely motivate many to lie about illness in order to not lose leave days. This is not employee friendly at all if sick leave must be separately accrued and tracked. Our employees will hate it and will feel as if they have lost benefits, not gained.”

Only about half of our members said they provide sick leave for part-time staff. Those who do not – many of them small businesses with limited staff – said that having to provide sick leave for part-time employees would be a burden, and could force them to cut back on their part-time staff. Here's what a few said:

“. . .[We'll] cut back on part time employees since each part-time employee will cost seven days of sick leave, and thus [we'll] consolidate jobs into full time positions instead of offering several part time positions, thus saving seven days of paid sick leave for every part-time position eliminated. Someone loses big time, and the other is either pleased or inconvenienced by not having a flexible part-time position.”

“Having to provide a minimum of 7 days, and having to include part-time workers would have negative impact. I would limit part-time staff.”

Two others, non-profit arts and social services organizations pointed out that:

“This will be very difficult for us, as most of our part-time workers are teaching artists. If we are required to offer sick leave to part-time workers, we'll have to pay them for time off and pay the substitute.”

“These additional costs for employees on a part time basis will make it difficult to provide affordable assistance to seniors.”

The majority do not provide sick leave for tipped employees. I'll let my colleague from the Maryland Restaurant Association address that.

Many employers, especially the smaller business owners, expressed concern that the amount of sick leave they would be required to provide is too much, and not in line with other jurisdictions, or state legislation that would differentiate between small and large businesses. Here's what they said:

“I believe the amount of time proposed is excessive. One hour per 40 hours is adequate. . .”

“This proposal is onerous. Seven days is a lot of sick leave. Part of the problem is that some employees view sick leave as a right, not a privilege. That is to say that honest people only take it for an actual illness, and normally don't use the entire amount of days. Some employees think that they get to take essentially five to seven extra vacation days a year, whether they are sick or not. This is very difficult to document, and adding eligible sick days only encourages this type of fraud. 40 hours a year (five working days) of sick leave is very fair and more than sufficient in my opinion.”

Many businesses are concerned about the report requirements in the bill. Having to provide an employee with a written statement of available earned sick and safe leave each time the employer pays wages to the employer would be a challenge for many small businesses. It is possible only if the employer has an automated paid leave system, something many small businesses do not. And while even small businesses use a payroll service, adding this element would increase the costs of that service. Here's what they said:

“This would be an administrative nightmare. Being in a small company, I am the only one that has access to the personnel information.”

“I am very concerned about the increased record keeping and oversight that tracking sick leave for part time staff would create.”

“There would be a significant impact in administering this, especially for part-time employees who work variable schedules, in terms of tracking eligibility and accrual.”

The cost of this legislation will fall not only on employers. The cumulative impact reaches into employee wages and benefits, and into the cost of goods and services, oftentimes services for the vulnerable members of our population for whom costs are often fixed. Here's how one home care company described it:

“Paid sick leave is a fundamentally correct thing to do. However, if we provided it for all employees, as I'd like to do, the price of our services would have to increase. Our prices are already at the top end of our competitors so that we can provide more employee pay, training and support, and more client support. Most of our clients pay privately for services, as preventive in-home care is not covered by any insurance other than Long Term Care Insurance, which most people don't have. Raising costs prices more people out of obtaining needed services, and seriously compromises our ability to compete in the market place. Perhaps one way to support employees, employers and clients/potential clients is for tax breaks for employers to provide this.

For these reasons, the Greater Silver Spring Chamber cannot support this legislation.

Montgomery County Employer/Business Owner Reaction to Bill 60-14 -- Human Rights and Civil Liberties -- Earned Sick and Safe Leave

This document contains verbatim comments from employers and business owners in Montgomery County regarding Bill 60-14 -- Human Rights and Civil Liberties -- Earned Sick and Safe Leave .

- To require employers to provide sick leave to part time employees is adding a new way for employees to misuse their benefits. I provide fair wages and compassionate benefits to all employees. However, this type of legislation hurts small businesses by adding a new mandatory employee benefit that is simply primed for misuse.
- This is a very expensive concept that will stymie wage increase for hard working employees and be passed along to customers-- it is also INCREDIBLY susceptible to being abused by employees (certainly not the majority of a company's employees-- but one or two a year) and to oversee for compliance. It also comes on the heel of mandatory health insurance at 30 hours/week and a drive to increase living wages.
- While we provide sick leave as part of our PTO we used to provide it separately and it was cumbersome for us and didn't give our employees as much flexibility. Providing sick leave for anything less than 40 hours worked would seem to reward those for working less than full time. In my opinion the hours should accrue after 40 hours regardless of when it's worked even if it's 3 weeks to accrue 40 hours.
- Paid sick leave is a fundamentally correct thing to do. However, if we provided it for all employees, as I'd like to do, the price of our services would have to increase. Our prices are already at the top end of our competitors so that we can provide more employee pay, training and support, and more client support. Most of our clients pay privately for services, as preventive in-home care is not covered by any insurance other than Long Term Care Insurance, which most people don't have. Raising costs prices more people out of obtaining needed services, and seriously compromises our ability to compete in the market place. Perhaps one way to support employees, employers and clients/potential clients is for tax breaks for employers to provide this, and for individuals who want or need to purchase services.
- Another reason I'm thinking of moving out of Montgomery County! Including part time employees is impractical and expensive and will cause us to do without any part time employees in the future.
- This proposal could result in serious negative impact on profitability and/or part time employee census.
- Extremely opposed. Employees would see this as a step backward and would be burdensome to administer. Current employees are very happy with general PTO philosophy
- Our recommendation is that the most hours of paid sick leave per calendar year should be 40 hours, not 56.
- Obama Care caused us to drop health care for our current employees. Montgomery County increased minimum wage and they are going up again. Our employees hours have been cut, our prices went up over 10 percent this January. So basically, the employee loses. We have made adjustments and opened a commissary in Virginia, where we supply our stores in D.C. and Montgomery County, Maryland, to address these issues. We are in the fast casual food business, so we are always struggling to pay the bills.
- This is another example of legislation made with no concern on the negative economic impact on small business employers. The requirement to specifically cover leave for employees that may be in the midst of a domestic and potentially violent situation, creates new liability issues for an employer. Even if a sick leave mandate is passed, please fight against the inclusion of that language. An employee can use sick leave for personal issues, and the type of issue does not matter. With written inclusion and thereby knowledge of a potentially violent and possibly criminal situation opens all employers to large liabilities.

- The increased leave cost would result in our firm eliminating a position to cover the increase.
- I believe that this type of regulation would not have a positive impact on the business community in Montgomery County. As an organization that provides sick time as part of our PTO calculation for all employees working a regular schedule of at least 16 hours per 2 week pay period, we view our total employment offering as a differentiator in the workforce marketplace. We continue to offer both core and affordable voluntary short term and long term disability options for employees. These types of benefits are differentiators and should be driven by competitive factors, not by law and regulation. Additionally, adding this as a requirement through law or regulation has the potential to change already strong total compensation and benefit offerings from organizations that comply with the law.
- This proposal is anti-employee for those who already provide sick leave via PTO. We are already generous in the PTO time we offer. We cannot add days overall if sick time is separately stated. We will have to reduce vacation days by the number of days we have to provide separately for sick days. This will be a detriment for healthy employees, and will likely motivate many to lie about illness in order to not lose leave days. This is not employee friendly at all if sick leave must be separately accrued and tracked. Our employees will hate it and will feel as if they have lost benefits, not gained.
- I am completely against this policy. Sick leave is a significant cost that isn't always reflected in our contracts -- and therefore could cause us to reject certain contracts.
- It would make more sense for MoCo's law to mirror DC's for comity and competitiveness' sake. (2) It's unclear when this leave is lost. (3) Accrual into a subsequent year should be capped at 40 hours in order to limit liability to the employer like they did in San Diego. I assume this stuff has to be booked as a liability in year-end financials. (4) Are lines 172-175 legal/within the jurisdiction of the Council to legislate? (5) Increments taken (lines 238-240)...this is going to be a pain to track. It should be more standard, like at least 2 hour increments, like they did in San Diego. (6) Lines 241-243, unclear if this is fulfilled by the paystub listing PTO left.
- The costs and regulatory burdens in Montgomery County already are excessive, and this only adds pain to everyone doing business in this area. People do have a choice as to where they want to work, and employers have a choice as to where they do business. If an employee's benefit package does not meet their needs, they do have an opportunity to either lobby their employer for the benefit or work for another business. Likewise, in a county that supposedly wants to be "more business friendly," Montgomery County has demonstrated that it is interested in doing just the opposite by limiting choices for employers in what benefits can be provided and to whom...and making it more expensive to do business here. I expect that ongoing legislative demands and lack of choice will lead many businesses to move across the Potomac into Virginia, where there is less regulation and lower cost. Further, if the County truly is wanting to work with business, the correct thing would have been to engage businesses and associations in a conversation about costs and the impact to owners and their benefit offerings before copying a cumbersome and ill-conceived piece of legislation from the District of Columbia.
- Montgomery County needs to start focusing on being business friendly and stop implementing legislation that hampers small to medium size businesses from growing. We need to implement legislation to help businesses grow that can then be in a position to hire and create new jobs. Benefits such as this are great but when this county was thriving it was because we had the lowest unemployment in the state and jobs were plentiful. There are reasons why we cannot attract large employers and that should be the focus of our county legislature.
- We provide 80 hours of PTO and two floating holidays to be used by employees as they see fit. If we need to add an additional 56 hours of sick time, we will need to reduce PTO and create a separate 'sick leave'. This will only complicate record keeping and drive up G&A cost. If I need to provide a separate 56 hours it will heavily impact pricing and significantly drive Fringe Cost up. In the end it will increase cost to our clients. As a Government contractor trying to survive in a Low Cost Technically Acceptable environment, we could easily be pricing ourselves out of business.

- I feel it is a mistake that will drive up costs and provide fewer jobs to the community. And when costs go up, it gets reflected in the retail price of goods sold. If employers are required to provide separate 'sick' leave or add more hours to PTO, because we use the PTO method, companies will cut back on the leave they're providing in order to accommodate the sick leave mandates. **EVEN MORE IMPORTANT** - They'll cut back on part time employees since each part-time employee will cost them seven days of sick leave, and thus they'll consolidate jobs into full time positions instead of offering several part time positions, thus saving seven days of paid sick leave for every part-time position they eliminate. Someone loses big time, and the other is either pleased or inconvenienced by not having a flexible part-time position. Employees in our service industry (Information Technology) for the most part prefer the PTO, as it gives the healthy ones the flexibility to use what would otherwise be set aside for only 'sick' use and have extended vacations and time off where they don't have to play at 'sick' in order to use the sick leave, and won't be caught in a lie if they're out 'sick' and get involved in a skiing accident that day they supposedly had been out 'sick'. Will the employer have the ability to fire an employee that claims sick leave when they really are not sick (or not in one of the categories listed above this new legislation plans to cover)? We already have FMLA to accommodate many medical/family situations, why is additional legislation separate from this being considered to provide additional legislation and burdens on employers? Thank you for the opportunity to express my concerns about this legislation. I feel the part-time folks may feel they're getting a good deal but they don't understand the ramifications and impact to them of the economic marketplace adjustments that will occur should this legislation get passed.
- While I concur with the intent of the legislation and it will not likely affect our business, I believe it is over reaching, confusing in its definitions, opens a door for disgruntled employees' attorneys to file frivolous lawsuits, and is impossible to enforce on companies located outside of the County with employees working in the County.
- We move people between offices in Montgomery County and Fairfax. There is a likelihood that we would put more in Fairfax rather than have to break out sick from the general PTO.
- Our firm prefers that the "state" utilize its time, resources, and legislative activities be aimed at encouraging American exceptionalism, competitiveness and progress by NOT mandating what is required of small businesses.
- Montgomery County government does not need to legislate how to compensate smart and talented employees. Montgomery County government needs to create a community that where businesses are attracted to locate, grow, and thrive. In that environment business owners to give sick leave as part of an overall fair compensation package.
- The administrative burden of this legislation if passed is significant. Enough with ACA tracking. It is getting harder and harder to conduct business in Montgomery County. Between minimum wage and ACA my bottom line has been cut. Paid sick leave will be a significant expense.
- This would be terrible for small business owners and it would raise their costs.
- I don't think this should be an issue legislated by government. Leave this as an individual business decision.
- As a 3 person firm, if I'm forced to provide 7 days of sick leave a year, I will likely reluctantly combine sick leave with vacation, but only add 5 days as I'm currently providing.
- I am concerned at this proposed level of mandatory sick leave. Those who actually abuse the system will have the ability to further abuse the system. The types of businesses that use part-time and tipped employees will be hit the hardest and will most likely need to re-analyze their budgets. The increased expenses will be passed along to the ultimate consumer.
- This will be very difficult for us, as most of our part-time workers are teaching artists. If we are required to offer sick leave to part-time workers, we'll have to pay them for time off and pay the substitute.
- This is a frightening trend by the County Council.
- Please stop legislating how I run my business. I pay a high hourly rate and my employees are happy. They are part time for a reason and these positions are not meant to support them beyond what they are making. Imposing yet

another regulation only impacts what I can pay my workers. I believe if given the choice of a lower wage and paid sick leave, they would choose a higher wage and no paid sick leave. If the market makes it important for me to offer this benefit to get better workers, then I will do it, but for now it is not necessary and takes away from my ability to run my business in this county. Please focus on more important things like being open and friendly to businesses so that you have more job opportunities here in Montgomery County. Make it easier to do business here instead of one expensive hoop jump after another. I don't have to be here, I can move my company to Virginia and pay less, with less hassle.

- This legislation is unnecessary. I already provide my employees with sick leave as part of their PTO. There is no need to separate the two types of leave. An employee is either at work or not at work. Also this legislation is much harder to manage with salaried employees. Once again Montgomery County legislators are sticking their noses into areas which they do not need to.
- This legislation will impose a cost on us. It will increase administrative burden. Our full-time employees all earn at least 14 days (80 hrs/yr) in PTO (combined sick, family, vacation). Only about 5% of our employees are part-time (<30 h/week) and do not earn sick leave. Based on estimates total hours in this category, this will cost us the equivalent of one additional 50% part-time employee.
- These additional costs for employees on a part time basis make it difficult to provide affordable assistance to seniors.
- We think the marketplace should be able to set the demand and competitiveness for employment agreements. We firmly believe this type of legislation would adversely affect small businesses and additionally negatively impact employees.
- Mandating paid sick leave creates an additional burden that we will only have to pass on to our customers in higher prices. As a 70+ year struggling construction business we aren't making a profit as it is. I think Montgomery County should pass legislation to guarantee a business a minimum profit.
- I believe the amount of time proposed is excessive. One hour per 40 hours is adequate as employees also get paid vacation and holidays.
- I am very concerned about the increased record-keeping and oversight that tracking sick leave for part time staff would create.
- I'm in agreement with the jurisdiction that limits sick time to 40 hours for fewer than 10 employees. The time should not include "for any purpose"; this would lead to everyone having PTO, or combined sick/vacation leave. I prefer to keep it separate as I allow vacation time to carry over but not sick leave.
- This is unaffordable to a small business owner. 1st Obamacare. Then minimum wage increases beyond the state increase and now 7 additional days of leave per year per employee. Employers will steer clear of Montgomery County and residents will pay a steep premium for services in this County as a result. A lose/lose for all. We already struggle to find good reliable help. Now we will have to reduce our PTO or other benefits to be able to meet this new requirement. 100% opposed to this legislation.
- This proposal is onerous. Seven days is a lot of sick leave. Part of the problem is that some employees view sick leave as a right, not a privilege. That is to say that honest people only take it for an actual illness, and normally don't use the entire amount of days. Some employees think that they get to take essentially five to seven extra vacation days a year, whether they are sick or not. This is very difficult to document, and adding eligible sick days only encourages this type of fraud. 40 hours a year (five working days) of sick leave is very fair and more than sufficient in my opinion.
- Significant impact in administering this, especially for part-time employees who work variable schedules, in terms of tracking eligibility and accrual.

- Running a restaurant, we are already being affected by the minimum wage increase. While we already paid everyone above minimum wage, the increases from that law are pretty drastic for our student staff, which is about half our staff. This sick leave proposal is just piling on top of the minimum wage increases and is putting a significant burden on service-based small businesses in a short period of time. In an industry that already does not have a high profit margin, this is very burdensome. Then add on the increased costs of the county's ban of Styrofoam. It just seems like the county is punching us in the gut over and over again.
- This would be exactly the wrong signal to send to business owners at a time when the County should be bending over backwards to show it is NOT as hostile to business as everyone thinks. The fact that this bill is even being introduced shows everyone is right - it IS hostile - and gets worse every year. One more reason to move to Virginia. This is about the stupidest thing the County could do at this point to drive small businesses away.
- This would be an administrative nightmare. Being in a small company, I am the only one that has access to the personnel information. Dealing with teenagers, you have to have fixed rules. I will not be OK to take time off and expect to get paid for it. I simply do not have time to manage this program with a staff with limited hours. For most, this is their first job and their work ethic has not been established. This proposed program is counterproductive to that employee development.
- We provide up to 40 hours per year for full time employees ONLY. It accrues at a rate of 1 hour for every 52 hours. A maximum of 16 hours can be carried over to the next year (Use it or lose it). We are a small business and cannot afford to pay an additional payroll of possibly up to 184 hours. This on top of the County mandate for minimum wage will requires us to charge more for goods and services which will put us out of the market. It will also reduce our ability to provide donated goods and services to local schools, nonprofits and other like organizations we service. Lastly it will hamper our efforts to grow and expand our business and hire additional employees.
- How could this proposed legislation potentially be abused (used in 1-hour increments with no notice seems absurd). Also, how much additional paperwork or administrative requirements will need to be met? Also, how does this figure into an existing PTO policy? Adding seven full paid working days to an already liberal and flexible policy would be impossible. We would need to tighten up the existing policy to be much more restrictive.
- Montgomery County is pushing us out of the county/area. It's hard enough to make ends meet as it is and adding additional "taxes" will force us to close, reduce workforce, and or move. If I move 10 minutes north to Frederick, I don't have to worry about making ends meet with higher wages or proposed additional benefits. We already pay a substantial amount for employees in Medicare, social security, health and unemployment. Those are employer paid. How about lawmakers take this out of their yearly salary instead.
- We view this requirement as costly and onerous.
- Up to 56 hours is way too much.
- Having to provide a minimum of 7 days, and having to include part-time workers would have negative impact. I would limit part-time staff.
- Our employees would not be happy if we have to break out sick leave. Employees who don't get sick would feel it is unfair since they would lose some of their paid leave. We cannot add additional days for sick leave. We already include a generous allowance for sick/vacation days in PTO.
- We don't have sick leave...it's part of PTO...There is a cost impact for adding sick leave either as a separate bucket of leave, or adding-on to our current programs. This impacts costs for business, money available for other programs (like 401(k)), and what we charge our customers.
- PTO allows employee to choose what is most important to them, instead of us dictating - that way they don't have to 'pretend' sickness to use their sick leave.

- If I have to pay for part-time sick leave I will not use part-time personnel, but may supplement with 1099s if needed (contracted services).
- Major impact. Would have to forgo salary increases, bonuses, and cut back hours.
- The proposed amount of sick leave is ridiculous! This would put a strain on my business and many of my clients!
- I provide sick leave as part of PTO. This legislation would mean that I would reduce the amount of PTO granted to all employees and it would thus hurt employees who do not need to use sick leave. This legislation would also encourage employees to call in sick when they want a day off. It should all be treated as PTO.
- Adding seven full paid working days to an already liberal and flexible policy would be impossible. We would need to tighten up the existing policy to be much more restrictive.
- We would reduce their number of vacation days so that we can comply. Ultimately, they would get the same number of days off, but about half would be reserved for sick leave. They currently can use PTO for any reason.
- It would be a disaster to implement and manage.
- In our case, this is a 25% increase in the annual sick leave.
- Would amount to extra \$22,000 in wages.
- Our employees are allowed 17 paid, non-federal holidays off of work for any reason in a calendar year.



Gaithersburg-Germantown Chamber of Commerce, Inc.

910 Clopper Road, Suite 205N, Gaithersburg, Maryland 20878 (301) 840-1400, Fax (301) 963-3918

BILL 60-14 – Human Rights and Civil Liberties – Earned Sick and Safe Leave

JANUARY 29, 2015

PUBLIC HEARING

Based on the feedback we have received from our members, the Gaithersburg-Germantown Chamber of Commerce cannot support Bill 60-14 (Human Rights and Civil Liberties – Earned Sick and Safe Leave) as it is currently proposed. There are some significant concerns that should be addressed prior to any final legislation.

1. **Paid Time Off (PTO) vs. Separate Vacation / Sick Leave.** My understanding is that the intent of the Bill is to allow employers to use an aggregate Paid Time Off system where an employee accrues a certain number of hours per year to be used at his/her discretion, including time off for sick and safe leave. This is addressed in Lines 78-79, but could be more explicitly defined. *Clarify the language to explicitly allow sick and safe leave to be part of a PTO program.*
2. **Part-Time Employees - Threshold.** The basic concept of part-time employment is that it doesn't fit the basic 40 hour week structure, which means that in many cases there are no standard parameters for part-time employment. One size does not fit all. There may be some PT workers who work as much as 30-35 hours week, while others work 5 hours every other week. Without exaggeration, there are many cases where providing sick and safe leave to PT employees is not feasible. A business could have an employee who works every other Friday, working 208 hours a year, accruing .26 hours of leave every pay period or 7 hours a year. Another example would be a dance teacher who teaches a two-hour class each week for 36 weeks during the year. With this Bill the employee would accrue .13 hours per pay period. In a small company, the additional cost of tracking those hours is onerous. These may sound like anecdotes, but the nature of part-time employees is that one-size does not fit all and all should not be treated the same. There also has to be some type of threshold for part-time workers.
3. **Part-Time Employees – Definition.** The Bill exempts employees who do not have a regular work schedule with the employer. I have a part-time bookkeeper who comes in on Monday and Wednesday from around 11:00 am to around 5:00 pm. Some weeks she works 10 hours, some weeks it's closer to 15. Some weeks she comes on Tuesday and Wednesday to allow herself long weekends. She has complete flexibility based on her personal schedule and the work that needs to be done. I don't require her to come in on any given day or any given hours. Although she tends to have a regular work schedule, she is not required to have a regular work schedule, is she exempted from this Bill? An unintended work around the Bill would be to set a different schedule each pay period to avoid a "regular work schedule".
4. **Part-Time Employees – Flexible Schedule.** One of the primary reasons employers hire part time workers is for the flexibility. Both the employer and employee can negotiate a schedule that fits the capacity needs of the employer and the personal needs of an employee. If a part-time employee wants or needs time off, there is often flexibility to change his/her schedule. While the Bill allows the employer to negotiate a change in schedule "by mutual consent" it doesn't require the employee to adapt. The Bill essentially says – Do you want to get paid for taking time off or do you want come in and work those hours? There is no impetus for the employee to negotiate. If an employee has the flexibility to change his/her schedule for personal reasons, the employer should be able to change the employee's schedule to cover unforeseen absences by the employee.

Part-time workers should be exempted from the Bill. At the very least there should be a minimum threshold of hours worked in a given time period before being eligible for sick and safe leave.

5. **Carry Over** – We have heard from many businesses that offer paid sick leave at varying amounts do not allow any carry over to occur. Mandatory carry-over of sick requires an accounting liability that would require employers to book the full amount of the accrued leave in the year in which it is accrued. This would result in an increased recorded expense and a resulting recorded liability on the balance sheet. For this reason many employers who provide sick leave do not allow any carry-over of accrued sick leave. Also, allowing up to 80 hours of sick leave to be taken in a given year is an undue burden for businesses that need to hire substitute employees to complete the work. *The carry-over requirement should be deleted.*
6. **Written Statement of Available Sick Leave** – The Bill requires an employer provide all employees with a written statement of available earned sick and safe leave each time the employer pays wages to the employer. This is only doable if the employer has an automated paid leave system that includes accrued leave. This is not the case for many small employers. This could be onerous for a small business to prepare and distribute statements every other week. In addition, many businesses no longer provide paper pay stubs. Employees are given access to their electronic paystubs via a password protected portal. *Delete the notice requirement or change it to quarterly report. Allow for electronic access.*
7. **Number of Employees** – Most mandatory sick leave legislation exempts very small businesses. Small businesses are less able to absorb employee absences or absorb the additional cost of hiring replacement workers. *Consider exempting employers with less than 10 employees. This would be in line with the proposed State Bill.*
8. **Amount of Leave Accrued** – There has been some concern over the amount of 56 hours (7 days). This exceeds the amount of leave offered by many small businesses. *Consider reducing the amount of leave from 56 hours to 40 hours.*
9. **Probationary Period** – There are many reasons why a new employee is not a good fit for an organization. An employer should be allowed to set a probationary period when benefits do not accrue. *There should be a 90 day probationary period prior to the accrual of sick and safe leave.*
10. **Reinstatement of Accrued Sick Leave after Re-hire** – This provision goes way outside the bounds of purpose of the Bill. Staff turnover is costly and there should not be an additional burden of reinstating prior accrued leave. If an employee quit his/her job they give up their accrued sick and safe leave. *This provision should be eliminated.*
11. **Multiple Locations** – The Bill is unclear concerning employees who spend a portion of their time working outside the County. It will be very difficult for companies to track sick leave accrued and taken based on the geographic County limits, particularly if the State or other surrounding Counties have their own sick and safe leave legislation. *Clarify the treatment of employees working outside the County.*
12. **Effective Dates** – The effective date of this legislation should coincide with similar legislation adopted at the State level, but should not take effect prior to October 1, 2016. For employers not currently offering sick and safe leave, this will be a major change in their personnel policies and they will need time to establish and communicate the policy changes. Business will need time to include the increase cost into their budgets. The County will also need ample time to effectively communicate the changes in the law.



THE GREATER BETHESDA-CHEVY CHASE CHAMBER OF COMMERCE

7910 Woodmont Avenue, Suite 1204
Bethesda, MD 20814
T: (301) 652-4900
F: (301) 657-1973
staff@bccchamber.org
www.bccchamber.org

Your Business Is Our Only Business

Written Testimony by Heather Dlhopsky On Behalf of The Greater Bethesda-Chevy Chase Chamber of Commerce Before the Montgomery County Council on Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave January 29, 2015

Good evening. My name is Heather Dlhopsky and I am here today as the Chair-Elect of The Greater Bethesda-Chevy Chase Chamber and representing our more than 600 member companies and non-profits, the majority of whom are small employers. I am here to testify in opposition to Bill 60-14. This bill is clearly well intentioned – to provide financial support to employees who miss work because of illness or domestic violence, and to prevent workers from coming to work when ill and potentially infecting others. Despite this worthy objective, we see a significant number of problems with the overall concept of imposing paid leave mandates on employers and more specifically, with the implementation of this bill.

As you heard from Jane Redicker of the Silver Spring Chamber, over 155 businesses from throughout Montgomery County responded to the joint survey we conducted regarding this legislation. I would like to focus on the following:

1. Increased Burden and Costs: As Jane mentioned, most employers provide sick leave for their full-time employees, but many small businesses with part-time employees do not make those employees full-time because the businesses cannot afford to pay the additional costs such as health care and sick leave. This bill will ultimately cause many of these employers to reduce the number of part-time employees rather than increase their benefits. In addition, most small employers do not have HR administrators managing their payroll. Requiring them to provide a written statement of available earned sick and safe leave every time employees get paid is unreasonable and would be a major burden.

2. Former Employees: The requirement to maintain records of sick and safe leave hours for former employees for three years may not be that burdensome, as most employers should have those records. However, requiring an employer to reinstate any unused earned sick and safe leave that the employee had before leaving employment would be a disincentive for an employer to hire back the former employee due to increased costs.

3. State Legislation vs County: We urge you to wait before voting on this legislation until the Maryland General Assembly concludes the 2015 Session, where similar legislation will be vetted with all members of the General Assembly. In order for Montgomery County businesses to remain competitive with other like industries around the State and region, it would make more sense for there to be a state-wide bill rather than just legislation at the County level. The Senate bill includes two items that seem more reasonable to us and should be considered:

=====

OUR MISSION: Build an environment that encourages business to grow and prosper within a thriving Bethesda-Chevy Chase community.
OUR VISION: The Bethesda-Chevy Chase community will be regarded as the preeminent place to do business in the Washington Metropolitan Area.
OUR GUIDING PRINCIPLES: Our Chamber supports its members by providing both a voice and a forum to help shape public policy and enhance opportunities for exposure, connections, and growth. Our responsibility is to lead by example, holding ourselves to the highest governance principles, ethical standards and business practices.

- Employers can provide a 90-day implementation period before having to provide sick and safe leave to their new employees, as is the custom for many employers currently; and
- The State legislation is focused on employers with ten or more employees. Companies employing fewer than 10 people should be exempt and not have to pay sick or safe leave for any employee – part-time, full-time, or tipped.

4. Part-Time and Tipped Employees: The additional costs of paid sick and safe leave for part-time and tipped employees should be further researched as far as the impact this will have on specific companies in Montgomery County. Obviously the more than 150 companies that participated in the survey were interested enough to actually read the legislation and comment on it, and have major concerns. A fiscal impact analysis needs to be conducted on what this will mean to small businesses affected before it is voted on.

5. Implementation of the Legislation: For this and all legislation that regulates business operations, adequate notification and implementation time are key components of the legislation. Employers need time to prepare and to incorporate such costs during preparation of their annual budgets. If this legislation moves forward, we urge that it not take effect until October 1, 2016 at the earliest in order to allow for adequate planning on the part of businesses.

Thank you for your consideration of our comments this evening.



THE VOICE OF MONTGOMERY COUNTY BUSINESS

**MONTGOMERY COUNTY COUNCIL
PUBLIC HEARING
JANUARY 29, 2015**

**BILL 60-14, HUMAN RIGHTS AND CIVIL LIBERTIES –
EARNED SICK AND SAFE LEAVE**

OPPOSE

The Montgomery County Chamber of Commerce (MCCC) acts on behalf of its members to lead, connect and advocate as the voice of business. MCCC opposes Bill 60-14.

We appreciate being invited by HHS Chair Council President Leventhal to a committee discussion on the topic of Earned Sick and Safe Leave on October 30, 2014. As we mentioned at that time, there are many issues to consider when developing additional regulations for Montgomery County businesses. We would like to use this opportunity to reiterate our concerns in hopes that they will be addressed through the legislative process.

Above all, we must acknowledge the economic reality of being a part of a regional economy. This makes us different than many other local jurisdictions across the county and has implications on the effectiveness of local legislation in general and for this bill in particular.

We encourage the County Council as you continue to seek to expand employment law in Montgomery County to consider the following:

- The benefits of coordinating with State and Federal rules and regulations at the outset,
- The responsibility of the government to provide the business community with adequate information on any new rule or regulation in a timely fashion, and
- The ability of small and mid-tier businesses to remain competitive and viable in light of the increased cost of doing business from the cumulative impact of multiple rules and regulations.

Specifically,

As we expressed at the committee meeting, **business is not one-dimensional**. Different industries have unique concerns. “Small” business is concerned about tracking this information; “big” business is worried about the liability of the carry over aspect of the legislation; mid-tier businesses that continue to recover from the recession do not have leeway to accommodate new employment regulations in the same year in which they are passed.

Gigi Godwin, President and CEO
Montgomery County Chamber of Commerce
51 Monroe Street, Suite 1800 Rockville, MD 20850
301-738-0015
www.montgomerycountychamber.com

The legislation as proposed **reduces the ability of a business to design and implement comprehensive employee benefits that make them competitive in the marketplace.** Employers should be allowed to use their judgment in crafting policies that fit with their workplace. Furthermore, this legislation could have the adverse impact of penalizing companies that have found an appropriate balance through Paid Time Off (PTO) in lieu of a policy of accrued sick days.

The cumulative impact of multiple pieces of recent legislation has yet to be measured or understood. From federal changes in the Affordable Care Act to local changes of timing of minimum wage raises, there is a great deal of change in the business world. Each piece of legislation should be examined in relation to other initiatives underway to better appreciate the multiple burdens placed on businesses who are trying to adapt and conform as necessary.

Implementation needs to be taken into consideration as part of the decision to pass legislation. Based on the recent experience of both the County Minimum Wage and Ban the Box laws going into effect, legislation put forth by the Council and signed into law by the Executive does not translate into effective implementation. Local businesses have not been fully informed of the new requirements in a timely manner and, in fact, some of those requirements remain in flux with pending legislation. In addition to a fiscal impact on the government, legislators should work with the executive branch to ensure smooth and effective implementation impacting businesses.

Adequate resources must be deployed to enforce this legislation. Once again, this Council is proposing legislation without the proper mechanism or resources to adequately enforce these new provisions. This raises expectations of employees that will be hard, if not impossible, to fulfill in a timely and efficient manner. This is particularly true of the provision of accruing sick leave for time worked in Montgomery County.

Montgomery County employment law should be coordinated with the State of Maryland. Earned Sick and Safe Leave legislation has been proposed at the State of Maryland for the past two years. It has once again been introduced in the 2015 General Assembly and we will know the outcomes of those proceedings within 90 days. Montgomery County should wait to see what happens at the State level in 2015.

MCCC respectfully requests that the Montgomery County Council delay any further discussion on this local bill until the issue has been discussed and decided at the State level. We may learn additional information from those conversations and we will avoid having to re-do work at the county level to bring laws into sync.

For these reasons, MCCC submits this testimony with an unfavorable report on Bill 60-14.

Bill 60-14 Human Rights and Civil Liberties - Earned Sick and Safe Leave

Opposition

January 29, 2015

I am Ian Paregol, Executive Director of the Montgomery County non-profit service provider Community Services for Autistic Adults and Children (CSAAC). Every day, CSAAC provides services to approximately 300 individuals diagnosed with autism who reside in Montgomery County. We provide lifespan services to children as young as 18 months through adults who are in retirement. CSAAC maintains a staff of 630 employees, 540 of whom provide direct supports to Montgomery County's citizens.

Like all of the counties non-profit human service agencies, we cannot control the reimbursement rate we receive from the state and county for our services. The costs associated with Bill 60-14 become yet another unfunded mandate for providing a service in this County that "but for" the non-profit providers like CSAAC would be borne entirely by the county creating the need for additional infrastructure, additional staff and additional costs.

We have both full time and part-time staff members at CSAAC. We are not funded by the state nor do we provide any leave for employees who work less than 38 hours per week. Adhering to the requirements of this proposed measure would impact 35% of our workforce at a present annual cost \$118,650. This figure does not include the operational costs associated with recordkeeping, nor the staff coverage costs associated with granting additional leave. We have no way to recover these costs unless the County is willing to provide additional funding to support the economic impact of enacting this bill.

Further, there are issues associated with the bill related to implementation. Some Montgomery County businesses and non-profits have paid time off, leave buy-back or other benefits that have a similar impact to the terms of this bill. Why must the county step in to this arena that will be rife with decisions on what qualifies and what does not qualify under the terms of this bill? Why do we not let the market dictate what is a proper leave? Maybe some entities pay more per hour because they do not have to allocate for leave for part-timers. Perhaps wages will even come down as a result of this constraint upon business in Montgomery County because this proposed expense has to be funded by some source.

Of note, the Maryland state legislature is also taking up a bill similar to this SB40 where some of the compliance aspects can be better worked though with public input. If the State of Maryland passes SB40, at least human service providers would have a way to request the funding for its implementation since it would actually carry with it an economic impact statement. I have been before you in the past expressing concerns about what happens when the County gets ahead of the State, especially as this relates to the Montgomery County Minimum wage. This is no different. It is a cost that the county is assessing to remain in business here.

Within this County, human service providers are being pressed from all sides and the citizens who will ultimately suffer are those who rarely get a voice in this arena - those with developmental disabilities or those who receive supports from one of our county's many non-profits.

CSAAC urges the Montgomery County Council await take one of three paths:

- 1) **Wait** until the State has determined whether this type of business regulation makes sense for Maryland;
- 2) Provide the necessary **reimbursement to non-profits** so that they can comply with this bill; or
- 3) **Exempt non-profits** from the requirements of this bill.

Respectfully submitted,



Ian Paregol, Executive Director
CSAAC
8615 East Village Ave.
Montgomery Village, MD 20886

Maryland Motor Truck Association

3000 Washington Boulevard, Baltimore, MD 21230

Phone: 410-644-4600 Fax: 410-644-2537

HEARING DATE: January 29, 2015
BILL NO/TITLE: Bill 60-14, Human Rights and Civil Liberties - Earned Sick and Safe Leave
POSITION: Oppose

Purpose: Bill 60-14 would require employers operating and doing business in Montgomery County to provide paid leave at a rate of at least one hour for every 30 hours an employee works.

Position Summary: The trucking industry is very diverse. Maryland Motor Truck Association's (MMTA) members reflect that diversity. They include household goods movers, gas haulers, grocery store haulers, construction companies, and more. Our members include single truck owner operators, small to mid-size fleets, and large international companies.

MMTA believes that business owners should have the flexibility to determine what benefits they can offer in order to meet their diverse needs and attract the best workforce; however, the association has the following concerns about this legislation's impact specifically on the trucking industry.

- 1) **It is overreaching and would apply to businesses across the country.** The mandate in this bill applies to companies "operating and doing business in the County that employs 1 or more persons in the County..." An employee includes "any person permitted or instructed to work or be present by an employer in the County..." Since these definitions do not require a business have a physical location in Montgomery County, and there is no minimum level of activity (e.g. Seattle's minimum activity level of 240 hours), every trucking company across the country that travels through or makes a pickup or delivery in the County must comply with the leave policy and notice requirements. As a result costs will skyrocket or trucking companies will cease to deliver the medical supplies, food, clothing, home heating oil, computers and other products citizens need.
- 2) **It disproportionately impacts small businesses.** There is great variation in trucking company size, yet the industry is overwhelmingly made up of small businesses. Over 90% of the industry operates just six trucks or fewer. When a company employing four drivers has a single driver out sick its delivery workforce is reduced by 25%. These small businesses cannot afford to offer sick leave at the levels mandated in these bills – a fact that is recognized in the federal Family Medical Leave Act (applies to businesses with 50 employees) and the Maryland Flexible Leave Act (impacting businesses with 15 employees).
- 3) **It negatively impacts the industry's ability to deliver goods.** Trucks are the hub of Maryland's distribution wheel, playing a vital role in the state's economic development as they support the manufacturing, agricultural, and retail industries. This bill will disrupt and delay delivery of products at a time when manufacturers and retailers stress using a "just in time" delivery schedule to keep warehousing and consumer costs down.
- 4) **It blurs the independent contractor relationship.** Motor carriers commonly use independent contractors to meet varying levels of demand. For the use of such contractors, who own and operate their own equipment, the motor carrier does not incur the expense of a capital investment for such equipment, which may only be needed on a temporary basis. To provide greater financial security to the public injured in the course of freight transportation, federal law has imputed responsibility for injuries caused by owner-operators to the motor carriers they contract with. This has resulted in motor carriers exercising certain controls over their contractors, which often blur the lines between whether the owner operator is an independent contractor or employee. Maryland's unemployment insurance and workers' compensation statutes recognize this by specifically carving out owner-operators as independent contractors; however, the "employee" definitions presented in this bill further blurs that line and could easily be interpreted to require a trucking company to provide sick leave to its independent contractors.

For the reasons noted above, MMTA respectfully request that the Council give this bill an unfavorable report.

About Maryland Motor Truck Association: Maryland Motor Truck Association is a non-profit trade association that has represented the trucking industry since 1935. In service to its 1,000 members, MMTA is committed to supporting and advocating for a safe, efficient and profitable trucking industry across all sectors and industry types, regardless of size, domicile or type of operation.

FURTHER INFORMATION, CONTACT: Louis Campion, (o) 410-644-4600 (c) 443-623-4223.



Council Bill 60-14

Human Rights and Civil Liberties - Earned Sick and Safe Leave

January 29, 2015

POSITION: Oppose

Mr. President and Members of the Montgomery County Council:

On behalf of the Montgomery County members of the *Restaurant Association of Maryland*, we oppose Council Bill 60-14.

Maryland's food code (COMAR 10.15.03.14) prohibits employers in our industry from allowing employees to work while exhibiting symptoms of being sick. The food code requires employers to ensure that employees "*experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth*" do not work with exposed food, equipment or utensils. Moreover, businesses in our industry cannot risk the negative consequences of making our customers sick.

Most restaurants have flexible scheduling policies that best meet the needs of our workplace and our employees. Flexible scheduling is one of the reasons why many people seek part-time employment in the foodservice industry. Such scheduling policies also help to ensure that employees do not work while sick by providing options, such as shift swapping or picking up extra shifts within the pay period, to make up for lost hours.

This legislation assumes that all county employers can easily adapt their operating practices to comply with the proposed earned sick and safe leave mandate. However, the reality is that one size does not fit all. Daily labor needs for an accounting firm, for example, are vastly different from the needs of service-oriented businesses like restaurants. Unlike an office workplace, for example, the work that our employees perform cannot be put on hold until a sick employee returns to work. We must continue to serve our customers on a daily basis. This means that we need to bring in available replacement staff to cover the shifts of sick employees. If required to provide paid sick leave, our industry would need to pay two employees for the same shift, which significantly increases labor costs and would be particularly challenging given our industry's low profit margins.

Instead, the typical scheduling practices of our industry allow sick employees the opportunity to make up lost income by picking up another shift when they are feeling better and are able to work.

While this legislation allows an employee to work additional hours during a pay period to make up missed work hours for which the employee could have used earned sick and safe leave, it restricts such an option by requiring mutual consent between the employee and employer. This means that most employees will likely choose the paid leave option, which takes away an employer's ability to establish flexible scheduling policies that facilitate mutually beneficial shift swapping and are uniquely tailored to their business operation.

For these reasons, we oppose this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Melvin R. Thompson", followed by a long, sweeping horizontal line that extends to the right.

Melvin R. Thompson
Senior Vice President



CONTEMPORARIES

EXPERIENCE • ADAPT • INTEGRATE

Testimony by
Erin Allen, President & CEO
ConTemporaries, Inc.
Before the
Montgomery County Council Re:
Bill 60-14 Human Rights and Civil Liberties – Earned Sick
Leave
January 29, 2015



CONTEMPORARIES

EXPERIENCE • ADAPT • INTEGRATE

Testimony by

Erin Allen (ConTemporaries, Inc.)

BILL 60-14 – Human Rights and Civil Liberties – Earned Sick and Safe Leave

JANUARY 29, 2015

PUBLIC HEARING

Good evening. My name is Erin Allen. I have owned CONTEMPORARIES, Inc with my family since 1991. We are a small firm with experience working throughout the county in every sector from federal to private with large and small firms. I am a member of the Silver Spring Chamber, the Montgomery County Chamber and I sit on the Board of the Greater Bethesda-Chevy Chase Chamber. As an active member in the business community I am here to testify as an employment specialist and on behalf of the businesses located within the county and share with you the affects this bill would have on our businesses.

You have heard from many other members of the community discuss the specifics of the bill. I would like to discuss the overarching effects.

- 1) Employees working part time could have their hours reduced as employers make efforts to circumvent the bill.
- 2) Colleagues I have surveyed have mentioned that as part time employees they don't expect to receive sick pay.
- 3) Those employers offering PTO would reduce the amount of PTO to offset the newly required amount of sick leave. Because sick leave doesn't roll over or accrue from one year to the other the employee would ultimately have a reduction in benefits.
- 4) For companies that allow employees to share leave in the event of catastrophic illness, extended maternity leave etc. reduced PTO would limit the ability of employees from sharing leave. (For example I have a friend who had short term disability but the income from that disability policy wasn't enough to cover her expenses when she was battling cancer. Her firm allowed her co-workers to share leave so she was able to receive full pay from the "pool" her co-workers had contributed)
- 5) Logistically as an employer, the weekly reporting of leave totals would be cumbersome and costly. In my case the firm I use for our payroll services does not have the capability to report leave weekly.
- 6) For a firm having locations in other jurisdictions the ripple effects of leave policies would be extraordinary at minimum. For example if a worker at a large fast food restaurant were to receive sick leave for every 30 hours worked here in Montgomery County, that same benefit would need to be applied to all of their fast food restaurants to have equity within the firm. That could equate to millions of dollars when spread across a large firm. How likely would that firm be to continue operations in Montgomery County?
- 7) Finally if a firm has employees that work in multiple jurisdictions - say an IT firm with multiple offices - how would the benefit be applied if they work 10 hours in Montgomery County, 10 hours in DC and 10 hours in Virginia in one week?

I have just discussed my thoughts as the successful owner of a temporary staffing firm. To that end, attached to my testimony are the insights from Marc Engle, a well-respected expert in the area of employment law and a partner with the law firm Lerch, Early and Brewer. Marc clearly explains many concerns with various areas of the legislation. I ask you to please take a moment to read and consider his comments.

I urge the County Council to consider all of these effects as they have a dramatic impact not only on the firms operating in the county but the ripple effect to their other offices and their employees. While I appreciate the sentiment behind the bill, the logistics of the bill are not surmountable. Thank you for your time.

-----Original Message-----

From: Engel, Marc R. [mrengel@lercheearly.com]

Sent: Monday, January 26, 2015 06:13 PM Eastern Standard Time

Subject: Earned Sick and Safe Leave

Set forth below are my comments to the proposed Montgomery County statute concerning Earned Sick and Safe Leave. I shared these comments with one of my partners (Bill Kominers) who is the former President of the Silver Spring Chamber (and still very active).

1. There is a fundamental question in my mind as to whether one of the proposed rationales for the statute – namely, safeguarding employers and employees against “unfair competition” -- is met by this legislation. In my experience, the more that employers have to deal with mandatory benefits, the more likely it is that they will find ways to make adjustments elsewhere in order to keep their labor costs at an acceptable figure.
2. Stated differently, employers generally view salaries and benefits as a total compensation figure. If employers need to spend more on benefits, that may (and often will) impact the amount that they are willing to spend on salary.
3. One of the possible unintended consequences of the statute is that it could cause salaries to remain flat. For example, if employers have to incur more benefit costs, they may consider implementing a more incentive based compensation where pay is linked to performance.
4. The proposed Montgomery County statute, unlike the D.C. Sick and Safe Leave Act, does not differentiate based upon the size of the employer. Seemingly, the impact of requiring an employer to provide 1 hour of accrued leave for every 30 hours an employee works in the County (up to 56 hours in a calendar year) will have a far more significant impact upon a smaller employer than it will upon a larger employer.
5. By my calculation, the maximum amount of leave to be provided each year under the proposed legislation (56 hours) is more than required for but the largest employers in D.C. (if 2000 hours per year is the basis for the comparison).
6. The proposed statute does not account for the fact that most employers blend sick and vacation leave into a combined leave “bucket” known as Paid Time Off (PTO).
7. Under the new statute, employers will have to provide paid sick leave of up to 56 hours per year regardless of any other leaves that they provide. Again, one of the unintended consequences may be that employers will reduce the amount of vacation leave available to employees.

8. The statute, by requiring employers to provide earned sick and safe leave for work performed in the County, is presumably going to force employers to allocate time for an employee who may work in D.C. and/or Virginia as well. This could be very time consuming and expensive.

9. The anti-retaliation provisions of the statute may very well curb an employer's willingness to challenge the use of sick days where such leave is being used under suspicious circumstances. In other words, employers may elect not to challenge the questionable use of sick leave day(s) out of concern that any such challenge will be met with a claim of retaliation.

10. Is the proposed legislation at odds with efforts by employers to promote attendance – such as rewards for “perfect attendance”?

11. The proposed legislation seems to ignore the practical reality that many employers “advance” PTO to employees in compelling or emergency situations. Other employers have leave donation policies to address compelling or emergency situations.

Please let me know if you have questions or would like to discuss my comments.

Best regards,

--
Marc R. Engel - Attorney
Lerch, Early & Brewer, Chtd. ideas that work
3 Bethesda Metro Center - Suite 460 - Bethesda, MD 20814
Tel: (301) 657-0184 Fax: (301) 347-1798 - mengel@lercheearly.com
Bio: www.lercheearly.com/team/marc-r-engel
Vcard: www.lercheearly.com/team/marc-r-engel-vcard

Montgomery County Council
Testimony for Bill 60-14, Sick and Safe Leave Act
1/29/2015

Andy Kirschner
10643 WEYMOUTH ST, Apt 102
BETHESDA, MD 20814-4238
andrewkirschner@gmail.com
630-607-9577

Thank you for holding this hearing on Bill 60-14, Paid Sick and Safe Leave. My name is Andy Kirschner and I live in Bethesda. I also volunteer with Jews United for Justice or JUFJ. JUFJ is working closely this year with the Working Matters coalition to see that every worker in Maryland is guaranteed the ability to earn sick and safe leave at their job.

When I go out to dinner with my wife, I want to know that the person working in the kitchen would have stayed home if he was ill; I want to know that parents of my son's classmates at daycare can keep their children home and out of school when they are sick; I want to know that if I take my son to an urgent care clinic, I don't have to worry that the woman at the desk is dealing with domestic abuse and couldn't take the day off to get a restraining order.

Many of the business owners and advocates supporting them are going to tell you about their thin profit margins and how this bill will be a job killer. Of course, business owners have reason to be concerned about the bottom line for their businesses. At the same time, I hope they recognize the research that demonstrates the positive impact policies like this one have had on workplace productivity, employee retention and profit.

In your conversations with these employers I ask you to remind them that for most of them there was a time that they relied on help from the County Council, and taxpayer dollars, to get their business up and running. Maybe it was a tax break, a change in a zoning law, the public parking garage for customers to have easy access, or one of the county's small business loan programs. The point is that the county has provided opportunities for business owners to open and maintain businesses and hire good people right here in Montgomery County. This bill simply allows these hardworking employees to earn a more sustainable living, in a healthier, safer workplace, so they can continue to care for their families and live with dignity.

Upward mobility and support for the middle class is something that I have heard politicians, both liberal and conservative, speak about at all levels of government. My friends and neighbors, the people I pray with in synagogue and those I work with during the week know that a policy like this is a no-brainer. Do we want to say that Montgomery County just went along for the ride or that Montgomery County was a clear leader in the effort to ensure a healthier and safer working environment for all families?

In closing, I want to share what got me here to testify in the first place. Last year we welcomed our first born child. His name is John. As any parent in this room will attest, one of the biggest jobs you ever get hired on for is being parent. Funny enough, it's a job that comes without any sort of leave policy, but most of us are thrilled to be parents 24/7. One of the hardest parts about parenting, though, is trying to understand how to teach your kids good values, so they can grow up to be *mentschen*, good people, and productive members of society. You teach them about truth, fairness, and justice, and it sounds wonderful, until they go out into the world and find that it doesn't always reflect the values we taught at home. I think we can all agree that workers should be treated fairly but we also know 700,000 workers across Maryland are not when it comes to sick and safe leave. This bill will help change that, so that we can be sure the good values we preach at home are practiced in our community at large.

Testimony in Favor of Bill 60-14
Montgomery County Council
Rabbi Charles L. Arian, Montgomery Village, MD

My name is Charles L. Arian and I am the rabbi of Kehilat Shalom synagogue in Montgomery Village. We have been proud to work with Jews United for Justice on behalf of earned Paid Sick Leave on both the State and County levels.

I must tell you that I am generally averse to the use of religious arguments when urging legislators to take a particular action. We live in an incredibly diverse community which consists of adherents of many religions and those of none, and there is no reason why the perspective of a particular religious community should dictate public policy.

It seems to me, however, that simple human decency is something that is common to all of our traditions. This bill isn't even purely altruistic. I don't want to be served food by a waiter or waitress who had to come to work although they were sick, or prepared by a cook who is sick. As a consumer and as a taxpayer, I am frankly tired of certain businesses which are poor corporate citizens and choose to inflate their profits by passing their labor costs of to the public, and this bill serves to put good corporate citizens on an equal playing field with the others.

As you know there is a bill to pass Earned Sick Leave on the State level and President Obama has come out in support of it on a national level. But there is no guarantee that these will pass, and it is time for us to start somewhere. I urge you to pass this bill as written, as quickly as possible. Thank you.

Montgomery County Council
Testimony for Bill 60-14, Sick and Safe Leave Act
1/29/2015

Fran Rothstein
130 Hilltop Road
Silver Spring, MD 20910-5448
fran.rothstein@verizon.net
301-588-5976

Good evening. My name is Fran Rothstein, and I live in Silver Spring. Thank you for holding this hearing on Bill 60-14, Earned Sick and Safe Leave.

I'm speaking today as a member of Jews United for Justice, which has a substantial membership in Montgomery County.

One of the most motivating principles in Judaism is "Tikkun Olam," repairing the world. By passing the Healthy Working Families Act, you will be taking a major step toward repairing the world of workers, children, families, and businesses here in Maryland. In addition, Jewish scholars over the centuries have emphasized our obligation not only to feed the hungry but also to help people become self-sufficient. Allowing people to earn sick leave enables them to take better care of themselves and their families.

I'm one of the lucky ones. During my early career, I worked for nonprofits with generous sick leave policies. As an independent consultant for 35 years, I set my own leave policies.

Other Maryland workers aren't so lucky. 700,000 of them – mostly low-paid workers and part-time workers – earn not a single hour of paid leave. These workers face impossible choices. Should a worker be compelled to come to work when she is ill, risking both her own health and that of colleagues and customers? Should a parent leave a sick child home alone, under threat of losing his job? (Alternatively, must a sick child go to school, sharing his germs with classmates and school staff?) What happens to an abused spouse who needs to obtain a restraining order, but has no protection against job loss if she takes time off to do so? Even workers authorized to take time off may lose a day's pay, which can throw a paycheck-to-paycheck budget into turmoil.

Employers benefit when sick workers stay home: those workers get well more quickly, and they keep their germs out of the workforce. Plus, employers who retain existing workers rather than forcing them off the payroll when they need time off have lower recruitment and training costs.

The public health benefits of paid sick leave are monumental. Do we want low-income workers using public transit to sneeze on busses and subways? Many workers without paid sick leave work in the food service industry; Bill 60-14 would reduce the spread of food-borne disease via restaurants and grocery stores.

Finally, paid sick leave is a factor in the nation's growing income disparity. The Washington Post reported recently that the top 10 percent of private sector wage earners are four times more likely to get paid sick leave as the bottom 10 percent of workers, and the Bureau of Labor Statistics estimates that private sector managers and financial workers are more than twice as likely to earn paid leave as are lower-paid service workers and construction workers.

Paid sick leave enjoys broad public approval. According to the University of Chicago's National Opinion Research Center, 86 percent of voters surveyed in recent years supported legislation to guarantee paid sick days.

As you know, the Maryland State Legislature will debate paid sick leave again this session. Many Montgomery County legislators have already signed onto the Maryland Healthy Workforce Act, which will require paid sick leave for the vast majority of Maryland's workers.

The Council's leadership was invaluable last year, when you took the lead on increasing the minimum wage. I encourage you to do the same this year and pass Bill 60-14. You will be doing a world of good for workers, employers, and public health in our County.

January 29, 2015

My name is Laura Wallace and I live in Montgomery County in District 2. I support Bill 60-14 giving Montgomery County workers the opportunity to earn Paid Sick and Safe Leave. This issue is important to me because I am a working mom with two young children. My son, Avi, is 8 and my daughter, Naomi, is 5.

Avi has had a bad cough all winter and each time the nurse calls from school or he is too sick to go to school, we have to figure out what to do. My husband is a contract worker and he only gets paid for the time he works. If he takes off time to care for our son, he has to find a way to make up those hours or we really feel it when his paycheck comes. We have no family in the area to ask for help. We have wonderful friends and neighbors, but they either work or have small children at home, and we can't ask them to expose their family to our illness.

I work for a small non-profit with 3 employees and we all work less than 40 hours a week. When I first started my job, I had no sick leave. Luckily, the organization hired a new director who put into place family friendly policies, including earned Paid Sick Leave.

Thanks to my Paid Sick Leave, I can stay home with Avi and Naomi when they are sick without having to worry about loss of income or if I am endangering my job. I can teach them how to take care of themselves, so they can get better quickly and stay healthy longer. I can keep them from infecting their friends at school, so other families don't have to make hard choices about how to care for their sick children. I can keep them from getting their teachers sick, because when the teacher is sick, the education of the whole class suffers. And if I get sick, I can stay home so I don't get anyone else sick and I can get back to both my jobs – my paid job and my job taking care of my family – as quickly as possible.

This issue is so important to me and I also see how important it is to my office mate, Marsha. Marsha has been taking care of her 87 year old mother, who has been in and out of the hospital and in declining health. Marsha has also taken over the care of her special needs nephew, Alec, who was living with her mother until last year. For Marsha and for me, paid sick leave is a big reason why we are loyal to our organization and it adds significantly to our job satisfaction. Honestly, I could make more money working somewhere else, but I am so appreciative of the flexibility and family friendly policies offered by my current job, that I have been there 8 years and counting.

Why is this legislation important to me? Because I have earned Paid Sick Leave and I know how much it benefits my family. I want those same benefits for workers throughout Maryland and I hope the state legislators will make it happen this session. But I don't think we can wait for the state to act. We have the opportunity right now to show that Montgomery County is a leader in creating family friendly workplaces and we should pass this legislation now for the good of our families, our schools, our businesses, and the whole county.

Thank you.

Testimony of Marcellina Flores

DATE: January 29, 2015
BILL NO.: Bill 60-14
TITLE: Montgomery County's Earned Sick Leave Bill
POSITION: Support

"Bill 60-14, Human Rights and Civil Liberties - Earned Sick and Safe Leave"

Good evening - my name is Marcellina Flores - and I clean commercial offices in Montgomery County.

My job is physically demanding

Often we're on our hands and knees, doing back-breaking work.

It's really difficult when we're sick. But getting sick from time to time is just part of being human.

We work hard and deserve to take a day off if we need to see a doctor or if we have a family emergency.

It's already a struggle to pay the bills - so missing a day's pay is not an option I can afford if I need to see the doctor.

This means I have no choice but to work, no matter how sick I am. And I'm not alone, most of the people in my community are stuck in this inhumane dilemma.

We can't rely on our employers to give us such benefits out of the goodness of their hearts. We only have our elected officials - like you - and the few of us who are lucky enough - have a union who can fight for us.

Thankfully I can take a day off - only because I have a union.

But at my other job, I don't have paid sick leave.

I had to miss two doctor's appointments because my employer rejected my request for time off.

Even when I was sick with the flu and was running a high fever, I had to work so I wouldn't lose my job.

I have to do it because the wages are so low and I need the money. I do heavy-duty cleaning in houses for up to 12 hours per day. I already have to cope with constant pain in my knee and arm.

That's why we really need this bill - to help us get the sick and safe days we deserve to take better care of ourselves and our families.

I hope Council Members will think about all of the men and women who keep County buildings clean and orderly.

We are all counting on you to make the Earned Sick and Safe Leave Act a reality - it would really be a lifesaver for us.

We all need to be able to take care of ourselves or our kids when they get sick.



**TESTIMONY IN SUPPORT OF COUNCIL BILL 60-14:
Earned Sick and Safe Leave**

TO: Hon. George Leventhal, President, and members of the Health and Human Services Committee
FROM: Mabrouka ("Mimi") Hassanein, Executive Director, Learning Centers Management
DATE: January 29, 2015

My name is Mimi Hassanein and I am the Executive Director of Learning Centers Management LLC ("LCM"). LCM is a family owned business that manages our three child care centers in Maryland, two in Germantown and one in Frederick County. We currently employ over 60 people, the overwhelmingly majority of whom are women. Most of our workers earn less than \$18 an hour. I have been in the child care industry for over 15 years. I also currently serve on the Montgomery County Commission on Child Care. I support Council Bill 60-14 for the following reasons:

Workers – especially women – need the ability to earn paid sick leave. It is unreasonable to expect that employees never get sick and for many workers losing a day's pay is difficult. When our staff members come to work sick, they spread germs and risk getting kids sick. That is why I'm proud to say that our company already offers earned paid sick leave. We now have three centers with over 60 employees but even when we just had one center with approximately 15 staff members we still offered paid sick leave. For my family's business, this is a common sense issue.

The other problem we see is that sometimes parents bring sick children to daycare because they cannot afford to take time off to care for their children. This is very troublesome. It puts other children at risk of getting sick. Most daycares, including ours, have a policy that a child must be fever free for 24 hours without medication before they can return to school. It is very hard for families to respect this policy if they cannot earn paid sick leave to care for a child.

I support Council Bill 60-14 and respectfully urge a favorable report.

Montgomery County Council
Testimony for Bill 60-14, Sick and Safe Leave Act
1/29/2015

Rachel Metz
metz.rachel.a@gmail.com
703-600-9592
702 Chaney Dr. Apt. 304
Takoma Park, MD 20912-6300

My name is Rachel Metz, and I'm a Montgomery County resident and a member of Jews United for Justice, a DC metro organization advocating for progressive values and local change.

First, I want to thank CM Leventhal for introducing this legislation that would allow all workers in Montgomery County to earn paid safe and sick days.

In my day job I work in education policy, a passion rooted in growing up attending a diverse DC suburban school district where I saw how students' family backgrounds meant we came in the school door at different levels. I still remember in middle school when one of the teachers told a student, "You've been sick for two weeks, you need to have your parents take you to the doctor!" and he responded by saying that he and his parents knew he needed care, but were waiting until one of them had a day off to take him in for it.

Montgomery County is too well off for us tolerate parents having to make those choices.

For the typical family without paid sick days, just 3.5 days without pay is equivalent to losing an entire month's grocery budget. Unsurprisingly, parents without paid sick days are more than twice as likely as parents with paid sick days to send a sick child to school or daycare. Because of that, what would be minor family nuisances becomes a major public health issues.

And it's not just children that suffer. Between September and November 2009 – the H1N1 flu pandemic's peak months – eight million workers went to work sick, and may have infected seven million of their coworkers.

I, and I'm sure you, have worked in offices where one person comes in sick and within two weeks everyone has gotten their illness. But offices are the least of it. In Maryland, forty percent of private sector workers and more than 80 percent of low-wage workers do not have paid sick days. Effectively, the industries where workers have the most potential to get each other and the public sick are the least likely to offer paid sick days.

Intuitively, it seems like any cost to businesses of paying for paid sick days should be counterbalanced by increased efficiency as they avoid illnesses spreading through their whole staffs, not to mention customer base. And, in fact, the Institute for Women's Policy Research estimates that providing earned sick days in Maryland will yield \$195 million annually for employers, largely due to savings from reduced turnover.

Even as a kid, I knew that from a human perspective everyone should have access to paid sick days to take care of themselves and their families. But even from an economic perspective, businesses, and public health, benefit. Montgomery County has so much to gain by passing the Sick and Safe Leave Act. I hope you'll let us see what a healthier county workforce can do.



1201 S. Sharp St. Ste. 109
Baltimore, MD 21230
410-685-6567
www.equalitymaryland.org

**Testimony of Keith Thirion
In Support of Bill 60-14: Earned Sick and Safe Leave
Montgomery County Council
January 29, 2015**

My name is Keith Thirion and I am the Director of Advocacy & Programs for Equality Maryland, the state's largest lesbian, gay, bisexual and transgender political advocacy organization. On behalf of Equality Maryland and our thousands of members and supporters in Montgomery County, I urge you to pass Bill 60-14: Earned Sick and Safe Leave.

This is a straightforward measure that allows workers to earn leave to use in times of sickness or when attempting to protect oneself from domestic violence, rape or stalking. The Council has passed many laws over the years that help Maryland workers, children and families and this bill seeks to do the same.

For many of us, having earned sick time and being able to use it when we get sick or are taking care of a sick family member is common-place in our workplaces. However, 40% of private sector workers do not have this leave. Equality Maryland recognizes that there are members of the lesbian, gay, bisexual and transgender community among those, in particular those most vulnerable such as low-income LGBT people and LGBT people of color.

They have to choose whether to go to work sick, send a sick family member to school or work or stay home and potentially lose their job. We can do better. We can help these workers and help the public not be exposed to sick people who feel compelled to come to their jobs by providing earned sick leave.

I urge you to pass bill 60-14.

Thank you.



Century Distributors, Inc.
15710 Crabbs Branch Way
Rockville, MD 20855-2620
www.centurydist.com
Tel: 301-212-9100 • Fax 301-212-9681

Council Members:

Tonight, I am here to tell you about a family business right in Montgomery County that I am president of, Century Distributors. What make us unique is that we are the only wholesaler of our kind in Montgomery County. The three owners live and were educated in the County. Currently we have 183 employees, a fleet of 45 vehicles, and work out of 100,000 square feet of warehouse space right down the road in Rockville. Most of our employees reside in Montgomery County. Century's goal is to service our customers in the most responsible, effective and profitable manner delivering tobacco and convenience products. We are not a government run business, but a family business. We have poured sweat, tears and personal capital into our operation, and have flourished within this county for the last 39 years.

Bill 60-14 is a bill outlined for Government and Government contractor employees and not the private sector. The bill will require significant modifications to payroll processes which will increase costs. For example, it allows up to 56 hours of unused sick and safe leave to be carried over to the next calendar year but prohibits more than 80 hours of such leave to be used per year. An employee who earns leave while working in the County gets to keep it even if the employee is transferred out of the County and, if an employee is rehired within 12 months after leaving employment, all accrued and unused leave must be reinstated. All of this has to be tracked. An employee may take leave in the smallest increment used by the employer's payroll system to account for absences, but may not be required by an employer to take leave in increments of more than 1 hour. Importantly, employers must provide employees with a written statement of available earned sick and safe leave each time the employer pays wages to the employee, as well as providing written notice of the law to employees either by visible posting, in the employee handbook or in the on-boarding process. We are going to have to hire a full time legal team to figure this bill out.

The layering of bills coming from this council continues to make it more and more difficult to do business in this county. The cost of compliance has crossed from

significant to crippling. If this bill is passed, we will incur nearly \$200,000 in costs directly attributable to this one bill alone.

Our competitors are not based in this county but are happy to come in and do business here given the cost advantages you continue to hand them. We are now faced with the possibility of having to scale back the benefits we are now offering our employees in order to remain competitive. We cannot continue to absorb these costs without consequence.

I am asking you today to stand up for the businesses in this county who continue to provide jobs for this county's residents, and are tired of being put at a competitive disadvantage. I am asking you to reject this bill as Maryland Legislatures have done over the past several years.

*Debbie Robins
President*



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✉ drobins@centurydist.com

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Opposition to Bill 60-14 - Earned Sick and Safe Leave

Maryland Retailers Association opposes Bill 60-14, which requires employers to provide paid leave to all employees. The legislation will further negatively impact job growth in the county by mandating additional costs to businesses for operating in Montgomery County. Retailers in the County have been struggling with the increase in minimum wage that was enacted last year and Bill 60-14 will only make it more difficult for them to financially operate in the County.

Bill 60-14 impact will be hardest felt by retailers because it requires them to provide all their employees with paid leave, regardless of how many hours worked by an employee. This additional cost is extremely onerous to the retail industry who is still struggling in a stagnant economy with very little increase in sales.

This measure just further exacerbates the additional costs mandated by the County. For retailers in the County, it will create a Hobson's choice. With slow sales growth, they will have to trim expenses and payroll is one of their largest expenses. Reduced employment or fewer hours will likely be the result but that also negatively impacts customer service which is one of the most important elements of "brick and mortar" retail stores.

The costs of mandating paid leave will fall squarely on the retailers and put them at a further competitive disadvantage to neighboring retailers in adjacent counties and Virginia and even less competitive with online retailers. Bill 60-14 certainly sends a message that Montgomery County is not business friendly.

Many retailers offer paid leave to employees. However, the provisions of Bill 60-14 are very prescriptive and are unlikely to match the current practice for those that do offer paid leave. Maryland Retailers Association urges Montgomery County Council to not enact Bill 60-14 and allow retailers time to manage the minimum wage increases before mandating additional costs on businesses.

Montgomery County Bill 60-14
Human Rights and Civil Liberties Earned Sick and Safe Leave
Bernard Brill
Alliance for Construction Excellence
Sheet Metal and Air Conditioning Contractors' Mid –Atlantic Chapter
February 12, 2015

As the executive director for the Sheet Metal and Air Conditioning Contractors' Mid-Atlantic Chapter and a member of The Alliance for Construction Excellence (ACE) our industry group is in strong opposition to Montgomery County Bill 60-14-- Human Rights and Civil Liberties Earned Sick and Safe Leave. ACE is a coalition of the premier construction specialty contractors' associations, allied to create awareness of quality construction. ACE represents some 1,200 subcontracting firms that employ highly skilled technicians for field construction work, and provide those employees with high value wages, family medical care, retirement plans and continuing education through education, workforce development, and apprenticeship training programs.

As you are aware, general contractors manage construction projects, and have the ability to directly hire employees such as carpenters, laborers, and cement finishers. However, 80 to 90 percent of the work performed on the construction site is done by subcontractors, typically specialty trade contractors who employ tradesmen such as plumbers, electricians, ironworkers, fitters, and HVAC technicians. The majority of these subcontractor companies are considered small businesses by definition.

A majority of contractors represented by ACE provide their employees many benefits including education and training along with quality retirement and health benefits. In addition, they support state accredited apprenticeship programs.

This bill, if enacted, will create an additional hardship on an industry that is still reeling from the recession and has yet to experience the recovery. The majority of my SMACNA members are continuing to lay off workers and working only four days a week. To put this in perspective, our sheet metal contractors produced more than 4 million hours in 2008. It looks like our hours for 2014 will be about half of that. The sad truth is that a majority of those workers are still unemployed. During the past five years we have learned that this area is not recession-proof.

Record Keeping Burden

The primary hardship in complying with this new regulation is bookkeeping and the difficulty in tracking workers. Within the trades there are several classifications of workers such as journeyperson/journeyman, specialty worker, classified worker, apprentice, etc. By definition a “journeyperson” or “journeyman” is an experienced and trained construction worker.

Throughout the history of the construction trades, to maintain maximum efficiency and skills necessary to complete a job, the construction industry has always operated with a workforce that is transient. Therefore, by definition *journeypersons and apprentices* travel with their tools from job to job and from employer to employer for various periods of time.

In addition, once a job is completed, the journeyperson often is laid off or may leave to join another company to maintain continuous employment. A job can last from several hours, to a day, week, month, or longer. To maintain employment, a journeyperson may work for two or more employers during a given year. If the journeyperson is a member of a trade union their wages and benefits are portable and move with him or her. If this measure is passed, who is responsible for providing sick leave benefits for an individual who may have worked for three or more employers in a given year?

Administrative Issues

The difficulty for the employer is keeping track of the hours and location of the worker. Given our large geographic area, this worker may be employed in the District of Columbia in the morning and work in Maryland or Virginia in the afternoon. Some may even be working in Pennsylvania or West Virginia. While hours worked are carefully tracked, where those hours are accumulated are not. Contractors have reported that in order to comply they will need to hire additional administrative staff to be able to provide the necessary record keeping, which adds to the overhead and financial burden of the contractor.

The size of a company’s workforce has tremendous volatility based upon the number of bids a firm is able to win. A company can bring on hundreds of workers for large jobs such as a sports

stadium or hospital and just as quickly reduce to fewer than 10 when times are slow as we have seen in recent years. Other factors affecting manpower are material deliveries, weather, design changes, the work of other trades on the job, and so forth. National Harbor is a good example as some firms doubled the number of workers and then scaled back upon completion of the project. Now with the startup of the new casino and hotel, employment will once again surge for the contractors awarded this work and journeypersons will be mobilized.

Like wages, paid holidays, vacation, and other benefits--these are items that each employer should be allowed to decide given their unique situation. Regarding wages, a sheet metal journeyperson earns \$39.73 per hour plus another \$16.22 in benefits for a total of \$55.95 per hour. Based upon a 2000 hour year, this total package is \$111,900. Of course this is a minimum compensation package and the employer has the opportunity and flexibility to pay over scale—and they often do to reward highly skilled and productive workers. The intention of this law as we see it was to support lower wage earners and this group does not meet the criteria.

Where union contractors are concerned, leave should be a collectively bargained item that is part of the negotiation process as are pensions, health benefits, vacation leave, work rules, and like issues. For decades labor and management have successfully come together to forge agreements that have resulted in building a quality workforce. While it is understood that this bill was initially intentioned to help those working in the hospitality or food service industry, it has never been an issue for construction. And if it was, the matter would come up at the negotiation table.

It is therefore suggested that the construction trade be exempted from Bill 60-14. At a minimum the committee might want to consider exempting construction employers working under a collective bargaining agreement.

For more information or questions, please contact Bernard Brill, SMACNA Mid-Atlantic Chapter, 7833 Walker Dr., Suite 640, Greenbelt, MD. Ph: 301/446-0002 x 101 or email Bernie@smacnaatl.org.

The Arc Montgomery County
Montgomery County Council Testimony
April 15, 2015

My name is Joyce Taylor and I am the Executive Director of The Arc Montgomery County. I am testifying today to express my concern with the Earned Sick and Safe Leave Bill introduced by the county council. As a non-profit organization operating in Montgomery County, there are new financial hurdles presented to us routinely. The Arc Montgomery County employs approximately 450 staff with 100 of those working part-time (<29 hours a week). We already provide 7.5 sick leave hours and 5 personal leave days each year to our part time staff (defined as 20-29 hours a week). This is industry standard. To comply with the additional requirements that this bill mandates, it will **cost The Arc an additional \$100,000 a year**. This amount includes paying the staff who are on leave, paying substitutes to cover for the staff who are on leave, and FICA.

We already struggle to comply with the Affordable Care Act (our health insurance costs have tripled in 18 months) and meeting the County's minimum wage requirement (in 2016, our state hourly reimbursement rate will be less than what the county will require us to pay our entry level staff). The Sick and Safe Leave bill will create additional hardships. We have cut administrative overhead to bare bones and cannot cut anymore. We have not given cost of living increases to all of our staff since 2013 (and only once in the 3 years prior to that). I understand the county has good intentions, but this is bad business – these actions will cause non-profits and the small-medium size businesses to collapse in Montgomery County. **Is this what the council hopes to achieve?**

Let me be clear – as an executive director, **I want to pay my staff increased wages and better benefits**, but we simply cannot afford to do so! The county must support us in these efforts – if the cost of doing business increases because of decisions the county makes, than the county needs to support us.

I am asking the county council to:

- Say NO to the sick and safe leave bill OR postpone the implementation until the county can fully fund non-profits to comply; AND
- Provide full funding to offset the impact of these costs to non-profits immediately (or when the bill becomes effective); OR
- Make non-profits exempt from the bill.

I urge you to think through the negative impact on non-profits who serve thousands of under-privileged county residents and small-medium size businesses who employ thousands of county residents. If all of these businesses close or relocate to other counties, what will that do Montgomery County's tax base?

Thank you for your careful and thoughtful attention to this issue.

Table 32. Leave benefits: Access, civilian workers,¹ National Compensation Survey, March 2014

(All workers = 100 percent)

Characteristics	Paid holidays	Paid sick leave	Paid vacations	Paid personal leave	Paid funeral leave	Paid jury duty leave	Paid military leave	Family leave ²	
								Paid	Unpaid
All workers	75	65	74	41	63	66	39	13	87
Worker characteristics									
Management, professional, and related	80	84	76	58	82	84	56	20	92
Management, business, and financial	95	89	94	60	85	87	56	25	92
Professional and related	73	82	68	58	81	83	56	17	92
Teachers	36	85	17	61	82	88	65	15	93
Primary, secondary, and special education school teachers	31	96	13	72	88	95	69	18	97
Registered nurses	85	81	83	65	84	84	55	24	93
Service	55	46	58	25	41	45	25	7	80
Protective service	82	71	80	45	71	74	55	14	90
Sales and office	79	66	79	42	63	65	37	13	88
Sales and related	68	51	68	34	50	53	28	8	87
Office and administrative support	86	74	85	47	71	72	41	16	89
Natural resources, construction, and maintenance	84	58	82	30	54	55	30	8	81
Construction, extraction, farming, fishing, and forestry	74	44	69	20	41	41	24	7	80
Installation, maintenance, and repair	93	70	94	39	65	67	36	9	83
Production, transportation, and material moving	84	57	82	34	64	66	34	7	86
Production	92	59	91	33	70	70	36	8	88
Transportation and material moving	76	55	73	35	59	62	33	6	84
Full time	87	78	87	49	74	76	46	15	90
Part time	36	25	34	16	30	33	18	5	77
Union	81	83	75	60	86	89	61	16	94
Nonunion	74	62	74	38	60	62	35	12	85
Average wage within the following categories ³ :									
Lowest 25 percent	50	34	51	18	34	37	17	5	78
Lowest 10 percent	36	21	39	10	23	27	11	4	75
Second 25 percent	83	68	82	42	66	68	37	11	87
Third 25 percent	90	78	89	49	75	78	47	15	91
Highest 25 percent	83	87	79	61	85	87	59	21	93
Highest 10 percent	82	90	79	62	88	91	65	22	94
Establishment characteristics									
Goods-producing industries	90	59	89	32	67	67	37	8	86
Service-providing industries	73	66	71	43	63	65	39	13	87
Education and health services	72	80	66	56	78	81	51	16	92
Educational services	53	87	40	59	83	89	68	15	93
Elementary and secondary schools	42	90	27	68	84	92	68	16	94
Junior colleges, colleges, and universities	78	85	67	43	87	89	73	14	96
Health care and social assistance	84	75	84	53	74	75	39	16	91
Hospitals	91	86	91	69	88	89	57	25	96
Public administration	88	89	89	54	86	91	82	16	94

See footnotes at end of table.

Table 32. Leave benefits: Access, civilian workers,¹ National Compensation Survey, March 2014—continued

(All workers = 100 percent)

Characteristics	Paid holidays	Paid sick leave	Paid vacations	Paid personal leave	Paid funeral leave	Paid jury duty leave	Paid military leave	Family leave ²	
								Paid	Unpaid
1 to 99 workers	68	53	69	28	47	49	23	8	79
1 to 49 workers	67	51	66	25	43	45	21	8	76
50 to 99 workers	73	58	75	35	58	61	27	9	88
100 workers or more	81	76	79	53	79	81	54	16	93
100 to 499 workers	79	68	79	47	70	72	41	14	92
500 workers or more	83	85	78	60	87	90	66	19	95
Geographic areas									
Northeast	75	69	73	54	69	75	43	12	87
New England	72	67	69	49	68	75	43	13	90
Middle Atlantic	76	69	74	55	69	75	43	12	85
South	77	66	76	39	64	67	42	13	87
South Atlantic	78	67	76	41	65	67	42	15	87
East South Central	76	63	74	35	61	66	43	6	87
West South Central	76	66	76	38	64	69	42	13	87
Midwest	76	61	74	41	65	66	35	12	86
East North Central	76	61	75	43	67	68	34	13	87
West North Central	76	63	74	35	61	61	36	11	84
West	72	64	71	33	55	55	34	12	87
Mountain	69	61	72	36	57	57	36	11	84
Pacific	73	66	71	32	54	54	33	13	88

¹ Includes workers in the private nonfarm economy except those in private households, and workers in the public sector, except the federal government. See Technical Note for further explanation.

² The sum of paid and unpaid family leave may exceed 100 percent because some workers have access to both types of plans.

³ Surveyed occupations are classified into wage categories based on the average wage for the occupation, which may include workers with earnings both above and below the threshold. The categories were formed using percentile estimates generated using ECEC data for March 2014.

Note: For definitions of major plans, key provisions, and related terms, see the "Glossary of Employee Benefit Terms" at www.bls.gov/ncs/ebs/glossary20132014.htm.

Table 32. Leave benefits: Access, private industry workers, National Compensation Survey, March 2014

(All workers = 100 percent)

Characteristics	Paid holidays	Paid sick leave	Paid vacations	Paid personal leave	Paid funeral leave	Paid jury duty leave	Paid military leave	Family leave ¹	
								Paid	Unpaid
All workers	76	61	77	38	60	61	32	12	85
Worker characteristics									
Management, professional, and related	89	82	88	57	80	81	48	21	91
Management, business, and financial	97	88	96	61	85	86	52	26	92
Professional and related	85	78	83	54	78	79	46	18	91
Service	51	40	55	21	34	37	17	6	78
Protective service	75	46	68	31	48	49	19	11	82
Sales and office	79	63	78	41	62	63	33	13	87
Sales and related	68	51	68	34	50	53	28	8	87
Office and administrative support	86	71	85	46	69	69	36	16	88
Natural resources, construction, and maintenance	83	54	81	28	51	51	24	8	80
Construction, extraction, farming, fishing, and forestry	72	38	66	17	36	35	16	6	78
Installation, maintenance, and repair	93	67	93	38	63	65	32	9	81
Production, transportation, and material moving	84	56	82	33	63	65	32	6	86
Production	92	58	91	32	70	69	35	8	88
Transportation and material moving	77	53	74	33	57	60	30	5	84
Full time	90	74	91	46	71	72	38	15	88
Part time	37	24	35	15	28	31	15	5	77
Union	91	70	91	51	79	81	42	11	91
Nonunion	75	60	75	37	58	60	32	12	85
Average wage within the following categories ² :									
Lowest 25 percent	48	30	49	15	31	33	14	5	78
Lowest 10 percent	34	20	39	9	21	25	9	4	75
Second 25 percent	83	64	83	40	62	64	31	10	85
Third 25 percent	90	73	90	46	71	72	39	13	89
Highest 25 percent	92	84	91	58	82	83	51	22	92
Highest 10 percent	93	87	93	60	86	88	60	23	93
Establishment characteristics									
Goods-producing industries	90	59	89	32	67	67	37	8	86
Construction	75	42	69	17	35	37	14	5	74
Manufacturing	96	65	96	38	79	79	45	9	91
Service-providing industries	74	61	74	40	58	60	32	13	85
Trade, transportation, and utilities	78	58	77	36	59	61	31	7	88
Wholesale trade	93	74	91	39	69	71	31	9	86
Retail trade	69	47	68	31	51	52	27	6	88
Transportation and warehousing	84	73	86	47	72	76	41	7	91
Utilities	99	91	99	65	92	90	70	16	98

See footnotes at end of table.

Table 32. Leave benefits: Access, private industry workers, National Compensation Survey, March 2014—continued

(All workers = 100 percent)

Characteristics	Paid holidays	Paid sick leave	Paid vacations	Paid personal leave	Paid funeral leave	Paid jury duty leave	Paid military leave	Family leave ¹	
								Paid	Unpaid
Information	96	91	94	73	87	90	49	26	97
Financial activities	94	86	94	61	84	85	55	30	92
Finance and insurance	97	90	97	67	90	92	65	36	95
Credit intermediation and related activities	98	90	97	61	92	92	70	31	97
Insurance carriers and related activities	96	89	96	74	88	90	57	39	93
Real estate and rental and leasing	83	74	83	41	62	63	20	—	83
Professional and business services	82	64	77	40	59	60	33	17	80
Professional and technical services	91	78	90	51	77	78	46	21	88
Administrative and waste services	70	44	58	23	32	33	13	9	68
Education and health services	81	74	80	52	74	74	37	16	90
Educational services	65	75	55	47	76	76	45	15	89
Junior colleges, colleges, and universities	81	81	73	52	90	91	61	18	96
Health care and social assistance	84	74	84	53	73	74	36	16	90
Leisure and hospitality	33	28	45	12	19	25	11	4	76
Accommodation and food services	30	24	45	10	18	23	10	3	76
Other services	65	54	68	30	43	43	18	7	73
1 to 99 workers	68	52	69	27	46	48	21	8	79
1 to 49 workers	67	50	66	25	42	44	20	8	76
50 to 99 workers	73	56	76	33	56	59	24	9	88
100 workers or more	86	72	85	51	76	77	46	16	93
100 to 499 workers	81	65	82	45	69	70	37	13	92
500 workers or more	92	81	91	60	87	87	58	21	94
Geographic areas									
Northeast	77	65	76	51	65	72	38	13	85
New England	75	63	73	44	64	72	40	13	89
Middle Atlantic	78	66	77	53	66	72	37	13	84
South	78	61	78	37	61	63	35	13	86
South Atlantic	78	62	78	39	62	63	35	14	85
East South Central	78	57	76	35	56	60	32	5	86
West South Central	79	62	80	33	62	65	36	14	86
Midwest	77	57	78	37	63	62	30	11	85
East North Central	77	57	78	40	65	65	31	10	86
West North Central	77	58	77	32	57	56	30	12	83
West	72	60	73	30	49	48	26	12	85
Mountain	71	57	75	34	52	52	30	11	82
Pacific	73	61	72	28	47	47	25	12	87

¹ The sum of paid and unpaid family leave may exceed 100 percent because some workers have access to both types of plans.

² Surveyed occupations are classified into wage categories based on the average wage for the occupation, which may include workers with earnings both above and below the threshold. The categories were formed using percentile estimates generated using ECEC data for March 2014.

Note: For definitions of major plans, key provisions, and related terms, see the "Glossary of Employee Benefit Terms" at www.bls.gov/ncs/ebs/glossary20132014.htm.

Table 34. Paid sick leave: Type of provision, private industry workers, National Compensation Survey, March 2014

(All workers with paid sick leave = 100 percent)

Characteristics	Sick leave provision		
	Fixed number of days per year ¹	As needed ²	As part of consolidated leave plan ³
All workers	70	6	24
Worker characteristics			
Management, professional, and related	63	9	29
Management, business, and financial	65	9	26
Professional and related	61	8	30
Service	67	—	—
Protective service	76	—	—
Sales and office	73	5	21
Sales and related	78	5	17
Office and administrative support	71	5	23
Natural resources, construction, and maintenance	72	10	18
Installation, maintenance, and repair	73	—	—
Full time	69	7	24
Nonunion	68	7	25
Average wage within the following categories ⁴ :			
Second 25 percent	72	5	23
Third 25 percent	72	5	23
Highest 25 percent	64	9	26
Highest 10 percent	64	11	24
Establishment characteristics			
Service-providing industries	69	6	24
Trade, transportation, and utilities	81	5	14
Wholesale trade	78	8	14
Retail trade	83	4	13
Utilities	83	—	—
Information	74	12	14
Financial activities	66	6	29
Finance and insurance	64	5	30
Credit intermediation and related activities	75	2	23
Real estate and rental and leasing	70	7	23
Professional and business services	67	—	—
Professional and technical services	62	11	27
Education and health services	59	4	37
Educational services	83	8	9
Junior colleges, colleges, and universities	82	8	10
Health care and social assistance	55	3	42
Other services	76	9	15

See footnotes at end of table.

Table 34. Paid sick leave: Type of provision, private industry workers, National Compensation Survey, March 2014—continued

(All workers with paid sick leave = 100 percent)

Characteristics	Sick leave provision		
	Fixed number of days per year ¹	As needed ²	As part of consolidated leave plan ³
1 to 99 workers	70	9	21
1 to 49 workers	69	11	20
50 to 99 workers	73	4	23
100 workers or more	69	4	27
100 to 499 workers	73	3	23
Geographic areas			
Northeast	72	8	21
New England	65	8	27
Middle Atlantic	74	7	18
South	70	5	25
South Atlantic	71	6	23
East South Central	71	6	23
West South Central	68	2	30
Midwest	65	8	27
East North Central	67	6	27
West	72	6	22
Mountain	65	6	30
Pacific	75	6	19

¹ Employees earn or accrue a specified number of sick leave days per year. This number may vary by length of service.

² Plan does not specify maximum number of days.

³ A consolidated leave plan provides a single amount of time off for workers to use for multiple purposes, such as vacation, illness, or personal business.

⁴ Surveyed occupations are classified into wage categories based on the average wage for the occupation, which may include workers with earnings both above and below the threshold. The categories were formed using percentile estimates generated using ECEC data for March 2014.

Note: Because of rounding, sums of individual items may not equal totals. Dash indicates no workers in this category or data did not meet publication criteria. For definitions of major plans, key provisions, and related terms, see the "Glossary of Employee Benefit Terms" at www.bls.gov/nchs/febs/glossary20132014.htm.

Executive Summary

This report presents results from the evaluation study of the City of Seattle Paid Sick and Safe Time Ordinance. Findings are based on two surveys of more than 300 randomly-sampled employers, over 80 in-depth interviews of employers and workers, and an analysis of confidential employment data from the State of Washington Employment Security Department.

Most employers know about the Ordinance. One year after the Ordinance took effect, more than eight of ten (83%) surveyed employers were aware of it. Initial difficulties in understanding the requirements of the Ordinance subsided over time.

The majority of employers are offering paid leave to full- and part-time employees. Almost all employers (96%) offer some paid leave to their full-time employees. Among employers with part-time employees, 62% cover their part-timers. Employers in the food and accommodation sector posted the greatest increase, with 78% of employers now providing paid leave coverage, up from 14% a year prior.

Gaps still remain. Nearly four in ten employers (39%) report that they either do not cover part- and full-time workers or fail to provide the minimum required hours of leave to their full-time workers (hours of leave provided to part-time workers were not tracked). Employees of some larger employers (those with 250 or more full-time equivalents) as well as some temporary and seasonal workers are particularly likely to lack leave.

Implementation was easy for some employers and caused temporary hassles for others. Many employers had no trouble changing their policies and practices to comply with the Ordinance. About a third of employers (32%) had difficulties with the required administrative tasks, such as working with payroll vendors. These challenges were frustrating but transient.

Costs to employers and impact on businesses have been modest and smaller than anticipated. The majority of employers have seen no effect of the Ordinance on customer service, employee morale, predictability of employee absenteeism, or profitability. Anecdotal cost information puts the cost of providing leave at about four tenths of one percent of total revenue. There is no evidence that the Ordinance caused employers to go out of business or leave Seattle.

Many employers support the Ordinance. Overall 70% of employers support the Ordinance. These business owners, managers, and human resources professionals view paid leave as a valuable and important benefit for their workers.

Workers view the Ordinance as helpful. Newly eligible workers – those who did not have paid leave prior to the Ordinance but now do – appreciate having a “safety net” that allows them to take time off to care for themselves or their sick family members.

Safe leave was expanded. One third of employers (33.5%) expanded their policies to include safe leave, and presumably many of the 13.4% of employers who implemented new leave policies included safe time.

Summary

The District of Columbia's Accrued Sick and Safe Leave Act (Act) of 2008 became effective on May 13, 2008. The Act requires employers to provide employees with paid sick days to care for themselves or family members. Additionally, the Act provides employees in the District of Columbia with access to paid leave for work absences associated with domestic violence or abuse. The Act applies to full and part-time employees however; certain food service personnel, healthcare workers, and full-time students working less than 25 hours a week at their college or university are exempt.

Employers are required to post the provisions of the Act in a "conspicuous place" that is accessible to employees.

The objectives of this audit were to:

- Determine compliance with the requirement for employers to post the provisions of the Act;
- Determine whether the administration of the Act by District agencies was consistent with the requirements of the Act; and
- Assess the economic impact of the Act on the private sector.

The following are the audit findings:

- 1. Intermittent District government employees did not receive paid sick leave;**
- 2. Hardship exemption rules were not finalized; and**
- 3. 91% of employers complied with the posting requirement.**

To ensure that the District complies with requirements of the Accrued Sick and Safe Leave Act, we recommend the Department of Human Resources:

- **Establish an accrual system to track eligibility for paid sick leave for intermittent District government employees.**
- **Provide retroactive accrued sick leave to current District employees that were eligible to accrue paid sick leave under the Accrued Sick and Safe Leave Act but did not receive paid sick leave due to the failure of the Department of Human Resources to track paid sick leave.**

To ensure that employers have a formal procedure to request a hardship exemption from the requirements of the Act, we recommend the Department of Employment Services:

- 3. Publish the final Accrued Sick and Safe Leave Act hardship exemption rules in the District of Columbia Register.**

To determine whether employees in the District of Columbia received paid sick leave we recommend the Department of Employment Services:

- 4. Establish a process to review employer compliance with the provisions of the Accrued Sick and Safe Leave Act of 2008.**

To ensure that the Auditor has the necessary data to determine whether employers circumvented staffing patterns we recommend:

- 5. The Council of the District of Columbia amend the Accrued Sick and Safe Leave Act of 2008 to require employers to retain records documenting hours worked by employees, paid sick leave taken by employees and provide the Auditor access to such records.**



Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: James Stowe, Director, Office of Human Rights

VIA: Marc P. Hansen, County Attorney *Marc P. Hansen*

FROM: Kathryn Lloyd, Associate County Attorney *Kathryn Lloyd*

DATE: December 26, 2014

RE: Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave

I have read and reviewed the content of Bill 60-14, “Human Rights and Civil Liberties – Earned Sick and Safe Leave,” and the Bill raises several legal issues.

Background

Bill 60-14 proposes to amend Chapter 27 of the Montgomery County Code by adding a new Article, Article XIII, entitled “Earned Sick and Safe leave.” This article would include new §§ 27-76 through 27-82, titled specifically: § 27-76, findings and definitions; § 27-77, earned and sick safe leave required; § 27-78, minimum earned sick and safe leave standards; § 27-79, use of earned sick and safe leave; § 27-80, notice; § 27-81, records; and § 27-82, enforcement. The Bill also adds the new Article XIII to the administration and enforcement provisions of § 27-7 and to the penalties and relief provisions of § 27-8, thereby providing for enforcement of Article XIII by the Office of Human Rights and the Human Rights Commission, or the appropriate State agency, and authorizing the Human Rights Commission to award certain relief.

The stated purpose of Bill 60-14 is to require certain employers within the County to provide earned sick and safe leave to employees working in the County. The goal of such legislation is to ensure employees in the County have paid sick leave so they are not forced to come to work or to send their children to school or daycare when they are sick because they do not have paid sick leave. Under § 27-76(b), an employer is defined as “any person, individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity operating and doing business in the County that employs 1 or more persons in the County in addition to the owners.” The definition includes the County government but does not include the federal, State, or any other local government. The

definition of “employer” under the proposed Bill contains similar language to that recently enacted under § 27-67(b) of the County Code for an “employer” under the County’s minimum wage law.

Earned sick and safe leave is defined under § 27-76(b) as “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.” Based on the definition, it appears that “sick and safe leave” is one type of leave. Assuming sick leave is leave used for an injury or illness, then safe leave would be leave used due to domestic violence. The second sentence of the definition reads as if an employee can use sick and safe leave for any purpose. This sentence should be amended to clarify that the leave “includes paid time off *already provided by the employer* that can be used by the employee for any purpose.” In addition, section 27-79, discussed in greater detail below, enables the employee to use sick and safe leave for various illnesses, injuries or conditions of the employee or the employee’s family members and to deal with domestic violence, sexual assault, or stalking committed against the employee or their family members.

Analysis

Bill 60-14 is modeled after House Bill 968, which was introduced in the Maryland General Assembly in 2014 but was not enacted. That proposed state legislation included a proposed section to the Labor and Employment Article of the Annotated Code of Maryland, section 3-1202, which stated:

This subtitle may not be construed to:

- (1) Require an employer to compensate an employee for unused earned sick and safe leave when the employer leaves the employer’s employment;
- (2) Prohibit an employer from establishing a policy under which employees may voluntarily exchange assigned work hours;
- (3) Prohibit an employer from adopting or retaining a general paid leave policy that meets the minimum requirements of this subtitle;
- (4) Affect a provision of a contract, a collective bargaining agreement, an employee benefit plan, or any other agreement that requires the employer to provide general paid leave benefits that meet the minimum requirements of this subtitle;
- (5) Preempt, limit or otherwise affect any other law that provides for sick and safe leave benefits that are more generous than required under this subtitle; or
- (6) Preempt, limit, or otherwise affect any workers’ compensation benefits that are available under Title 9 of this article.

The County should consider adding similar language into Bill 60-14 to ensure that there is no confusion between the enactment of Bill 60-14 and existing employment contracts. For example, under proposed § 27-78(e), an employee who is rehired by an employer within 12 months after leaving employment must have their unused sick and safe leave reinstated. This

policy could differ from an existing employment contract or bargaining agreement. Inserting language into the statute to address potential conflicts would alleviate contract disputes.

The use of earned sick and safe leave is governed by the proposed § 27-79. Under § 27-79, sick and safe leave may be used for the employee to care for an injury or illness sustained by the employee or the employee's immediate family, as defined in § 27-76(b), or due to domestic violence suffered by the employee or the employee's immediate family. Section 27-79(a)(7)(B) enables an employee to use sick and safe leave "during the time that the employee has temporarily relocated due to the domestic violence, sexual assault, or stalking." There are no other conditions imposed on the use of leave under this section. The employee does not need to be engaged in any activity related to the domestic violence, sexual assault, or stalking – they simply need to have relocated, a condition which could exist for an extended period of time during which it may not be practical for the employee to remain on leave.

Subsections 27-79(c) and (d) outline items an employer must not require an employee to do. These two subsections could be combined into one. In addition, subsection 27-79(d) should be reworded in several ways. First, § 27-79(d)(1) prohibits an employer from requiring an employee to "disclose details of the mental or physical illness, injury, or condition of the employee or the employee's family member." The use of the term "detail" under this subsection is very vague and does not provide guidance as to what would constitute a detail. Under subsection 27-79(h), an employer "may require an employee who uses more than 3 consecutive days of earned sick and safe leave to provide reasonable documentation to verify that the leave was used appropriately." This subsection appears to be in direct conflict with § 27-79(d)(1) in that (d)(1) prohibits the employer from requiring details about the employee's leave while (h) then allows the employer to require documentation, which would most likely necessarily include "details" and thus constitute a violation of (d)(1). Changing the wording from "disclose details" to "disclose specific details" could clarify that the employer may require documentation about the illness, injury, or condition, but not specifics.

Section 27-80 deals with employers providing notice to employees about sick and safe leave. Section 27-80(d) outlines three methods by which an employer may provide the requisite notice, in (d)(1), (d)(2), and (d)(3). There is no "and" or "or" in between these subsections so it is unclear whether the employer must comply with all three or can choose one of the three methods for notice. In addition, § 27-81 requires an employer to keep a record of earned sick and safe leave accrued and used by each employee for at least three years. There is no indication as to when the three year period begins –when the employee begins employment with the employer, when the employee leaves employment, or some other time. There is also a typo in § 27-82, which reads "[a] covered employee who was who did not receive earned sick and safe leave..." The words "who was" should be omitted.

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Robert Drummer, Sr. Legislative Attorney