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Dear Ms. Ong:

This is in response to your letter of March 23, 2018 seeking additional guidance on a wide variety of issues under the Maryland Healthy Working Families Act. To the extent that DLLR can provide further guidance, the responses are below. In many cases, the answer would depend on facts of a complaint as presented to the Commissioner and DLLR is not able to give a hypothetical answer. The numbers correspond to the question numbers in your letter.

1. DLLR believes the difference between a Temporary Services Agency under §3-1301(E)(5) and an Employment Agency under §3-1301(E)(6) is that a "temporary services agency" within the meaning of the law is intended to address registries or similar entities that match workers with clients of the temporary services agencies. The workers are generally considered independent contractors by the agency and may or may or may not be considered employees of the clients to whom they are referred. Employment agencies, on the other hand, consider their workers to be employees.
2. Nothing in the law prohibits an employer from seeking verification of familial relationships. If the Commissioner received a complaint, he would consider the reasonableness of the documentation or verification sought by the employer.
3. Upon receipt of a complaint, it is not likely that the Commissioner would consider a coffee house or bakery to be a "dining room with facilities for preparing and serving regular meals." Most coffee houses such as Starbucks simply re-heat a limited selection of pre-prepared and pre-packaged food.
4. The terms of use of short term disability benefits depend on the particular policy. DLLR does not review, evaluate or "approve" individual employer disability policies. DLLR is not able to provide guidance on this question.
5. See question 4.
6. (a) If the Commissioner received a complaint from an employee who had been granted a block of time in January of 2018 (prior to the law going into effect) and used some or all of it before February 11, 2018, the Commissioner would consider whether the employee was permitted to use the leave under equivalent conditions to those set forth in the Maryland Healthy Working Families Act. See FAQ's Section III, Question 3. (b) If the rate of accrual is less than 1 hour for every thirty hours worked, the policy would not be providing "equivalent" benefits. (c) The law provides that the notice requirement for use of SSL cannot be more than 7 days. Any notice requirement for SSL use that exceeds 7 days would not be consistent with the law. The employer may apply it's existing notice requirement for leave other than SSL.

7. DLLR recognizes that additional clarification would be helpful about what it means to "regularly" work less than 12 hours per week. DLLR anticipates that additional guidance with be forthcoming in the near future.
8. If an employee is required to work a certain number of shifts in a given time period, it would appear that the employee is "guaranteed" to be called in to work.
9. See FAQ 4 which clarifies that the Commissioner will look at an employee's primary work location.
10. If an employee is not paid a salary or hourly wage, the employer will need to develop a reasonable method to impute an hourly rate to the employee. Wage and hour laws require hours to be tracked, an hourly rate imputed, and overtime paid for any employee who is not exempt from overtime, so this method could be used to calculate an hourly rate for sick leave calculations as well. The law requires that the employee be compensated at the rate the employee normally earns. Unless the employee actually earns the minimum wage, paying the minimum wage for SSL use would not satisfy the requirements of the law. An employer would not be required to include shift differentials in calculating the employee's normal wage rate unless the shift differential was part of the employee's normal wage rate. For example, if a security firm pays guards who work the day shift $10 per hour and guards who work the night shift $13 per hour, if a guard exclusively worked the night shift, the guard should be compensated for SSL use at the rate of $13 per hour.
11. (a) Because the law requires that an employee accrue one hour of leave for every thirty hours that the employee works, the employer will need to develop a method to track hours for employees who are compensated by a method other than hourly or salary. (b) Yes. All hours are counted.
12. If an employee works fewer than the number of hours set forth in 3-1304(C)(5), the employer is not required to count those hours toward the 30 hour requirement.
13. See FAQ 13 which addresses hiring after the beginning of the benefit year.
14. Whether an employee has "generally complied" with an employer's notice requirements will depend upon the facts and circumstances of the particular situation.
15. The law provides that an employer's procedural requirements for requesting or reporting leave may not interfere with the employee's ability to use earned sick and safe leave. This suggests that an employer may not have a general policy that interferes with the employee's ability to use it nor may an employer interfere in a specific situation.
16. Whether an employee's absence will cause a disruption will depend on the facts and circumstances of a particular case. If the Commissioner received a complaint, it is unlikely that he would find a minor inconvenience on the part of an employer to be a "disruption."
17. (a), (b) and (c) Whether an employer has exercised "reasonable efforts" and what "will cause disruption" will depend on the facts and circumstances of a particular situation. Generally, this provision would apply only to direct service providers but the Commissioner would look at the specific circumstances of each situation.
18. The law requires that with each pay period an employer provide in writing by any reasonable method a statement regarding the amount of earned sick and safe leave that

is available for the employee to use. If an employer has clearly communicated in writing to employees that it will refer to SSL as “PTO” it could reference “PTO” rather than SSL.

19. Please see response to question 18. DLLR cannot provide advice about whether it is appropriate to include the names and leave balances of other employees in a spreadsheet.
20. Please see response to question 18.
21. If the Commissioner received a complaint, he would consider whether the verification requested by the employer was reasonable under the circumstances. For example, if the employee used SSL for a medical appointment for a child, a doctor’s note to that effect would be reasonable.
22. The law provides that an employer may deny a “subsequent” request to use SSL for the same reason. It does not provide that an employer may deny leave for the current instance for which verification was not provided. In many cases, the employee would not be able to provide the verification until after the leave was used.
23. An employer may have a policy providing that any leave used for a SSL qualifying reason will be deducted from the employee’s accrued SSL. This policy should be clearly communicated to employees.
24. If the Commissioner received a complaint, he would consider whether the employer’s notice and record keeping was sufficient to satisfy the law and whether the employee clearly understood the amount of SSL that was accrued and used regardless of the name the employer assigned to the leave.
25. An employer may have a neutral policy that is uniformly enforced such as a requirement that an employee work the day before a holiday in order to be paid for the holiday. An employer may have a policy that provides that an employee will only receive their regular rate of pay if they call out on a holiday. The employer would need to have a policy stating that holiday pay is contingent on the employee working on the holiday.