

OREGON'S NEW PAID SICK LEAVE LAW: AN OVERVIEW

Insights

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On June 22, 2015, Oregon became the fourth state to enact a statewide mandatory paid sick leave law, following California, Connecticut, and Massachusetts. The bill, signed into law by Governor Kate Brown, requires Oregon employers to provide up to 40 hours of sick leave to employees per year beginning January 1, 2016, and in most cases that leave time must be paid.

Just about every employer with workers in Oregon will feel the impact of the new paid sick leave law in one way or another. 2016 will be here before you know it, so here's an overview on what you need to know:

Who Is Impacted?

Employers with 10 or more employees (six or more for Portland employers) will be required to provide their employees who work in Oregon with up to 40 hours of **paid** sick leave per year. Smaller companies are not necessarily off the hook – employers with fewer than 10 employees (fewer than six for Portland employers) will also be required to provide employees with up to 40 hours of sick leave, but this bank of leave time can be **unpaid**.

The law applies to the vast majority of Oregon's workforce, including full-time, part-time, temporary, and seasonal employees. There are limited exceptions, including independent contractors, employees

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receiving paid sick leave under federal law, certain work-training program and work-study program participants, certain railroad workers, and individuals employed by their parent, spouse, or child. The law applies to both private and public-sector employers, but excludes the federal government.

Employers that already provide their employees paid time off under a PTO, vacation, or other paid leave policy are not required to provide any additional paid sick time under this law, provided they permit employees to use at least 40 hours of leave per year for the purposes covered under the law and otherwise meet the minimum requirements under the law.

What Can Employees Use Sick Time For?

Employees can use sick time, whether paid or unpaid, for the following purposes:

- for an employee's own illness, injury, or health condition, including time off for medical diagnosis, care, treatment, and preventive care;
- to care for a family member with an illness, injury, or health condition, including time off for medical diagnosis, care, treatment, and preventive care ("family member" has the same definition as under the Oregon Family Leave Act (OFLA), and thus includes spouses, parents, parents-in-law, children, grandparents, and grandchildren);
- for any purposes allowed under OFLA, such as bereavement leave, caring for a newborn child or newly adopted/foster child, or sick child leave, regardless of whether the employee is eligible for OFLA leave and regardless of whether the company is a "covered employer" under OFLA;
- for any purpose allowed under Oregon's domestic violence, harassment, sexual assault, or stalking law;
- to donate accrued sick time to another employee, who may use it for any qualifying purpose (i.e., any reason listed above or below). This is optional for

employers; it is only permitted if the employer has a policy that allows employees to donate sick time to coworkers; or

- in the event of a public health emergency, including upon an order of a general or specific public health emergency, or when the employer excludes the employee from the workplace by law or rule for health reasons.

Can Employers Require Medical Verification?

If an employee is absent for more than three consecutive scheduled workdays, you may require verification from a healthcare provider of the employee's or employee's family member's need for sick leave. The employer must pay for any costs of verification that are not covered under a health benefit plan.

How Is The Time Earned?

Employees accrue sick time at a rate of one hour per every 30 hours worked, or one and one-third hours for every 40 hours worked, up to 40 hours per year. Exempt employees are presumed to work 40 hours per week unless their normal work week is less than 40 hours a week. Employees start to accrue sick time on January 1, 2016, or, if hired after January 1, 2016, on their first day of employment. While new employees begin to accrue sick time on their first day of employment, they are not eligible to use accrued sick time until their 91st day of employment unless their employer authorizes prior use.

Employees must also be permitted to carry over up to 40 hours of unused sick time to the subsequent year. Employers who provide employees with sick time or PTO at the beginning of each year – also known as “front loading” – instead of on an accrual basis are exempt from the carry-over obligations of the law.

Employers are not required to pay employees for accrued but unused sick leave upon separation from employment.

What Are Employees' Rights And Employers' Obligations?

Employers are prohibited from interfering with an employee's right to use sick leave or retaliating against an employee who requests or uses sick leave. In addition to enforcement by the Oregon Bureau of Labor and Industries (BOLI), employees who believe their rights under this act have been violated will have a private right of action to sue.

You must provide notification at least once per quarter to each employee of the amount of accrued and unused sick time available for use by the employee; you can satisfy the quarterly requirement by including the information in employee pay statements. You are also required to provide written notice to employees regarding the requirements of the law. BOLI will soon make available to employers a template that meets the required notice provisions under the law.

What About Employers In Portland And Eugene?

Portland has its own local sick leave law, which went into effect in January 2014. That law requires employers with six or more employees to provide paid sick leave to employees working in Portland; those with fewer than six employees must only provide unpaid sick leave. The new statewide law retains the six-employee threshold for employers located in Portland, not the 10-employee threshold which applies for all others. Portland employers must continue to comply with the Portland ordinance until the statewide law takes effect on January 1, 2016.

The Eugene City Council voted to repeal its own city ordinance upon the Governor's signing of the statewide legislation, and therefore the Eugene sick leave law will not move forward. Employers with employees in Eugene need only comply with the statewide legislation.

The new law prohibits other local governments within Oregon from creating their own sick leave requirements for private employers, so companies can rest assured that they will not be faced with having to comply with

multiple local sick leave laws within the state in the future.

What Should Employers Do Now?

In anticipation of these changes, Oregon employers should review their paid time off, vacation, or other paid leave policies to determine whether they will have to implement a paid sick time policy for any of their employees or amend their existing policies to come into compliance with the new law. You should also inform managers and supervisors of the company's new policy changes and advise them of their added responsibilities.

Consider revising your employee handbooks to account for these changes and be on the lookout for the poster and template notice issued by BOLI. If you choose not to pay out accrued but unused sick leave upon termination, make that abundantly clear in your written policies.

If you have any questions about this new law or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Portland office at (503) 242-4262.

This Legal Alert provides an overview of a specific Oregon law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.