

# PORTLAND SICK LEAVE

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# CITY OF PORTLAND PROTECTED SICK TIME

- Overview:
  - All private employers with employees working in the City of Portland must provide at least 40 hours of sick time
- Effective January 1, 2014



# COVERED EMPLOYER

“Any person who employs another person”

Except:

- U.S. Government
- State of Oregon
- Political subdivision of the State
- Any Oregon county, city, district, authority, public corporation or public entity other than the City of Portland

# WHO IS AN ELIGIBLE EMPLOYEE?



# ELIGIBLE EMPLOYEE

- Any employee who has worked at least 240 hours in a year within Portland city limits
  - Current employees must work 240 hours in 2014
  - One time qualification unless employee is separated from employer for more than 6 months
- **Year = Any consecutive 12-month period**
  - Calendar year
  - Tax year
  - Fiscal year
  - Contract year
  - Year beginning on employee's anniversary date



# ELIGIBLE EMPLOYEE

## ■ “Working in the City”

- Employer’s location irrelevant
- [www.portlandoregon.gov/sicktime](http://www.portlandoregon.gov/sicktime)
- Includes physically working in the City via telecommuting
  - Traveling through the City does not count IF:
    - Not stopping for a work purpose
    - Only making incidental stops, e.g., refueling, eating, changing a flat tire



## ■ Reasonable estimate of time worked in the City

- May rely on, for example, dispatch logs, delivery addresses and estimated travel time, or historical averages

# ELIGIBLE EMPLOYEE

- Not covered:
  - Co-partners of the employer
  - Volunteers
  - Independent contractors
  - Participants in work-study programs
  - Exempt railroad workers under the Federal Railroad Insurance Act



# ELIGIBLE EMPLOYEE

- Temporary workers
  - Covered if they perform 240 hours of work within the City
  - Temporary workers supplied by a staffing agency are employees of the staffing agency for all purposes of the Ordinance
  - Rules do not address other multiple employer situations such as hiring halls



# COMPLIANCE WITH PTO POLICY

- PTO policy may satisfy ordinance IF it meets all the requirements
- PTO is defined as
  - Bank of time that the employee can use to take time off for any purpose, including the purposes covered by the Ordinance
  - Contribution to a vacation pay account in the name of a construction trade union employee covered by a CBA, that the employee may cash out or use for any purpose
- An employee may choose to exhaust PTO for non-sick leave purposes

# ACCRUAL OF SICK TIME

- Minimum of 1 hour of sick time for every 30 hours worked
  - Overtime included in hours worked
  - Exempt employees presumed to work 40 hours per week
    - Accrue based on regular schedule if < 40 hours/week
  - No accrual for hours on paid or unpaid leave
- Equivalent given at beginning of year
  - Employees working at least 1200 hours/year eligible for full 40 hours
- Accrual begins for
  - Current employees: January 1, 2014
  - New employees: Upon hire

# CARRYOVER OF SICK TIME

- Must permit carry over of up to 40 hours of unused sick time
- Exception: If sick time is frontloaded (rather than accrued over the year), carryover is not required
- Sick leave use may be capped at 40 hours per year

# TRANSFER OF SICK TIME

- Sick time retained by employee upon sale, transfer, etc. of business, if employee continues to work in the City
- Sick time restored to employee rehired within six months of separation
- Sick time may, but is not required to be, cashed out upon termination of employment

# TO PAY OR NOT TO PAY?

- Paid vs. unpaid sick leave
  - Paid: 6 or more employees
  - Unpaid: 5 or fewer employees
- Who counts?
  - Full time, part time, temporary
  - Employees who work outside of Portland
- How to count?
  - Established employers: number of employees employed each working day during each of 20 or more calendar work weeks in the year in current or prior calendar year
  - New employers: average number of employees during first 90 calendar days of the current calendar year



# RATE OF PAY FOR SICK LEAVE

- Same **base rate of pay** employee would have earned during sick leave
  - Not entitled to lost tips or commissions
  - Pay based on scheduled hours, not hours actually worked by replacement worker
  - If shift is of indeterminate length, may determine pay based on hours worked by replacement worker or similar shifts in the past
  - No overtime pay if shift would have been overtime

# QUALIFYING ABSENCES

Diagnosis, care or treatment of mental or physical illness, injury or health condition of employee or family member

- Includes prenatal visits, pregnancy, childbirth, post-partum care
- Includes routine medical and dental visits





# QUALIFYING ABSENCES

- Also, any absence due to:
  - Domestic violence, harassment, sexual assault or stalking
  - Closure of business, school or daycare due to public health emergency
  - Care for family member if family member's presence in community jeopardizes health of others
  - Any law that requires employer to exclude the employee from the workplace for health reasons

# USE OF SICK TIME

- May use sick time
  - In increments of one hour
  - To cover all or part of a shift
  - As soon as it is accrued
- May NOT use sick time
  - If not scheduled to work in the City
  - Until the 91<sup>st</sup> calendar day of employment
  - Until employee has worked 240 hours in a year
    - Current employees must work 240 hours in 2014

# USE OF SICK TIME

- Must use sick time
  - When absent for a qualifying reason
  - Unless employer permits shift trading
- Must NOT be required
  - To search for or find replacement
  - To work an alternate shift to make up for sick leave
  - Take off full shift as condition of using sick time
    - **Except:** when it is physically impossible for an employee to commence or end work partway through a shift, entire time an employee is absent may be counted as sick leave

# EMPLOYEE NOTICE

- Employer may require employee to provide reasonable notice of an absence for sick time
- Reasonable notice = complying with employer's written policy
  - Designated phone number
  - Uniform call-in procedure, or
  - Other reasonable and accessible means of communication
- Employer **must** have a written policy

# EMPLOYEE NOTICE

## ■ Foreseeable Leave

- Written notice as soon as practicable, in advance of the leave, or as provided by the employer's policy
- Employee must make a reasonable effort to schedule foreseeable leave in a manner that does not unduly disrupt the operations of the employer

## ■ Unforeseeable Leave

- Notice before start of shift or as soon as practicable

## ■ Changes of Duration

- Employee must notify employer as soon as practicable

## ■ “As soon as practicable” = fact specific inquiry

# FAILURE TO PROVIDE NOTICE

Employer may deny sick time if employee:

- Fails to provide required notice
- Fails to make reasonable effort to schedule leave in a manner that does not unduly disrupt the operations of the employer



# EMPLOYEE DOCUMENTATION

- Documentation may be requested for absences of more than three consecutive days
  - Signed by licensed Health Care Provider
  - Documentation for victims of domestic violence, harassment, sexual assault or stalking per ORS 659A.280(4)
  - Signed personal statement that sick leave was for qualifying purpose



# EMPLOYEE DOCUMENTATION

- Employer must pay employee's out-of-pocket costs of verification
  - Cannot require second opinion
- Consequences
  - Employer may deny the use of sick time until the employee provides requested documentation verifying the absence was for a qualifying reason.

**MEDICAL CERTIFICATE**  
This is to certify that in my professional opinion:

Mr./Mrs./Miss \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Is suffering from: \_\_\_\_\_  
And is unable to attend work:  
From: \_\_\_\_\_  
To: \_\_\_\_\_  
Signed: *Dr. Frederick McCallen*  
Date: \_\_\_\_\_

DOCTOR'S STAMP  
Dr. Frederick McCallen  
Shore Dry Medical Group

# CONFIDENTIALITY

- Health information
  - About employee or employee's family member
- Records and information regarding request or use of sick time due to domestic violence, harassment, sexual assault or stalking

# CURBING ABUSE



# CURBING ABUSE

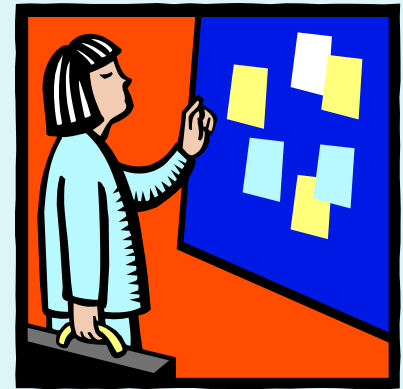
- Patterns of abuse
  - Repeated use of unscheduled sick time on or adjacent to weekends, holidays, or vacation, pay day, or mandatory shifts
- Employer may require documentation from a licensed health care provider verifying need for leave without waiting the three days
- Employer must pay the cost of such verification

# NO DISCRIMINATION

- Discrimination and retaliation unlawful
  - Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right
- Use of sick time under the Ordinance cannot be used as a reason for an adverse employment action **or when awarding a benefit such as a raise, premium, or bonus**
- May discipline for abusing sick time, including using sick time for an impermissible purpose or falsifying documentation of the need for sick time

# EMPLOYER NOTICE & POSTING

- Employers must provide and post written notice of employee rights
  - To all employees who work in the City
  - Amount of sick time and terms of its use
  - Prohibition of retaliation
  - Right to file a complaint
- Must provide written notice no later than:
  - For current employees: end of 1<sup>st</sup> pay period in 2014
  - For new employees: end of 1<sup>st</sup> pay period for those employees
  - The City drafted a sample written notice
- Must be in English and any additional languages the employer normally uses to communicate with its employees
- May be provided in any way, including in pay stub statements, through accessible online programs, or electronic delivery



# EMPLOYER NOTICE & POSTING

## ■ Poster

- City published the required poster on December 2, 2013
- Post in each building and worksite in an area accessible to and frequented by employees
- Post in English and any additional languages normally used to communicate with employees

## ■ Quarterly notice of available sick time

- Amount of accrued and unused sick time available to each employee, but there is no requirement to include accruable hours



# EMPLOYER RECORD KEEPING

- Required records must be maintained for at least 2 years
- Employers with PTO policies not required to maintain records showing reasons for use of paid leave
- Must permit BOLI access to records

# EMPLOYER RECORD KEEPING

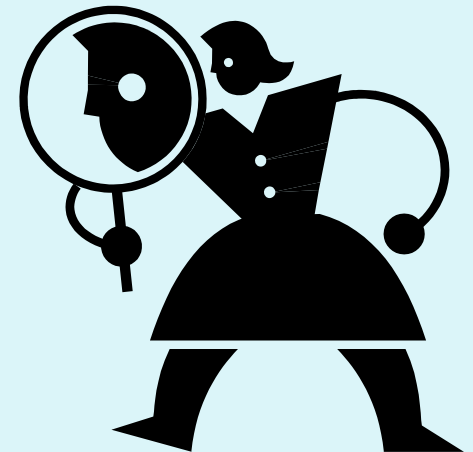
- Name, address, and occupation of each employee
- Amount of sick time or PTO accrued and used by each employee
- And records relating to hours actually worked in the City:
  - For hourly employees, hours actually worked in the City during each pay period by each employee
  - For salaried employees who work in the City on a regular basis, hours of a normal workweek for each employee
  - For salaried employees who work in the City on an occasional basis, hours actually worked in the City during each pay period by each employee
  - For employers who frontload sick time or PTO, amount of sick time or PTO and dates on which sick time or PTO is available to each employee

# RELATIONSHIP TO OTHER LAWS

- Ordinance does not preempt, limit or otherwise affect any other law or policy that provides for greater accrual or use of sick time
- Employee may not use sick time while on other paid leave provided by the employer, including workers' compensation benefits
- Sick leave may qualify for concurrent leave under OFLA and/or FMLA

# ENFORCEMENT

- City has contracted with BOLI to investigate complaints
  - Safe harbor period for unintentional violations
    - Through July 31, 2014
    - Employer must correct errors and compensate employees
- Governed by ORS Chapters 652 and 653
- Unlawful employment practice
  - File complaint with BOLI
  - Private right of action



# HOMEWORK

## 1. Read

- Ordinance
- Administrative Rules
- Sample Policy
- Checklist for Compliance



## 2. Adopt/revise policies

## 3. Distribute notice by 1<sup>st</sup> pay period of 2014

## 4. Obtain & display poster by January 1<sup>st</sup>

## 5. Questions? Let us know!

# RESOURCES

[www.portlandoregon.gov/sicktime/](http://www.portlandoregon.gov/sicktime/)

- Ordinance
- Final Rules
- Poster
- Template Letter
- Frequently Asked Questions

# QUESTIONS?

**-Thank You-**



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