MARSH & McLENNAN AGENCY

Employee Benefits Legislative Compliance
Monthly Newsletter, MMA West Edition

FEBRUARY 2018 | Issue 2

## IN THIS ISSUE



# MARYLAND ENACTS LAW REQUIRING EMPLOYERS TO PROVIDE PAID SICK AND SAFE TIME LEAVE

In April 2017, the Maryland General Assembly passed the Maryland Healthy Working Families Act (the Act) which requires most employers in Maryland to provide paid sick and safe leave to their employees. In May 2017, Maryland Governor Lawrence J. Hogan vetoed the Act. On January 12, 2018, the Maryland General Assembly overrode Governor Hogan's veto of the Act, making the law effective on February 11, 2018. However, on January 23, 2018, an emergency bill was introduced to delay the implementation of the Act for sixty (60) days, to provide the state time to draft regulations and provide employers with additional time to comply with the Act's requirements.

### Covered Employers

The law applies to **all** Maryland employers, regardless of size. Employers with fifteen (15) or more employees will be required to provide employees with **paid** leave, while employers with fewer than fifteen (15) employees will be required to provide **unpaid** leave. The number of employees is determined by calculating the average monthly number of employees (including full-time, part-time, temporary, and seasonal) who were employed during the immediately preceding twelve (12) months.

### Covered Employees

Covered employees are those that work twelve (12) or more hours a week. Certain workers are excluded from the Act's coverage, including: individuals under the age of eighteen (18) before the beginning of the year; construction workers covered by collective bargaining agreements; health care workers who provide service on an "as-needed" basis; licensed real estate salespersons and brokers; employees of temporary staffing agencies, if the agency does not have day-to-day control over their work assignments; and employees of an employment agency providing part-time or temporary services to another person.

### Permitted Uses of Sick and Safe Time

Employees may use paid sick and safe leave for the following reasons:

- To care for or treat the employee's mental or physical illness, injury, or condition;
- To obtain preventive medical care for the employee or employee's family member;
- To care for a family member with a mental or physical illness, injury, or condition;
- For maternity or paternity leave; and
- For specified circumstances due to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member.

A "family member" is broadly defined to include children (biological, adopted, foster, stepchild), parents (biological, adoptive, foster, stepparent), legal guardians, spouse, grandchildren, grandparents and siblings.

## Maryland Enacts Law Requiring Employers to Provide Paid Sick and Safe Time Leave (continued)

### Accrual, Caps, and Carryover of Sick and Safe Time

#### *Accrual*

Covered employees will be eligible to accrue one (1) hour of leave for every thirty (30) hours worked (leave must be **paid** leave if the employer has 15 or more employees). At the beginning of the year, employers may also "front-load" leave by awarding the full amount of earned sick and safe leave that an employee would earn over the course of the year.

Earned leave begins to accrue on January 1, 2018, or the date an employee begins employment, whichever is later. Employers may also restrict the use of leave during an employee's first 106 calendar days of employment.

#### *Limitations on Leave Time*

The Act allows an employer to restrict the maximum amount of sick and safe time an employee can accrue and use per year, as follows:

- Forty (40) hours – Total amount of leave earned each year
- Forty (40) hours- Total unused leave carried over each year
- Sixty- four (64) hours- Total amount of accrued leave at any time
- Sixty-four (64) hours- Total amount of leave used each year

Employees are permitted to carry over accrued but unused sick and safe time to the following calendar year, up to the annual limits mentioned above. However, an employer is not required to compensate an employee for unused earned sick and safe leave when the employee leaves the employer's employment. An employer who rehires an employee within thirty-seven (37) weeks after leaving employment must reinstate that employee's unused leave, unless the employer voluntarily paid out that leave.

### Impact on Local Sick Leave Laws

An employer may retain an existing paid leave policy if it is at least equivalent to the earned sick and safe leave provided for under the Act or if the policy does not reduce employee compensation for an absence due to sick or safe leave. The Act preempts local jurisdictions from passing sick and safe leave laws of their own in the future. Preemption is retroactive to January 1, 2017. For employers who have employees in Montgomery County, which passed its own Sick and Safe Leave Law in 2016, these employers will be required to comply with the requirements of both the state and local laws.

### Notice Requirement/Enforcement

Employers must provide notice to employees regarding their right to use sick and safe time leave, and must post a poster provided by the Maryland DLLR. An employer must also keep any relevant records associated with an employee's earned and accrued sick and safe leave time, for at least three years. If an employer fails to do so, there is a rebuttable presumption created that an employer has violated the law.

An employee may file a complaint with the labor commissioner and may then bring a civil action for treble damages, punitive damages, and attorney's fees.

### Action Required

Employers must review their current leave policies to determine whether revisions are required. Payroll systems will need to be reviewed to ensure that the systems account for the accrual, usage and carry over of sick/safe leave, and that the leave records are maintained for a period of at least three years.

**For bill text, see**: http://mgaleg.maryland.gov/2017RS/bills/hb/hb0001e.pdf

# COMPLIANCE REMINDER: ONLINE CMS DISCLOSURE FORM DUE BY MARCH 1, 2018

Health plan sponsors are required to complete an **annual online disclosure form** in relation to their prescription drug coverage with the Centers for Medicare and Medicaid Services (CMS). This form details whether prescription drug coverage under the sponsor's health plan is "creditable" (meaning that the plan's prescription coverage is comparable to, or better than, Medicare Part D's prescription drug benefit), or is "non-creditable" (does not reimburse prescription coverage at the same level as Medicare Part D's prescription drug benefit). Plan sponsors must complete the disclosure within 60 days of the start of the plan year if any plan participants are receiving Medicare Part D prescription drug benefits. Therefore, for **calendar year** health plans, this online disclosure form is due to CMS by **March 1, 2018.**

A health plan is also required to report to CMS within 30 days if a prescription drug plan is terminated, or if there are any other changes in a plan's creditable coverage status.

### Plans Exempt from the Filing Process

Employer health plans that do not offer prescription drug coverage to any Medicare-enrolled employees, employees' spouses, employees' dependents, or retirees at the start of the plan year are exempt from filing with CMS. In addition, employers who qualify for the Medicare Part D retiree drug subsidy are exempt from filing, but only in regard to those individuals for which they claimed the plan subsidy.

### Annual Part D Notice

As a reminder, plan sponsors must annually issue a notice to their Medicare-enrolled employees, dependents, and retirees informing them whether the drug coverage under the sponsor's plan is "creditable" or "non-creditable". Notices must be provided:

- Prior to enrollment in the employer's plan
- Prior to annual Part D enrollment window (opens October 15th)
- Prior to an individual's initial enrollment period for Part D
- When a plan ceases prescription drug coverage, or drug coverage status changes (i.e., creditable to non-creditable)
- Upon Request

### Action Required

Plan sponsors with calendar year health plans must complete the disclosure to CMS by March 1, 2018. Plan sponsors must go online to complete this filing before the due date. Plan sponsors should print a copy of the confirmation page for their records.

For instructions on how to file, see:

https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosure.html

To complete the online disclosure to CMS form, see:

https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html

# QUESTION OF THE MONTH

## Does an Employee's Prior Consent to Electronic Furnishing of Form W-2 Also Apply to Receiving Form 1095-C Electronically?

QUESTION: Our company is an applicable large employer (ALE) and would like to distribute Form 1095-C electronically to employees. If an employee previously consented to receiving Form W-2 electronically, does that consent also apply to Form 1095-C?

ANSWER: Unless the employee's consent specifically identifies Form 1095-C, it will not serve as valid consent to receive Form 1095-C electronically. As background, Code § 6056 requires an ALE to provide information to the IRS and full-time employees about the health coverage offered by the ALE (see our article). Form 1095-C provides information about the coverage offered to each full-time employee and it is the IRS-designated employee statement that must be filed with the IRS and furnished to employees. (Form 1094-C, the other Code § 6056 reporting form, provides information about the aggregate coverage offered to full-time employees; it is filed with the IRS but is not furnished to employees.) For a given year, Form 1095-C must generally be furnished by January 31 of the immediately following year.

Form 1095-C may be provided to a recipient electronically only if the recipient affirmatively consents to receive the statement electronically in accordance with applicable requirements. Although the consent requirements for receiving Form 1095-C electronically are similar to those for electronic receipt of Form W-2, the IRS requires that an employee's consent must specifically identify Form 1095-C. The consent must include clear and conspicuous disclosure (prior to or at the time of consent) of certain information, such as the scope and duration of the consent, the hardware and software requirements to access the form, a description of the procedure for requesting a paper copy, and the process for withdrawing consent. The consent must be given in a manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished.

Source: EBIA

### CONTACTS

**Christopher K. Bao, Esq.**
Manager, Employee Benefits Compliance & Regulatory Affairs, MMA West
Chris.Bao@MarshMMA.com
+1 415 230 7224

**Brittany D. Botterill, Esq.**
Manager, Employee Benefits Compliance & Regulatory Affairs, MMA West
Brittany.Botterill@MarshMMA.com
+1 858 587 7511

**Leah Nguyen**
Manager, Employee Benefits Compliance & Regulatory Affairs, MMA West
Leah.Nguyen@MarshMMA.com
+1 949 540 6924