
MEMORANDUM

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To: *Human Services Subcommittee*

From: *Krista McDowell, Legislative Fiscal Office*
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Date: June 1, 2015

Subject: *SB 454 Relating to mandatory provision of sick time*
Work Session Recommendations

SB 454-A relates to the mandatory provision of sick time. Beginning January 1, 2016 the bill would require most employers having six or more employees to implement a sick time policy allowing an employee to earn, accrue, donate or use up to 40 hours of paid sick time per year. Most employers who employ fewer than six employees are required to implement an unpaid sick time policy.

The measure, amendments, and staff measure summary are available on the Oregon Legislative Information System (OLIS).

The measure previously had a public hearing and work session in the Senate Committee on Workforce and was recommended as do pass with amendments and referred to Ways and Means. The measure was previously heard in the Joint Ways and Means Human Service Subcommittee on May 7, 2015.

The measure, with the -A39 amendment, has a \$4,424,865 Total Funds fiscal impact in the 2015-17 biennium. Appropriations have been made to the affected agencies with the exception of agencies statewide which hire seasonal temporary employees; the fiscal impact associated with these employees is likely absorbable on an individual agency budgetary basis. However should agencies need additional funding for these temporary employees, they may return to the Emergency Board if budgeted resources prove insufficient to cover the actual costs of this measure.

Amendment

The proposed -A39 amendment to the measure increases, from six to ten, the minimum number of employees an employer shall have working anywhere in this state to implement a paid sick time policy. It changes employers who employ fewer than six, to fewer than ten, employees anywhere in this state to implement an unpaid sick time policy. Employers located in a city with a population exceeding 500,000 are to comply with a threshold of six, rather than ten, employees for the associated sick time policies.

The -A39 amendment also expands the definition of an employee to include individuals for whom withholding is required under ORS 316.162 to 316.221. It adds to the definition of sick time that an employee may not experience a reduction in benefits,

including but not limited to health care benefits, that the employee earns from the employer. It defines how the number of employees employed by an employer shall be determined.

Finally, the -A39 amendment provides a \$402,879 General Fund appropriation to the Bureau of Labor and Industries as well as a \$1,015,574 General Fund appropriation to the Department of Human Services, and \$3,094 General Fund appropriation to the Oregon Health Authority.

Motion: Move the –A39 amendment to SB 454 .

Measure as Modified

The measure, as amended, is recommended to be moved to the Full Committee on Joint Ways and Means.

Motion: Move SB 454 to the full committee with a “do pass” recommendation, as amended.

Assignment of Carriers

Full: _____

1st Chamber: _____

2nd Chamber: _____

PRELIMINARY STAFF MEASURE SUMMARY**Joint Committee On Ways and Means**

Fiscal: Fiscal impact issued
Revenue: Revenue impact issued

Action Date:

Action:

Meeting Dates:

Prepared By: Krista McDowell, Fiscal Analyst

WHAT THE MEASURE DOES:

Requires employers of 6 or more employees provide paid sick time for employees for the purpose of caring for personal or family member's mental or physical illness, injury, or health condition or for preventative medical care. Sets the rate at which paid sick leave accrues and annual maximum. Requires employees give advance notice of intent to use paid sick leave under certain circumstances. Classifies violations as unlawful practices under the jurisdiction of the Bureau of Labor and Industries and allows for both equitable and compensatory relief. Preempts local governmental authority on matters related to sick leave. Effective January 1, 2016.

ISSUES DISCUSSED:**EFFECT OF COMMITTEE AMENDMENT:**

(-A39) Expands the definition of an employee to include individuals paid on a 'piece-rate', and hourly basis as well as those whom withholding is required under ORS 316.162 to 316.221. Changes the definition of an employer from a person that employs another person, to a person that employs one or more employees working anywhere in the state. Specifies that the definition of an employer includes an employer located in a city with a population exceeding 500,000 but is not limited to, an employer that maintains any office, store, restaurant or establishment in a city. Introduces and defines the term 'front-load' for employees who have worked for an employer less than a full year and for those who have worked more than a full year. Increases, from six to ten, the minimum number of employees an employer shall have working anywhere in this state to implement a paid sick time policy and to qualify to payout any unused paid sick time.

Adds to the definition of sick time, that an employee may not experience a reduction in benefits, including but not limited to health care benefits, that the employee earns from the employer. Changes employers who employ fewer than six to fewer than ten employees anywhere in this state to implement an unpaid sick time policy. Clarifies that sick time accrues at a rate of 1.33 hours for every 40 hours the employee works. Exempts employers that have a front-load sick time policy from providing an accrued sick time policy. Defines how the number of employees employed by an employer shall be determined. Employers located in a city with a population exceeding 500,000 are to comply with a threshold of six, rather than ten, employees for the associated sick time policies.

Rather than providing exemption from this law for employers that meet or exceed the requirements of sections 2 through 16, employers need to have a sick time policy that is substantially equivalent to or more generous than the requirements of sections 2 through 16 to be exempted. Removes section 4. (2) (a) and (b) related to exceptions to employers for providing paid time off. Strikes the term 'hourly increments' from section 6 relating to how an employee may use sick time. Provides additional exceptions to taking sick time in hourly increments in section 7. (A) through (c). Appropriates for the biennium beginning July 1, 2015 to the Bureau of Labor and Industries \$402,879 General Fund (GF), Department of Human Services \$1,015,574 GF, and the Oregon Health Authority \$3,094 GF.

BACKGROUND:

Three states currently require paid sick leave: Connecticut, California and Massachusetts. There are no federal laws that require employers to provide paid sick leave for their employees. In Oregon, the City of Portland implemented

an ordinance in 2013 requiring employers with at least six employees to provide paid sick leave and smaller employers to provide unpaid, protected sick time. The City of Eugene followed in 2014 with a requirement that all employers provide paid sick leave.

Under current law, employers are not required to provide paid sick leave to employees. If an employee misses a day of work due to illness, the employer has no duty to provide compensation for the missed time or to schedule an extra shift for the employee to make up the time. However, the Oregon Family Leave Act (OFLA) requires employers with at least 25 employees to provide protected leave for eligible employees. Similar statutes provide protected leave for victims of domestic violence, sexual assault, and stalking.

Senate Bill 454 requires employers provide paid sick time to employees for the purpose of caring for personal or a family member's mental or physical illness, injury, or health condition or for preventative medical care. Under this measure, employees accrue 1 hour of paid sick leave for every 30 hours worked, up to a maximum of 40 hours per year, and must provide verification of the need for sick leave under certain circumstances. Additionally, leave for the purpose of providing care to new family members, grieving a family member's death, or handling matters related to domestic violence, sexual assault, or stalking would qualify for paid sick leave. Senate Bill 454 also requires employees to give advance notice of intent to use paid sick leave under certain circumstances. The measure also prohibits discrimination against employees who inquire about or use paid sick leave. Finally, Senate Bill 454 classifies any violation of sick leave provisions as an unlawful practice under the jurisdiction of the Bureau of Labor and Industries and allows for both equitable and compensatory relief.

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 454 - A39**Seventy-Eighth Oregon Legislative Assembly – 2015 Regular Session
Legislative Fiscal Office***Only Impacts on Original or Engrossed
Versions are Considered Official***Prepared by: Krista McDowell
Reviewed by: Michelle Deister, Paul Siebert, Laurie Byerly, Linda Ames
Date: 5/29/2015**Measure Description:**

Requires all employers to implement sick time for employees.

Government Unit(s) Affected:

Bureau of Labor and Industries (BOLI), Department of Human Services (DHS), Department of Administrative Services (DAS), Cities, Counties, Special Districts, Oregon Health Authority (OHA)

Summary of Expenditure Impact:

	2015-17 Biennium	2017-19 Biennium
General Fund	\$1,655,847	\$1,961,243
Lottery Funds	\$24,663	\$32,884
Other Funds	\$337,088	\$449,450
Federal Funds	\$2,407,268	\$3,209,490
Total Funds	\$4,424,865	\$5,653,067
Positions	3	2
FTE	2.25	2.00

Summary of Revenue Impact:

	2015-17 Biennium	2017-19 Biennium
Federal Funds	2,407,268	3,209,490
Total Funds	\$2,407,268	\$3,209,490

Local Government Mandate:

This bill may affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

Beginning January 1, 2016 the bill would require most employers having ten or more employees to implement a sick time policy allowing an employee to earn, accrue, donate or use up to 40 hours of paid sick time per year. Most employers who employ fewer than ten employees are required to implement an unpaid sick time policy. For employers located in a city with a population exceeding 500,000, the threshold for paid sick time is set lower; it applies to employers with at least six employees and the threshold for unpaid sick time for city employers is set for fewer than six employees. Paid sick time is given the definition of time off from work while being compensated at the regular rate of pay without reductions in benefits; and sick time, that is not paid, is given the definition of time off from work without reductions in benefits.

The Commissioner of the Bureau of Labor and Industries (BOLI) is directed to adopt rules for determining the number of employees employed by an employer, as well as adopt rules and create a template pertaining to employers providing written notice of certain requirements of this Act to their employees. The Commissioner of BOLI is also directed to enforce this legislation; including but not limited to investigating violations and assessing civil penalties.

Due to the state-wide expansion of sick leave policies, BOLI anticipates the need for a permanent Civil Rights Field Representative 2 position to process additional complaints of sick leave violations. This position is estimated at 0.75 FTE and \$126,121 General Fund in the 2015-17 biennium and 1.00 FTE and \$166,673 General Fund in the 2017-19 biennium. In order to investigate allegations of non-compliance with sick leave, BOLI anticipates the need for an additional permanent Compliance Specialist 2 position. This position is estimated at 0.75 FTE and \$133,908 General Fund in the 2015-17 biennium and 1.00 FTE and \$177,058 General Fund in the 2017-19 biennium. Additionally, a limited-duration Training and Development Specialist 2 position is needed to handle increased phone calls, update printed materials, develop content for the website as well as conduct state-wide trainings. This position is estimated at 0.75 FTE and \$142,850 General Fund in the 2015-17 biennium. Costs associated with rule making, printing new training materials, and updates or changes to computers systems are minimal and absorbable within existing parameters of the BOLI budget. BOLI is not able to predict potential penalty revenue should SB 454 become law, due to the discretionary nature of the Commissioner's penalty authority and the potential difference between what might be assessed versus actually collected.

The State of Oregon employs roughly 1,675 temporary employees for three or more months, which do not currently receive sick leave, throughout the biennium. Based on temporary employees' average wages, average hours worked, and average employment length, the statewide cost for a full biennium is estimated and broken down by fund type as follows: \$312,400 General Fund, \$449,450 Other Funds, \$32,884 Lottery Funds and \$172,449 Federal Funds per biennium. Any additional workload or IT programming costs associated with updating the state payroll system for these temporary employees are anticipated to be minimal and absorbable within agencies' existing budgets.

Home care workers and personal support workers, through the Department of Human Services (DHS) and Oregon Health Authority (OHA), currently accrue up to 32 hours of paid time off annually. The bill would increase allowable paid time off by up to 8 hours per employee, for a maximum accrual of 40 hours of paid time off a year. The Home Care Commission is directed to establish a paid sick time policy which is anticipated to distinguish how paid sick time, vacation time and other forms of paid time off will be accommodated. The combined impact to DHS and OHA for these home care workers and personal support workers is estimated to cost \$1.02 million General Fund and \$2.28 million Federal Funds in the 2015-17 biennium and \$1.31 million General Fund and \$3.04 million Federal Funds in the 2017-19 biennium. The current timeline to transition the home care workers' payments to the BSI Trust aligns with the effective date of the bill; therefore costs associated with updates to the payroll system are anticipated to be minimal.

Local providers that contract with DHS and OHA may incur additional costs associated with this bill, which may result in price increases with the state's contracts for programs, including the Oregon Developmental Disabilities Services (ODDS) and the Aging and People with Disabilities (APD) programs. The rates the state pays providers are based on a client's needs using various assessment tools. Some rates include an allowance for personal time off and/or other administrative costs. Some rates, such as nursing facility rates use cost-based reimbursement and rates are set prospectively using retrospective costs. Some employees in nursing facilities are now covered by a union and some home-like settings may have fewer than ten employees, so these employees would be excluded as this bill is written. However some other providers will be affected by the bill and may ask for payment increases in their contracts. The noted uncertainty surrounding this measure's impact to local provider contracts suggests that DHS and/or OHA may need to return to the Emergency Board if budgeted resources prove insufficient to cover the actual costs of these contracts.

This bill may have a fiscal impact on school districts, public universities and community colleges, but the amount is indeterminate.

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 454**

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 25 and
2 delete pages 2 through 9 and insert:

3 **“SECTION 1. Sections 2 to 16 of this 2015 Act are added to and made
4 a part of ORS chapter 653.**

5 **“SECTION 2. As used in sections 2 to 16 of this 2015 Act:**

6 **“(1)(a) ‘Employee’ means an individual who renders personal ser-
7 vices at a fixed rate to an employer if the employer either pays or
8 agrees to pay for personal services or permits the individual to per-
9 form personal services.**

10 **“(b) ‘Employee’ includes, but is not limited to:**

11 **“(A) An individual who is paid on a piece-rate basis or the basis of
12 the number of operations accomplished or quantity produced or han-
13 dled;**

14 **“(B) Individuals paid on an hourly, salary or commission basis;**

15 **“(C) Individuals for whom withholding is required under ORS
16 316.162 to 316.221; and**

17 **“(D) Home care workers as defined in ORS 410.600.**

18 **“(c) ‘Employee’ does not include:**

19 **“(A) An employee who receives paid sick time under federal law;**

20 **“(B) An independent contractor;**

21 **“(C) A participant in a work training program administered under
22 a state or federal assistance program;**

1 **“(D) A participant in a work-study program that provides students**
2 **in secondary or post-secondary educational institutions with employ-**
3 **ment opportunities for financial or vocational training;**

4 **“(E) A railroad worker exempted under the federal Railroad Unem-**
5 **ployment Insurance Act; and**

6 **“(F) An individual employed by that individual’s parent, spouse or**
7 **child.**

8 **“(2)(a) ‘Employer’ means any person that employs one or more**
9 **employees working anywhere in this state, a political subdivision of**
10 **the state and any county, city, district, authority, public corporation**
11 **or entity, and any instrumentality of a county, city, district, author-**
12 **ity, public corporation or entity, organized and existing under law or**
13 **charter.**

14 **“(b) ‘Employer’ includes an employer located in a city with a pop-**
15 **ulation exceeding 500,000.**

16 **“(c) ‘Employer’ does not include the federal government.**

17 **“(3) ‘Employer located in a city with a population exceeding**
18 **500,000’ includes, but is not limited to, an employer that maintains any**
19 **office, store, restaurant or establishment in that city.**

20 **“(4) ‘Family member’ has the meaning given that term in ORS**
21 **659A.150.**

22 **“(5)(a) ‘Front-load,’ except as provided in paragraph (b) of this**
23 **subsection, means to assign and make available a certain number of**
24 **hours of sick time to an employee as soon as the employee becomes**
25 **eligible to use sick time and on the first day of the immediately sub-**
26 **sequent year without regard to an accrual rate.**

27 **“(b) For employees employed by an employer for less than a full**
28 **year, ‘front-load’ means to assign and make available to an employee**
29 **as soon as the employee becomes eligible to use sick time a number**
30 **of hours of sick time that is the pro rata percentage of the hours the**

1 employee would be entitled to for an entire year based on the number
2 of hours the employee was actually employed by the employer for the
3 year.

4 “(6) ‘Paid sick time’ means time off:

5 “(a) That is provided to an employee by an employer that employs
6 10 or more employees;

7 “(b) That may be used for the purposes specified in section 6 of this
8 2015 Act; and

9 “(c) That is compensated at the regular rate of pay and without
10 reductions in benefits, including but not limited to health care bene-
11 fits, that the employee earns from the employer at the time the em-
12 ployee uses the paid sick time.

13 “(7) ‘Sick time’ means time during which an employee is permitted
14 to be absent from work for a reason authorized under section 6 of this
15 2015 Act without a reduction in benefits, including but not limited to
16 health care benefits, that the employee earns from the employer.

17 “(8) ‘Year’ includes any consecutive 12-month period, such as a
18 calendar year, a tax year, a fiscal year, a contract year or the
19 12-month period beginning on the anniversary of the date of employ-
20 ment of the employee.

21 **“SECTION 3. (1)(a) Employers that employ at least 10 employees**
22 **working anywhere in this state shall implement a sick time policy that**
23 **allows an employee to earn and use up to 40 hours of paid sick time**
24 **per year. Paid sick time shall accrue at the rate of at least one hour**
25 **of paid sick time for every 30 hours the employee works or 1-1/3 hours**
26 **for every 40 hours the employee works.**

27 **“(b) Employers that employ fewer than 10 employees working any-**
28 **where in this state shall implement a sick time policy that allows an**
29 **employee to earn and use up to 40 hours of unpaid sick time per year.**
30 **Unpaid sick time shall accrue at the rate of at least one hour of unpaid**

1 sick time for every 30 hours the employee works or 1-1/3 hours for
2 every 40 hours the employee works.

3 “(c) Employers that employ at least 10 employees working anywhere
4 in this state and front-load for employees at least 40 hours of paid sick
5 time or paid time off at the beginning of each year used to calculate
6 the accrual and usage of sick time or time off need not comply with
7 subsections (1)(a) and (3) of this section.

8 “(d) Employers that employ fewer than 10 employees working any-
9 where in this state and front-load for employees at least 40 hours of
10 unpaid sick time or unpaid time off at the beginning of each year used
11 to calculate the accrual and usage of sick time or time off need not
12 comply with subsections (1)(b) and (3) of this section.

13 “(2)(a) The number of employees employed by an employer shall be
14 ascertained by determining that the per-day average number of em-
15 ployees is 10 or greater for each of 20 workweeks in the calendar year
16 or the fiscal year of the employer immediately preceding the year in
17 which the leave is to be taken.

18 “(b) If the business of the employer was not in existence for the
19 entire year preceding the determination made under paragraph (a) of
20 this subsection, the number of employees shall be based on any 20
21 workweeks preceding the request for sick time, which may include
22 workweeks in the current year, the preceding year or a combination
23 of workweeks in the current year and the preceding year.

24 “(3) An employee shall begin to earn and accrue sick time on the
25 first day of employment with an employer. The employee may carry
26 over up to 40 hours of unused sick time from one year to a subsequent
27 year. However, an employer may adopt a policy that limits:

28 “(a) An employee to accruing no more than 80 hours of sick time;
29 or

30 “(b) An employee to using no more than 40 hours of sick time in a

1 year.

2 “(4)(a) An employer is not required to carry over unused sick time
3 if, by mutual consent, the employer and an employee agree that:

4 “(A) If the employer has 10 or more employees working anywhere
5 in this state, the employee will be paid for all unused paid sick time
6 at the end of the year in which the sick time is accrued and the em-
7 ployer will credit the employee with an amount of paid sick time that
8 meets the requirements of this section on the first day of the imme-
9 diately subsequent year; or

10 “(B) If the employer has fewer than 10 employees working anywhere
11 in this state, the employer will credit the employee with an amount
12 of sick time that meets the requirements of this section on the first
13 day of the immediately subsequent year.

14 “(b) The Commissioner of the Bureau of Labor and Industries shall
15 adopt rules for the determination of the number of employees em-
16 ployed by an employer.

17 “(5)(a) An employee is eligible to use sick time beginning on the 91st
18 calendar day of employment with the employer and may use sick time
19 as it is accrued.

20 “(b) An employer may authorize an employee to use accrued sick
21 time prior to the 91st calendar day of employment.

22 “(c)(A) An employer that employs 10 or more employees working
23 anywhere in this state shall pay an employee for accrued sick time
24 used at the regular rate of pay of the employee.

25 “(B) For an employee employed on a commission or piece-rate basis
26 by an employer that employs 10 or more employees working anywhere
27 in this state, the employer shall pay the employee for accrued sick
28 time used at the employee’s regular rate of pay. If the employee is paid
29 on a commission or piece-rate basis and does not have a previously
30 established regular rate of pay, the employer shall pay the employee

1 at a rate equal to at least the minimum wage specified in ORS 653.025.

2 “(6) An employee who is exempt from overtime requirements under
3 29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act of 1938 is
4 presumed to work 40 hours in each workweek for the purpose of ac-
5 crual of sick time unless the actual workweek of the employee is less
6 than 40 hours, in which case sick time accrues based on the actual
7 workweek of the employee.

8 “(7) Nothing in sections 2 to 16 of this 2015 Act requires an employer
9 to compensate an employee for accrued unused sick time upon the
10 employee’s termination, resignation, retirement or other separation
11 from employment.

12 “(8) An employer may not require an employee to:

13 “(a) Search for or find a replacement worker as a condition of the
14 employee’s use of accrued sick time; or

15 “(b) Work an alternate shift to make up for the use of sick time.

16 “(9) Upon mutual consent by the employee and the employer, an
17 employee may work additional hours or shifts to compensate for hours
18 or shifts during which the employee was absent from work without
19 using accrued sick time for the hours or shifts missed. However, the
20 employer may not require the employee to work additional hours or
21 shifts authorized by this subsection. If the employee works additional
22 hours or shifts, the employer must comply with any applicable federal,
23 state or local laws regarding overtime pay.

24 “(10) An employee retains accrued sick time if the employer sells,
25 transfers or otherwise assigns the business or an interest in the busi-
26 ness to another employer.

27 “(11)(a) An employer shall restore previously accrued unused sick
28 time to an employee who is reemployed by that employer within 180
29 days of separation from employment with the employer.

30 “(b) If an employee leaves employment with an employer before the

1 91st day of employment and subsequently is reemployed by that em-
2 ployer within 180 days of separation from employment, the employer
3 shall restore the accrued sick time balance the employee had when the
4 employee left the employment of the employer and the employee may
5 use accrued sick time after the combined total of days of employment
6 with the employer exceeds 90 calendar days.

7 “(12) If an employee is transferred to a separate division, entity or
8 location of the employer but remains employed by that same employer,
9 the employee is entitled to use all sick time accrued while working at
10 the former division, entity or location of the employer and is entitled
11 to retain or use all sick time as provided by sections 2 to 16 of this 2015
12 Act.

13 “(13) Employers located in a city with a population exceeding 500,000
14 shall comply with sections 2 to 16 of this 2015 Act, except that:

15 “(a) If an employer located in a city with a population exceeding
16 500,000 employs at least six employees working anywhere in this state,
17 the employer shall implement a policy consistent with this section as
18 it applies to employers with at least 10 employees working anywhere
19 in this state.

20 “(b) If an employer located in a city with a population exceeding
21 500,000 employs fewer than six employees working anywhere in this
22 state, the employer shall implement a policy consistent with this sec-
23 tion as it applies to employers with fewer than 10 employees working
24 anywhere in this state.

25 “SECTION 4. (1) An employer with a sick leave policy, paid vacation
26 policy, paid personal time off policy or other paid time off program
27 that is substantially equivalent to or more generous to the employee
28 than the minimum requirements of sections 2 to 16 of this 2015 Act
29 shall be deemed to be in compliance with the requirements of sections
30 2 to 16 of this 2015 Act.

1 **“(2) If an employee of an employer that has a policy for paid sick**
2 **time, paid vacation leave, paid personal time off or other paid time**
3 **off programs has exhausted all paid and unpaid leave available to the**
4 **employee, the employer is not obligated to provide additional leave for**
5 **paid or unpaid sick time as required by sections 2 to 16 of this 2015**
6 **Act. However, the employer may be obligated to provide paid or unpaid**
7 **sick time by federal or state law that provides for paid or unpaid leave**
8 **for similar purposes.**

9 **“SECTION 5. Notwithstanding section 3 (5) of this 2015 Act, an**
10 **employee who is employed by an employer on the effective date of this**
11 **2015 Act is eligible to use any accrued sick time as it accrues on or**
12 **after the effective date of this 2015 Act.**

13 **“SECTION 6. An employee may use sick time earned under section**
14 **3 of this 2015 Act:**

15 **“(1) For an employee’s mental or physical illness, injury or health**
16 **condition, need for medical diagnosis, care or treatment of a mental**
17 **or physical illness, injury or health condition or need for preventive**
18 **medical care.**

19 **“(2) For care of a family member with a mental or physical illness,**
20 **injury or health condition, care of a family member who needs medical**
21 **diagnosis, care, or treatment of a mental or physical illness, injury or**
22 **health condition or care of a family member who needs preventive**
23 **medical care.**

24 **“(3) Notwithstanding ORS 659A.153, for any other purpose specified**
25 **in ORS 659A.159.**

26 **“(4) For a purpose specified in ORS 659A.272, notwithstanding ORS**
27 **659A.270 (1).**

28 **“(5) To donate accrued sick time to another employee if the other**
29 **employee uses the donated sick time for a purpose specified in this**
30 **section and the employer has a policy that allows an employee to do-**

1 nate sick time to a coworker for a purpose specified in this section.

2 “(6) In the event of a public health emergency. For purposes of this
3 subsection, a public health emergency includes, but is not limited to:

4 “(a) Closure of the employee’s place of business, or the school or
5 place of care of the employee’s child, by order of a public official due
6 to a public health emergency;

7 “(b) A determination by a lawful public health authority or by a
8 health care provider that the presence of the employee or the family
9 member of the employee in the community would jeopardize the health
10 of others, such that the employee must provide self care or care for
11 the family member; or

12 “(c) The exclusion of the employee from the workplace under any
13 law or rule that requires the employer to exclude the employee from
14 the workplace for health reasons.

15 “SECTION 7. (1)(a) Upon request of an employee with accrued sick
16 time available, an employer must allow the employee to use sick time.
17 If possible, the employee shall include the anticipated duration of the
18 sick time requested in the request.

19 “(b) Sick time earned under section 3 of this 2015 Act shall be taken
20 in hourly increments unless:

21 “(A) To do so would impose an undue hardship on the employer;
22 and

23 “(B) The employer has a policy or combination of policies that al-
24 lows an employee to use at least 56 hours of paid leave per year that
25 may be taken in minimum increments of four hours and may be used
26 for the purposes specified in section 6 of this 2015 Act.

27 “(c) The Commissioner of the Bureau of Labor and Industries shall
28 adopt rules for the implementation and administration of this sub-
29 section. The rules adopted shall include, but need not be limited to,
30 criteria for establishment of undue hardship under this section that

1 are based on the difficulty of securing a replacement worker while al-
2 lowing the employer to apply a consistent policy to all employees.

3 “(2) An employer may require the employee to comply with the
4 employer’s usual and customary notice and procedural requirements
5 for absences or for requesting time off if those requirements do not
6 interfere with the ability of the employee to use sick time.

7 “(3) If the need to use sick time is foreseeable:

8 “(a) The employer may require reasonable advance notice of the
9 employee’s intention to use sick time, not to exceed 10 days prior to
10 the date the sick time is to begin or as soon as otherwise practicable;
11 and

12 “(b) The employee shall make a reasonable attempt to schedule the
13 use of sick time in a manner that does not unduly disrupt the oper-
14 ations of the employer.

15 “(4) If the need to use sick time is unforeseeable, the employee shall
16 provide notice to the employer as soon as practicable and must comply
17 generally with the employer’s notice or procedural requirements for
18 requesting or reporting other time off if those requirements do not
19 interfere with the ability of the employee to use sick time.

20 “SECTION 8. (1)(a) If an employee takes more than three consec-
21 utive scheduled workdays of sick time for a purpose described in sec-
22 tion 6 (1) to (4) of this 2015 Act, an employer may require the employee
23 to provide verification from a health care provider of the need for the
24 sick time, or certification of the need for leave for purposes of ORS
25 659A.272 as provided in ORS 659A.280.

26 “(b) If the need for sick time is foreseeable and is projected to last
27 more than three scheduled workdays and an employee is required to
28 provide notice under section 7 of this 2015 Act, the employer may re-
29 quire that verification or certification be provided before the sick time
30 commences or as soon as otherwise practicable.

1 “(c) If the employee commences sick time without providing prior
2 notice required by the employer under section 7 of this 2015 Act:

3 “(A) Medical verification shall be provided to the employer within
4 15 calendar days after the employer requests the verification; or

5 “(B) Certification provided as specified in ORS 659A.280 shall be
6 provided to the employer within a reasonable time after the employee
7 receives the request for certification.

8 “(2) The employer shall pay any reasonable costs for providing
9 medical verification or certification required under this section, in-
10 cluding lost wages, that are not paid under a health benefit plan in
11 which the employee is enrolled.

12 “(3)(a) An employer may not require that the verification or certi-
13 fication required under this section explain the nature of the illness
14 or details related to the domestic violence, sexual assault, harassment,
15 or stalking that necessitates the use of sick time.

16 “(b) If an employer suspects that an employee is abusing sick time,
17 including engaging in a pattern of abuse, the employer may require
18 verification from a health care provider of the need of the employee
19 to use sick time, regardless of whether the employee has used sick
20 time for more than three consecutive days. As used in this paragraph,
21 ‘pattern of abuse’ includes, but is not limited to, repeated use of un-
22 scheduled sick time on or adjacent to weekends, holidays, vacation
23 days or paydays.

24 “(4) As used in this section, ‘health care provider’ has the meaning
25 given that term in ORS 659A.150.

26 “SECTION 9. (1) An employer shall:

27 “(a) Provide written notification at least quarterly to each employee
28 of the amount of accrued and unused sick time available for use by
29 the employee. Inclusion of the amount of accrued and used sick time
30 on the statement required under ORS 652.610 meets the requirements

1 of this paragraph.

2 “(b) Provide written notice of the requirements of sections 2 to 16
3 of this 2015 Act to each employee in accordance with rules adopted by
4 the Commissioner of the Bureau of Labor and Industries.

5 “(2) The notices provided under this section must be in the language
6 the employer typically uses to communicate with the employee.

7 “(3) The Bureau of Labor and Industries shall make available to
8 employers a template that meets the required notice provisions of this
9 section.

10 “(4) Health information of an employee related to sick time is con-
11 fidential and may not be released without the permission of the em-
12 ployee. Information pertaining to leave under ORS 659A.272 that is
13 provided by an employee in accordance with sections 2 to 16 of this
14 2015 Act is confidential as provided in ORS 659A.280.

15 “SECTION 10. Sections 2 to 16 of this 2015 Act establish minimum
16 requirements pertaining to sick time and may not be construed to
17 preempt, limit or otherwise affect the applicability of any employer
18 policy, standard or collective bargaining agreement that provides for
19 greater use of paid or unpaid sick time.

20 “SECTION 11. It is an unlawful practice for an employer or any
21 other person to:

22 “(1) Deny, interfere with, restrain or fail to pay for sick time to
23 which an employee is entitled under sections 2 to 16 of this 2015 Act;

24 “(2) Retaliate or in any way discriminate against an employee with
25 respect to any term or condition of employment because the employee
26 has inquired about the provisions of sections 2 to 16 of this 2015 Act,
27 submitted a request for sick time, taken sick time, participated in any
28 manner in an investigation, proceeding or hearing related to sections
29 2 to 16 of this 2015 Act, or invoked any provision of sections 2 to 16
30 of this 2015 Act; or

1 **“(3) Apply an absence control policy that includes sick time ab-**
2 **sences covered under sections 2 to 16 of this 2015 Act as an absence**
3 **that may lead to or result in an adverse employment action against**
4 **the employee.**

5 **“SECTION 12. (1) The requirements of sections 2 to 16 of this 2015**
6 **Act do not apply to an employee:**

7 **“(a) Whose terms and conditions of employment are covered by a**
8 **collective bargaining agreement;**

9 **“(b) Who is employed through a hiring hall or similar referral sys-**
10 **tem operated by the labor organization or a third party; and**

11 **“(c) Whose employment-related benefits are provided by a joint**
12 **multi-employer-employee trust or benefit plan.**

13 **“(2)(a) The Home Care Commission created under ORS 410.602 shall**
14 **establish a paid sick time policy for consumer employed home care**
15 **workers.**

16 **“(b) A policy for paid sick time for consumer employed home care**
17 **workers implemented by the Home Care Commission that allows an**
18 **eligible home care worker to accrue and use up to 40 hours of paid**
19 **time off a year, including but not limited to sick time, is deemed to**
20 **meet the requirements of sections 2 to 16 of this 2015 Act and is ex-**
21 **empt from the provisions of sections 2 (6), 3 (5), 4, 7, 8 and 9 of this**
22 **2015 Act.**

23 **“(3) As used in this section, ‘consumer employed home care**
24 **worker’ has the meaning given the term ‘home care worker’ in ORS**
25 **410.600.**

26 **“SECTION 13. (1) An employee asserting a violation of section 11**
27 **(2) or (3) of this 2015 Act may file a complaint with the Commissioner**
28 **of the Bureau of Labor and Industries under ORS 659A.820 or a civil**
29 **action as provided in ORS 659A.885.**

30 **“(2) The commissioner has the same enforcement powers with re-**

1 spect to the rights established under sections 2 to 16 of this 2015 Act
2 as are established in ORS chapters 652 and 653.

3 **SECTION 14. The Commissioner of the Bureau of Labor and In-**
4 **dustries:**

5 **“(1) Shall enforce the provisions of sections 2 to 16 of this 2015 Act;**
6 **and**

7 **“(2) May adopt rules necessary for the implementation and**
8 **enforcement of sections 2 to 16 of this 2015 Act.**

9 **SECTION 15. The State of Oregon preempts all charter and statu-**
10 **tory authority of local governments as defined in ORS 174.116 to set**
11 **any sick leave requirements.**

12 **SECTION 16. If any provision or application of sections 2 to 16 of**
13 **this 2015 Act is determined to be invalid, the remaining provisions re-**
14 **main in force and have full effect, and the invalid provisions are de-**
15 **clared severable.**

16 **SECTION 17. ORS 653.256 is amended to read:**

17 **“653.256. (1) In addition to any other penalty provided by law, the Com-**
18 **missioner of the Bureau of Labor and Industries may assess a civil penalty**
19 **not to exceed \$1,000 against any person [who] that willfully violates ORS**
20 **653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or sections 3, 4, 5, 6, 7,**
21 **8, 9 and 10 of this 2015 Act or any rule adopted thereunder.**

22 **“(2) In addition to any other penalty provided by law, the commissioner**
23 **may assess a civil penalty not to exceed \$1,000 against any person [who] that**
24 **intentionally violates ORS 653.077 or any rule adopted thereunder.**

25 **“(3) Civil penalties authorized by this section shall be imposed in the**
26 **manner provided in ORS 183.745.**

27 **“(4)(a) All sums collected as penalties under this section shall be first**
28 **applied toward reimbursement of costs incurred in determining the vio-**
29 **lations, conducting hearings under this section and addressing and collecting**
30 **the penalties.**

1 “(b) The remainder, if any, of the sums collected as penalties under sub-
2 section (1) of this section shall be paid over by the commissioner to the De-
3 partment of State Lands for the benefit of the Common School Fund of this
4 state. The department shall issue a receipt for the money to the commis-
5 sioner.

6 “(c) The remainder, if any, of the sums collected as penalties under sub-
7 section (2) of this section shall be paid over by the commissioner to the De-
8 partment of Human Services for the benefit of the Breastfeeding Mother
9 Friendly Employer Project. The department shall issue a receipt for the
10 moneys to the commissioner.

11 **“SECTION 18.** ORS 659A.885 is amended to read:

12 “659A.885. (1) Any person claiming to be aggrieved by an unlawful prac-
13 tice specified in subsection (2) of this section may file a civil action in cir-
14 cuit court. In any action under this subsection, the court may order
15 injunctive relief and any other equitable relief that may be appropriate, in-
16 cluding but not limited to reinstatement or the hiring of employees with or
17 without back pay. A court may order back pay in an action under this sub-
18 section only for the two-year period immediately preceding the filing of a
19 complaint under ORS 659A.820 with the Commissioner of the Bureau of La-
20 bor and Industries, or if a complaint was not filed before the action was
21 commenced, the two-year period immediately preceding the filing of the
22 action. In any action under this subsection, the court may allow the pre-
23 vailing party costs and reasonable attorney fees at trial and on appeal. Ex-
24 cept as provided in subsection (3) of this section:

25 “(a) The judge shall determine the facts in an action under this sub-
26 section; and

27 “(b) Upon any appeal of a judgment in an action under this subsection,
28 the appellate court shall review the judgment pursuant to the standard es-
29 tablished by ORS 19.415 (3).

30 “(2) An action may be brought under subsection (1) of this section alleg-

1 ing a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237
2 (2), 476.574, 652.355, 653.060, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063,
3 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186,
4 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
5 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,
6 659A.309, 659A.315, 659A.318, 659A.320 or 659A.421 **or sections 2 to 16 of**
7 **this 2015 Act.**

8 “(3) In any action under subsection (1) of this section alleging a violation
9 of ORS 25.337, 25.424, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,
10 659A.082, 659A.103 to 659A.145, 659A.199, 659A.228, 659A.230, 659A.250 to
11 659A.262, 659A.290, 659A.318 or 659A.421:

12 “(a) The court may award, in addition to the relief authorized under
13 subsection (1) of this section, compensatory damages or \$200, whichever is
14 greater, and punitive damages;

15 “(b) At the request of any party, the action shall be tried to a jury;

16 “(c) Upon appeal of any judgment finding a violation, the appellate court
17 shall review the judgment pursuant to the standard established by ORS
18 19.415 (1); and

19 “(d) Any attorney fee agreement shall be subject to approval by the court.

20 “(4) In any action under subsection (1) of this section alleging a violation
21 of ORS 652.355 or 653.060, the court may award, in addition to the relief
22 authorized under subsection (1) of this section, compensatory damages or
23 \$200, whichever is greater.

24 “(5) In any action under subsection (1) of this section alleging a violation
25 of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addi-
26 tion to the relief authorized under subsection (1) of this section,
27 compensatory damages or \$250, whichever is greater.

28 “(6) In any action under subsection (1) of this section alleging a violation
29 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
30 thorized under subsection (1) of this section, a civil penalty in the amount

1 of \$720.

2 “(7) Any individual against whom any distinction, discrimination or re-
3 striction on account of race, color, religion, sex, sexual orientation, national
4 origin, marital status or age, if the individual is 18 years of age or older,
5 has been made by any place of public accommodation, as defined in ORS
6 659A.400, by any employee or person acting on behalf of the place or by any
7 person aiding or abetting the place or person in violation of ORS 659A.406
8 may bring an action against the operator or manager of the place, the em-
9 ployee or person acting on behalf of the place or the aider or abettor of the
10 place or person. Notwithstanding subsection (1) of this section, in an action
11 under this subsection:

12 “(a) The court may award, in addition to the relief authorized under
13 subsection (1) of this section, compensatory and punitive damages;

14 “(b) The operator or manager of the place of public accommodation, the
15 employee or person acting on behalf of the place, and any aider or abettor
16 shall be jointly and severally liable for all damages awarded in the action;

17 “(c) At the request of any party, the action shall be tried to a jury;

18 “(d) The court shall award reasonable attorney fees to a prevailing
19 plaintiff;

20 “(e) The court may award reasonable attorney fees and expert witness fees
21 incurred by a defendant who prevails only if the court determines that the
22 plaintiff had no objectively reasonable basis for asserting a claim or no
23 reasonable basis for appealing an adverse decision of a trial court; and

24 “(f) Upon any appeal of a judgment under this subsection, the appellate
25 court shall review the judgment pursuant to the standard established by ORS
26 19.415 (1).

27 “(8) When the commissioner or the Attorney General has reasonable cause
28 to believe that a person or group of persons is engaged in a pattern or
29 practice of resistance to the rights protected by ORS 659A.145 or 659A.421
30 or federal housing law, or that a group of persons has been denied any of the

1 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
2 commissioner or the Attorney General may file a civil action on behalf of
3 the aggrieved persons in the same manner as a person or group of persons
4 may file a civil action under this section. In a civil action filed under this
5 subsection, the court may assess against the respondent, in addition to the
6 relief authorized under subsections (1) and (3) of this section, a civil penalty:

7 “(a) In an amount not exceeding \$50,000 for a first violation; and

8 “(b) In an amount not exceeding \$100,000 for any subsequent violation.

9 “(9) In any action under subsection (1) of this section alleging a violation
10 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing
11 law, when the commissioner is pursuing the action on behalf of an aggrieved
12 complainant, the court shall award reasonable attorney fees to the commis-
13 sioner if the commissioner prevails in the action. The court may award rea-
14 sonable attorney fees and expert witness fees incurred by a defendant that
15 prevails in the action if the court determines that the commissioner had no
16 objectively reasonable basis for asserting the claim or for appealing an ad-
17 verse decision of the trial court.

18 “(10) In an action under subsection (1) or (8) of this section alleging a
19 violation of ORS 659A.145 or 659A.421 or discrimination under federal hous-
20 ing law:

21 “(a) ‘Aggrieved person’ includes a person who believes that the person:

22 “(A) Has been injured by an unlawful practice or discriminatory housing
23 practice; or

24 “(B) Will be injured by an unlawful practice or discriminatory housing
25 practice that is about to occur.

26 “(b) An aggrieved person in regard to issues to be determined in an action
27 may intervene as of right in the action. The Attorney General may intervene
28 in the action if the Attorney General certifies that the case is of general
29 public importance. The court may allow an intervenor prevailing party costs
30 and reasonable attorney fees at trial and on appeal.

