

OP-ED: Mandatory sick time is almost here

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Effective Jan. 1, 2016, Oregon employers will be required to begin providing protected sick time to all employees. On June 12, the Oregon Legislature passed Senate Bill 454, mandating sick time to be provided by Oregon employers. While the overall requirement is pretty simple – employees are entitled to up to 40 hours of paid, protected sick time each year – the devil is in the details and employers must be sure that they are complying with all aspects of the law, including the minimum accrual rates, carryover requirements, qualifying absences, notice requirements and so on. So read on to learn the key requirements of the new law.

All employers, except the federal government, that have one or more employees working anywhere in Oregon must implement a sick leave policy that will allow an employee to earn and use up to 40 hours of sick time per year. In general, all employees are entitled to receive sick time, but the law provides a limited exception for any employee who meets all of the three following requirements: the employee's terms and conditions of employment are covered by a collective bargaining agreement, the employee is employed through a hiring hall or similar referral system, and the employee's employment benefits are provided by a joint multi-employee trust or benefit plan. These employees are not entitled to sick time; however, all other unionized workers who do not fall within this limited exception must be provided sick time in accordance with the new law, and employers must bargain for changes to existing collective bargaining agreements that are not in compliance.

Sick time is protected and employers must not retaliate or discriminate against an employee who inquires about, requests or uses protected time. This means that a qualifying absence for which an employee uses sick time may not be disciplined or terminated as a result of, even in part, that absence. Employers with attendance control policies may need to make changes to ensure protected absences are not held against an employee.

Sick time must accrue at a rate of at least one hour for every 30 hours worked, unless the employer elects to front-load sick time by providing 40 hours at the beginning of the year. Employees begin to earn and accrue sick time on the first day of employment.

Employees employed prior to Jan. 1, 2016, may begin using sick time immediately as it accrues. New employees hired on or after Jan. 1, 2016, may use sick time beginning their 91st day of employment. Sick time may be used for the employee's own physical or mental illness, injury or health condition (including routine doctor or dentist appointments), as well as for the care of a family member, for absences due to domestic violence, or in the event of a public health emergency. The employee cannot

be required to find a replacement worker or work an alternate shift as a condition of, or to make up for, the use of sick time.

Employers must allow employees to use sick time in hourly increments unless to do so would impose an undue hardship on the employer and the employer has a policy 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.

Unless an employer front-loads sick time, an employee may carry over up to 40 hours from one year to a subsequent year, but an employer may limit an employee to accrual of no more than 80 hours of sick time or use of no more than 40 hours of sick time in a year. Employers are not required to cash out unused sick time at termination.

Many people think of the new law as paid sick time, but whether an employee is paid depends upon an employer's number of employees. Employers with 10 or more employees must provide sick time as paid. However, the threshold number of employees for paid sick time drops to six for employers that maintain any office, store, restaurant or establishment within the city of Portland, regardless of whether the employee works in Portland or elsewhere in Oregon. Paid sick time must be paid at the employee's regular rate of pay and without a reduction in benefits. Employers with fewer than 10 employees (or Portland employers with fewer than six) must offer unpaid sick time, but may elect to offer it as paid.

Employers are free to provide for more generous sick leave policies and may comply with the new law through vacation or paid time off policies so long as the minimum requirements of the law are met.

Employers may still require their employees to comply with their usual notice and procedural requirements for absences and requesting time off so long as those requirements do not interfere with the employees' ability to make use of their accrued sick time. However, an employer may not require more than 10 days' advance notice of foreseeable leave.

The good news for employers is that the Oregon law pre-empts local governments from setting any sick leave requirements. That means that as of Jan. 1, 2016, Portland's Protected Sick Time Ordinance will no longer be in effect, leaving employers to focus just on the statewide requirements. However, employers subject to the Portland ordinance should continue to comply through the end of 2015. By then, BOLI will publish final rules clarifying the new requirements as well as a template notice that employers can use to communicate the provisions of the law to employees.

Time is running out! While this article touches on the key components of the detailed law, employers should consult with counsel regarding nuances for their workplace and update their policies to ensure full compliance by Jan. 1, 2016.

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