OREGON BUSINESS ASSOCIATION
200 SW Market Street, Suite L100 Portland, Oregon 97201
Ph: 503-641-0990 Fax: 503-641-0959 oba@oba-online.org www.oba-online.org

OBA testimony on Statewide Paid Sick Leave Legislation, HB 2005, SB 454

OBA convened a special meeting of our members (and experts on employment issues) and also invited our peers in the other major business associations to review the bills establishing a statewide paid sick leave requirement. Below are the recommendations the OBA group crafted for possible changes to HB 2005, SB 454 that would make the law much more workable for employers.

Policy should be statewide and uniform. This legislation must preempt local governments from adopting parallel or similar ordinances which require paid sick time. The cities of Portland and Eugene have each adopted mandatory paid sick leave ordinances for employers in their municipalities. Several other cities are currently considering paid sick leave ordinances in their cities. Unless the statewide legislation preempts local ordinances, employers will face confusing, inconsistent and complex regulations across the state which could stifle job creation and economic opportunity.

Exempt all collective bargaining agreements. As currently drafted, the legislation exempts some collective bargaining agreements but not others. The legislation should exempt all collective bargaining agreements (CBA). The policy arguments which support exempting CBAs apply across the board. Employees who are members of a union have elected representation to negotiate with employers on precisely these issues. If CBAs are not exempted, employers will be placed in the untenable situation of deciding whether to comply with their contractual obligations in the CBA or the law as enacted.

Accommodate small employers. Smaller employers lack the staffing flexibility and economic resources to accommodate and pay for absent employees. Additionally, the law imposes a significant administrative burden in terms of tracking and paying for leave, which falls disproportionately on smaller employers. The legislation should exempt employers with fewer than 10 employees, or require that the sick leave they must provide be unpaid rather than paid.

Allow employers to self-certify compliance, or provide a certification process. Employers should have access to a compliance process to ensure they are meeting the requirements of the law and eliminate uncertainty and litigation over compliance. The Oregon Bureau of Labor and Industries issues advisory rulings on 'prevailing wage' projects; a statutory paid sick leave program necessitates a similar program to assist employers in confirming compliance and ensure that employees are protected by the statute.

Clarify definitions, notice requirements, and scope.

The proposed definition of "family member" expands the definition used in the Oregon Family Leave Act by adding vague language about "blood or affinity" and "close association." The existing definition in the Oregon Family Leave Act (which, notably, has always included same sex partners as well as "in loco parentis"

situations) is sufficient, clear, and workable. The proposed expansion is vague and would require both employers and employees to debate what constitutes "the equivalent of a family relationship."

Language in proposed Section 7 requires employees to comply with an employer's notice requirements for requesting time off but also allows employees to call in "as soon as practicable." The proposed "as soon as practicable" enables employees to avoid reasonable call-in requirements and invoke statutory protections to ignore such requirements. The "as soon as practicable" language should be deleted.

Language in proposed Section 8 regarding medical verification should be modified so it addresses situations where employees do not necessarily work 8-hour days. The law as written only allows an employer to seek medical verification when an employee takes "more than 24 consecutive hours" of sick time. That language should be modified ("more than 24 consecutive hours or over 3 consecutive work days") to encompass such situations. Similarly, this section should allow an employee to seek medical verification in situations of suspected abuse (use of sick time on or adjacent to weekends, holidays or vacations, requested but denied time off, etc.).

Finally, employers and employees remain confused about what happens when an employee has used accrued paid time off for non-sick leave purposes (a vacation), and then falls ill. Seattle's ordinance clearly and directly addresses this issue, and Oregon's state law should do the same, by adding language which states "[i]f an employee uses all paid leave for a reason not related to paid sick time, the employer is not obligated to provide additional leave for paid sick time under this statute."

Clearly identify which existing policies will meet the requirements of the statute. The legislation should clarify when existing employer-provided paid time off programs (singly or cumulatively meet the requirements of the legislation. "Equal or better" policies need to be clearly defined in the legislation, and should not be focused solely on the legislation's "1 for 30" hour requirement. Employers who provide more than the "1 for 30" when time off programs are considered as a whole, and over time, should be considered to be in compliance. In other words, determination of compliance must incorporate more than the "1 for 30" in the statute, and consider all of the paid time off offered by an employer (vacation, sick, PTO, holidays, floating holidays, etc.)

Contact:
DJ Vogt
VP, Government Affairs
djv@oba-online.org