

MEMORANDUM

September 16, 2016

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 32-16, Human Rights and Civil Liberties – Earned Sick and Safe Leave – Use of Earned Sick and Safe Leave – Parental Leave

Bill 32-16, Human Rights and Civil Liberties – Earned Sick and Safe Leave – Use of Earned Sick and Safe Leave – Parental Leave, sponsored by Lead Sponsor Councilmember Hucker and Co-sponsors Council Vice President Berliner and Councilmembers Katz and Navarro, was introduced on August 2, 2016. A Health and Human Services Committee worksession is tentatively scheduled for October 17 at 9:30 a.m.

Bill 32-16 would amend the County's Earned Sick and Safe Leave Law to provide that certain employees may use earned sick and safe leave for parental purposes, which is not currently expressly permitted.

Background

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

Under the provisions of the new law, an employee may use earned sick and safe leave for several enumerated purposes. Bill 32-16 will add two related purposes for which use of sick and safe leave will be permitted. The Bill would permit the use of sick and safe leave: (1) for the birth of a child, or for the placement of a child with the employee for adoption or foster care; and (2) to care for a newborn, newly adopted, or newly placed child within one year of birth, adoption, or placement.

Employees have leave rights and protections under federal, State, and now County law, and there is some overlap among these provisions. A summary of the related provisions at different levels of government is useful in understand the actual effect of the changes proposed in Bill 32-16.

Federal law – Family and Medical Leave Act

The federal Family and Medical Leave Act (FMLA) entitles eligible employees who work for covered employers to take *unpaid*, job-protected leave for specified family and medical reasons. Eligible employees may take up to 12 workweeks of leave during any 12-month period for certain family and medical reasons. These reasons include, among others, use of leave for the birth and care of the newborn child of an employee, or for placement with the employee of a child for adoption or foster care. An employee is an “eligible employee” if the employee has worked for their employer at least 12 months, at least 1,250 hours over the past 12 months, and works at a location where the company employs 50 or more employees within 75 miles.

Under regulations adopted pursuant to the FMLA,¹ an eligible employee may choose to substitute accrued paid leave for FMLA leave. The employee’s ability to substitute accrued paid leave is determined by the terms and conditions of the employer’s normal leave policy, such as submitting a leave form or providing advance notice. If the employee does not comply with the requirements of the employer’s paid leave policy, then the employee may be forbidden from substituting accrued paid leave, but this does not change the employee’s entitlement to take FMLA.

State law – Maryland Parental Leave Act

The Maryland Parental Leave Act (PLA) is similar to the FMLA, but applies to smaller employers (15-49 employees) and is limited to “parental” leave. The PLA guarantees eligible employees 6 workweeks of unpaid parental leave during any 12-month period for the birth of the employee’s child or the placement of a child with the employee for adoption or foster care. An “eligible employee” under the PLA is quite similar to that under the FMLA, other than the size of the employer.² The PLA also has a provision allowing an employee to substitute paid leave for the unpaid leave guaranteed by the law. If an employer provides paid leave to an eligible employee, the employer may require the eligible employee, or the eligible employee may elect, to substitute the paid leave for any part of or all of the period of parental leave.

County Sick and Safe Leave law

As mentioned above, the County’s Sick and Safe Leave Law, effective October 1, 2016, requires an employer doing business in the County to provide a minimum amount of earned sick and safe leave for an employee who works in the County. The County’s definition of an employee eligible to earn and use this leave is much broader than the federal and State laws.

In particular, County Code Section 27-79(a) sets forth the permissible uses of earned sick and safe leave. These uses are all related to either mental or physical health issues or domestic violence, sexual assault, or stalking. Under County law, an employee, which is broadly defined,

¹ 29 CFR 825.207 - Substitution of paid leave.

² Under MD Code, Labor and Employment, § 3-1201, “eligible employee” means an individual who has requested that an employer provide parental leave and who, as of the date that the requested parental leave begins, will have been employed by that employer for at least: (i) a 12-month period; and (ii) 1,250 hours during the previous 12 months. “Eligible employee” does not include an individual: (i) 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; or (ii) who is an independent contractor.

may use the leave: (1) to care for or treat the employee’s mental or physical illness, injury, or condition; (2) to obtain preventive medical care for the employee or the employee’s family member; (3) to care for a family member with a mental or physical illness, injury, or condition; (4) if the employer’s place of business has closed by order of a public official due to a public health emergency; (5) if the school or child care center for the employee’s family member is closed by order of a public official due to a public health emergency; (6) to care for a family member if a health official or health care provider has determined that 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 (7) in certain circumstances if the absence from work is due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family member.

Effect of the Bill

Due to the employer size and duration of employment requirements of the FMLA and PLA, there are some “employees” under County law who would not be able to substitute paid leave, such as County earned sick and safe leave, under the provisions of those laws. Also, because the PLA covers the birth or placement, but not “care” (as is covered by the FMLA) of a child, employees eligible under the PLA but not FMLA (*i.e.*, employees of employers with 15-49 employees) are not assured of the ability to use paid leave for the care of/bonding with a new child for the first year. Bill 32-16 closes these gaps.

Also, while it is likely that the birth of a child would likely fall within the existing permissible uses of County sick and safe leave, placement for adoption or foster care would not, as there is not the requisite “mental or physical illness, injury, or condition” or medical necessity. Similarly, there is nothing in the County law that requires an employer to allow a new parent to use sick and safe leave to spend time with a healthy child during the child’s first year with the family. The provision proposed at lines 21-22 of the Bill, “to care for a newborn, newly adopted, or newly placed child within one year of birth, adoption, or placement,” would make this possible. Thus, the provisions of Bill 32-16 both clarify and expand permissible uses of County sick and safe leave without requiring employers to provide any additional paid leave. They also ensure that a broader range of employees than those already protected by the FMLA and PLA are able to use paid leave for these purposes.

This packet contains:

Bill 32-16

Legislative Request Report

Circle #

1

4

Bill No. 32-16
Concerning: Human Rights and Civil Liberties – Earned Sick and Safe Leave – Use of Earned Sick and Safe Leave – Parental Leave
Revised: May 10, 2016 Draft No. 1
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: _____
Executive: _____
Effective: October 1, 2016
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Hucker
Co-Sponsors: Vice President Berliner and Councilmembers Katz and Navarro

AN ACT to:

- (1) provide that certain employees may use earned sick and safe leave for parental purposes; and
- (2) generally regulate the eligibility for sick and safe leave benefits provided to an employee working in the County for certain employers.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Article XIII, Earned Sick and Safe leave
Section 27-79

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

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

1 **Sec. 1. Section 27-79 is amended as follows:**

2 **27-79. Use of Earned Sick and Safe Leave.**

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

- 4 (1) to care for or treat the employee's mental or physical illness, injury,
5 or condition;
- 6 (2) to obtain preventive medical care for the employee or the
7 employee's family member;
- 8 (3) to care for a family member with a mental or physical illness,
9 injury, or condition;
- 10 (4) if the employer's place of business has closed by order of a public
11 official due to a public health emergency;
- 12 (5) if the school or child care center for the employee's family member
13 is closed by order of a public official due to a public health
14 emergency;
- 15 (6) to care for a family member if a health official or health care
16 provider has determined that the family member's presence in the
17 community would jeopardize the health of others because of the
18 family member's exposure to a communicable disease; [or]
- 19 (7) for the birth of a child, or for the placement of a child with the
20 employee for adoption or foster care;
- 21 (8) to care for a newborn, newly adopted, or newly placed child within
22 one year of birth, adoption, or placement; or
- 23 (9) if the absence from work is due to domestic violence, sexual
24 assault, or stalking committed against the employee or the
25 employee's family member and the leave is used:
- 26 (A) by the employee to obtain for the employee or the
27 employee's family;

- 28 (i) medical attention needed to recover from a physical
- 29 or psychological injury due to domestic violence,
- 30 sexual assault, or stalking;
- 31 (ii) services from a victim services organization related
- 32 to the domestic violence, sexual assault, or stalking;
- 33 or
- 34 (iii) legal services, including preparing for or
- 35 participating in a civil or criminal proceeding related
- 36 to the domestic violence, sexual assault, or stalking;
- 37 or
- 38 (B) during the time that the employee has temporarily relocated
- 39 due to the domestic violence, sexual assault, or stalking.

Sec. 2. Effective date.

This Act takes effect on October 1, 2016.

42 *Approved:*

43

Nancy Floreen, President, County Council Date

44 *Approved:*

45

Isiah Leggett, County Executive Date

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

47

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 32-16

Human Rights and Civil Liberties – Earned Sick and Safe Leave – Use of Earned Sick and Safe Leave – Parental Leave

DESCRIPTION: The Bill would permit the use of sick and safe leave for: (1) for the birth of a child, or for the placement of a child with the employee for adoption or foster care; and (2) to care for a newborn, newly adopted, or newly placed child within one year of birth, adoption, or placement.

PROBLEM: The earned sick and safe leave permits an employee to use the leave for several purposes, but does not expressly permit its use for parental purposes.

GOALS AND OBJECTIVES: Permit employees who are new parents, either through birth or placement for foster care or adoption, to use earned sick and safe leave for the birth or placement of a new child, and to bond with the child during the first year after the child's birth, adoption, or placement.

COORDINATION: Office of Human Rights

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Josh Hamlin, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None.