

# The New Maryland Healthy Working Families Act – Who? What? When? Why? & How?

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# Today's Webinar

During the webinar, feel free to email or text Richard if you have additional questions that you would like to have addressed.

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# Presenters



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# Legislative History

- ▶ Bill passed in 2017; Governor Hogan vetoed May 25, 2017; Veto overridden on January 12, 2018
- ▶ Maryland is now the 9<sup>th</sup> state to pass a paid sick leave law, in addition to a number of other jurisdictions



# Which Employers are Subject to this Law?

- ▶ An Employer that employs **15 or more** employees must provide paid sick and safe leave at the same wage rate that the employee normally earns.
- ▶ An Employer that employs **14 or fewer** employees must at least provide an employee with unpaid earned sick and safe leave.



# Who is Exempt from this Law?

- ▶ Anyone under age 18 prior to 1/1/18
- ▶ Anyone employed in agricultural operations
- ▶ Anyone who regularly works less than 12 hours/week
- ▶ Employees in the construction industry covered by a CBA which waives the requirements of this law
- ▶ Health or Human Services employees called on an as-needed basis
- ▶ Independent contractors
- ▶ Real Estate Brokers



# How much Leave is Required?

- ▶ Employees are required to accrue at least one (1) hour of paid leave for every thirty (30) hours worked
- ▶ Employers can cap the maximum amount of annual leave at 40 hours per year



# Can we give Employees all 40 Hours at Once?

- ▶ Employers are permitted to make the full amount of leave available at the beginning of the fiscal year
- ▶ Employers who make the full amount available at the beginning of the year are not required to allow employees to roll over leave





# Can we Combine Sick Leave and Vacation Leave into a General PTO Policy?

- ▶ As long as the leave is available for all required uses under the Act, employers may provide a single pool for all paid leave



# Can We Require a Waiting Period?

- ▶ Employees must be permitted to begin accruing leave upon the date of their hire
- ▶ Employers can require that employees be employed for 106 calendar days before using leave



# Do we have to let Employees Roll Over Unused Leave?

- ▶ Employers with accrual policies are required to allow employees to roll over up to 40 hours of unused, accrued leave at the end of the year
- ▶ Employers who make the full amount of leave available at the start of the calendar are not required to roll over accrued leave
- ▶ Employers can cap the amount of sick & safe leave available for use in a calendar year at 64 hours



# Do we have to pay out Accrued, Unused Sick Leave at Termination?

- ▶ Employers are not required to pay out accrued, unused sick leave at termination
- ▶ If an employer does not pay out accrued, unused leave at termination, employers are required to reinstate the full amount of accrued leave if an employee returns to work within 37 weeks of termination



# What Absences are Covered?

- ▶ To care for or treat the employee's mental or physical illness, injury or condition
- ▶ To obtain preventative care for the employee or a family member
- ▶ To care for a family member with a mental or physical illness, injury or condition
- ▶ For maternity or paternity leave
- ▶ If the absence is necessary due to domestic violence, sexual assault or stalking against the employee or a family member



# What kind of Documentation Can Employers Require?

- ▶ An employer can require verification that leave was used appropriately if leave was used for more than two consecutive shifts
- ▶ If the leave was used between the 107<sup>th</sup> and 120<sup>th</sup> calendar days and the employee agreed to provide such verification at the time of hire



# Can we Require Advance Notice of the Need for Leave?

- ▶ If the need for leave is foreseeable, an employer may require an employee to provide no more than seven (7) days advance notice
- ▶ If the need is not foreseeable, an employee must provide notice as soon as is practicable and follow general procedural requirements, if they do not prevent the use of leave



# Can We Deny a Leave Request?

Yes, if:

- ▶ The employee fails to provide notice to the employer; AND
- ▶ The employee's absence will cause a disruption to the employer

Yes, if:

- ▶ The private employer is licensed to provide services to developmentally disabled or mentally ill individuals;
- ▶ The need for sick/safe leave is foreseeable;
- ▶ There is not suitable replacement for the employee; AND
- ▶ The employee's absence will cause a disruption to at least 1 individual with a developmental disability or mental illness





# Can We Require Employees to Use Leave in Full-Day Increments?

- ▶ Employees may use leave in the smallest increment trackable by the employer's payroll system
- ▶ Employers may require employees use earned sick and safe leave in increments of up to four hours



# What are we Required to Tell our Employees?

- ▶ Employers are required to have policies stating how leave is accrued and the permissible uses
- ▶ The policies must also contain anti-retaliation language and advise employees how to seek redress if employers do not comply
- ▶ Employers are also required to post a workplace poster including information about the Act



# What are we Required to Tell our Employees?

- ▶ Paystubs and pay records must include information about the amount of leave used and the amount of leave available
- ▶ Employers may also create an online system that employees can use to determine the balance of their available earned sick and safe leave



# Additional Recordkeeping Requirements

- ▶ Employers must keep records of each employee's earned sick and safe leave accrued and used for at least 3 years
- ▶ Failure to keep accurate records or refusal to allow inspection creates a “rebuttable presumption” that the employer violated the law.
- ▶ Penalties can be waived if errors were caused by a third-party payroll service



# How is the Law Enforced?

- ▶ Employee must file a complaint with the DLLR prior to filing civil action
- ▶ DLLR will investigate and attempt to mediate
- ▶ If mediation is unsuccessful, the DLLR will issue an order if there is a violation
- ▶ If the employer does not comply with the order, employees can file suit to enforce the order



# What are the Penalties if We Do Not Provide the Required Paid Leave?

- ▶ Actual economic damages
- ▶ Three times the employee's hourly wage
- ▶ \$1,000 per employee

If an employee files a civil action to enforce a DLLR order:

- ▶ Punitive damages
- ▶ Attorneys' fees
- ▶ Injunctive relief



# Questions?

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# Upcoming Events - Webinars

**MARCH 28, 12PM – 1PM EST**

Specialty Drugs





# Upcoming Events – HR Roundtables

## SAVE THE DATE

**MARCH 22 8AM – 10AM EST**

Speaker: Laura Rubenstein, Esq.

Update on the New MD Sick Pay Law and any developments since it went into effect on 2/11 along with a discussion of best practices for HR Professionals given the recent developments with sexual harassment and social media.



# What's New with SIGU?



**Podcast** – Male Sterilization Coverage in Maryland and HSA-Eligible HDHPs

Host: Jay Winn, Smith & Downey, P.A.



**Podcast** – The Future of Healthcare: A Health Rosetta Certified Advisor's Standpoint

Host: Brian Uhlig, Senior Partner and Benefit Consultant, Alera Group\

**For Healthcare Reform Updates please visit our Web Page:**

<https://blog.silbs.com/sig-university/healthcare-reform-updates>



# 2018 Mid Atlantic Benchmarking Survey

If you are a Mid Atlantic employer with 50 or more employees, then you are invited to participate in the 2018 Mid Atlantic Benchmarking Survey

By completing this survey, you will be able to find out:

- ▶ How your employee benefits compare to other employers in the Mid Atlantic
- ▶ The types of strategies other employers are using in this health care reform era
- ▶ If your wellness and disease management plans are on par with your peer
- ▶ The prevalence of high-deductible health plans in your area
- ▶ Cost control strategies other employers are utilizing

[www.silbs.com/benchmarking](http://www.silbs.com/benchmarking) - Link opens in March!



**Thank You!**

