



March 19, 2013

HR NOTEBOOK

PORTLAND EMPLOYERS – GET READY FOR MANDATORY SICK TIME

A few weeks ago, we told you about a proposal introduced by Commissioner Amanda Fritz to require certain employers with employees in Portland to provide paid and unpaid sick time off to employees. On March 13, 2013, that proposal became a reality; the Portland City Council voted unanimously to make Portland one of several U.S. cities requiring paid and unpaid sick leave. Portland will require businesses doing work in the City to give workers up to 40 hours (five days) of sick leave each year.

Effective January 1, 2014, employees who work the equivalent of 240 hours (30 full-time days) within the Portland city limits, will be able to accrue job-protected time off that may be used for the employee's illness, for a family member's illness and for certain health and safety purposes. The City is currently in the process of working with the Oregon Bureau of Labor and Industries to develop specific rules to implement the Portland Protected Sick Time [Ordinance](#). In the paragraphs below, we summarize the key provisions of the new Ordinance.

Coverage

The Ordinance applies to all private and non-profit employers who have employees who work within the geographic boundaries of the City. Federal, state and Oregon public employers are not covered. All employees who work at least 240 hours in a calendar year in Portland (including part-time and temporary), and those employed by businesses outside Portland, but who work occasionally in Portland, are covered.

Accrual, Use, Carryover and Caps

Employers that have six or more employees must provide employees with a minimum of one hour of paid sick time for every 30 hours of work (approximately five days/year), up to a maximum of 40 hours accrued sick time in a calendar year. Employers with five employees or less must also provide sick time at the same rate and accrual, but it can be unpaid.

Employees who are paid on a base wage plus piece rate, tips or commission, accrue sick time based on their base rate. Salaried exempt employees are presumed to work 40 hours for purposes of earning and accruing sick time, unless their normal workweek is less than 40 hours. Employees who travel into the City and stop to perform work accrue sick time only for the hours they actually work within the City.

Sick time accrued but not used in the calendar year may be carried over into the next year. Under the Ordinance, employers may impose a 40-hour cap on an employee's annual accrual of sick time and year-end carryover of unused accrued time.

Sick time begins to accrue for current employees on January 1, 2014, the date the Ordinance takes effect. New employees begin accruing sick time as soon as they are hired. Employees may use sick time after the first 90 calendar days of employment, and may choose to use it for all or part of a shift, and in increments of one-hour or more. If the employee is not scheduled to work in the City on

the shift for which sick leave is requested, or seeks use during the first 90 days of employment, the employer may deny the use of sick time.

Employers may require the use of sick time hours before other accrued leave or leave without pay. Employers may not require employees to work extra shifts to make up for use of sick time, or require them to find a replacement (though may allow shift trading).

Transfer, Successors and Rehire

Employees, who are transferred to another division or location within the City, retain all sick time accrued. Accrued sick time is also retained by employees if their employer sells the business, so long as the employee continues to work in the City. If employees are rehired by the same employer within six months of separation, they retain and may use all previously accrued sick time immediately upon reemployment.

PTO

Employers with Paid Time Off (PTO) policies that allow accrual up to a minimum of 40 hours per calendar year which may be used for any purpose covered by the Ordinance are not required to provide more sick time. PTO policies are defined as accrued banks of time that an employee may use to take paid time off from work, without having to specify a reason.

Employers with a sick time or a PTO policy in effect on January 1, 2014, that equals or exceeds the minimum requirements will be in compliance.

Purposes

Under the Ordinance, a single bank of sick time (or PTO) must be available for three purposes:

1. An employee may use sick time for absences for the diagnosis, care or treatment of his/her own mental or physical illness, injury or health condition, including pregnancy and prenatal care. An employee also may use sick time for his/her family member's mental or physical illness, injury or health condition. "Family member" follows the broad definition under the Oregon Family Leave Act, and includes the employee's parents, spouse, registered same-gender domestic partner (and parents or children of a registered same-gender domestic partner), children (under and over age 18), grandparents, grandchildren and parents-in-law.
2. An employee may use sick time for absences related to domestic violence, harassment, sexual assault and stalking that affects the employee or the employee's family or household member (which carries the same broad definitions under ORS 659A.272). Sick time may also be used to seek or obtain, for the employee or the employee's family member, legal or law enforcement assistance, treatment or counseling from a healthcare provider, and safety planning or relocation.
3. An employee may also use sick time when any law or regulation prohibits the employee from working for health reasons, or an employee's place of business or childcare/school of the employee's child, is closed by a public official due to a public health emergency. Sick time also may be used if the employee must care for a "family member" whose presence in the community would jeopardize the health of others.

Notice

Employers must have published written policies (or standards) if they want employees to call in or notify them about using sick time.

Employees must give notice of any foreseeable use of sick time (for example, using sick time for a scheduled treatment) in accordance with the employer's policy, or "as soon as practicable," and like FMLA/OFLA use, must make reasonable efforts to schedule the time off in a manner that does not unduly disrupt operations.

Medical Verification

For an absence of more than three consecutive days, employers may require verification (1) from a licensed healthcare provider, (2) to establish domestic violence, harassment, assault or stalking, or (3) in the form of a signed "personal statement" that sick care is for any purpose under the Ordinance. The term "healthcare provider" includes licensed physicians, naturopaths and other providers allowed by OFLA. There is no mention of allowing medical certification to verify the need for non-consecutive intermittent absences for a chronic health condition, or for absences for one or two days.

If employers suspect sick leave abuse (including suspicious patterns of use), they may seek documentation from licensed healthcare providers; presumably, this includes any abuse of 1-2 day absences. Employers are prohibited from using absences covered by protected earned sick time against employees and sick time may not be used as an "occurrence" under employer attendance policies. Employers must pay for out-of-pocket costs for any medical verification.

Termination, Retaliation, Posting, etc.

- Employers are not required to pay employees for accrued but unused sick time upon termination, or other separation from employment.
- Employers with sick leave or PTO policies in effect that provide employees with use that equals or exceeds the requirements of the Ordinance will comply.
- There is no waiver for employees with collective bargaining agreements.
- Retaliation against employees who use or invoke sick time, or interference (discouraging use of sick time) is prohibited.
- Employers must provide written notice and post employee rights to sick time. BOLI will be developing that poster and procedures for BOLI enforcement.

In the next few months, the City will begin working with BOLI to draft rules to clarify recordkeeping standards, penalties for non-compliance and other issues. Bullard Law will be reporting on these efforts and other developments related to the Paid Sick Time Ordinance. Please feel free to contact us anytime with any questions about these matters or any other labor, employment, or benefits issues.

~KATHRYN M. HINDMAN

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