

Co-Chair
Senator Elizabeth Steiner Hayward
SD 17



Co-Chair
Representative Jessica Vega Pederson
HD 47

2013-2014 Sick Time Workgroup Final Report

February 12, 2015

After the 2013 legislative session, Senator Elizabeth Steiner Hayward and Representative Jessica Vega Pederson co-chaired a workgroup to review the 2013 sick time legislation with all interested stakeholders and to discuss changes for future iterations of sick time legislation.

The workgroup met a total of seven times over the fall of 2013 to review the legislation in detail and provide comments that informed drafting of the 2015 legislation. The workgroup was reconvened in December 2014 to review the 2015 LC draft and provide comments before the concepts, HB 2005 and SB 454 (both identical), were pre-session filed.

The goal of the workgroup was to create an open and inclusive process where both proponents and opponents could discuss in detail the provisions of the bill, offer comments and air concerns. The goal was not to achieve consensus among participants on a sick time proposal, but rather to review the concept section by section and make changes where agreement could be reached. Where agreement could not be reached, the group debated the merits or objections with specific provisions. In this manner, the group was able to make significant changes to the concept to make it easier for employers to comply and to better align the policy with existing standards and intent. Details of changes made can be found on the second page of this report.

Participants in the workgroup are listed below. Additionally, all workgroup meetings were open to interested parties, also listed below, who were invited to actively participate in the discussions.

Workgroup Members: Co-Chair Senator Elizabeth Steiner Hayward, Co-Chair Jessica Vega Pederson, Senator Bill Hansell, Andrea Paluso (Family Forward), Jenn Baker (ONA), Jeff Anderson (UFCW), J.L. Wilson (AOI), Jan Meekoms (NFIB), Bill Perry (ORLA), Joe Gilliam (NW Grocers), Lee Mercer (Main Street Alliance), and Elana Guiney (AFL-CIO).

Interested Parties: Drew Hagedorn (Tonkin Torp), Shawn Miller (NW Grocers), John Mohlis (Building Trades), Caleb Hayes (PacWest), Beth Cooke (UFCW), Midge Purcell (Urban League), Eva Rippeteau (AFSCME), Kate Newhall (Family Forward), Ian Tolleson (Farm Bureau), Anna Braun (BOLI), Matt Swanson (SEIU), Joe Baessler (AFSCME), Nellie deVries (ORLA), Soren Metzger (OSEA), Joseph Santos-Lyons (APANO), Megan Osborne (Sen. Rosenbaum staff), Lili Hoag (Family Forward), Stephen Hughes (Oregon Working Families Party), Tom Barrows (Worker Leasing Agencies)

Overview of Issues Discussed

The following summarizes the conversations had on the major provisions of the bill. These were all areas for discussion and changes to the legislation were made where there was agreement among workgroup participants or based on the preferences of chief sponsors.

- Employer Size Threshold: Advocates on the workgroup wanted to see a lower employer size threshold for coverage. The 2013 draft required employers of 6 or more employees to provide paid sick time and no protections for employees with employers of 6 or fewer employees. They argued that a worker's need for sick time isn't dependent on their employer's size and that people get sick regardless of employer size. In Portland, unpaid but protected sick time is provided to employers with 5 or fewer employees, meaning no employee can get fired for using accrued, protected sick time (unpaid sick time accrues at the same rate as paid sick time and is subject to the same maximum accruals). After Eugene passed an ordinance requiring paid sick time for all employees, regardless of employer size, legislative sponsors decided to mirror that standard in the 2015 legislation.
- Existing Paid Time Off (PTO) Policies: It was clear from the discussions that many of the employer groups wanted to be able to have an employer's existing PTO policy meet the requirements under this bill and didn't think the existing language allowed it. Proponents of sick time acknowledged that this was the intent in drafting the legislation, as long as the PTO was an equal or greater benefit than required in the law and could be used for the same purposes as sick time accrued under this proposal. All participants agreed to clarifying language in Section 2(4)(a) to achieve the intent of allowing PTO to fulfill sick time requirements.
- Waiting Period: Several workgroup participants wanted to see a longer waiting period for employees to be able to use accrued sick time and suggested 180 days instead of the 90 days currently contained in the proposal. Sick time proponents argued that 180 days (6 months) effectively cut out temporary and seasonal workers who are some of the lowest wage workers and those who most need access to paid and protected sick time. 90 days is the current waiting period in both the Portland and Eugene standards.
- Accrual Rate and Maximum Sick Time Accruals: There was not agreement on sick time accrual rates and the maximum amount of sick time allowable. No change was made to the accrual rate of 1 hour for every 30 hours worked or to the maximum of 56 hours (7 days) of sick time allowable. There was, however, agreement to allow employers the ability to "front-load" the maximum of 56 hours of sick time each year and be able to avoid tracking sick time accruals.

- Shift Trading: Employees may “trade” a shift instead of using accrued sick time if both the employer and employee agree to this. This provision has been important to restaurant employers and employees and remains unchanged in HB 2005 and SB454.
- Posting and Notice Requirements: Some employer groups expressed a preference for Seattle’s language around employee notice to employer of the need to use sick time and Seattle’s posting requirements. The original legislation required 7 days advance notice when the need for sick time is foreseeable. Seattle’s language requires 10 days advance notice when the need is foreseeable (i.e. a doctor’s appointment for preventative care). Employer groups also liked the ability (also in the Seattle law) to require employees to notify them in whatever the employer’s regular notification process was (i.e. a particular supervisor, a call-in number, a website, ect). Employer groups also preferred Seattle’s approach to posting requirements, where employers can provide individual notice to employees about their rights under the sick time law instead of using required posters. There were no objections to mirroring Seattle’s language on these provisions and those changes are reflected in HB 2005 and SB 454.
- Collective Bargaining Agreements: Building Trade Unions have historically expressed a desire to be exempted from the sick time legislation. Their employment model is unique in their use of a hiring hall to dispatch employees to multiple employers. A trade union employee may work for one employer for a day, the next employer for two weeks and another employer for 3 months. They also already have generous vacation pay, pensions and other benefits. Other unions whose members are employed in more traditional means and have membership that do not have access to sick time, however, have expressed a strong desire NOT to exempt just because they have a collective bargaining agreement. Currently, the bill draft excludes Building Trade Unions and allows other unions who use hiring halls to waive the provision in a collective bargaining agreement. Other unions, who work in a more traditional setting of only having one employer, are not exempt in HB 2005 and SB 454.
- Preemption: Opponents believe that the statewide legislation should preempt local ordinances and set one consistent statewide standard that does not allow cities to go beyond state requirements. Sick time advocates strongly oppose preemption and favor maintaining a city’s ability to go beyond the state’s requirements, especially if it has the effect of rolling back the standard set in Portland that has already covered over 260,000 workers.

Overview of Changes Made

As a result of the discussions had by the workgroup and agreement by all participants, several changes were made to the 2015 legislation, including:

- Defined “year” to include any type of year the employer regularly uses, instead of specifically requiring a “calendar year” – Section 2(5)
- Clarified language about an equivalent PTO policy as being able to meet the sick time standard - Section 3(5)(a)
- Added language about being able to front-load all 56 hours and not need to track accruals - Section 3(5)(b)
- Removed posting requirement. Concept now requires individual notice to employees of sick time rights – Section 9(3)(a)
- Required notice an employee must give an employer of the need to take sick time when the need for sick time is foreseeable changed from 7 days advance notice to 10 days advance notice – Section 7

Conclusions

The workgroup successfully combed through the sick time legislation and identified several areas where changes could be agreed to by all participants. This feedback was very helpful and those changes were incorporated into the 2015 legislation. The workgroup was also able to have very frank discussions about every provision in the bill, even if there was no expectation of agreement on a particular provision. This open and inclusive dialog was appreciated and allowed the workgroup to make significant improvements to HB 2005 and SB 454.