



## Oregon Enacts Paid Sick Time

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### Quick Facts

- On June 12, 2015, the Oregon Legislature passed Senate Bill 454, requiring all employers to provide sick leave.
- This new law will take effect on Jan. 1, 2016.
- The law states that employers with 10 or more employees must provide **paid** sick leave, and employers with fewer than 10 employees must provide **unpaid** sick leave.

Beginning on Jan. 1, 2016, all Oregon employers must allow employees to earn and use up to 40 hours of sick leave per year.

On June 12, 2015, the Oregon Legislature passed [Senate Bill 454](#), which requires all Oregon employers to provide sick leave to their employees.

The bill was signed into law by Governor Kate Brown on June 22, 2015, and will take effect on **Jan. 1, 2016**.

### Affected Employers

In general, **all employers in Oregon** will be required to comply with the new sick leave law. However, the mandate requiring **paid leave** only applies to employers with 10 or more employees.

Under the new law:

- Employers with **10 or more employees** must allow employees to earn and use up to 40 hours of **paid sick time** per year.
- Employers with **fewer than 10 employees** must allow employees to earn and use up to 40 hours of **unpaid sick time** per year.

The law allows an employer to choose any consecutive 12-month period for purposes of compliance.

Employers must provide sick time to virtually all employees, including full-time, part-time, commissioned and piece-rate employees.

### Accrual of Leave

Under Oregon's new sick leave law, employees earn a minimum of:

- One hour of sick time for every 30 hours worked; or
- 1½ hours of sick time for every 40 hours worked.

Exempt employees are presumed to work 40 hours per week, unless the actual workweek is less than 40 hours. In this case, accrual of sick time is based on the actual workweek of the exempt employee.

Employees begin to earn and accrue sick time on the first day of employment. However, an employer may restrict use of accrued sick time until the employee's 91st day of employment.

In addition, an employer may limit an employee's sick time **accrual** to 80 hours per year, and it may restrict employee **use** of sick time to 40 hours per year.



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### Reasons for Leave

Sick time may be taken in hourly increments.

An employee may use accrued sick time:

- For the employee's mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment, or the need for preventive medical care;
- For the care of a family member with a mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment, or the need for preventive medical care;
- To care for an infant or newly adopted child;
- To deal with the death of a family member by attending the funeral, making arrangements or grieving;
- To seek legal or law enforcement assistance to ensure the health and safety of the employee or the employee's minor child;
- To obtain services from a victim services provider or to relocate because the employee or the employee's minor child are victims of domestic violence, harassment, sexual assault or stalking; and
- For the closure of the employee's place of business, or the school or place of care of the employee's child.

In addition, employees may **donate** accrued sick time to co-workers for one of the specified purposes above, if permitted by the employer's policy.

### Carry-over and Rehire Requirements

Employees may carry over up to 40 hours of unused sick time from one year to the next. However, an employer with 10 or more employees is not required to allow employees to carry over unused sick time, if, by mutual consent with the employee, the employer:

- Pays out any unused sick time at the end of the year; and

- Credits the employee with the required paid sick time on the first day of the subsequent year.

In addition, employers with fewer than 10 employees may also avoid the carryover of unused sick time by crediting employees with the required amount of sick time on the first day of the immediately subsequent year (if mutually agreed upon with the employees).

Employees who are rehired within 180 days of separation must have any previously accrued sick time restored. Employers are not required to pay out accrued but unused sick time upon an employee's termination, resignation, retirement or other separation from employment.

### "Front-loading" Option for Employers

Oregon's new sick leave law allows an employer the option of "front-loading" sick time. Under this method, an employer may make a certain number of hours of sick time available to an employee as soon as the employee becomes eligible to use sick time, on the first day of the subsequent year, without regard to an accrual rate.

Employers who front-load at least 40 hours of unpaid or paid sick time (depending on the employer's size) for employees at the beginning of each year are not required to comply with the law's accrual rate or carry-over requirements.

### Notice and Certification Requirements

When possible and when the need for leave is foreseeable, an employer may require advance notice of an employee's intention to use sick time, up to 10 days prior (or as soon as otherwise practicable). In addition, employees must make a reasonable attempt to schedule sick time in a manner that does not unduly disrupt the employer's operations.

If an employee takes more than three consecutive workdays of sick time, an employer may require verification from a



health care provider of the need for the sick time.

If an employee's need for sick time is anticipated to last more than three consecutive workdays, the employer may require verification be provided prior to the sick time commencing.

An employer may also require verification if it suspects abuse of sick time by an employee (such as a pattern of unscheduled sick time adjacent to weekends, holidays or vacation days), regardless of whether the employee used sick time for more than three consecutive days.

The employer cannot require that the verification explains the nature of the illness or the details (like in the case of domestic violence) related to the use of sick time.

#### **Employee Protections**

An employer may not require an employee to find a replacement worker as a condition of an employee's use of accrued sick time. In addition, an employer may not require an employee to work an alternate shift to make up for the use of sick time.

By mutual agreement, an employee may work additional hours to compensate for hours that he or she was absent without using sick time. However, the employer may not require the employee to work additional hours or shifts.

An employer may not interfere with, restrain an employee's rights to, or fail to pay an employee for sick time he or she is entitled to. Employers are prohibited from retaliation and discrimination against employees for inquiring about, requesting or using sick time.

#### **Implications for Employers**

Employers must comply with the requirements of Oregon's new sick time law beginning on Jan. 1, 2016. Employees who are employed on Jan. 1, 2016, may use sick time as it accrues on or after Jan. 1, 2016, provided they have been employed for at least 90 days.

Employers with a sick leave, paid vacation, paid personal time off or other paid time off policies or programs that are substantially equivalent to or more generous than the minimum requirements of the law will be considered to be in compliance.

Employers will be required to provide a quarterly written notification (such as on a paystub) to each employee stating the amount of accrued and unused sick time available.

Employers will also be required to provide employees with notice of their rights and responsibilities under the new sick leave law.

#### **Portland and Eugene Sick Leave Ordinances**

Prior to the passage of Senate Bill 454, the cities of Portland and Eugene passed their own sick leave ordinances. The new state law explicitly provides that Oregon state law preempts local government laws that set any sick leave requirements.

Eugene's sick leave ordinance was to take effect July 1, 2015. However, because it is now preempted by state law, the Eugene City Council voted to repeal the ordinance in favor of the new state law. This means that employers in Eugene must only comply with the state's sick leave requirements.

Portland's sick time ordinance has been in effect since Jan. 1, 2014. This ordinance requires employers with six or more employees to provide paid sick time, and employers with fewer than six employees to provide unpaid sick time. Because it is more protective than the new state law, Portland's sick leave ordinance will remain in effect. However, employers in Portland will have to comply with the new state sick leave law in all other aspects. This means Portland employers with six or more employees must comply with the law's requirements that apply employers with 10 or more employees.

