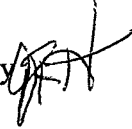


MEMORANDUM

October 28, 2016

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

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

Health and Human Services Committee recommendation (2-0): Enact Bill 32-16 with amendment

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, Navarro and Elrich, was introduced on August 2, 2016. A public hearing was held on September 20, and the Health and Human Services (HHS) Committee held a worksession on the Bill on October 17.

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. Up to and since the October 1 effective date, 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.

Public Hearing

A public hearing on the Bill was held on September 20, at which there were seven speakers, all of whom spoke in favor of the Bill. Laura Wallace of Jews United for Justice noted that while the Bill is not “a robust paid family and medical leave program,” it would be “a lifeline to many, primarily low-wage workers, in our County.” (©11) Both the Public Justice Center, NARAL Pro-Choice Maryland, and MomsRising.org all stressed the importance of parental leave and characterized the Bill as clarifying and defining appropriate uses of the Sick and Safe Leave earned under existing County law (see ©12-13, ©14-15, and ©16). Montgomery County Education Association President Christopher Lloyd referred to the Bill as “a step in the right direction.” (©17)

Discussion

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

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

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, 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.

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.

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.

Finally, while Bill 32-16 is more than “clarifying” as it was characterized at the public hearing, it would not require employers to provide any additional leave beyond what the law now requires. It would not have a fiscal impact on the County (see ©5-8). As such, it represents a recognition of the benefits of parental leave for all workers, and extends the existing benefit from the County’s Earned Sick and Safe Leave law to this use.

Effective Date

Bill 32-16 was drafted to take effect on October 1, 2016 to coincide with the effective date of the Earned Sick and Safe Leave law. Since that date has passed, and employees are already accruing leave under the law, staff recommended amending the Bill to make it an expedited bill, effective on the date that it becomes law.

Committee recommendation (2-0): change the Bill to an expedited bill, and amend lines 40-41 to read:

Sec. 2. Expedited Effective date.

[[This Act takes effect on October 1, 2016.]] The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

HHS Committee recommendation (2-0): Enact Bill 32-16 as amended.

This packet contains:	<u>Circle #</u>
Bill 32-16	1
Legislative Request Report	4
Fiscal and Economic Impact statement	5
Public Hearing testimony	
Jews United for Justice	11
Public Justice Center	12
NARAL Pro-Choice Maryland	14
MomsRising.org	16
MCEA	17

Expedited 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: August 2, 2016 Draft No. 3
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: _____
Executive: _____
Effective: _____
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, Navarro and Elrich

AN EXPEDITED 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. Expedited Effective date.

41 [[This Act takes effect on October 1, 2016.]] The Council declares that this
42 legislation is necessary for the immediate protection of the public interest. This Act
43 takes effect on the date on which it becomes law.

44 *Approved:*

45 _____
Nancy Floreen, President, County Council

Date

46 *Approved:*

47 _____
Isiah Leggett, County Executive

Date

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

49 _____
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.

BILL 32-16



ROCKVILLE, MARYLAND

JH
CC
SBF
LL

MEMORANDUM

September 16, 2016

TO: Nancy Floreen, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
 Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Council Bill 32-16 Human Rights and Civil Liberties-Earned Sick and Safe Leave – Use of Earned Sick and Safe Leave – Parental Leave

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

JAH:mc

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
 Alexandre A. Espinosa, Director, Department of Finance
 Marc Hansen, County Attorney
 James Stowe, Director, Office of Human Rights
 Karen Plucinski, Office of Human Resources
 Lori O'Brien, Office of Human Resources
 Johnna DeVaul, Office of Human Resources
 Stuart Weisberg, Office of Human Resources
 Corey Orlosky, Office of Management and Budget
 Naeem Mia, Office of Management and Budget

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COUNCIL

2016 SEP 19 AM 7:54

Fiscal Impact Statement
Council Bill 32-16 Human Rights and Civil Liberties-Earned Sick and Safe Leave – Use of
Earned Sick and Safe Leave – Parental Leave

1. Legislative Summary.

Bill 32-16 amends the Earned Sick and Safe Leave provisions from Bill 60-14 passed in May 2016 to provide certain employees use of earned sick and safe leave for parental purposes; and generally regulate the eligibility for sick and safe leave benefits provided to an employee working in the County for certain employers.

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.

Regular (Non-Probationary) County Employees: As noted in the fiscal impact statement for Bill 60-14, Human Rights and Civil Liberties – Earned Sick and Safe Leave, regular County employees have many different forms of leave available to them as indicated in Montgomery County Personnel Regulations Sections 16 through 25. The County's sick leave benefit for regular employees accrues at a faster rate than that available under the sick and safe leave provisions. With the passage of Bill 60-14, it was assumed that total leave accumulations would not change due to the legislation. The original legislation established a new category of leave – safe leave. Bill 32-16 establishes that earned sick and safe leave could be used for two additional purposes: for the birth, adoption, or foster placement of a child, or to care for a child within one year of birth, adoption, or foster placement. Assuming Bill 32-16 intends that the current County parental leave policies for regular employees apply (eligibility, amount, use, limits, administration), there is no additional cost to the County for regular employees.

Temporary County Employees: the effect of sick and safe leave for temporary employees is the availability of up to 56 hours of earned leave per calendar year, with a maximum of 80 hours use per calendar year, for all purposes. This fiscal impact statement assumes that no change in the benefit by the additional use of sick and safe leave for the birth, adoption, or foster placement of a child or to care for a child within one year of birth, adoption, or foster placement. Estimated 6-year costs for temporary employees is detailed in the fiscal impact statement for Council Bill 60-14.

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

See #2

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

Not applicable

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

Not applicable

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

An action that may affect future revenues and expenditures is increased utilization of temporary employees. However, the bill does not authorize future spending.

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

Not applicable.

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

In the Fiscal Impact Statement for 60-14, the Office of Human Rights (HRC) identified the possibility of an increase in the number of complaints. To the extent this bill would increase that number of complaints, HRC will utilize existing staff to absorb the additional workload.

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

It is estimated that no additional appropriation is necessary to implement this bill.

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

Variables that could affect revenue and cost estimates are:

- Any substantive changes to the rate of use of parental leave by regular (non-probationary) employees;
- An increased utilization of temporary employees, or
- If the volume of complaints related to this policy increases over time, additional HRC and EEO resources may be required.

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

See #10

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

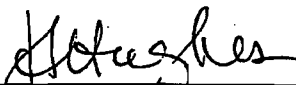
Not applicable

- 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
Karen Plucinski, Office of Human Resources
Lori O'Brien, Office of Human Resources
Johnna DeVaul, Office of Human Resources
Stuart Weisberg, Office of Human Resources
Corey Orlosky, Office of Management and Budget
Marc Hansen, County Attorney



Jennifer A. Hughes, Director
Office of Management and Budget

9/15/16

Date

Economic Impact Statement
Bill 32-16, Human Rights and Civil Liberties – Earned Sick and Safe Leave – Use of
Earned Sick and Safe Leave – Parental Leave

Background:

Bill 60-14, Human Rights and Civil Liberties Earned Sick and Safe Leave 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. Under the provisions of the 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.

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

- Montgomery County Office of Human Rights
- 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)
- U.S. Census Bureau

Because there are no specific data for Montgomery County that show the percent of small private-sector businesses providing paid sick leave, Finance used national data to estimate the number of employees in the County without paid sick leave in formulating the economic impact for Bill 60-14. Using two separate methodologies, Finance estimated that approximately 91,051 employees in Montgomery County do not have paid sick leave. Assuming an employer pays the minimum wage (\$10.75 hourly) for each hour of sick leave and 56 hours of maximum sick leave per calendar year, Finance estimated a maximum annual cost of \$602 per employee. Based on that estimate and the number of employees without paid sick leave, the total cost to small private-sector businesses is approximately \$54.8 million per year.

According to U.S. Census Bureau data, the birth rate for Montgomery County in 2016 is 5.4% which is the second most of all counties in the area. Adoption statistics for the County are not tracked and statistics nationally are diminutive enough to be negligible in the calculations relevant to this legislation. Applying the same methodology used for Bill 60-14 to estimate the costs to small private-sector businesses, the addition of permitted Sick and Safe Leave for the birth or adoption of a child would be approximately 5.4% of the current estimate of \$54.8 million or \$2.96 million per year in allowable costs for permitted leave under Bill 32-16.

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

Economic Impact Statement
Bill 32-16, Human Rights and Civil Liberties – Earned Sick and Safe Leave – Use of
Earned Sick and Safe Leave – Parental Leave

(the EIS assumes the maximum of 56 hours), applicable birth and adoption rates for the County, and the actual wage earnings by employees. Given that birth and adoption rates tend to be static year-over-year, totals are not estimated to deviate greatly for these variables.


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

The same logic that applied to Bill 60-14 is relevant in the estimated effects for Bill 32-16. Based on the assumptions and calculations, Bill 32-16 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 32-16 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 to 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: David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.



Alexandre A. Espinosa, Director
Department of Finance

9/16/16
Date

JEW'S UNITED FOR JUSTICE

Testimony in Support of Bill 32-16

September 20, 2016

Laura Wallace
Jews United for Justice
9908 Shrewsbury Court
Montgomery Village, MD 20886

My name is Laura Wallace. I am the Montgomery County organizer for Jews United for Justice and a District 2 resident. JUFJ is a volunteer driven organization that leads Jews from Montgomery County, as well as in DC and Baltimore, to act on our shared Jewish values through grassroots civic engagement.

I want to start by thanking Councilmember Leventhal for your vision and hard work last year that led to passage of one of the strongest earned sick leave bills in the country. I also thank Councilmember Navarro for your leadership and to the whole Council for your unanimous support.

We believe Bill 32-16 will strengthen this legislation even further, and we thank Councilmember Hucker for introducing this legislation, which JUFJ supports.

The U.S. is the only industrialized nation not to mandate paid leave for mothers of newborns. While we are working hard to change that on both a national and local level, we know that in the meantime many new parents do not receive any paid time off.

While Bill 32-16 by no means approaches a robust paid family and medical leave program—which we look forward to working with Council to create—we know that in the meantime this legislation will be a lifeline to many, primarily low-wage workers, in our County.

In the course of JUFJ's work to pass paid family and medical leave in D.C. we have heard horror stories of mothers going back to work—often in physically demanding jobs such as office cleaning—two days after giving birth by C-section. We heard stories of parents having to leave while their newborns were in the NIC-U because they couldn't afford not to work. Even with our excellent earned sick leave law, maternity or paternity leave is not currently one of the covered conditions, and low wage workers simply can't afford to take unpaid time off of work. Having access to those 7 paid sick days could make a huge difference for many new parents—including fathers, who should also have the opportunity to bond with a newborn.

While some employers may be generous in their interpretation of what is considered a sick day, employees should not have to win the "boss lottery" to take even a few days off for a new child—whether biological, adopted or fostered.

When my children were born, my husband had no paternity leave and my maternity leave was almost completely unpaid. Luckily, I had sick leave and vacation time that I was able to use while I was on leave. I was so grateful to have that option and it made it possible for me to spend a little extra time at home with my babies before going back to work.

Those of us who can use our sick days for parental leave often take that for granted, and we thank Councilmember Hucker again for his foresight in making sure everyone can do the same.

Thank you very much.



Public Justice Center
1 North Charles Street, Suite 200
Baltimore, Maryland 21201
410-625-9409
410-625-9423 (fax)

Sulma Guzmán, Attorney
410-625-9409 ext. 223
guzmans@publicjustice.org

**WORKING
MATTERS**
MARYLAND CAMPAIGN FOR PAID SICK DAYS



**TESTIMONY IN SUPPORT OF BILL 32-16:
Human Rights and Civil Liberties – Earned Sick and Safe Leave – Use of Earned Sick and
Safe Leave – Parental Leave**

TO: Hon. Nancy Floreen, President, and members of the Health and Human Services
Committee
FROM: Sulma Guzmán, Attorney
DATE: September 20, 2016

The Public Justice Center (PJC), founded in 1985, is a not-for-profit civil rights and anti-poverty legal services organization that seeks to enforce and expand the rights of people who are denied justice because of poverty or discrimination. Working Matters is a coalition of more than 150 organizations committed to advancing the Maryland Campaign for Paid Sick Days. We **SUPPORT** Bill 32-16, which amends the use of earned sick and safe leave to include parental leave for the birth or arrival of a child.

Montgomery County took great care in enacting legislation supporting working families. This amendment simply clarifies and defines the appropriate use of sick and safe leave to reflect that families grow and time is needed to welcome the newest family member.

Bill 32-16 would allow parents in Montgomery County to use accrued earned sick and safe leave in various circumstances surrounding the birth or arrival of a child:

- For the birth of a child;
- During the adoption of a child;
- During the placement of a child through foster care; and,

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

- To care for a newly born, newly adopted or newly placed child within one year of the child's birth or arrival into the family.

This amendment captures the reality of working families welcoming a child, whether through birth, adoption or foster care. While this does not replace the federal Family Medical Leave Act, it does provide the parents with official use of at least a couple of days to welcome their newest family member. We are also aware that the County is currently researching parental leave as an option for its residents. We look forward to seeing the report once complete.

The care for a newborn is full of love but at the same time labor intensive – feeding, soothing, and nurturing.¹ Parents need time to adjust and create new family routines taking into account their new child. In the scenario of adoption or foster care, the parents may still be going through lengthy legal paperwork or procedure even after the child's arrival into the home. According to the National Adoption Center, the finalization of adoption for a healthy infant may take from two to seven years.²

A new child requires parents to find as much time as possible to establish their role in the family. We are glad that the County is giving parents the opportunity to use earned sick and safe leave for this purpose. We respectfully urge a favorable report.

¹ <http://womenshealth.gov/pregnancy/childbirth-beyond/newbon-care-safety.html>

² <http://www.adopt.org/faqs>



NARAL Pro-Choice Maryland

8905 Fairview Road, Suite 401- Silver Spring, MD 20910 (301)565-4154 - www.prochoicemd.org

Montgomery County Council Public Hearing: Bill 32-16

Human Rights and Civil Liberties - Earned Sick and Safe Leave - Use of Earned Sick and Safe Leave

September 20, 2016 1:30 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland encourages the Montgomery County Council to give a favorable report on Bill 32-16: Use of Earned Sick and Safe Leave. The right to use earned leave to adequately address family formation needs is a reproductive justice issue.

Subsections (7) and (8) in the proposed bill clarifies how Sections 27-79 Use of Sick and Safe Leave applies to parents and guardians who wish to care and bond with new infants, or children recently added to their families through adoption or foster care. Earned sick and safe leave is crucial for Marylanders with children to be able to parent with dignity – to financially, emotionally, and physically support a child's basic needs.¹ Nurturing children when they are born, adopted, or fostered, as well as caring for children that become ill, are essential to a holistic and comprehensive vision of reproductive health, rights, and justice.

Using earned leave as described in the bill would help more Marylanders receive the necessary income on which they rely to adequately care for their families during both planned and unplanned family formation events.. The bill is designed to meet the needs of those who must take short-term leave, but also be supportive to the concerns of the business community. Along with improving health outcomes for working families, access to this type of paid leave minimizes risks of significant conflict with one's employer, that could lead to unemployment, as well as reduces employee turnover and increases employee morale.

This measure will be particularly helpful to new mothers. According to a 2014 national study from the Bureau of Labor Statistics, approximately 57 percent of mothers of newborns and nearly two-thirds of women with children under the age of six are in the workforce.² Because of workplace demands, nearly one in four new mothers return to their jobs in less than two weeks after giving birth because they cannot afford to take unpaid leave. Bill 32-16 would give mothers more time to recover properly and care for their newborns without worrying about affording basic needs. Locating adequate childcare has proven problematic for these families as Maryland bans placing newborns under 6 weeks of age in licensed childcare facilities. It is also important to note research suggesting that accessing earned leave can reduce stress and depression for new mothers and contribute to meaningful bonding between parent and child, which improves children's responses to external pressures and reduces risk factors for child abuse. In fact, a new study determining whether using earned leave to bond with newborns has any impact found a lower hospital admission rate for babies suffering from

¹ Center for American Progress "More than a Choice: A Progressive Vision for Reproductive Health and Rights," 2006 https://cdn.americanprogress.org/wp-content/uploads/issues/2006/09/more_than_a_choice.pdf

² US Department of Labor, Bureau of Labor Statistics, Employment Characteristics of Families, 2014 <http://www.bls.gov/news.release/famee.nr0.htm>

deliberately inflicted head injuries in California since passing its paid family leave law in 2004, when compared with seven states that do not have paid family leave, including Maryland.³

Access to earned sick and safe leave is a privilege that shouldn't be a privilege — *it should be a right*. Paid workplace leave is crucial for all people, but especially for low-income workers and people of color seeking to become parents and have healthy families—a right to which we are all entitled. Historically, though, some parenting has been privileged at the expense of others, and not everyone has been able to exercise this right. Policies at work that affect pay and leave influence family formation and pregnancy decision-making.

The inability to access earned leave has a particular impact on women, who often take on the majority of responsibility for caring for children, disabled relatives, and ailing older family members, and who make up almost two-thirds of minimum wage workers. Marylanders should be able to parent with dignity and not be penalized at work for being care givers. Furthermore, it is important to recognize that the issue of using earned sick leave to address family formation needs is not only a matter of wage and reproductive justice, but also an important issue of LGBTQ rights - as workplace policies have been historically developed within the heteronormative, nuclear family framework. When Maryland families, no matter how they are formed, must be separated from their new children in need of attention at home so that they can make enough money to afford housing and food, they are not functioning in a positive and productive work environment.

If we want to ensure that everyone has control of when and how they become parents—and to best support parents in caring for themselves and their families—we need to ensure they have flexibility in navigating their life choices. The use of earned sick and safe leave to welcome new children into families upholds reproductive justice and gender equity for these workers. It means not having to decide between addressing a significant healthcare or bonding need and keeping the job that is crucial to your family's wellbeing. For too many working Marylanders, addressing healthcare needs means risking hours that are docked, being written up, having less money to put food on the table, and fearing job loss. Giving birth becomes a stressful life event for those missing pay necessary to cover basic needs such as housing and food.

Bill 32-16: Use of Earned Sick and Safe Leave will ensure that more Marylanders workers do not have to choose against positive family health outcomes for economic stability. Therefore, we urge a favorable report. Thank you for your time and consideration.

³ Klevens J, et al. "Paid family leave's effect on hospital admissions for pediatric abusive head trauma" *Injury Prevention*. February 2016.

MomsRising.org

TESTIMONY IN SUPPORT OF BILL 32-16:

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

TO: Hon. Nancy Floreen, President, and members of the Health and Human Services Committee

FROM: Ruth Martin, National Director: Workplace Justice Campaigns

DATE: September 20, 2016

Good afternoon. My name is Ruth Martin and I'm the National Director of Workplace Justice Campaigns at MomsRising. I also live in Silver Spring. Thank you for holding this important hearing!

MomsRising is a national grassroots organization dedicated to building a nation where both families and businesses can thrive. 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.

MomsRising is part of the Working Matters Coalition and the Maryland Campaign for Paid Sick Days. We were actively involved in last year's campaign for earned safe and sick time in Montgomery County and our members were thrilled when the Montgomery County Council passed the strongest earned paid sick and safe time laws in the country. Because we know how critical access to paid sick days and paid family leave are for working families **we are supportive of Bill 32-16 which provides an important technical clarification that earned safe and sick leave can be used for parental leave for the birth or arrival of a new child.**

Amending the current earned safe and sick leave law to ensure that working people are able to use their earned time for parental reasons is no substitute for paid family leave, but it is an important clarification. Right now in the United States only 13% of working people have access to paid family leave via their employer. Low wage workers are the least likely to have access to paid family leave: Only 5 percent of workers among the lowest paid 25 percent have access to paid family leave, compared with 22 percent of workers among the highest 25 percent. So it's not surprising that research released last year showed that 1 in 4 new mothers are back at work within just two weeks of having given birth.

The Montgomery County Council showed tremendous leadership and forward thinking when passing the earned safe and sick leave bill last year. Passing last year's bill was not just a victory for our county and state, but also set a high bar for other jurisdictions across the country and MomsRising applauds and supports this important clarification about appropriate uses of the earned safe and sick time law. We urge the council to support and pass Bill 32-16.

*Testimony to Montgomery County Council
Earned Sick and Safe Leave Amendment
Christopher Lloyd, MCEA President*

Poet Maya Angelou wrote, "I sustain myself with the love of family." And today, as we consider amending the Earned Sick and Safe Leave Act, we acknowledge that Maya Angelou's words have meaning to our families and this community. For in sustaining family, we sustain the support structure that loves and cares for children.

The birth or adoption of a child marks a significant event in the life of a family, and allowing families to use earned leave recognizes the significance of the initial period of transition. As teachers, we know the value of families, both in our classrooms and in our lives. And collectively we have sought to increase the number of days for family leave, and sought to take care of mothers and fathers through the period of childbirth.

We know this time is critical in the development of a child, and the development of a functioning family unit. It's why worldwide, paid leave is not a luxury but a necessity for many nations, with the United States running behind. Deloitte became a leader in the US recently, offering 16 weeks of paid family leave, with the intent of differentiating itself from rivals, and offering millennials a reason to choose their company. As we compete in a labor force for teachers, who now enter college degree programs at a rate almost a third less than a couple of decades ago, we need to think about how we honor families and attract a workforce here in Montgomery. In a career where we care for other people's children, we have a vested interest in family leave - not only personally, but professionally.

This amendment before you takes a step in the right direction, in good faith, to allow families to be together upon birth or adoption. For folks who have accumulated sick leave, it honors the time of bringing a new child into the family, either through birth or adoption. As an organization, we support this amendment, and look forward to working with you and state legislators to build upon it so that one day in Maryland, we can offer paid family leave to all, resulting in stronger families and stronger communities.