

# An Unintended Impact of Paid Sick Leave Law: Unleveling the Prevailing Wage Rate Law Balance

An unintended consequence of the Oregon sick leave law is that it greatly upset the even-playing field that the prevailing wage rate (“PWR”) law, ORS 279C.800 et seq., set in place for employers. Oregon law requires that prevailing wage rates be paid to all workers performing labor on a public works project. ORS 279C.840(1). This is because Oregon’s lawmakers designed PWR law to ensure that contractors compete on their ability to perform work competently and efficiently while maintaining community established compensation standards, to encourage the training and education of workers in industry skill standards and to encourage employers to use the funds required by the PWR law for fringe benefits for the actual purchase of such benefits. ORS 279C.805. Therefore, under the PWR system, non-union employers must pay employees both a basic hourly rate and a fringe hourly rate for all work performed on prevailing wage rate projects. Then, an employer may contribute funds directly to the employee’s bona fide fringe benefit plan, which provides the employee with payment for things such as health and welfare plans.

## **A Practical Example of How Prevailing Wage Rate Worked before Paid Sick Leave**

In order to better understand how the PWR system plays out and what the impact of the Oregon sick leave law is, let us take the example of an employee who works as a dredger. The current PWR for a dredger is a basic hourly rate of \$39.08 plus a fringe rate of \$13.28. Therefore, a dredger is entitled to receive \$52.36 per hour or \$2,094.40 per week if the employee works 8 hours per day, 5 days per week. The law permits the employer to satisfy this obligation by paying \$2,094.40 per week in wages to the employee, or \$1,000 in wages and \$1,094.40 to a fringe program, or \$1,500 in wages and \$594.40 to a fringe program – or any other similar combination of wages and fringe benefits.<sup>1</sup> Thus, no matter the combination of wages and fringe benefits, the total amount the employee is entitled to receive is still \$2,094.40 per week.

Before the Oregon sick leave law was passed, a dredger would therefore be entitled to \$52.36 per hour or \$2,094.40 per week. Let’s say that the employer pays \$10.00 per hour worked into the dredger’s fringe benefit program. The law then would permit the employer to take a credit of \$10.00 per hour towards the hourly fringe benefit requirement. Thus, the employee is then paid the basic hourly rate (\$39.08) plus a fringe of \$3.28 (i.e. \$13.28 - \$10.00) per hour. The employee will therefore receive \$42.36 per hour plus \$10.00 per hour that will go toward the employee’s fringe benefit plan that can be used for receiving payment when the employment takes sick leave. The net benefit to the employee is \$52.36 per hour (i.e. \$39.08 basic hourly rate + \$10.00 toward fringe benefit plan + \$3.28 fringe rate). Therefore, the employee is receiving his/her full entitlement of \$52.36 per hour or \$2,094.40 per week.

## **How Prevailing Wage Rate Changes with Paid Sick Leave Law**

This calculation changed with the passage of the Oregon sick leave law. Take the above example of the dredger. Now under the sick leave law, an employer who provides the above compensation plan will pay double whatever amount the employer has to put in the employee’s fringe benefit program when the

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<sup>1</sup> See BOLI Prevailing Wage Rate Laws: A Handbook for Oregon Contractors, Subcontractors, and Public Agencies, available at [http://www.oregon.gov/boli/WHD/PWR/docs/2014\\_PWR\\_Law\\_Book.pdf](http://www.oregon.gov/boli/WHD/PWR/docs/2014_PWR_Law_Book.pdf), p. 24.

employee takes paid sick time. This is because the employer will pay \$39.08 for the basic hourly rate plus \$10.00 toward the employee's fringe benefit plan plus \$13.28 for the fringe rate, which the employer now receives no credit against even though the employer is paying \$10.00 per hour toward the employee's fringe benefit plan. Therefore, the net benefit to the employee is \$62.36 per hour, even though the employee is only entitled to \$52.36 per hour. Thus, rather than paying only \$10.00 to the fringe benefit plan per hour to pay for the employee's paid sick time, the employer will pay an additional \$10.00 via the fringe rate that cannot be credited. The employee under the Oregon sick leave law therefore receives double the payment toward paid sick time because the employer cannot take a credit for providing the single payment to the employee's bona fide fringe benefit plan. In addition, at termination the employee will receive all of the contributions made by the employer to his/her fringe benefit plan, even though the Oregon sick leave law does not require this. Thus, under the Oregon sick leave law, the employee will receive \$62.36 per hour (or \$2,494.40 per week, if s/he works 8 hours per day, 5 days per week), rather than what the employee would otherwise be entitled to, which is \$52.36 per hour (or \$2,094.40 per week), in addition to a pay out of the amount paid toward the employee's fringe benefit program at termination. On an annual basis, assuming the employee works only 8 hours per day, 5 days per week, this employee would receive an additional \$20,800 as compared to what the PWR law entitles the employee to receive.

### **This Law Forces a Greater Benefit Than Paid Sick Leave Law**

In addition, according to PWR law, any contribution the employer makes to the employee's fringe benefit program is irrevocable and for the employee's benefit. ORS 279C.800(1)(a). In other words, once the employer contributes money to an employee's fringe benefit program, it is the employee's to keep, even if the employee separates or terminates from employment with that employer for any reason. This is a greater benefit to the employee than the Oregon sick leave law requires, which states that an employer only needs to provide 40 hours of paid sick leave to its employees and does not have to pay out any accrued, but unused sick time when an employee leaves employment for any reason.

### **Recommendation for Leveling the Playing Field Again**

The Oregon sick leave rules should specify that employers who contribute to an employee's fringe benefit program in order to provide employees with payment for taking sick leave should be considered a fringe benefit.<sup>2</sup> Therefore, employers would potentially be able to receive a credit that would allow employees to continue to be entitled to their net compensation under the PWR law. Employees will not receive a net deduction to his/her overall compensation package by allowing employers to take this credit. Instead, employees will receive what they are fully entitled to receive under the PWR law, but not receive a wind fall due to the unintended consequences of the Oregon sick leave law or force employers to pay double to cover the payment of sick time to their employees.

### **Solution: Clarify the Legislative Intent with the language in SB 1594.**

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<sup>2</sup> The precise proposed language is as follows: *Notwithstanding ORS 279C.800(1), the provision of sick leave under ORS 653.601 to 653.661 may be considered a fringe benefit for purposes of ORS chapter 279C.*