



Summary of Oregon's Paid Sick Leave Law, effective January 1, 2016

Covered employers: If you employ one employee in the State of Oregon you must provide sick leave, with a few limited exceptions such as federal employees; work-study students; railroad workers; people employed by their parent, spouse or child; and most union-represented construction workers employed through a hiring hall. Employer size and location matter, though. Statewide, the general rule is that if you employ at least 10 employees anywhere in Oregon, the sick leave must be paid. For smaller employers with 1-9 employees, the sick leave may be unpaid. If you have a facility in **Portland**, then the threshold for providing paid leave kicks in if you have at least 6 employees anywhere in Oregon (similar to Portland's current threshold for paid sick leave).

Two earning methods: Leave Must Accrue at a Minimum Rate or Be Frontloaded on the First Day of Employment: In order to comply, employers must ensure that employees accrue sick time at the minimum rate of either **(a)** one hour for every 30 hours worked or **(b)** one and one-third hours for every 40 hours worked (up to 40 hours per year).

Employers may consider exempt employees under the executive, administrative, or professional exemptions of the Fair Labor Standards Act as working 40 hours per week, unless an exempt employee's actual workweek is less than 40 hours, in which case the actual workweek can be used as the FTE basis for accrual. Employees will begin accruing leave on their first day of employment, although they are not eligible to use any accrued leave until after working 90 days.

As an alternative to accruing leave, employers may frontload employees with a full bank of 40 hours of sick time as soon as they are eligible to use leave (i.e., after 90 days of employment, or the first day of each subsequent year). If an employee starts working or otherwise becomes eligible mid-year, an employer may frontload a pro rata percentage of the hours the employee would be entitled to for an entire year.

Employers Generally Must Allow Employees to Carry-Over Accrued Leave to Subsequent Years: Employers using an accrual method must generally allow employees to carry forward up to 40 hours of unused sick time into the subsequent year. In no event, however, must an employer allow an employee to accrue a total of more than 80 hours of sick time.

Carryover is not required if an employer and employee agree that, at year end, the employer will pay for all unused sick time accrued that year, provided the employer frontloads an employee with a full bank of sick time on the first day of the next year.

Employers that frontload leave will not be required to allow any carryover, as employees will automatically receive a full bank of sick time at the beginning of each year. Employers will also not be obligated to pay out any unused sick time at the end of the year.

No use during the first 90 days of employment: Employees who are hired on or after January 2, 2016, begin earning sick leave immediately, but cannot use it until their 91st calendar day of employment. Everyone who is employed when the ordinance takes effect on January 1, 2016, including those with fewer than 91 days of service, may begin taking sick leave as soon as it is available to them.

Broad reasons for leave: Sick Time Must Be Allowed for Six Specific Reasons and Cannot Be Held Against an Employee: Although accrual must begin on the first day of employment, employees will become eligible to use any accrued or frontloaded leave on their 91st day of employment. From that point on, employees who accrue sick time must be credited with each hour as it accrues (e.g., after working 40 hours). An employer may not require employees to wait until the end of a workweek or pay period to be credited with accrued sick time.

Employers must allow employees to take sick time in one-hour increments for any of the following purposes:

1. For an employee's own illness, injury, or health condition, or the need for diagnosis, care, or treatment, or the need for preventive medical care;
2. For care of a family member with an illness, injury, or health condition, or who needs medical diagnosis, care, or treatment, or who needs preventive medical care—"family member" has the same broad definition as is found in the Oregon Family Leave Act (OFLA);
3. For any purpose allowed under OFLA, even if the company is not covered by OFLA by virtue of having fewer than 25 employees, and even if the employee is not eligible for OFLA leave;
4. For any purpose allowed under Oregon's domestic violence, harassment, sexual assault, and stalking law;
5. To donate accrued sick time to another employee if the other employee uses the donated sick time for a purpose specified under the law and the employer has a policy that allows an employee to donate sick time;
6. In the event of a public health emergency, including: (a) closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency; (b) a determination by a lawful public health authority or by a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others, such that the employee must provide self-care or care for the family member; or (c) the exclusion of the employee from the workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons.

If allowing the use of sick time in one-hour increments would pose an "undue hardship" (a standard BOLI will have to define) and a company allows an employee to use at least 56 hours of paid leave per year, then it may require paid sick leave to be used in increments of up to four hours.

When the leave is required to be paid, sick time must be paid out at the employee's "regular rate" of pay, which is typically at a base hourly or salary rate. Employees paid on a commission or piece-rate basis who do not have a previously established regular rate of pay will be entitled to at least the Oregon state minimum wage.

In addition to mandatory use for the reasons above, it will also be unlawful to count such time off against an employee, whether formally via an attendance policy or performance evaluation, or informally through adverse assignments, exclusion from projects, etc. It will also be unlawful to require an employee to search for a replacement as a condition of using available sick time, or to require an employee to work an alternate shift or otherwise make up for time. In short, employers should consider any use of sick time to be legally protected, just as they would for leave taken under the OFLA or federal Family and Medical Leave Act.

WATCH OUT FOR:

40 Tardies per year: Chronically tardy employees could use the sick leave law as an easy way to be late 40 times during the year, with no consequences. The law generally allows employees to take paid sick leave in one-hour increments. In most cases, employers cannot ask for medical certification until someone uses three consecutive days of sick leave. So, employees could call in, saying they felt ill just before the shift started, and will be up to an hour late to work. Employers may ask for medical certification if they observe a "pattern of abuse," but depending on the type of alleged condition (allergies, migraine, etc.), it may be difficult for a health care provider to say that the employee didn't legitimately need to be late 40 times. And, the employer would have to pay reasonable expenses for the doctor visit, including lost wages and costs not covered by the employer's health plan.

Carryover versus payout: The general rule is that you must allow employees to carry over unused sick time from one leave year to the next. Some employers may prefer to clear the books at the end of a leave year and cash out unused sick leave. The new law allows this as an option only if you and the employee mutually consent to the cash-out, and you credit the employee with the amount of sick time available under the law at the beginning of the next leave year. For employers that are small enough to be permitted to provide unpaid sick leave, since there isn't anything to cash out, they may (with the employee's consent) wipe the slate clean and then front-load the employee's balance with 40 hours.

Restore sick leave for rehires: Oregon sick leave has no cash value upon termination, but if you rehire an employee within 180 days of separation from employment, you must restore the employee's unused sick leave balance.

Discretionary changes discussed above may include:

- Adding an option accrual rate of one and one-third hours of sick time for every 40 hours worked;
- Adding a "donation" policy that allows employees to donate accrued sick time to one another; and
- Adding an "undue hardship" exception to the minimum one-hour leave increment.

Employers who choose to include these discretionary provisions must explain them in their Sick Leave Policy.

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