

EMERGENCY BILL

AN ACT concerning

Paid Leave Compromise Act of 2018

FOR the purpose of amending a requirement that certain employers provide certain employees with earned sick and safe leave to require certain employers to provide certain employees with paid time off; exempting certain employers who provide certain existing paid leave from the requirements of this Act; providing that local laws governing paid time off are preempted by this Act; providing for the method of determining whether an employer is required to provide paid time off; providing for the manner in which paid time off is accrued by the employee and treated by the employer; providing for a certain hardship waiver; amending certain notice provisions; altering certain provisions relating to an employee complaint against an employer; amending the application of certain provisions of this Act; providing for the application of certain provisions of this Act; altering certain terms; altering certain definitions; defining certain terms; making this Act an emergency measure; and generally relating to paid leave.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 3-1301 through 3-1311 to be under amended subtitle “Subtitle 13.

Paid Leave Compromise Act”

Annotated Code of Maryland

2008 Replacement Volume and 2017 Supplement

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

Title 3. Employment Standards and Conditions

Subtitle 13. Paid Leave Compromise 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.

~~(e)~~ — “Domestic violence” means abuse against an individual eligible for relief.

~~(d)~~ — “Earned sick and safe leave” means leave away from work that is provided by an employer under ~~§ 3–1304~~ of this subtitle.

~~(e)~~ **(B)** “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;

(5) is employed by a temporary services agency to provide temporary staffing services to another person if the temporary services agency does not have day-to-day control over the work assignments and supervision of the individual while the individual is providing the temporary staffing services; or

(6) is directly employed by an employment agency to provide part-time or temporary services to another person;

~~(e)~~ **(C)** “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.

(D) “PAID TIME OFF” MEANS PAID LEAVE AWAY FROM WORK THAT:

(1) MAY BE USED BY AN EMPLOYEE FOR ANY REASON; AND

(2) THAT IS PROVIDED BY AN EMPLOYER UNDER § 3-1304 OF THIS SUBTITLE.

~~(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) — “Restaurant” means an establishment that:~~

~~(1) — accommodates the public;~~

~~(2) — is equipped with a dining room with facilities for preparing and serving regular meals; and~~

~~(3) — has average daily receipts from the sale of food that exceed the average daily receipts from the sale of alcoholic beverages.~~

~~(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.~~

~~(l) — Unless the context requires otherwise, “year” means a regular and consecutive 12-month period as determined by the employer.~~

3-1302.

(a) In this section, “Existing paid leave” includes:

(1) vacation days;

(2) sick days;

(3) short-term disability benefits;

(4) floating holidays;

(5) parental leave; and

(6) other paid time off ~~that may be used under the terms and conditions as paid sick and safe leave.~~

(b) This subtitle may not be construed to:

(1) require an employer to compensate an employee for unused **PAID TIME OFF** ~~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:

(i) the policy permits an employee to accrue and use leave under terms and conditions that are at least equivalent to the **PAID TIME OFF** ~~earned sick and safe leave~~ provided for under this subtitle; or

(ii) the paid leave policy does not reduce employee compensation for an absence due to **PAID TIME OFF** ~~sick or safe leave~~;

(3) ~~except as provided in subsection (d) 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 and enforcing 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 prohibits the improper use of earned sick and safe leave, including prohibiting a pattern of abuse of earned sick and safe leave.~~

(C) AN EMPLOYER WITH AN EXISTING PAID LEAVE POLICY THAT PROVIDES AN AMOUNT OF PAID LEAVE MEETING THE TOTAL ANNUAL ACCRUAL REQUIREMENTS PROVIDED FOR IN § 3-1304 OF THIS SUBTITLE AND ALLOWS AN EMPLOYEE TO USE THE PAID LEAVE FOR ANY REASON SHALL BE EXEMPT FROM ALL OTHER REQUIREMENTS OF THIS SUBTITLE.

~~(e)~~ **(D)** For the purposes of subsection (b)~~(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.

~~(d)~~ **(E)** ~~(1)~~ Except as provided in paragraph ~~(2)~~ of this subsection, [this] **THIS** subtitle preempts the authority of a local jurisdiction to enact a law ~~on or after January 1, 2017,~~ that regulates **PAID TIME OFF** ~~sick and safe leave provided by an employer other than the local jurisdiction.~~

~~(2)~~ This subsection does not preempt a local jurisdiction from amending a law that was enacted before January 1, 2017, and regulates sick and safe leave provided by an employer.

3-1303.

(a) This subtitle does not apply to an employee who:

~~(1)~~ regularly works less than 12 hours a week for an employer;

(1) HAS BEEN EMPLOYED BY THE EMPLOYER FOR LESS THAN 120 DAYS DURING A 12-MONTH PERIOD;

(2) (i) is employed in the construction industry, AS CLASSIFIED BY CODE UNDER THE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM; [and]

(3) IS COVERED UNDER THE FEDERAL RAILROAD UNEMPLOYMENT INSURANCE ACT; OR

(4) (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; or~~

~~(3) (i) is called to work by the employer on an as needed basis in a health or human services industry;~~

~~(ii) can reject or accept the shift offered by the employer;~~

~~(iii) not guaranteed to be called on to work by the employer; and~~

~~(iv) is not employed by a temporary staffing agency.~~

~~(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 doorman;~~

~~(6) a handyperson; or~~

~~(7) a building superintendent.~~

(c) (1) Except as provided in paragraph (2) of this subsection, if a unit of state or local government's **PAID TIME OFF sick leave** accrual and use requirements meet or exceed the **PAID TIME OFF sick and safe leave** provided for under this subtitle, employees of the unit of state or local government who are part of the unit's personnel system are subject to the unit's laws, regulations, policies, and procedures providing for:

(i) accrual and use of **PAID TIME OFF sick leave**;

(ii) grievances; and

(iii) disciplinary actions.

(2) employees of a unit of state government that are entitled to PAID TIME OFF ~~sick and safe leave~~ under this subtitle and who are not covered by the unit's PAID TIME OFF ~~sick leave~~ and accrual and use requirements are subject to § 3-1308 of this subtitle.

3-1304.

(a) (1) (i) Subject to subparagraph ~~(iii)~~ **(II)** of this paragraph, an employer ~~that employs 15 or more employees~~ shall provide an employee with PAID TIME OFF ~~earned sick and safe leave~~ that is paid at the same wage rate as the employee normally earns **IF**:

A. IN 2018, THE EMPLOYER EMPLOYED 50 OR MORE EMPLOYEES;

B. IN 2019, THE EMPLOYER EMPLOYS 40 OR MORE EMPLOYEES; AND

C. IN 2020 AND EACH YEAR THEREAFTER, THE EMPLOYER EMPLOYS 25 OR MORE EMPLOYEES.

~~(ii) An employer that employs 14 or fewer employees shall at least provide an employee with unpaid earned sick and safe leave.~~

~~(iii) An employer may not be required to pay a tipped employee more than the applicable minimum wage for PAID TIME OFF earned sick and safe leave.~~

(2) (i) For the purpose of determining whether an employer is required to provide ~~paid or unpaid PAID TIME OFF 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 **PROVIDED THAT, DURING**

THE IMMEDIATELY PRECEDING CALENDAR YEAR, THE EMPLOYEE WAS EMPLOYED BY THE EMPLOYER AT LEAST 120 DAYS TOTAL ~~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 **PAID TIME OFF** ~~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 40 hours of **PAID TIME OFF** ~~earned sick and safe leave~~ in a year;

(2) use more than 64 hours of **PAID TIME OFF** ~~earned sick and safe leave~~ in a year;

(3) accrue a total of more than 64 hours at any time; or

(4) use **PAID TIME OFF** ~~earned sick and safe leave~~ during the first ~~106~~ **120** calendar days the employee works for the employer; ~~or~~

(5) ~~accrue earned sick and safe leave during a:~~

(i) ~~2 week pay period in which the employee worked fewer than 24 hours total;~~

(ii) ~~1 week pay period if the employee worked fewer than a combined total of 24 hours in the current and the immediately preceding pay period;~~
~~or~~

(iii) ~~pay period in which:~~

1. ~~the employee is paid twice a month regardless of the number of weeks in a pay period; and~~

2. ~~the employee worked fewer than 26 hours in the pay period.~~

(d) At the beginning of each year, an employer may award to an employee the full amount of **PAID TIME OFF** ~~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 **PAID TIME OFF** ~~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) **PAID TIME OFF** ~~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 **PAID TIME OFF** ~~earned sick and safe leave~~ at the end of each year, the employee may carry over the balance of the **PAID TIME OFF** ~~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 40 hours of **PAID TIME OFF** ~~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 **PAID TIME OFF** ~~earned sick and safe leave~~ under paragraph (1) of this subsection if:

(i) the employer awards the employee the full amount of **PAID TIME OFF** ~~earned sick and safe leave~~ at the beginning of each year under subsection (d) of this section; or

(ii) the employee is employed by a nonprofit entity or a governmental unit in accordance with a grant, the duration of which is limited to 1 year and is not subject to renewal.

~~(h) If an employee is rehired by the employer within 37 weeks 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 unless the employer voluntarily paid out the unused earned sick and safe leave on the termination of employment.~~

~~(i)~~ (1) An employer may allow an employee to use **PAID TIME OFF** earned sick and safe leave before the employee accrues the amount needed.

(2) If an employee is allowed under paragraph (1) of this subsection to use **PAID TIME OFF** earned sick and safe leave before it has accrued, the employer may deduct the amount paid for the **PAID TIME OFF** 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 **PAID TIME OFF** earned sick and safe leave that was used.

~~(j)~~ (I) An employer may not be required to pay out on the termination of employment unused **PAID TIME OFF** earned sick and safe leave accrued by an employee.

~~(k)~~ (J) An employer who acquires, by sale or otherwise, another employer shall allow all employees of the original employer who remain employed by the successor employer to retain all unused **PAID TIME OFF** earned sick and safe leave accrued during employment with the original employer.

(K) AN EMPLOYER MAY DENY A REQUEST TO TAKE PAID TIME OFF IF:

(1) THE EMPLOYER IS A PRIVATE EMPLOYER LICENSED UNDER TITLE 7 OR TITLE 10 OF THE HEALTH – GENERAL ARTICLE TO PROVIDE SERVICES TO DEVELOPMENTALLY DISABLED OR MENTALLY ILL INDIVIDUALS;

(2) THE NEED TO USE PAID TIME OFF IS FORESEEABLE;

(3) AFTER EXERCISING REASONABLE EFFORTS, THE EMPLOYER IS UNABLE TO PROVIDE A SUITABLE REPLACEMENT EMPLOYEE; AND

(4) THE EMPLOYEE'S ABSENCE WILL CAUSE A DISRUPTION OF SERVICE TO AT LEAST ONE INDIVIDUAL WITH A DEVELOPMENTAL DISABILITY OR MENTAL ILLNESS.

(L) (1) AN EMPLOYER MAY NOT REQUIRE DISCLOSURE OF DETAILS RELATING TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, SEXUAL CONTACT OR STALKING OR THE DETAILS OF AN EMPLOYEE'S OR AN EMPLOYEE'S FAMILY MEMBER'S HEALTH INFORMATION AS A CONDITION OF PROVIDING, EARNING, ACCRUING OR USING PAID TIME OFF UNDER THIS SUBTITLE.

(2) IF AN EMPLOYER POSSESSES HEALTH INFORMATION OR INFORMATION PERTAINING TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, SEXUAL CONTACT, OR STALKING ABOUT AN EMPLOYEE OR EMPLOYEE'S FAMILY MEMBER, SUCH INFORMATION SHALL BE TREATED AS CONFIDENTIAL AND NOT DISCLOSED EXCEPT TO THE AFFECTED EMPLOYEE OR WITH THE PERMISSION OF THE AFFECTED EMPLOYEE UNLESS REQUIRED BY EXISTING REGULATION OR LAW.

3-1305.

(A) AN EMPLOYER MAY APPLY TO THE DEPARTMENT FOR A HARDSHIP WAIVER FROM THE REQUIREMENTS OF THIS SUBTITLE.

(B) (1) THE DEPARTMENT SHALL WAIVE THE REQUIREMENTS OF THIS SUBTITLE FOR AN EMPLOYER THAT CAN PROVIDE SPECIFIC AND DEMONSTRATED EVIDENCE THAT A SIGNIFICANT FINANCIAL HARDSHIP WILL RESULT FROM THE EMPLOYER'S COMPLIANCE WITH THIS SUBTITLE.

(2) EVIDENCE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE EVIDENCE THAT COMPLIANCE WITH THIS SUBTITLE:

(I) CREATES A RISK THAT THE EMPLOYER WILL HAVE TO CEASE OPERATIONS;

(II) MAY FORCE THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF EMPLOYEES; AND

(III) PLACES THE EMPLOYER AT A COMPETITIVE DISADVANTAGE WITH EMPLOYERS THAT ARE NOT SUBJECT TO THIS SUBTITLE.

(C) THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION, INCLUDING REGULATIONS THAT:

(1) ESTABLISH A PROCESS FOR RECEIVING, PROCESSING, AND REVIEWING WAIVER APPLICATIONS; AND

(2) PROVIDE GUIDANCE ABOUT THE APPLICATION OF THIS SECTION.

(D) THE DEPARTMENT SHALL REQUIRE AN EMPLOYER SEEKING A HARDSHIP WAIVER TO REAPPLY BIENNIALLY.

~~(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) for maternity or paternity leave; or~~

~~(5) 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:~~

~~(i) 1. an employee fails to provide the notice required under paragraphs (1) or (2) of this subsection; and~~

~~2. the employee's absence will cause a disruption to the employer; or~~

~~(ii) 1. the employer is a private employer licensed under Title 7 or Title 10 of the Health General Article to provide services to developmentally disabled or mentally ill individuals;~~

~~2. the need to use earned sick and safe leave is foreseeable;~~

~~3. after exercising reasonable efforts, the employer is unable to provide a suitable replacement employee; and~~

~~4. the employee's absence will cause a disruption of service to at least one individual with a developmental disability or mental illness.~~

~~(c) 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.~~

~~(d) (1) (i) 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, or the following pay period, to make up work hours that the employee took off for which the employee could have taken earned sick and safe leave.~~

~~(ii) An employee is not required to offer or to accept an offer of additional work hours or a trade in shifts.~~

~~(iii) if an employee works additional hours or trades shifts under subparagraph (i) of this paragraph, the employer may not deduct the absence from the employee's accrued earned sick and safe leave.~~

~~(2) (i) This paragraph applies only to an employee employed in the restaurant industry who is compensated as a tipped employee under § 3-419 of~~

~~this title and who would be entitled to paid leave under § 3-1304 of this subtitle if the employee:~~

- ~~1. — needs to take earned sick and safe leave;~~
- ~~2. — prefers and is able to work additional hours or trade shifts with another employee in the same pay period or the following pay period; and~~
- ~~3. — requires the employer to arrange coverage of the shift.~~

~~(ii) — If the employer is contacted to arrange the coverage of a shift under subparagraph (i) of this paragraph, the employer shall have the discretion to offer the employee a choice of:~~

~~1. — being paid the minimum wage required under § 3-413 of this title for the employee's absence; or~~

~~2. — working an equivalent shift of the same number of hours in the same pay period or the following pay period.~~

~~(iii) — An employer that does not offer the tipped employee the choice under subparagraph (ii) of this paragraph shall pay to the employee the minimum wage required under § 3-413 of this title for the use of the earned sick and safe leave.~~

~~(iv) — An employer may deduct an absence taken under this paragraph from the employee's accrued earned sick and safe leave.~~

~~(3) — An employer is not required to consent to an employee's request to work additional hours or trade shifts if the additional hours or trade in shifts would result in the employer being required to pay overtime to the employee.~~

~~(e) — (1) — Except as provided in paragraph (2) of this subsection, 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 employer may require an employee to take earned sick and safe leave in an increment not exceeding 4 hours.~~

~~(f) — (1) — 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.~~

~~(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 to provide verification that the leave was used appropriately under subsection (a) of this section if:~~

~~(i) — the leave was used for more than two consecutive scheduled shifts; or~~

~~(ii) — 1. — the employee used the leave during the period between the first 107 and 120 calendar days, both inclusive, that the employee was employed by the employer; and~~

~~2. — the employee agreed to provide verification under terms mutually agreed to by the employer and the employee at the time the employee was hired by the employer.~~

~~(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 **PAID TIME OFF** ~~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 **PAID TIME OFF** ~~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:

(i) in § 3-1309 of this subtitle against the employer taking adverse action against an employee who exercises a right under this subtitle; and

(ii) in § 3-1310 of this subtitle against an employee making a complaint, bringing an action, or testifying in an action in bad faith; and

~~(4)~~ **(3)** 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:

(1) create and make available a poster and a model notice at no charge to the employer that may be used by an employer to comply with subsection (a) of this section; **AND**

~~(2) develop a model sick and safe leave policy that an employer may use as a sick and safe leave policy in an employee handbook or other written guidance to employees concerning employee benefits or leave provided by the employer; and~~

~~(3)~~ provide technical assistance to an employer, if an employer requests assistance regarding implementing the provisions of this subtitle.

(d) The Department shall post the notice ~~and model sick and safe leave policy~~ created and developed under subsection (c)(1) ~~and (2)~~ of this section on the Department's Web site in a downloadable format.

3-1307.

(a) An employer shall keep for at least 3 years a record of:

(1) PAID TIME OFF ~~earned sick and safe leave~~ accrued by each employee; and

(2) PAID TIME OFF ~~earned sick and safe leave~~ used by each employee.

(b) 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) — An employer that fails to keep accurate records or refuses to allow the Commissioner to inspect a record kept under subsection (a) of this section creates a rebuttable presumption that the employer violated this subtitle.~~

~~(2)~~ The Commissioner may waive a civil penalty assessed under this subtitle if the penalty was assessed for a violation that was due to an error caused by a third-party payroll service provider with whom the employer in good faith contracted for services.

3-1308.

(a) (1) If an employee believes that an employer has violated this subtitle, the employee may file a written complaint with the Commissioner.

(B) IF THE COMMISSIONER RECEIVES A COMPLAINT UNDER SUBSECTION (A) OF THIS SUBSECTION, THE COMMISSIONER SHALL:

(1) TRY TO RESOLVE THE ISSUE INFORMALLY; OR

(2) DETERMINE WHETHER THE EMPLOYER HAS VIOLATED THIS SECTION.

(C) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER HAS VIOLATED THIS SECTION, THE COMMISSIONER SHALL:

(1) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS SECTION;
AND

(2) IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL PENALTY OF:

(I) UP TO \$300 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION; OR

(II) UP TO \$600 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION IF THE VIOLATION OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD OCCURRED.

(D) THE PROVISIONS OF SUBSECTIONS (B) AND (C) OF THIS SECTION ARE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(E) (1) IN DETERMINING WHETHER THERE IS A VIOLATION OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER IF THE EMPLOYEE HAS BEEN DEPRIVED OF A RIGHT PURSUANT TO THIS SUBTITLE.

(2) IN DETERMINING THE AMOUNT OF ANY CIVIL PENALTY TO BE IMPOSED, THE COMMISSIONER SHALL CONSIDER THE:

(I) SERIOUSNESS OF THE VIOLATION;

(II) SIZE OF THE EMPLOYER'S BUSINESS;

(III) EMPLOYER'S GOOD FAITH IN COMPLYING WITH THIS SECTION; AND

(IV) EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS SECTION.

(F) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A VIOLATION UNDER SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER MAY BRING AN ACTION TO ENFORCE THE ORDER AND CIVIL PENALTY IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

(G) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A SUBSEQUENT VIOLATION AGAINST THE SAME EMPLOYEE UNDER SUBSECTION (C) OF THIS SECTION WITHIN 3 YEARS AFTER THE EMPLOYEE FILED A COMPLAINT THAT IS DETERMINED TO BE A VIOLATION UNDER THIS SUBSECTION, THE ATTORNEY GENERAL OR THE EMPLOYEE MAY BRING AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

(H) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER SUBSECTION (G) OF THIS SECTION, THE EMPLOYEE MAY BE ENTITLED TO ACTUAL DAMAGES AND REASONABLE ATTORNEY'S FEES AND COURT COSTS OF THE EMPLOYEE.

~~(1) Within 90 days after the receipt of a written complaint, the Commissioner shall conduct an investigation and attempt to resolve the issue informally through mediation.~~

~~(2) (i) If the Commissioner is unable to resolve an issue through mediation during the period stated in paragraph (1) of this subsection and the Commissioner determines that an employer has violated this subtitle, the Commissioner shall issue an order.~~

~~(ii) An order issued under subparagraph (i) of this paragraph:~~

~~1. shall describe the violation;~~

~~2. shall direct the payment of the full monetary value of any unpaid earned sick and safe leave and any actual economic damages;~~

~~3. may, in the commissioner's discretion, direct the payment of an additional amount up to three times the value of the employee's hourly wage for each violation; and~~

~~4. may, in the commissioner's discretion, assess a civil penalty of up to \$1,000 for each employee for whom the employer is not in compliance with this subtitle.~~

~~(3) The actions taken under paragraphs (1) and (2) of this subsection are subject to the hearing and notice requirements of Title 10, Subtitle 2 of the State Government Article.~~

~~(e) (1) Within 30 days after the Commissioner issues an order, an employer shall comply with the order.~~

~~(2) If an employer does not comply with an order within the time period stated in paragraph (1) of this subsection:~~

~~(i) The Commissioner may:~~

~~1. with the written consent of the employee, ask the Attorney General to bring an action on behalf of the employee in the county where the employer is located; or~~

~~2. bring an action to enforce the order for the civil penalty in the county where the employer is located; and~~

~~(ii) within 3 years after the date of the order, an employee may bring a civil action to enforce the order in the county where the employer is located.~~

~~(3) If an employee prevails in an action brought under paragraph (2)(ii) of this subsection to enforce an order, the court may award:~~

~~(i) three times the value of the employee's unpaid earned sick and safe leave;~~

~~(ii) punitive damages in an amount to be determined by the court;~~

~~(iii) reasonable counsel fees and other costs;~~

~~(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 **PAID TIME OFF** ~~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;

(2) bring an action under § 3-1308 of this subtitle; or

(3) testify in an action under § 3-1308 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.

~~Strikethroughs~~ = deletions from HB 1 of 2017 (Maryland Healthy Working Families Act)
SMALL CAPS = new provisions

3-1311.

This subtitle may be cited as the **PAID LEAVE COMPROMISE ACT** ~~Maryland Healthy Working Families Act~~.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye or nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.