

House Bill 2005

Sponsored by Representatives VEGA PEDERSON, HOYLE, Senators ROSENBAUM, STEINER HAYWARD; Representatives BUCKLEY, FAGAN, FREDERICK, GALLEGOS, HELM, KENY-GUYER, LININGER, MCLAIN, NOSSE, SMITH WARNER, WILLIAMSON, Senators BURDICK, DEMBROW, MONNES ANDERSON, MONROE, RILEY (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires all employers to implement paid sick time for employees. Creates exceptions. Specifies purposes for which sick time may be taken and rate at which sick time accrues. Requires advance notice of request to use sick time under certain circumstances. Prohibits discrimination against employee for inquiring about or using paid sick time. Makes violation unlawful practice subject to jurisdiction of Bureau of Labor and Industries. Authorizes civil action for violation.

A BILL FOR AN ACT

1
2 Relating to mandatory provision of sick time; creating new provisions; and amending ORS 659A.885.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 to 13 of this 2015 Act are added to and made a part of ORS**
5 **chapter 652.**

6 **SECTION 2. As used in sections 2 to 13 of this 2015 Act:**

7 (1) **“Employee” means an individual who renders personal services to an employer if the**
8 **employer either pays or agrees to pay for personal services, or permits the individual to**
9 **perform personal services. “Employee” includes, but is not limited to, home care workers**
10 **as defined in ORS 410.600. “Employee” does not include employees who receive paid sick time**
11 **under federal law.**

12 (2) **“Employer” means any person that employs another person. “Employer” includes the**
13 **State of Oregon or a political subdivision of the state or any county, city, district, authority,**
14 **public corporation or entity and any instrumentality thereof organized and existing under**
15 **law or charter. “Employer” does not include the federal government.**

16 (3) **“Family member” means:**

17 (a) **A family member as defined in ORS 659A.150; or**

18 (b) **An individual related by blood or affinity to the employee whose close association with**
19 **the employee is the equivalent of a family relationship.**

20 (4) **“Paid sick time” means time off that is provided to an employee by an employer that**
21 **may be used for the purposes specified in section 6 of this 2015 Act and that is compensated**
22 **at the same rate of pay and with the same benefits, including but not limited to health care**
23 **benefits, as the employee earns from the employer at the time the employee uses the paid**
24 **sick time.**

25 (5) **“Sick time” means an absence from work for a reason authorized under section 6 of**
26 **this 2015 Act.**

27 (6) **“Year” means a consecutive 12-month period. “Year” includes, but is not limited to,**
28 **a calendar year, tax year, fiscal year, contract year or the 12-month period beginning on the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 anniversary of the date of employment of the employee.

2 **SECTION 3.** (1) All employers shall implement a sick time policy that allows an employee
3 to earn and accrue at least 56 hours of paid sick time per year. Paid sick time shall accrue
4 at the rate of one hour of paid sick time for every 30 hours worked.

5 (2) An employee shall begin to earn and accrue paid sick time on the first day of em-
6 ployment with an employer. Unused paid sick time shall be carried over from one year to a
7 subsequent year. However, an employer may adopt a policy that limits:

8 (a) An employee from accruing more than 56 hours of paid sick time in a year; or

9 (b) The use of paid sick time by an employee to no more than 56 hours of paid sick time
10 in a year.

11 (3) An employer is not required to carry over unused paid sick time if, by mutual con-
12 sent, the employer and the employee agree that the employee will be paid for all unused sick
13 time at the end of the year in which the sick time is accrued and the employer credits the
14 employee with an amount of paid sick time that meets the requirements of this section on
15 the first day of the immediately subsequent year.

16 (4) Employees who are exempt from overtime requirements under 29 U.S.C. 213(a)(1) of
17 the federal Fair Labor Standards Act of 1938 shall be presumed to work 40 hours in each
18 workweek for the purpose of accrual of paid sick time unless the actual workweek of the
19 employee is less than 40 hours, in which case paid sick time accrues based on the actual
20 workweek of the employee.

21 (5) The requirements of subsection (1) of this section do not apply to an employer that
22 has a paid sick time or paid time off policy that:

23 (a) Provides employees with paid sick time benefits or paid time off that equals or ex-
24 ceeds the paid sick time benefits required by this section and that may be used by the em-
25 ployee under the same terms and conditions and for the purposes specified in section 6 of
26 this 2015 Act.

27 (b) Grants the employee at least 56 hours of paid sick time or paid time off at the be-
28 ginning of each year used to calculate the accrual and usage of paid sick time or paid time
29 off.

30 (c) Specifies that the protections against retaliation specified in section 11 of this 2015
31 Act are applicable to the employee.

32 (6) Nothing in sections 2 to 13 of this 2015 Act requires an employer to compensate an
33 employee for accrued unused sick time upon the employee's termination, resignation, re-
34 tirement or other separation from employment.

35 (7) An employer may not require an employee to:

36 (a) Search for or find a replacement worker as a condition of the employee's use of ac-
37 crued sick time; or

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

39 (8) Upon mutual consent by the employee and the employer, an employee may work ad-
40 ditional hours or shifts during the same or next pay period without using accrued sick time
41 for the hours or shifts missed. However, the employer may not require the employee to work
42 additional hours or shifts authorized by this subsection. If the employee works additional
43 hours or shifts, the employer must comply with any applicable federal, state or local laws
44 regarding overtime pay.

45 (9) Accrued paid sick time shall be retained by the employee if the employer sells,

1 transfers or otherwise assigns the business to another employer.

2 (10) An employer shall restore previously accrued unused paid sick time to an employee
3 who is rehired by that employer within 180 days of separation from employment with the
4 employer. The employee shall be entitled to use previously accrued paid sick time imme-
5 diately upon reemployment.

6 (11) If an employee is transferred to a separate division, entity or location of the em-
7 ployer but remains employed by that same employer, the employee is entitled to use all sick
8 time accrued while working at the former division, entity or location of the employer and is
9 entitled to retain or use all sick time as provided by sections 2 to 13 of this 2015 Act.

10 **SECTION 4.** (1) An employee is eligible to use paid sick time beginning on the 90th cal-
11 endar day of employment with the employer and may use paid sick time as it is accrued.

12 (2) An employer may authorize an employee to use accrued sick time prior to the 90th
13 calendar day of employment.

14 (3) Employees shall be paid for accrued sick time used at the regular rate of pay of the
15 employee.

16 (4) Accrued sick time may be taken in one-hour increments or the smallest increments
17 that the payroll system of the employer uses to account for absences or use of other time.

18 **SECTION 5.** Notwithstanding section 4 of this 2015 Act, an employee who is employed by
19 an employer on the effective date of this 2015 Act is eligible to use any accrued sick time as
20 it accrues on or after the effective date of this 2015 Act.

21 **SECTION 6.** Paid sick time required under section 3 of this 2015 Act may be taken by an
22 employee:

23 (1) For an employee's mental or physical illness, injury or health condition, need for
24 medical diagnosis, care or treatment of a mental or physical illness, injury or health condi-
25 tion or need for preventive medical care;

26 (2) For care of a family member with a mental or physical illness, injury or health con-
27 dition, care of a family member who needs medical diagnosis, care, or treatment of a mental
28 or physical illness, injury or health condition or care of a family member who needs pre-
29 ventive medical care;

30 (3) Notwithstanding ORS 659A.153, for any other purpose specified in ORS 659A.159;

31 (4) For a purpose specified in ORS 659A.272, notwithstanding ORS 659A.270 (1);

32 (5) In the event of a public health emergency, including, but not limited to:

33 (a) Closure of the employee's place of business, or the school or place of care of the
34 employee's child, by order of a public official due to a public health emergency;

35 (b) Self-care or for care for a family member, if it has been determined by a lawful public
36 health authority or by a health care provider that the presence of the employee or the family
37 member of the employee in the community would jeopardize the health of others; or

38 (c) Under any law or rule that requires the employer to exclude the employee from the
39 workplace for health reasons; or

40 (6) In hourly increments or the smallest increments that the payroll system of the em-
41 ployer uses to account for absences or use of other time.

42 **SECTION 7.** (1) Upon request of an employee with accrued paid sick time available, an
43 employer must provide the employee with paid sick time. If possible, the employee shall in-
44 clude the anticipated duration of the sick time requested in the request.

45 (2) An employer may require the employee to comply with the employer's usual and

1 customary notice and procedural requirements for absences or for requesting time off if
 2 those requirements do not interfere with the ability of the employee to use sick time.

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

4 (a) The employer may require reasonable advance notice of the intention to use sick
 5 time, not to exceed 10 days prior to the date the sick time is to begin or as soon as otherwise
 6 practicable; and

7 (b) The employee shall make a reasonable attempt to schedule the use of paid sick time
 8 in a manner that does not unduly disrupt the operations of the employer.

9 (4) If the need to use paid sick time is unforeseeable, the employee shall provide notice
 10 to the employer as soon as practicable and must comply generally with the employer's notice
 11 or procedural requirements for requesting or reporting other time off if those requirements
 12 do not interfere with the ability of the employee to use paid sick time.

13 **SECTION 8.** (1)(a) If an employee takes more than 24 consecutive hours of paid sick time
 14 for a purpose described in section 6 of this 2015 Act, an employer may require the employee
 15 to provide verification from a health care provider of the need for the sick time, or certi-
 16 fication of the need for leave for purposes of ORS 659A.272 as provided in ORS 659A.280.

17 (b) If the need for sick time is foreseeable and an employee is required to provide notice
 18 under section 7 of this 2015 Act, the employer may require that verification or certification
 19 be provided before the sick time commences or as soon as otherwise practicable. If the em-
 20 ployee commences paid sick time without providing prior notice required by the employer
 21 under section 7 of this 2015 Act, medical verification or certification provided under ORS
 22 659A.280 shall be provided to the employer within 15 calendar days after the employer re-
 23 quests the verification or certification or as soon as otherwise practicable.

24 (2) All costs for providing medical verification or certification required under this section
 25 shall be paid by the employer.

26 (3) The employer may not require that the verification or certification required under
 27 this section explain the nature of the illness that necessitates the use of sick time, except
 28 as required by ORS 659A.280 for sick time taken under section 6 (4) of this 2015 Act.

29 (4) As used in this section, "health care provider" has the meaning given that term in
 30 ORS 659A.150.

31 **SECTION 9.** (1) An employer shall:

32 (a) Maintain records of the hours worked and the paid sick time accrued and used by
 33 each employee.

34 (b) Provide written notification at least quarterly to each employee of the amount of
 35 accrued and unused paid sick time available for use by the employee.

36 (c) Make records required to be maintained under this section available for inspection
 37 by the Commissioner of the Bureau of Labor and Industries upon request. An employer may
 38 not unreasonably delay or refuse to allow the commissioner to review the records required
 39 to be maintained under this section.

40 (d) Maintain records required under this section for three years from the date paid sick
 41 time accrues.

42 (2) Health information of an employee related to paid sick time is confidential and may
 43 not be released without the permission of the employee. Information pertaining to leave un-
 44 der ORS 659A.272 that is provided by an employee in accordance with sections 2 to 13 of this
 45 2015 Act is confidential as provided in ORS 659A.280.

1 **(3)(a) An employer shall provide written notice of the requirements of sections 2 to 13**
2 **of this 2015 Act to each employee individually.**

3 **(b) The notice provided under this subsection must be in the language the employer**
4 **typically uses to communicate with the employee.**

5 **(4) The Bureau of Labor and Industries shall provide employers with a template that**
6 **meets the required notice provisions of this section.**

7 **SECTION 10. Sections 2 to 13 of this 2015 Act establish minimum requirements pertaining**
8 **to paid sick time and shall not be construed to preempt, limit or otherwise affect the appli-**
9 **cability of any law, regulation, ordinance, requirement, policy, standard or collective bar-**
10 **gaining agreement that provides for greater use of paid or unpaid sick time.**

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

12 **(1) Deny, interfere with, restrain or fail to pay for paid sick time to which an employee**
13 **is entitled under sections 2 to 13 of this 2015 Act;**

14 **(2) Retaliate or in any way discriminate against an employee with respect to any term**
15 **or condition of employment because the employee has inquired about the provisions of**
16 **sections 2 to 13 of this 2015 Act, submitted a request for paid sick time, taken paid sick time,**
17 **participated in any manner in an investigation, proceeding or hearing related to sections 2**
18 **to 13 of this 2015 Act, or invoked any provision of sections 2 to 13 of this 2015 Act; or**

19 **(3) Apply an absence control policy that includes sick time absences covered under**
20 **sections 2 to 13 of this 2015 Act as an absence that may lead to or result in and adverse**
21 **employment action against the employee.**

22 **SECTION 12. The requirements of sections 2 to 13 of this 2015 Act do not apply to an**
23 **employee:**

24 **(1) In the building and construction industry whose terms and conditions of employment**
25 **are covered by a collective bargaining agreement; or**

26 **(2) Who works as a longshoreman or stage hand and whose terms and conditions of em-**
27 **ployment are covered by a collective bargaining agreement, if the agreement includes a**
28 **statement in clear and unambiguous terms that the paid sick time requirements of sections**
29 **2 to 13 of this 2015 Act are expressly waived.**

30 **SECTION 13. If any provision or application of sections 2 to 13 of this 2015 Act is deter-**
31 **mined to be invalid, the remaining provisions remain in force and have full effect, and the**
32 **invalid provisions are declared severable.**

33 **SECTION 14. ORS 659A.885 is amended to read:**

34 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
35 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
36 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
37 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
38 court may order back pay in an action under this subsection only for the two-year period imme-
39 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
40 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
41 year period immediately preceding the filing of the action. In any action under this subsection, the
42 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
43 cept as provided in subsection (3) of this section:

44 (a) The judge shall determine the facts in an action under this subsection; and

45 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall

1 review the judgment pursuant to the standard established by ORS 19.415 (3).

2 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 3 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 476.574, 652.355, 653.060, 659A.030,
 4 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,
 5 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,
 6 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
 7 659A.318, 659A.320 or 659A.421 **or sections 2 to 13 of this 2015 Act.**

8 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 9 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 10 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318 or 659A.421 **or sections 2 to 13 of**
 11 **this 2015 Act:**

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

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

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

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

18 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or
 19 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,
 20 compensatory damages or \$200, whichever is greater.

21 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574,
 22 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1)
 23 of this section, compensatory damages or \$250, whichever is greater.

24 (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,
 25 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil
 26 penalty in the amount of \$720.

27 (7) Any individual against whom any distinction, discrimination or restriction on account of
 28 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual
 29 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS
 30 659A.400, by any employee or person acting on behalf of the place or by any person aiding or
 31 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator
 32 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor
 33 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-
 34 section:

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

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

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

41 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

42 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
 43 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
 44 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
 45 and

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

3 (8) When the commissioner or the Attorney General has reasonable cause to believe that a
4 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
5 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
6 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
7 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
8 manner as a person or group of persons may file a civil action under this section. In a civil action
9 filed under this subsection, the court may assess against the respondent, in addition to the relief
10 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

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

20 (10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145
21 or 659A.421 or discrimination under federal housing law:

22 (a) "Aggrieved person" includes a person who believes that the person:

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

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

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

30 **SECTION 15. Sections 2 to 13 of this 2015 Act and the amendments to ORS 659A.885 by**
31 **section 14 of this 2015 Act apply to requests for paid sick time made on or after January 1,**
32 **2016.**