

Portland Mandates Paid Sick Leave to "Promote a Vibrant, Productive and Resilient City"

April, 2013

The West Coast is pioneering a national trend to require that employers provide sick leave to employees. Portland recently joined Seattle and San Francisco in passing a mandatory sick leave requirement, applicable to all eligible employees working in Portland. It is essential that employers understand the requirements of the new city ordinance in order to avoid having to defend complaints to the Bureau of Labor Industries, which is tasked with its enforcement.

Beginning January 1, 2014, private employers will be required to provide 40 hours of sick leave each year to eligible employees who work within Portland's city limits. Employers should be aware that this includes employers not based within Portland, but which have employees who work more than 240 hours in a calendar year within the geographic Portland city limits. *Any employee* who meets these criteria is entitled to this paid leave, although independent contractors are not covered by the ordinance.

- Under the city ordinance, every employer with six or more employees must provide **paid** leave. Employers with fewer than six employees must also provide leave, but it may be unpaid.
- Employees will accrue sick leave time at a rate of one hour sick leave for every 30 hours worked, up to 40 hours per year, and that accrual will begin immediately for any employee working on January 1, 2014 or hired after that date. This is a change from many employer policies which require a certain amount of service time before PTO is accrued, although the new law does provide a 90-day waiting period after hire before sick time may be used.
- Employees must be allowed to use the accrued time in increments of an hour (rather than, for example, by the day or half-day).
- Sick time may be used for:
 - an employee or employee's family member who is ill (including for physical and mental health illness or issues, pregnancy, and preventative care). "Family member" includes the employee's spouse or domestic partner, as well as parent, grandparent or child (by birth, adoption, marriage, or foster relationship).
 - domestic violence, stalking, harassment, or sexual assault issues.
 - certain public health emergencies.
- Employers will be allowed to require documentation of significant (3+ day) absences, and employees are encouraged to notify employers as far in advance as practicable.
- The new law also prohibits retaliatory action or discrimination against an employee for use of sick time, which has the potential to affect many employee discipline policies as currently written.
- Employers that already provide sick leave or paid time off equivalent to or in excess of what the ordinance requires do not need to make any changes to their policies, but should review their existing policies carefully to ensure that they comply with the use, carryover, and accrual requirements.

It will be important for employers to comply with the record-keeping requirements for employee eligibility, accrual and use of sick leave hours and the preservation of these records in compliance with the new rules. Additionally, employers will be required to provide written notice to employees, or conspicuously post notice of these rights and policies, similar to the requirements for wage and hour postings.

We are happy to consult with you to examine whether your existing leave policies are compliant with the new requirements or develop new policies to come into compliance, including new policies for ensuring accurate recordkeeping and developing policies and standards for employee notification. Please contact Katherine Somervell at katherine.somervell@bullivant.com to discuss how we can help your company successfully comply with these new requirements.