

New Oregon Law Extends Sick Leave to (Almost) All Employees

July, 2015

Beginning January 1, 2016, most Oregon employers will be required to provide up to 40 hours of sick leave per year to their employees. Whether sick leave is paid or unpaid depends on the number of employees the business employs.

Covered Employers; Minimum Requirements. Employers that employ at least 10 employees in Oregon (six in Portland) are required to implement a sick time policy that allows an employee to earn and use up to 40 hours of paid sick time per year. Paid sick time accrues at the rate of at least one hour of paid sick leave for every 30 hours worked, or 1-1/3 hours for every 40 hours worked. Employers below the threshold limits must allow employees to earn the same amount of sick time off, but it does not have to be paid.

Covered Employees. Covered employees include all state, government and private sector full- and part-time workers, regardless of how they are paid (hourly, salaried, commissioned or piece-work), subject to certain narrow exclusions, such as workers who receive paid sick time under federal law, employees covered by collective bargaining agreements, and children employed by their parents.

Earning and Accrual. An employee must begin to earn and accrue sick time on the first day of employment, and may carry over up to 40 hours of sick leave from one year to a subsequent year, although an employer may adopt a policy that limits an employee from accruing more than 80 hours of sick time or from using more than 40 hours of sick time in a year. An employee is eligible to use sick time beginning on the 91st day of employment, although an employer may authorize earlier use, and may then use sick time as it is accrued.

No Cash-out Required. The new law does not require an employer to compensate an employee for accrued, unused sick time upon the employee's termination, resignation, retirement or other separation from employment.

Permissible Uses of Sick Time. The use of the sick time is much broader than the name would imply. An employee may use sick time mandated by the new law for:

1. The employee's own mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition, or the need for preventative medical care;
2. The care of a family member with a mental or physical illness, injury or health condition, care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness or health condition or care of a family member who needs preventative care; "family member" for this purpose means the employee's spouse, children, parents, parents-in-law, grandparents, grandchildren and registered same-sex domestic partners;
3. Bereavement leave;
4. Seeking legal or law enforcement assistance with regard to the health and safety of the employee or the employee's minor child or dependent, and to obtain services from a victim services provider, or to relocate or take steps to secure an existing home to ensure the safety of the employee or minor child or dependent;
5. Donating accrued sick time to another employee if the donee uses the donated sick time for one of the above-listed purposes, provided that the employer has a policy that allows an employee to donate sick time to a co-worker; or
6. Absence due to a certain types of "public health emergency."

Use of Sick Leave; Procedures and Notice. An employer must grant sick leave time upon request by the employee. Leave may be taken in one-hour increments unless doing so would impose an undue hardship on the employer and the employer has a policy or combination of policies that allows an employee to use at least 56 hours of paid leave per year that may be taken in minimum increments of four hours. (What constitutes "undue hardship" is to be addressed in regulations to be adopted by the Commissioner of the Bureau of Labor and Industries.) An employer may require the employee to comply with the employer's usual and customary notice and procedure requirements for absences if they do not interfere with the ability of the employee to use the sick time. If the need to use the sick time is foreseeable, the employer may require reasonable advance notice, not to exceed 10 days prior to the date the sick time is to begin or as soon as otherwise practicable, and the employee must make a reasonable effort to schedule the sick time in a manner that does not unduly disrupt the operations of the employer. If the need is unforeseeable, the employee must provide notice as soon as practicable and must comply with the employer's notice and procedural requirements as long as they do not interfere with the ability of the employee to use the sick time.

Medical Verification. An employer may require verification from a health care provider if an employee takes more than three consecutive workdays off as sick time. If the need for sick time is foreseeable and is projected to last more than three workdays, the employer may require that the verification be provided in advance. The cost of the verification must be borne by the employer to the extent that it is not paid under a health benefit plan of the employer. Verification or certification may not be required to explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.

If the employer suspects that an employee is abusing sick time, including engaging in a "pattern of abuse," the employer may require verification from a health care provider of the need of the employee to use sick time, regardless of whether the employee has used sick time for more than three consecutive work days. "Pattern of abuse" includes repeated use of unscheduled sick time on or adjacent to weekends, holidays or paydays.

Quarterly Notice of Accrued Sick Time. Employers must provide written notification at least quarterly of the amount of accrued and unused sick time available for use by the employee.

Employers should take care to update their employee handbook or policies manual to reflect the requirements of this new law.