

Bill No. 60-14  
Concerning: Human Rights and Civil Liberties – Earned Sick and Safe Leave  
Revised: November 17, 2014 Draft No. 4  
Introduced: November 25, 2014  
Expires: May 25, 2016  
Enacted: \_\_\_\_\_  
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Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council Vice President Leventhal and Councilmembers Navarro, Branson, and Elrich

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**AN ACT** to:

- (1) require certain employers in the County to provide earned sick and safe leave to certain employees working in the County;
- (2) provide enforcement by the Office of Human Rights and the Human Rights Commission or the appropriate State agency;
- (3) authorize the Human Rights Commission to award certain relief; and
- (4) generally regulate the sick and safe leave benefits provided to an employee working in the County for certain employers.

By amending

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Sections 27-7 and 27-8

By adding

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

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

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

**Sec. 1. Sections 27-7 and 27-8 are amended and Chapter 27, Article XIII is added as follows:**

**27-7. Administration and enforcement.**

(a) *Filing complaints.* Any person subjected to a discriminatory act or practice in violation of this Article, or any group or person seeking to enforce this Article or Articles X, XI, [or] XII, or XIII may file with the Director a written complaint, sworn to or affirmed under the penalties of perjury, that must state:

- (1) the particulars of the alleged violation;
- (2) the name and address of the person alleged to have committed the violation; and
- (3) any other information required by law or regulation.

\* \* \*

(f) *Initial determination, dismissal before hearing.*

- (1) The Director must determine, based on the investigation, whether reasonable grounds exist to believe that a violation of this Article or Articles X, XI, [or] XII, or XIII occurred and promptly send the determination to the complainant and the respondent.
- (2) If the Director determines that there are no reasonable grounds to believe a violation occurred, and the complainant appeals the determination to the Commission within 30 days after the Director sends the determination to the complainant, the Director promptly must certify the complaint to the Commission. The Commission must appoint a case review board to consider the appeal. The board may hear oral argument and must:
  - (A) dismiss the complaint without a hearing;
  - (B) order the Director to investigate further; or

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

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

36 \* \* \*

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

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

42 \* \* \*

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

46 \* \* \*

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

50 \* \* \*

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

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

53 (a) *Findings.*

- 54           (1) Many persons employed in the County do not receive earned sick  
 55           and safe leave.
- 56           (2) The absence of earned sick and safe leave often results in the  
 57           unnecessary spread of disease in the County when:
- 58           (A) an employee without earned sick and safe leave is forced  
 59           to work while ill; or
- 60           (B) a parent without earned sick and safe leave is forced to  
 61           send a sick child to day care or school.
- 62           (3) Minimum standards for earned sick and safe leave in the County  
 63           are necessary to:
- 64           (A) promote the health and welfare of County residents;
- 65           (B) safeguard employers and employees against unfair  
 66           competition;
- 67           (C) increase the stability of industry in the County; and
- 68           (D) decrease the need for the County to spend public money  
 69           for the relief of employees who also live in the County.
- 70       (b) Definitions. As used in this Article:
- 71           Abuse has the meaning defined in Section 4-501 of the Family Law  
 72           Article of the Maryland Code, as amended.
- 73           Director means the Executive Director of the Office of Human Rights  
 74           and includes the Executive Director’s designee.
- 75           Domestic violence means abuse against a person eligible for relief.
- 76           Earned sick and safe leave means paid leave away from work that is  
 77           provided by an employer under §27-77 and can be used for the purposes  
 78           described in §27-79. Earned sick and safe leave includes paid time off  
 79           that can be used by the employee for any purpose.
- 80           Employ means to engage a person to work for compensation.

Employee means any person permitted or instructed to work or be present by an employer in the County, including a domestic worker as defined in Section 11-4B(b). 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 after 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.

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

Family member means:

- (1) a biological child, adopted child, foster child, or 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, adoptive parent, foster parent, or stepparent of the employee or the employee's spouse;
- (5) the legal guardian of the employee;

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

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

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

120           Sexual assault means:

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

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

130           Tipped employee means an employee who:

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

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

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

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

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

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

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

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

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

152 (1) retaliate against any person for:

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

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

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

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

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

182    **27-79.    Use of Earned Sick and Safe Leave.**

- 183           (a)    An employee may use earned sick and safe leave:  
 184                    (1)    to care for or treat the employee's mental or physical illness,  
 185                    injury, or condition;



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

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

213 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

247 **27-80. Notice.**

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

250 (b) The notice must include:

- 251 (1) a statement of how earned sick and safe leave is accrued;
- 252 (2) the permitted uses of earned sick and safe leave;
- 253 (3) a statement that the employer must not retaliate against an  
 254 employee for exercising the rights granted by this Article; and
- 255 (4) information about the employee's right to file a complaint with  
 256 the Director for a violation of any rights granted by this Article.

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

260 (d) An employer may provide notice by:

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

264 (2) including the model notice or another notice containing the same  
 265 information in an employee handbook or other written guidance  
 266 distributed to all employees;

267 (3) distributing the model notice or another notice containing the  
 268 same information to each employee when the employee is hired.

269 **27-81. Records.**

270 (a) An employer must keep, for at least 3 years, a record of:

271 (1) earned sick and safe leave accrued by each employee; and

272 (2) earned sick and safe leave used by each employee.

273 (b) After giving the employer notice and determining a mutually agreeable  
 274 time for the inspection, the Director may inspect a record kept under  
 275 subsection (a) for the purposes of determining whether the employer is  
 276 complying with this Article.

277 **27-82. Enforcement.**

278 (a) A covered employee who was who did not receive earned sick and safe  
 279 leave in violation of this Article may file a complaint with the Director  
 280 under Section 27-7.

281 (b) The County Executive may delegate the authority to enforce this Article  
 282 to a State agency that is legally authorized to enforce the County earned  
 283 sick and safe leave requirements.

284 **Sec. 2. Transition.**

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

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

290 This Act takes effect on October 1, 2015.