

HOUSE BILL 1

K3, P4
HB 580/16 – ECM

(PRE-FILED)

7lr0736

By: **Delegates Clippinger and Davis**

Requested: September 29, 2016

Introduced and read first time: January 11, 2017

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Maryland Healthy Working Families Act**

3 FOR the purpose of requiring certain employers to provide employees with certain earned
4 sick and safe leave; providing for the method of determining whether an employer is
5 required to provide paid or unpaid earned sick and safe leave; providing for the
6 manner in which earned sick and safe leave is accrued by the employee and treated
7 by the employer; authorizing an employer, under certain circumstances, to deduct
8 the amount paid for earned sick and safe leave from the wages paid to an employee
9 on the termination of employment under a certain provision of law; prohibiting an
10 employer from being required to pay out on the termination of employment certain
11 earned sick and safe leave; requiring an employer to allow an employee to use earned
12 sick and safe leave for certain purposes; authorizing an employer to require an
13 employee to provide certain notice under certain circumstances; requiring an
14 employee, under certain circumstances, to provide certain notice to the employer;
15 authorizing an employer to deny a request for leave under certain circumstances;
16 prohibiting an employer from requiring that a certain employee search for or find an
17 individual to work in the employee's stead during a certain period of time;
18 authorizing an employee to work additional hours or trade shifts with another
19 employee instead of taking earned sick and safe leave, under certain circumstances;
20 providing that an employee is not required to accept a certain offer; prohibiting an
21 employer, under certain circumstances, from being required to pay more than a
22 certain rate or allowing an employee to work certain hours or shifts; prohibiting an
23 employer, under certain circumstances, from deducting a certain absence from a
24 certain employee's earned sick and safe leave; authorizing an employer, under
25 certain circumstances, to require an employee to provide certain verification;
26 requiring an employer to notify the employees that the employees are entitled to
27 certain earned sick and safe leave; specifying the information that must be included
28 in the notice; requiring the Commissioner of Labor and Industry to create and make
29 available a certain poster and notice; requiring an employer to keep certain records
30 for a certain time period; authorizing the Commissioner to inspect certain records;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



establishing a presumption that an employer has violated certain provisions of this Act under certain circumstances; requiring and authorizing the Commissioner to take certain acts when the Commissioner receives a certain written complaint; specifying the contents that are required to be included and may be included in a certain order issued by the Commissioner; subjecting certain acts to certain hearing and notice requirements; requiring an employer to comply with a certain order within a certain time period; authorizing an employee to bring a civil action in a certain court against an employer for a violation of certain provisions of this Act within a certain time period; requiring a court to award certain damages, fees, and injunctive relief under certain circumstances; establishing certain prohibited acts; providing for certain criminal penalties; providing that certain protections apply to certain employees; 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 that this Act preempts the authority of a local jurisdiction to enact a law on or after a certain date that provides for certain sick and safe leave provided by certain employers; providing for the application of this Act; providing for a delayed effective date; 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

(2016 Replacement Volume)

BY adding to

Article – Labor and Employment

Section 3–103(k); and 3–1301 through 3–1311 to be under the new subtitle “Subtitle 13. Healthy Working Families Act”

Annotated Code of Maryland

(2016 Replacement Volume)

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 13 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.

(K) (1) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER SUBTITLE 13 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 13 OF THIS TITLE UNLESS THE EMPLOYEE WAIVES CONFIDENTIALITY.

SUBTITLE 13. HEALTHY WORKING FAMILIES ACT.

3–1301.

(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 AN INDIVIDUAL ELIGIBLE FOR RELIEF.

(D) “EARNED SICK AND SAFE LEAVE” MEANS PAID LEAVE AWAY FROM WORK THAT IS PROVIDED BY AN EMPLOYER UNDER § 3–1304 OF THIS SUBTITLE.

(E) “EMPLOYEE” DOES NOT INCLUDE AN INDIVIDUAL WHO:

(1) PERFORMS WORK UNDER A CONTRACT OF HIRE THAT IS DETERMINED NOT TO BE COVERED EMPLOYMENT UNDER § 8–205 OF THIS ARTICLE;

(2) IS NOT A COVERED EMPLOYEE UNDER § 9-222 OF THIS ARTICLE;

(3) IS UNDER THE AGE OF 18 YEARS BEFORE THE BEGINNING OF THE YEAR; OR

(4) IS EMPLOYED IN THE AGRICULTURAL SECTOR ON AN AGRICULTURAL OPERATION UNDER § 5-403(A) OF THE COURTS ARTICLE.

(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 STANDS IN LOCO PARENTIS, REGARDLESS OF THE CHILD'S AGE;

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

(5) THE LEGAL GUARDIAN OF THE EMPLOYEE;

(6) AN INDIVIDUAL WHO ACTED AS A PARENT OR STOOD IN LOCO PARENTIS TO THE EMPLOYEE OR THE EMPLOYEE'S SPOUSE WHEN THE EMPLOYEE OR THE EMPLOYEE'S SPOUSE WAS A MINOR;

(7) THE SPOUSE OF THE EMPLOYEE;

(8) A BIOLOGICAL GRANDPARENT, AN ADOPTED GRANDPARENT, A FOSTER GRANDPARENT, OR A STEPGRANDPARENT OF THE EMPLOYEE;

(9) A BIOLOGICAL GRANDCHILD, AN ADOPTED GRANDCHILD, A FOSTER GRANDCHILD, OR A STEPGRANDCHILD OF THE EMPLOYEE; OR

(10) A BIOLOGICAL SIBLING, AN ADOPTED SIBLING, A FOSTER SIBLING, OR A STEPSIBLING OF THE EMPLOYEE.

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

(I) "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.

(J) "STALKING" HAS THE MEANING STATED IN § 3-802 OF THE CRIMINAL LAW ARTICLE.

(K) UNLESS THE CONTEXT REQUIRES OTHERWISE, "YEAR" MEANS A REGULAR AND CONSECUTIVE 12-MONTH PERIOD AS DETERMINED BY THE EMPLOYER.

3-1302.

(A) 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) REQUIRE AN EMPLOYER TO MODIFY AN EXISTING PAID LEAVE POLICY IF THE POLICY PERMITS AN EMPLOYEE TO ACCRUE AND USE LEAVE UNDER TERMS AND CONDITIONS THAT ARE AT LEAST EQUIVALENT TO THE EARNED SICK AND SAFE LEAVE PROVIDED FOR UNDER THIS SUBTITLE;

(3) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, 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;

(4) PREEMPT, LIMIT, OR OTHERWISE AFFECT ANY WORKERS' COMPENSATION BENEFITS THAT ARE AVAILABLE UNDER TITLE 9 OF THIS ARTICLE; OR

(5) PROHIBIT AN EMPLOYER FROM ADOPTING A POLICY THAT LIMITS AN EMPLOYEE TO USING EARNED SICK AND SAFE LEAVE ONLY FOR THE REASONS LISTED IN § 3-1305(A) OF THIS SUBTITLE.

(B) FOR THE PURPOSES OF SUBSECTION (A)(2) OF THIS SECTION, THE TERMS AND CONDITIONS OF A PAID LEAVE POLICY SHALL BE PRESUMED TO BE EQUIVALENT IF THE TERMS AND CONDITIONS ALLOW AN EMPLOYEE TO:

(1) ACCESS AND ACCRUE PAID LEAVE AT THE SAME RATE OR AT A GREATER RATE THAN PROVIDED FOR IN § 3-1304 OF THIS SUBTITLE; AND

(2) USE THE PAID LEAVE FOR THE PURPOSES LISTED IN § 3-1305 OF THIS SUBTITLE.

(C) THIS SUBTITLE PREEMPTS THE AUTHORITY OF A LOCAL JURISDICTION TO ENACT A LAW ON OR AFTER JANUARY 1, 2017, THAT REGULATES SICK AND SAFE LEAVE PROVIDED BY AN EMPLOYER OTHER THAN THE LOCAL JURISDICTION.

3-1303.

(A) THIS SUBTITLE DOES NOT APPLY TO AN EMPLOYEE WHO:

(1) REGULARLY WORKS LESS THAN 8 HOURS A WEEK FOR AN EMPLOYER; OR

(2) (I) IS EMPLOYED IN THE CONSTRUCTION INDUSTRY; AND

(II) IS COVERED BY A BONA FIDE COLLECTIVE BARGAINING AGREEMENT IN WHICH THE REQUIREMENTS OF THIS SUBTITLE ARE EXPRESSLY WAIVED IN CLEAR AND UNAMBIGUOUS TERMS.

(B) FOR THE PURPOSE OF SUBSECTION (A)(2)(I) OF THIS SECTION, AN EMPLOYEE WHO IS EMPLOYED IN THE CONSTRUCTION INDUSTRY DOES NOT INCLUDE AN EMPLOYEE EMPLOYED AS:

(1) A JANITOR;

(2) A BUILDING CLEANER;

(3) A BUILDING SECURITY OFFICER;

(4) A CONCIERGE;

(5) A DOORPERSON;

(6) A HANDYPERSON; OR

(7) A BUILDING SUPERINTENDENT.

3-1304.

(A) (1) AN EMPLOYER THAT EMPLOYS 15 OR MORE EMPLOYEES SHALL PROVIDE AN EMPLOYEE WITH EARNED SICK AND SAFE LEAVE THAT IS PAID AT THE SAME WAGE RATE AS THE EMPLOYEE NORMALLY EARNS.

(2) AN EMPLOYER THAT EMPLOYS 14 OR FEWER EMPLOYEES 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 YEAR.

(II) EACH EMPLOYEE OF AN EMPLOYER SHALL BE INCLUDED IN THE CALCULATION MADE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHOUT REGARD TO WHETHER THE EMPLOYEE IS A FULL-TIME, PART-TIME, TEMPORARY, OR SEASONAL EMPLOYEE OR 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 YEAR;

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

(3) ACCRUE A TOTAL OF MORE THAN 80 HOURS AT ANY TIME; OR

(4) USE EARNED SICK AND SAFE LEAVE DURING THE FIRST 90 CALENDAR DAYS THE EMPLOYEE WORKS FOR THE EMPLOYER OR THE FIRST 480 HOURS WORKED, WHICHEVER IS SHORTER.

(D) AT THE BEGINNING OF EACH 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 YEAR RATHER THAN AWARDING THE LEAVE AS THE LEAVE ACCRUES DURING THE 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) EARNED SICK AND SAFE LEAVE SHALL BEGIN TO ACCRUE:

(1) JANUARY 1, 2018; OR

(2) IF THE EMPLOYEE IS HIRED AFTER JANUARY 1, 2018, THE DATE ON WHICH THE EMPLOYEE BEGINS EMPLOYMENT WITH THE EMPLOYER.

(G) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, IF AN EMPLOYEE HAS UNUSED EARNED SICK AND SAFE LEAVE AT THE END OF EACH YEAR, THE EMPLOYEE MAY CARRY OVER THE BALANCE OF THE EARNED SICK AND SAFE LEAVE TO THE FOLLOWING 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.

(3) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO CARRY OVER UNUSED SICK AND SAFE LEAVE UNDER PARAGRAPH (1) OF THIS SUBSECTION IF:

(I) THE EMPLOYER AWARDS THE EMPLOYEE THE FULL AMOUNT OF EARNED SICK AND SAFE LEAVE AT THE BEGINNING OF EACH YEAR UNDER SUBSECTION (D) OF THIS SECTION; OR

(II) THE EMPLOYMENT OF THE EMPLOYEE IS CONTINGENT ON THE EMPLOYER RECEIVING A GRANT.

(H) IF AN EMPLOYEE IS REHIRED BY THE EMPLOYER WITHIN 9 MONTHS AFTER LEAVING THE EMPLOYMENT OF THE EMPLOYER, THE EMPLOYER SHALL REINSTATE ANY UNUSED EARNED SICK AND SAFE LEAVE THAT THE EMPLOYEE HAD

1 WHEN THE EMPLOYEE LEFT THE EMPLOYMENT OF THE EMPLOYER UNLESS THE
2 EMPLOYER VOLUNTARILY PAID OUT THE UNUSED EARNED SICK AND SAFE LEAVE ON
3 THE TERMINATION OF EMPLOYMENT.

4 (I) (1) AN EMPLOYER MAY ALLOW AN EMPLOYEE TO USE EARNED SICK
5 AND SAFE LEAVE BEFORE THE EMPLOYEE ACCRUES THE AMOUNT NEEDED.

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

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

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

16 (J) AN EMPLOYER MAY NOT BE REQUIRED TO PAY OUT ON THE
17 TERMINATION OF EMPLOYMENT UNUSED EARNED SICK AND SAFE LEAVE ACCRUED
18 BY AN EMPLOYEE.

19 (K) AN EMPLOYER WHO ACQUIRES, BY SALE OR OTHERWISE, ANOTHER
20 EMPLOYER SHALL ALLOW ALL EMPLOYEES OF THE ORIGINAL EMPLOYER WHO
21 REMAIN EMPLOYED BY THE SUCCESSOR EMPLOYER TO RETAIN ALL UNUSED
22 EARNED SICK AND SAFE LEAVE ACCRUED DURING EMPLOYMENT WITH THE
23 ORIGINAL EMPLOYER.

24 3-1305.

25 (A) AN EMPLOYER SHALL ALLOW AN EMPLOYEE TO USE EARNED SICK AND
26 SAFE LEAVE:

27 (1) TO CARE FOR OR TREAT THE EMPLOYEE'S MENTAL OR PHYSICAL
28 ILLNESS, INJURY, OR CONDITION;

29 (2) TO OBTAIN PREVENTIVE MEDICAL CARE FOR THE EMPLOYEE OR
30 EMPLOYEE'S FAMILY MEMBER;

31 (3) TO CARE FOR A FAMILY MEMBER WITH A MENTAL OR PHYSICAL
32 ILLNESS, INJURY, OR CONDITION; OR

(4) 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 OR MENTAL HEALTH ATTENTION THAT IS RELATED TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING;

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

C. LEGAL SERVICES OR PROCEEDINGS 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) (1) IF THE NEED TO USE EARNED SICK AND SAFE LEAVE IS FORESEEABLE, AN EMPLOYER MAY REQUIRE AN EMPLOYEE TO PROVIDE REASONABLE ADVANCE NOTICE OF NOT MORE THAN 7 DAYS BEFORE THE DATE THE EARNED SICK AND SAFE LEAVE WOULD BEGIN.

(2) IF THE NEED TO USE EARNED SICK AND SAFE LEAVE IS NOT FORESEEABLE, AN EMPLOYEE SHALL:

(I) PROVIDE NOTICE TO AN EMPLOYER AS SOON AS PRACTICABLE; AND

(II) GENERALLY COMPLY WITH THE EMPLOYER'S NOTICE OR PROCEDURAL REQUIREMENTS FOR REQUESTING OR REPORTING OTHER LEAVE, IF THOSE REQUIREMENTS DO NOT INTERFERE WITH THE EMPLOYEE'S ABILITY TO USE EARNED SICK AND SAFE LEAVE.

(3) AN EMPLOYER MAY DENY A REQUEST TO TAKE EARNED SICK AND SAFE LEAVE IF:

1 (I) AN EMPLOYEE FAILS TO PROVIDE THE NOTICE REQUIRED
2 UNDER PARAGRAPHS (1) OR (2) OF THIS SUBSECTION; AND

3 (II) THE EMPLOYEE'S ABSENCE WILL CAUSE A DISRUPTION TO
4 THE EMPLOYER.

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

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

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

16 (3) IF AN EMPLOYEE WORKS ADDITIONAL HOURS OR TRADES SHIFTS
17 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE EMPLOYER MAY NOT:

18 (I) BE REQUIRED TO PAY THE EMPLOYEE MORE THAN THE
19 EMPLOYEE'S BASE RATE OF PAY FOR THE EMPLOYEE'S ABSENCE;

20 (II) BE REQUIRED TO ALLOW AN EMPLOYEE TO WORK
21 ADDITIONAL HOURS OR SHIFTS THAT WOULD RESULT IN THE EMPLOYER BEING
22 REQUIRED TO PAY OVERTIME TO THE EMPLOYEE; OR

23 (III) DEDUCT THE ABSENCE FROM THE EMPLOYEE'S ACCRUED
24 EARNED SICK AND SAFE LEAVE.

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

28 (2) AN EMPLOYEE MAY NOT BE REQUIRED TO TAKE EARNED SICK AND
29 SAFE LEAVE IN AN INCREMENT OF MORE THAN 4 HOURS.

30 (F) (1) WHEN WAGES ARE PAID TO AN EMPLOYEE, THE EMPLOYER SHALL
31 PROVIDE IN WRITING BY ANY REASONABLE METHOD A STATEMENT REGARDING THE
32 AMOUNT OF EARNED SICK AND SAFE LEAVE THAT IS AVAILABLE FOR USE BY THE
33 EMPLOYEE.

(2) AN EMPLOYER MAY SATISFY THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION BY PROVIDING AN ONLINE SYSTEM THROUGH WHICH AN EMPLOYEE MAY ASCERTAIN THE BALANCE OF THE EMPLOYEE'S AVAILABLE EARNED SICK AND SAFE LEAVE.

(G) (1) AN EMPLOYER MAY REQUIRE AN EMPLOYEE WHO USES EARNED SICK AND SAFE LEAVE FOR MORE THAN TWO CONSECUTIVE SCHEDULED SHIFTS TO PROVIDE VERIFICATION THAT THE LEAVE WAS USED APPROPRIATELY UNDER SUBSECTION (A) OF THIS SECTION.

(2) IF AN EMPLOYEE FAILS OR REFUSES TO PROVIDE VERIFICATION AS REQUIRED BY AN EMPLOYER UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE EMPLOYER MAY DENY A SUBSEQUENT REQUEST TO TAKE EARNED SICK AND SAFE LEAVE FOR THE SAME REASON.

3-1306.

(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 § 3-1304 OF THIS SUBTITLE;

(2) THE PURPOSES FOR WHICH THE EMPLOYER IS REQUIRED TO ALLOW AN EMPLOYEE TO USE EARNED SICK AND SAFE LEAVE UNDER § 3-1305 OF THIS SUBTITLE;

(3) A STATEMENT REGARDING THE PROHIBITION IN § 3-1309 OF THIS SUBTITLE AGAINST 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 TO BRING A CIVIL ACTION UNDER § 3-1308(c) OF THIS SUBTITLE.

(C) 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.

1 **3-1307.**

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

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

4 **AND**

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

6 **(B) THE COMMISSIONER MAY INSPECT A RECORD KEPT UNDER**
7 **SUBSECTION (A) OF THIS SECTION FOR THE PURPOSE OF DETERMINING WHETHER**
8 **THE EMPLOYER IS COMPLYING WITH THE PROVISIONS OF THIS SUBTITLE.**

9 **(C) AN EMPLOYER THAT FAILS TO KEEP ACCURATE RECORDS OR REFUSES**
10 **TO ALLOW THE COMMISSIONER TO INSPECT A RECORD KEPT UNDER SUBSECTION**
11 **(A) OF THIS SECTION SHALL BE PRESUMED TO HAVE VIOLATED THIS SUBTITLE.**

12 **3-1308.**

13 **(A) IF AN EMPLOYEE BELIEVES THAT AN EMPLOYER HAS VIOLATED THIS**
14 **SUBTITLE, THE EMPLOYEE MAY FILE A WRITTEN COMPLAINT WITH THE**
15 **COMMISSIONER.**

16 **(B) (1) WITHIN 90 DAYS AFTER THE RECEIPT OF A WRITTEN COMPLAINT,**
17 **THE COMMISSIONER SHALL CONDUCT AN INVESTIGATION AND ATTEMPT TO**
18 **RESOLVE THE ISSUE INFORMALLY THROUGH MEDIATION.**

19 **(2) (I) IF THE COMMISSIONER IS UNABLE TO RESOLVE AN ISSUE**
20 **THROUGH MEDIATION DURING THE PERIOD STATED IN PARAGRAPH (1) OF THIS**
21 **SUBSECTION AND THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS**
22 **VIOLATED THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE AN ORDER.**

23 **(II) AN ORDER ISSUED UNDER SUBPARAGRAPH (I) OF THIS**
24 **PARAGRAPH:**

25 **1. SHALL DESCRIBE THE VIOLATION;**

26 **2. SHALL DIRECT THE PAYMENT OF THE FULL**
27 **MONETARY VALUE OF ANY UNPAID EARNED SICK AND SAFE LEAVE AND ANY ACTUAL**
28 **ECONOMIC DAMAGES;**

1 **3. MAY, IN THE COMMISSIONER’S DISCRETION, DIRECT**
2 **THE PAYMENT OF AN ADDITIONAL AMOUNT UP TO THREE TIMES THE VALUE OF THE**
3 **EMPLOYEE’S HOURLY WAGE FOR EACH VIOLATION; AND**

4 **4. MAY, IN THE COMMISSIONER’S DISCRETION, ASSESS A**
5 **CIVIL PENALTY OF UP TO \$1,000 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER**
6 **IS NOT IN COMPLIANCE WITH THIS SUBTITLE.**

7 **(3) THE ACTIONS TAKEN UNDER PARAGRAPHS (1) AND (2) OF THIS**
8 **SUBSECTION ARE SUBJECT TO THE HEARING AND NOTICE REQUIREMENTS OF TITLE**
9 **10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

10 **(C) (1) WITHIN 30 DAYS AFTER THE COMMISSIONER ISSUES AN ORDER,**
11 **AN EMPLOYER SHALL COMPLY WITH THE ORDER.**

12 **(2) IF AN EMPLOYER DOES NOT COMPLY WITH AN ORDER WITHIN THE**
13 **TIME PERIOD STATED IN PARAGRAPH (1) OF THIS SUBSECTION:**

14 **(I) THE COMMISSIONER MAY:**

15 **1. WITH THE WRITTEN CONSENT OF THE EMPLOYEE, ASK**
16 **THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF OF THE EMPLOYEE IN**
17 **THE COUNTY WHERE THE EMPLOYER IS LOCATED; OR**

18 **2. BRING AN ACTION TO ENFORCE THE ORDER FOR THE**
19 **CIVIL PENALTY IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; AND**

20 **(II) WITHIN 3 YEARS AFTER THE DATE OF THE ORDER, AN**
21 **EMPLOYEE MAY BRING A CIVIL ACTION TO ENFORCE THE ORDER IN THE COUNTY**
22 **WHERE THE EMPLOYER IS LOCATED.**

23 **(3) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER**
24 **PARAGRAPH (2)(II) OF THIS SUBSECTION TO ENFORCE AN ORDER, THE COURT**
25 **SHALL AWARD:**

26 **(I) THREE TIMES THE VALUE OF THE EMPLOYEE’S UNPAID**
27 **EARNED SICK AND SAFE LEAVE;**

28 **(II) PUNITIVE DAMAGES IN AN AMOUNT TO BE DETERMINED BY**
29 **THE COURT;**

30 **(III) REASONABLE COUNSEL FEES AND OTHER COSTS;**

31 **(IV) INJUNCTIVE RELIEF, IF APPROPRIATE; AND**

(V) ANY OTHER RELIEF THAT THE COURT DEEMS APPROPRIATE.

3-1309.

(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) AN EMPLOYER MAY NOT:

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

(2) INTERFERE WITH, RESTRAIN, OR DENY THE EXERCISE BY AN EMPLOYEE OF ANY RIGHT PROVIDED FOR UNDER THIS SUBTITLE; OR

(3) APPLY AN ABSENCE CONTROL POLICY THAT INCLUDES EARNED SICK AND SAFE LEAVE ABSENCES AS AN ABSENCE THAT MAY LEAD TO OR RESULT IN AN ADVERSE ACTION BEING TAKEN AGAINST AN EMPLOYEE.

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

3-1310.

(A) AN EMPLOYEE MAY NOT IN BAD FAITH:

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

1 **(2) BRING AN ACTION UNDER § 3-1308 OF THIS SUBTITLE; OR**

2 **(3) TESTIFY IN AN ACTION UNDER § 3-1308 OF THIS SUBTITLE.**

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

5 **3-1311.**

6 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND HEALTHY WORKING**
7 **FAMILIES ACT.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
9 apply only prospectively and may not be applied or interpreted to have any effect on or
10 application to any bona fide collective bargaining agreement entered into before June 1,
11 2017, for the duration of the contract term, excluding any extensions, options to extend, or
12 renewals of the term of the original agreement.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 January 1, 2018.