HHS Item 2
October 30, 2014
**Discussion**

# MEMORANDUM

October 28, 2014

TO: Health and Human Services Committee

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

SUBJECT: **Discussion:** Earned Sick Leave

Expected Attendees:

The Honorable Ariana Kelly, Delegate
Jason Perkins-Cohen, Working Matters Coalition
Melvin Thompson, Restaurant Association of Maryland
Ilaya Hopkins, Montgomery County Chamber of Commerce
Mimi Hassanein, Employer in Montgomery County

## Background

Congress enacted the Family and Medical Leave Act (FLMA) 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." The U.S. Department of Labor FMLA Fact Sheet is at ©1-4.

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 and does not protect an employee who has not worked at least 1250 hours in the preceding 12 months. 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 ©5. 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 ©6-24.

Legislation to mandate earned sick leave was introduced in the Maryland General Assembly in 2014, but was not enacted. See HB 968 at ©25-43.

**Issues**

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

The U.S. Bureau of Labor Statistics reported, in 2013, 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. Private-industry businesses with fewer than 100 workers provide 51% of workers with paid sick leave. Low wage workers are much less likely than high wage workers to benefit from paid leave.

The absence of paid sick leave inevitably forces low wage employees to choose between working sick, and thereby spreading contagious diseases, or losing much needed pay. 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 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.

**2. How would a small employer be affected by a paid sick leave law?**

Congress was concerned about small employers being required to provide unpaid FMLA leave and did not include them in the law. Small employers may find that even modest increases in absenteeism present staffing challenges. Furthermore, some small employers may utilize unsophisticated payroll and record-keeping systems, and therefore may not be able to easily track earned leave and leave used.

**3. How would a paid sick leave law apply to tipped employees or employees who are paid on Commission?**

Tips are paid by customers. Commissions are paid by the employer as a part of the revenue received from a sale. If an employee is on paid sick leave, should the employer be responsible for paying the tips that could have been earned from customers, but were not? If so, how would an employer calculate the tips that could have been earned? Similar questions arise for an employee who works on commission. How can an employer be required to share the revenue from a sale that was not made because the employer called in sick?

**4. Would a paid sick leave law encourage some employers to reduce other benefits or wages to cover the added cost of paid sick leave?**

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. 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).

**5. Who would enforce a County paid sick leave law?**

The County does not have a Department of Labor and Industry responsible for overseeing employment practices of private employers in the County. The State of Maryland, the District of Columbia, and the City of San Francisco each have a department of labor responsible for enforcing wage and hour laws. The General Assembly required the State Department of Labor, Licensing, and Regulation (DLLR) to enforce a County minimum wage law in the last legislative session.

**6. What is the extent of the County's jurisdiction to cover employees in the County?**

The Council faced this issue when deliberating over the County Minimum Wage Law, Bill 27-13. The issue arises when an employer has its physical place of business outside the County, but regularly sends employees into the County to work. For example, would the law cover an employee for a landscape company located in Howard County who is working on a contract for landscaping services in Montgomery County? If so, how would an employer calculate paid sick leave earned for an employee who works part of the time in the County and part of the time outside the County?

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**U.S. Department of Labor**
Wage and Hour Division

U.S. Wage and Hour Division
(Revised 2012)

# 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.

**REVISED February 22, 2014**

# 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 INFORMACION 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 concurra 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.

**REVISADO febrero 22, 2014**

# 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

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.

The authors wish to thank the employers who took valuable time to participate in this study. In addition, numerous business association leaders, city officials and labor advocates spent time providing their perspectives and helping identify respondents for this study. In particular, the authors thank Jim Wunderman of the Bay Area Council and Netsy Firestein of the Labor Project for Working Families for reviewing a draft of the report. Pam Loprest and Margaret Simms also provided helpful suggestions to earlier drafts. The authors are also grateful to Heidi Johnson for her excellent assistance on the site visit.

# CONTENTS

# 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; Goetzel 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 teputation 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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# HOUSE BILL 968

K3, P4 4lr0618
CF SB 753

By: **Delegates Olszewski, Anderson, Barkley, Barnes, Bobo, Braveboy, Cane, Carter, Clagett, Clippinger, Conaway, Cullison, DeBoy, Dumais, Fraser-Hidalgo, Frush, Gaines, Gilchrist, Glenn, Gutierrez, Guzzone, Hammen, Haynes, Healey, Hixson, Holmes, Howard, Hubbard, Hucker, Ivey, Jones, Kaiser, A. Kelly, Lafferty, Lee, Love, Luedtke, McHale, McIntosh, A. Miller, Mitchell, Mizeur, Morhaim, Nathan-Pulliam, Niemann, Oaks, Pena-Melnyk, Pendergrass, Proctor, Reznik, B. Robinson, S. Robinson, Rosenberg, Simmons, Stukes, Summers, Swain, Tarrant, F. Turner, V. Turner, Valderrama, Vaughn, Waldstreicher, A. Washington, M. Washington, and Zucker**

Introduced and read first time: February 6, 2014
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

**Labor and Employment – Maryland Earned Sick and Safe Leave Act**

FOR the purpose of requiring certain employers to provide employees with certain earned sick and safe leave; providing for the method of determining whether an employer is required to provide paid or unpaid earned sick and safe leave; providing for the manner in which earned sick and safe leave is accrued by the employee and treated by the employer; authorizing an employer, under certain circumstances, to deduct the amount paid for earned sick and safe leave from the wages paid to an employee on the termination of employment under a certain provision of law; requiring an employer to allow an employee to use earned sick and safe leave for certain purposes; requiring an employee, under certain circumstances, to request leave, notify the employer of certain information, and comply with certain procedures; authorizing an employer to establish, subject to certain limitations, certain procedures for an employee to follow when requesting and taking earned sick and safe leave; authorizing an employer, under certain circumstances, to require an employee to provide certain documentation subject to certain limitations; requiring an employer to notify the employees that the employees are entitled to certain earned sick and safe leave; specifying the information that must be included in the notice; requiring the Commissioner of Labor and Industry to create and make available a certain poster and notice; providing for the manner in which an employer may comply with a certain notice requirement; establishing certain civil penalties for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

the violation of certain provisions of this Act; requiring an employer to keep certain records for a certain time period; authorizing the Commissioner under certain circumstances to inspect certain records; establishing a rebuttable presumption that an employer has violated certain provisions of this Act under certain circumstances; providing that a certain rebuttable presumption may be overcome only by certain evidence; authorizing the Commissioner to take certain acts when the Commissioner determines certain provisions of this Act have been violated; authorizing an employee to bring a civil action in a certain court against an employer for a violation of certain provisions of this Act; requiring that a certain action be brought within a certain time period; authorizing a court to award certain damages and fees under certain circumstances; establishing certain prohibited acts; providing for certain criminal penalties; providing that certain protections apply to certain employees; requiring the Commissioner to develop and implement a certain outreach program; authorizing the Commissioner to adopt regulations to carry out certain provisions of this Act; authorizing the Commissioner to conduct an investigation, under certain circumstances, to determine whether certain provisions of this Act have been violated; requiring the Commissioner, except under certain circumstances, to keep certain information confidential; providing for the construction of certain provisions of this Act; providing for the application of this Act; defining certain terms; and generally relating to earned sick and safe leave.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 2–106(b)
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

BY adding to
Article – Labor and Employment
Section 3–103(i); and 3–1201 through 3–1212 to be under the new subtitle "Subtitle 12. Earned Sick and Safe Leave"
Annotated Code of Maryland
(2008 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Labor and Employment**

2–106.

(b) Except as provided in subsection (c) of this section, and in addition to authority to adopt regulations that is set forth elsewhere, the Commissioner may adopt regulations that are necessary to carry out:

(1) Title 3, Subtitle 3 of this article;

(2) Title 3, Subtitle 5 of this article;

**(3) TITLE 3, SUBTITLE 12 OF THIS ARTICLE;**

**[**(3)**]** **(4)** Title 4, Subtitle 2, Parts I through III of this article;

**[**(4)**]** **(5)** Title 5 of this article;

**[**(5)**]** **(6)** Title 6 of this article; and

**[**(6)**]** **(7)** Title 7 of this article.

3–103.

**(I) (1) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER SUBTITLE 12 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT BY AN EMPLOYEE.**

**(2) TO THE EXTENT PRACTICABLE, THE COMMISSIONER SHALL KEEP CONFIDENTIAL THE IDENTITY OF AN EMPLOYEE WHO HAS FILED A WRITTEN COMPLAINT ALLEGING A VIOLATION OF SUBTITLE 12 OF THIS TITLE UNLESS THE EMPLOYEE WAIVES CONFIDENTIALITY.**

**SUBTITLE 12. EARNED SICK AND SAFE LEAVE.**

**3–1201.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(B) "ABUSE" HAS THE MEANING STATED IN § 4–501 OF THE FAMILY LAW ARTICLE.**

**(C) "DOMESTIC VIOLENCE" MEANS ABUSE AGAINST A PERSON ELIGIBLE FOR RELIEF.**

**(D) "EARNED SICK AND SAFE LEAVE" MEANS PAID LEAVE AWAY FROM WORK THAT IS PROVIDED BY AN EMPLOYER UNDER § 3–1205 OF THIS SUBTITLE.**

**(E) "EMPLOYEE" DOES NOT INCLUDE AN INDIVIDUAL WHO:**

**(1) DOES NOT HAVE A REGULAR WORK SCHEDULE WITH THE EMPLOYER;**

**(2) CONTACTS THE EMPLOYER FOR WORK ASSIGNMENTS AND IS SCHEDULED TO WORK THE ASSIGNMENTS WITHIN 48 HOURS OF CONTACTING THE EMPLOYER;**

**(3) HAS NO OBLIGATION TO WORK FOR THE EMPLOYER IF THE INDIVIDUAL DOES NOT CONTACT THE EMPLOYER FOR WORK ASSIGNMENTS; AND**

**(4) IS NOT EMPLOYED BY A TEMPORARY PLACEMENT AGENCY.**

**(F) "EMPLOYER" INCLUDES:**

**(1) A UNIT OF STATE OR LOCAL GOVERNMENT; AND**

**(2) A PERSON THAT ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.**

**(G) "FAMILY MEMBER" MEANS:**

**(1) A BIOLOGICAL CHILD, AN ADOPTED CHILD, A FOSTER CHILD, OR A STEPCHILD OF THE EMPLOYEE;**

**(2) A CHILD FOR WHOM THE EMPLOYEE HAS LEGAL OR PHYSICAL CUSTODY OR GUARDIANSHIP;**

**(3) A CHILD FOR WHOM THE EMPLOYEE IS THE PRIMARY CAREGIVER;**

**(4) A BIOLOGICAL PARENT, AN ADOPTIVE PARENT, A FOSTER PARENT, OR A STEPPARENT OF THE EMPLOYEE OR THE EMPLOYEE'S SPOUSE;**

**(5) THE LEGAL GUARDIAN OF THE EMPLOYEE;**

**(6) AN INDIVIDUAL WHO SERVED AS THE PRIMARY CAREGIVER OF THE EMPLOYEE WHEN THE EMPLOYEE WAS A MINOR;**

**(7) THE SPOUSE OF THE EMPLOYEE;**

**(8) A GRANDPARENT OF THE EMPLOYEE;**

**(9) THE SPOUSE OF A GRANDPARENT OF THE EMPLOYEE;**

**(10) A GRANDCHILD OF THE EMPLOYEE;**

**(11) A BIOLOGICAL SIBLING, AN ADOPTED SIBLING, OR A FOSTER SIBLING OF THE EMPLOYEE; OR**

**(12) THE SPOUSE OF A BIOLOGICAL SIBLING, A FOSTER SIBLING, OR AN ADOPTED SIBLING OF THE EMPLOYEE.**

**(H) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL LICENSED UNDER STATE LAW TO PROVIDE MEDICAL SERVICES.**

**(I) "PERSON ELIGIBLE FOR RELIEF" HAS THE MEANING STATED IN § 4–501 OF THE FAMILY LAW ARTICLE.**

**(J) "SEXUAL ASSAULT" MEANS:**

**(1) RAPE, SEXUAL OFFENSE, OR ANY OTHER ACT THAT IS A SEXUAL CRIME UNDER TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;**

**(2) CHILD SEXUAL ABUSE UNDER § 3–602 OF THE CRIMINAL LAW ARTICLE; OR**

**(3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER § 3–604 OF THE CRIMINAL LAW ARTICLE.**

**(K) "STALKING" HAS THE MEANING STATED IN § 3–802 OF THE CRIMINAL LAW ARTICLE.**

**3–1202.**

**THIS SUBTITLE MAY 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 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.**

**3–1203.**

**THIS SUBTITLE DOES NOT APPLY TO AN EMPLOYEE WHO REGULARLY WORKS LESS THAN 8 HOURS A WEEK FOR AN EMPLOYER.**

**3–1204.**

**(A) THE COMMISSIONER SHALL DEVELOP AND IMPLEMENT A MULTILINGUAL OUTREACH PROGRAM TO INFORM EMPLOYEES AND OTHER AFFECTED INDIVIDUALS ABOUT THE AVAILABILITY OF EARNED SICK AND SAFE LEAVE UNDER THIS SUBTITLE.**

**(B) THE PROGRAM ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE THE DISTRIBUTION OF NOTICES AND OTHER WRITTEN MATERIAL IN ENGLISH, SPANISH, AND OTHER LANGUAGES TO:**

**(1) CHILD AND ELDER CARE PROVIDERS;**

**(2) DOMESTIC VIOLENCE SHELTERS;**

**(3) SCHOOLS;**

**(4) HOSPITALS;**

**(5) COMMUNITY HEALTH CENTERS; AND**

**(6) HEALTH CARE PROVIDERS.**

**3–1205.**

**(A) (1) AN EMPLOYER THAT EMPLOYS MORE THAN 9 EMPLOYEES SHALL PROVIDE AN EMPLOYEE WITH EARNED SICK AND SAFE LEAVE THAT IS PAID AT THE SAME RATE AND WITH THE SAME BENEFITS AS THE EMPLOYEE NORMALLY EARNS.**

**(2) AN EMPLOYER THAT EMPLOYS 9 EMPLOYEES OR LESS SHALL PROVIDE AN EMPLOYEE WITH UNPAID EARNED SICK AND SAFE LEAVE.**

**(3) (I) FOR THE PURPOSE OF DETERMINING WHETHER AN EMPLOYER IS REQUIRED TO PROVIDE PAID OR UNPAID EARNED SICK AND SAFE LEAVE UNDER THIS SUBSECTION, THE NUMBER OF EMPLOYEES OF AN EMPLOYER SHALL BE DETERMINED BY CALCULATING THE AVERAGE MONTHLY NUMBER OF EMPLOYEES EMPLOYED BY THE EMPLOYER DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR.**

**(II) EACH EMPLOYEE OF AN EMPLOYER SHALL BE INCLUDED IN THE CALCULATION MADE UNDER SUBPARAGRAPH (1) OF THIS PARAGRAPH WITHOUT REGARD TO WHETHER THE EMPLOYEE WOULD BE ELIGIBLE FOR EARNED SICK AND SAFE LEAVE BENEFITS UNDER THIS SUBSECTION.**

**(B) THE EARNED SICK AND SAFE LEAVE PROVIDED UNDER SUBSECTION (A) OF THIS SECTION SHALL ACCRUE AT A RATE OF AT LEAST 1 HOUR FOR EVERY 30 HOURS AN EMPLOYEE WORKS.**

**(C) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO:**

**(1) EARN MORE THAN 56 HOURS OF EARNED SICK AND SAFE LEAVE IN A CALENDAR YEAR;**

**(2) USE MORE THAN 80 HOURS OF EARNED SICK AND SAFE LEAVE IN A CALENDAR YEAR; OR**

**(3) USE EARNED SICK AND SAFE DURING THE FIRST 3 MONTHS THE EMPLOYEE IS EMPLOYED.**

**(D) AT THE BEGINNING OF A CALENDAR YEAR, AN EMPLOYER MAY AWARD TO AN EMPLOYEE THE FULL AMOUNT OF EARNED SICK AND SAFE LEAVE THAT AN EMPLOYEE WOULD EARN OVER THE COURSE OF THE CALENDAR YEAR**

**RATHER THAN AWARDING THE LEAVE AS THE LEAVE ACCRUES DURING THE CALENDAR YEAR.**

**(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, FOR THE PURPOSES OF CALCULATING THE ACCRUAL OF EARNED SICK AND SAFE LEAVE, AN EMPLOYEE WHO IS EXEMPT FROM OVERTIME WAGE REQUIREMENTS UNDER THE FEDERAL FAIR LABOR STANDARDS ACT IS ASSUMED TO WORK 40 HOURS EACH WORKWEEK.**

**(2) IF THE EMPLOYEE'S NORMAL WORKWEEK IS LESS THAN 40 HOURS, THE NUMBER OF HOURS IN THE NORMAL WORKWEEK SHALL BE USED.**

**(F) (1) EARNED SICK AND SAFE LEAVE SHALL BEGIN TO ACCRUE:**

**(I) OCTOBER 1, 2014; OR**

**(II) IF THE EMPLOYEE IS HIRED AFTER OCTOBER 1, 2014, THE DATE ON WHICH THE EMPLOYEE BEGINS EMPLOYMENT WITH THE EMPLOYER.**

**(2) AN EMPLOYEE MAY NOT ACCRUE EARNED SICK AND SAFE LEAVE BASED ON HOURS WORKED BEFORE OCTOBER 1, 2014.**

**(G) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF AN EMPLOYEE HAS UNUSED EARNED SICK AND SAFE LEAVE AT THE END OF A CALENDAR YEAR, THE EMPLOYEE MAY CARRY THE BALANCE OF THE EARNED SICK AND SAFE LEAVE OVER TO THE FOLLOWING CALENDAR YEAR.**

**(2) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO CARRY OVER MORE THAN 56 HOURS OF EARNED SICK AND SAFE LEAVE UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

**(H) IF AN EMPLOYEE BEGINS WORKING IN A SEPARATE DIVISION OR LOCATION BUT REMAINS EMPLOYED BY THE EMPLOYER, THE EMPLOYEE IS ENTITLED TO THE EARNED SICK AND SAFE LEAVE THAT ACCRUED BEFORE THE EMPLOYEE MOVED TO THE SEPARATE DIVISION OR LOCATION.**

**(I) (1) IF AN EMPLOYEE IS REHIRED BY THE EMPLOYER WITHIN 12 MONTHS AFTER LEAVING THE EMPLOYMENT OF THE EMPLOYER, THE EMPLOYER SHALL REINSTATE ANY UNUSED EARNED SICK AND SAFE LEAVE THAT THE EMPLOYEE HAD WHEN THE EMPLOYEE LEFT THE EMPLOYMENT OF THE EMPLOYER.**

**(2) IF AN EMPLOYEE IS REHIRED BY THE EMPLOYER MORE THAN 12 MONTHS AFTER LEAVING THE EMPLOYMENT OF THE EMPLOYER, THE EMPLOYER MAY NOT BE REQUIRED TO REINSTATE ANY UNUSED EARNED SICK AND SAFE LEAVE THAT THE EMPLOYEE HAD WHEN THE EMPLOYEE LEFT THE EMPLOYMENT OF THE EMPLOYER.**

**(J) (1) AN EMPLOYER MAY ALLOW AN EMPLOYEE TO USE EARNED SICK AND SAFE LEAVE BEFORE THE AMOUNT NEEDED BY THE EMPLOYEE ACCRUES.**

**(2) IF AN EMPLOYEE IS ALLOWED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO USE EARNED SICK AND SAFE LEAVE BEFORE IT HAS ACCRUED, THE EMPLOYER MAY DEDUCT THE AMOUNT PAID FOR THE EARNED SICK AND SAFE LEAVE FROM THE WAGES PAID TO THE EMPLOYEE ON THE TERMINATION OF EMPLOYMENT UNDER § 3–505 OF THIS TITLE IF:**

**(I) THE EMPLOYER AND EMPLOYEE MUTUALLY CONSENTED TO THE DEDUCTION AS EVIDENCED BY A DOCUMENT SIGNED BY THE EMPLOYEE; AND**

**(II) THE EMPLOYEE LEAVES THE EMPLOYMENT OF THE EMPLOYER BEFORE THE EMPLOYEE HAS ACCRUED THE AMOUNT OF EARNED SICK AND SAFE LEAVE THAT WAS USED.**

**3–1206.**

**(A) AN EMPLOYER SHALL ALLOW AN EMPLOYEE TO USE EARNED SICK AND SAFE 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 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 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;**

**(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) IF:**

**(I) THE ABSENCE FROM WORK IS NECESSARY DUE TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; AND**

**(II) THE LEAVE IS BEING USED:**

**1. BY THE EMPLOYEE TO OBTAIN FOR THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER:**

**A. MEDICAL ATTENTION THAT IS NEEDED TO RECOVER FROM PHYSICAL OR PSYCHOLOGICAL INJURY OR DISABILITY THAT IS CAUSED BY THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING;**

**B. SERVICES FROM A VICTIM SERVICES ORGANIZATION RELATED TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING;**

**C. PSYCHOLOGICAL OR OTHER COUNSELING RELATED TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING; OR**

**D. LEGAL SERVICES, INCLUDING PREPARING FOR OR PARTICIPATING IN A CIVIL OR CRIMINAL PROCEEDING RELATED TO OR RESULTING FROM THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING; OR**

**2. DURING THE TIME THAT THE EMPLOYEE HAS TEMPORARILY RELOCATED DUE TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

**(B) IN ORDER TO USE EARNED SICK AND SAFE LEAVE, AN EMPLOYEE SHALL:**

**(1) REQUEST THE LEAVE FROM THE EMPLOYER AS SOON AS PRACTICABLE AFTER THE EMPLOYEE DETERMINES THAT THE EMPLOYEE NEEDS TO TAKE THE LEAVE;**

**(2) NOTIFY THE EMPLOYER OF THE ANTICIPATED DURATION OF THE LEAVE; AND**

**(3) COMPLY WITH ANY REASONABLE PROCEDURES ESTABLISHED BY THE EMPLOYER UNDER SUBSECTION (C) OF THIS SECTION.**

**(C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AN EMPLOYER MAY ESTABLISH REASONABLE PROCEDURES FOR AN EMPLOYEE TO FOLLOW WHEN REQUESTING AND TAKING EARNED SICK AND SAFE LEAVE.**

**(2) AN EMPLOYER MAY NOT REQUIRE THAT AN EMPLOYEE WHO IS REQUESTING EARNED SICK AND SAFE LEAVE SEARCH FOR OR FIND AN INDIVIDUAL TO WORK IN THE EMPLOYEE'S STEAD DURING THE TIME THE EMPLOYEE IS TAKING THE LEAVE.**

**(3) AN EMPLOYER MAY NOT REQUIRE AN EMPLOYEE TO:**

**(I) DISCLOSE DETAILS OF:**

**1. THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING THAT WAS COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; OR**

**2. THE MENTAL OR PHYSICAL ILLNESS, INJURY, OR CONDITION OF THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; OR**

**(II) PROVIDE AS CERTIFICATION ANY INFORMATION THAT WOULD VIOLATE THE FEDERAL SOCIAL SECURITY ACT OF 1939 OR THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.**

**(D) (1) INSTEAD OF TAKING EARNED SICK AND SAFE LEAVE UNDER THIS SECTION, BY MUTUAL CONSENT OF THE EMPLOYER AND EMPLOYEE, AN EMPLOYEE MAY WORK ADDITIONAL HOURS OR TRADE SHIFTS WITH ANOTHER EMPLOYEE DURING A PAY PERIOD TO MAKE UP WORK HOURS THAT THE EMPLOYEE TOOK OFF FOR WHICH THE EMPLOYEE COULD HAVE TAKEN EARNED SICK AND SAFE LEAVE.**

**(2) AN EMPLOYEE IS NOT REQUIRED TO OFFER OR TO ACCEPT AN OFFER OF ADDITIONAL WORK HOURS OR A TRADE IN SHIFTS.**

**(E) (1) AN EMPLOYEE MAY TAKE EARNED SICK AND SAFE LEAVE IN THE SMALLEST INCREMENT THAT THE EMPLOYER'S PAYROLL SYSTEM USES TO ACCOUNT FOR ABSENCES OR USE OF THE EMPLOYEE'S WORK TIME.**

**(2) AN EMPLOYEE MAY NOT BE REQUIRED TO TAKE EARNED SICK AND SAFE LEAVE IN AN INCREMENT OF MORE THAN 1 HOUR.**

**(F) WHEN WAGES ARE PAID TO AN EMPLOYEE, THE EMPLOYER SHALL PROVIDE IN WRITING BY ANY REASONABLE METHOD A STATEMENT REGARDING THE AMOUNT OF EARNED SICK AND SAFE LEAVE THAT IS AVAILABLE FOR USE BY THE EMPLOYEE.**

**(G) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN EMPLOYER MAY REQUIRE AN EMPLOYEE WHO USES EARNED SICK AND SAFE LEAVE FOR MORE THAN 2 CONSECUTIVE SCHEDULED SHIFTS TO PROVIDE REASONABLE DOCUMENTATION TO VERIFY THAT THE LEAVE WAS USED APPROPRIATELY UNDER SUBSECTION (A) OF THIS SECTION.**

**(2) REASONABLE DOCUMENTATION THAT MAY BE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDES:**

**(I) FOR LEAVE USED UNDER SUBSECTION (A)(5) OF THIS SECTION, THE NOTICE OF THE CLOSURE ORDER BY A PUBLIC OFFICIAL IN THE FORM IN WHICH THE EMPLOYEE RECEIVED THE NOTICE;**

**(II) FOR LEAVE USED UNDER SUBSECTION (A)(1), (3), OR (6) OF THIS SECTION, DOCUMENTATION FROM THE HEALTH OFFICER OR HEALTH CARE PROVIDER THAT THE USE OF EARNED SICK AND SAFE LEAVE IS NECESSARY; AND**

**(III) FOR LEAVE USED UNDER SUBSECTION (A)(7) OF THIS SECTION:**

**1. A REPORT BY A LAW ENFORCEMENT OFFICER INDICATING THAT THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER WAS A VICTIM OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING;**

**2. DOCUMENTATION OF AN INDICTMENT FOR DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER;**

**3. CERTIFICATION BY A STATE'S ATTORNEY'S OFFICE, CHILD PROTECTIVE SERVICES, LAW ENFORCEMENT, THE VICTIM'S ATTORNEY, OR THE VICTIM'S ADVOCATE THAT THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER IS A PARTY TO OR WITNESS IN A LEGAL ACTION RELATED TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER;**

**4. A COURT ORDER PROTECTING THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER FROM THE PERPETRATOR OF THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; OR**

**5. A NOTICE FROM A COURT, VICTIM'S ATTORNEY, OR STATE'S ATTORNEY'S OFFICE THAT THE EMPLOYEE OR EMPLOYEE'S FAMILY MEMBER APPEARED, OR IS SCHEDULED TO APPEAR, IN COURT IN CONNECTION WITH THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER.**

**(3) AN EMPLOYER MAY NOT REQUIRE THAT:**

**(I) THE DOCUMENTATION USED FOR VERIFYING THE USE OF THE EARNED SICK AND SAFE LEAVE UNDER SUBSECTION (A)(1), (3), OR (6) OF THIS SECTION EXPLAIN THE NATURE OF THE MENTAL OR PHYSICAL ILLNESS, INJURY, OR CONDITION; OR**

**(II) THE DOCUMENTATION USED FOR VERIFYING THE USE OF THE EARNED SICK AND SAFE LEAVE UNDER SUBSECTION (A)(7) OF THIS SECTION INCLUDE DETAILS REGARDING THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.**

**(4) (I) IF DOCUMENTATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION RELATES TO MENTAL OR PHYSICAL HEALTH OF AN EMPLOYEE, OR IS DOCUMENTATION RELATING TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST AN EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER, THE EMPLOYER SHALL MAINTAIN THE DOCUMENTATION IN A CONFIDENTIAL FILE THAT IS SEPARATE FROM THE EMPLOYEE'S PERSONNEL FILE.**

**(II) AN EMPLOYER MAY NOT DISCLOSE THE DOCUMENTATION MAINTAINED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH UNLESS THE DISCLOSURE IS MADE TO THE EMPLOYEE OR WITH THE PERMISSION OF THE EMPLOYEE.**

**3–1207.**

**(A) AN EMPLOYER SHALL NOTIFY THE EMPLOYER'S EMPLOYEES THAT THE EMPLOYEES ARE ENTITLED TO EARNED SICK AND SAFE LEAVE UNDER THIS SUBTITLE.**

**(B) THE NOTICE PROVIDED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:**

**(1) A STATEMENT OF HOW EARNED SICK AND SAFE LEAVE IS ACCRUED UNDER § 3–1205 OF THIS SUBTITLE;**

**(2) THE PURPOSES FOR WHICH THE EMPLOYER IS REQUIRED TO ALLOW AN EMPLOYEE TO USE EARNED SICK AND SAFE LEAVE UNDER § 3–1206 OF THIS SUBTITLE;**

**(3) A STATEMENT REGARDING THE PROHIBITION IN § 3–1210 OF THIS SUBTITLE OF THE EMPLOYER TAKING ADVERSE ACTION AGAINST AN EMPLOYEE WHO EXERCISES A RIGHT UNDER THIS SUBTITLE; AND**

**(4) INFORMATION REGARDING THE RIGHT OF AN EMPLOYEE TO REPORT AN ALLEGED VIOLATION OF THIS SUBTITLE BY THE EMPLOYER TO THE COMMISSIONER OR BRING A CIVIL ACTION UNDER § 3–1209(B) OF THIS SUBTITLE.**

**(C) (1) THE COMMISSIONER SHALL CREATE AND MAKE AVAILABLE A POSTER AND A MODEL NOTICE THAT MAY BE USED BY AN EMPLOYER TO COMPLY WITH SUBSECTION (A) OF THIS SECTION.**

**(2) THE MODEL NOTICE CREATED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE PRINTED IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE THAT THE COMMISSIONER DETERMINES IS NEEDED TO NOTIFY EMPLOYEES OF THE EMPLOYEES' RIGHTS UNDER THIS SUBTITLE.**

**(D) AN EMPLOYER MAY COMPLY WITH SUBSECTION (A) OF THIS SECTION BY:**

**(1) DISPLAYING THE POSTER CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION IN A CONSPICUOUS AND ACCESSIBLE AREA AT THE LOCATION IN WHICH THE EMPLOYEES WORK;**

**(2) INCLUDING THE NOTICE CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION IN AN EMPLOYEE HANDBOOK OR OTHER WRITTEN GUIDANCE TO EMPLOYEES CONCERNING EMPLOYEE BENEFITS OR LEAVE PROVIDED BY THE EMPLOYER; OR**

**(3) DISTRIBUTING THE NOTICE CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION TO EACH EMPLOYEE WHEN THE EMPLOYEE IS HIRED.**

**(E) IF AN EMPLOYER DECIDES NOT TO USE THE MODEL NOTICE CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION, THE NOTICE PROVIDED BY THE EMPLOYER SHALL CONTAIN THE SAME INFORMATION THAT IS INCLUDED IN THE MODEL NOTICE.**

**(F) THE NOTICE MAY BE DISTRIBUTED ELECTRONICALLY BY THE EMPLOYER TO THE EMPLOYER'S EMPLOYEES.**

**(G) AN EMPLOYER WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $125 FOR THE FIRST VIOLATION AND $250 FOR EACH SUBSEQUENT VIOLATION.**

**3–1208.**

**(A) (1) AN EMPLOYER SHALL KEEP FOR AT LEAST 3 YEARS A RECORD OF:**

**(I) EARNED SICK AND SAFE LEAVE ACCRUED BY EACH EMPLOYEE; AND**

**(II) EARNED SICK AND SAFE LEAVE USED BY EACH EMPLOYEE.**

**(2) AN EMPLOYER MAY KEEP THE RECORD IN THE SAME MANNER THAT THE EMPLOYER KEEPS OTHER RECORDS REQUIRED TO BE KEPT UNDER THIS TITLE.**

**(B) AFTER GIVING THE EMPLOYER NOTICE AND DETERMINING A MUTUALLY AGREEABLE TIME FOR THE INSPECTION, THE COMMISSIONER MAY INSPECT A RECORD KEPT UNDER SUBSECTION (A) OF THIS SECTION FOR THE PURPOSE OF DETERMINING WHETHER THE EMPLOYER IS COMPLYING WITH THE PROVISIONS OF THIS SUBTITLE.**

**(C) (1) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER HAS VIOLATED THE PROVISIONS OF THIS SUBTITLE IF:**

**(I) THERE IS AN ALLEGATION THAT THE EMPLOYER HAS FAILED TO ACCRUE ACCURATELY THE AMOUNT OF EARNED SICK AND SAFE LEAVE AVAILABLE TO AN EMPLOYEE; AND**

**(II) THE EMPLOYER FAILS TO:**

**1. KEEP A RECORD AS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION; OR**

**2. ALLOW THE COMMISSIONER TO INSPECT A RECORD KEPT UNDER SUBSECTION (A) OF THIS SECTION.**

**(2) THE REBUTTABLE PRESUMPTION IN PARAGRAPH (1) OF THIS SUBSECTION MAY BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE.**

**3–1209.**

**(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER:**

**(1) MAY TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION INFORMALLY BY MEDIATION;**

**(2) WITH THE WRITTEN CONSENT OF THE EMPLOYEE, MAY ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND**

**(3) MAY BRING AN ACTION ON BEHALF OF AN EMPLOYEE IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED.**

**(B) (1) AN EMPLOYEE MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST THE EMPLOYER FOR A VIOLATION OF THIS SUBTITLE.**

**(2) AN ACTION MAY BE BROUGHT UNDER PARAGRAPH (1) OF THIS SUBSECTION WHETHER OR NOT THE EMPLOYEE FIRST FILED A COMPLAINT WITH THE COMMISSIONER.**

**(C) AN ACTION BROUGHT UNDER SUBSECTION (A) OR (B) OF THIS SECTION SHALL BE FILED WITHIN 3 YEARS AFTER THE OCCURRENCE OF THE ACT ON WHICH THE ACTION IS BASED.**

**(D) (1) IF, IN AN ACTION UNDER SUBSECTION (A) OR (B) OF THIS SECTION, A COURT FINDS THAT AN EMPLOYER VIOLATED THIS SUBTITLE, THE COURT MAY AWARD THE EMPLOYEE:**

**(I) THE FULL MONETARY VALUE OF ANY UNPAID EARNED SICK AND SAFE LEAVE;**

**(II) ACTUAL ECONOMIC DAMAGES SUFFERED BY THE EMPLOYEE AS THE RESULT OF THE EMPLOYER'S VIOLATION OF THIS SUBTITLE;**

**(III) AN ADDITIONAL AMOUNT NOT EXCEEDING 3 TIMES THE DAMAGES AWARDED UNDER ITEM (II) OF THIS PARAGRAPH;**

**(IV) REASONABLE COUNSEL FEES AND OTHER COSTS; AND**

**(V) ANY OTHER RELIEF THAT THE COURT DEEMS APPROPRIATE, INCLUDING:**

**1. REINSTATEMENT TO EMPLOYMENT;**

**2. BACK PAY; AND**

**3. INJUNCTIVE RELIEF.**

**(2) IF BENEFITS OF AN EMPLOYEE ARE RECOVERED UNDER THIS SECTION, THEY SHALL BE PAID TO THE EMPLOYEE WITHOUT COST TO THE EMPLOYEE.**

**(3) IF THE ACTION UNDER SUBSECTION (A)(2) OF THIS SECTION WAS BROUGHT BY THE ATTORNEY GENERAL, THE COURT MAY AWARD A FINE OF $1,000 PER VIOLATION TO THE STATE.**

**3–1210.**

**(A) IN THIS SECTION, "ADVERSE ACTION" INCLUDES:**

**(1) DISCHARGE;**

**(2) DEMOTION;**

**(3) THREATENING THE EMPLOYEE WITH DISCHARGE OR DEMOTION; AND**

**(4) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM EXERCISING A RIGHT UNDER THIS SUBTITLE.**

**(B) A PERSON MAY NOT INTERFERE WITH THE EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT GIVEN UNDER THIS SUBTITLE.**

**(C) (1) AN EMPLOYER MAY NOT:**

**(I) TAKE ADVERSE ACTION OR DISCRIMINATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE EXERCISED IN GOOD FAITH THE RIGHTS PROTECTED UNDER THIS SUBTITLE; OR**

**(II) COUNT EARNED SICK AND SAFE LEAVE THAT AN EMPLOYEE TOOK IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE AS AN ABSENCE THAT MAY LEAD TO OR RESULT IN ANY ADVERSE ACTION TAKEN AGAINST THE EMPLOYEE.**

**(2) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER HAS VIOLATED THIS SUBSECTION IF THE EMPLOYER TOOK ADVERSE ACTION AGAINST AN EMPLOYEE WITHIN 90 DAYS AFTER THE EMPLOYEE:**

**(I) FILES A COMPLAINT WITH THE COMMISSIONER ALLEGING A VIOLATION OF THIS SUBTITLE OR BRINGS A CIVIL ACTION UNDER § 3–1209(B) OF THIS SUBTITLE;**

**(II) INFORMS A PERSON ABOUT AN ALLEGED VIOLATION OF THIS SUBTITLE BY THE EMPLOYER;**

**(III) COOPERATES WITH THE COMMISSIONER OR ANOTHER PERSON IN THE INVESTIGATION OR PROSECUTION OF AN ALLEGED VIOLATION OF THIS SUBTITLE BY THE EMPLOYER; OR**

**(IV) OPPOSES A POLICY OR PRACTICE OF THE EMPLOYER OR AN ACT COMMITTED BY THE EMPLOYER THAT IS UNLAWFUL UNDER THIS SUBTITLE.**

**(D) THE PROTECTIONS AFFORDED UNDER THIS SUBTITLE SHALL APPLY TO AN EMPLOYEE WHO MISTAKENLY, BUT IN GOOD FAITH, ALLEGES A VIOLATION OF THIS SUBTITLE.**

**3–1211.**

**(A) AN EMPLOYEE, IN BAD FAITH, MAY NOT:**

**(1) FILE A COMPLAINT WITH THE COMMISSIONER ALLEGING A VIOLATION OF THIS SUBTITLE;**

**(2) BRING AN ACTION UNDER § 3–1209 OF THIS SUBTITLE; OR**

**(3) TESTIFY IN AN ACTION UNDER § 3–1209 OF THIS SUBTITLE.**

**(B) AN EMPLOYEE WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $1,000.**

**3–1212.**

**THIS SUBTITLE MAY BE CITED AS THE MARYLAND EARNED SICK AND SAFE LEAVE ACT.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.