

Senate Bill 1581

Sponsored by Senator THOMSEN, Representative MCLANE; Senators HANSELL, JOHNSON, Representatives BARKER, GILLIAM, KOMP, LIVELY, MCKEOWN, OLSON (Pre-session 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**.

Defines employer location as location of headquarters. Limits application of paid leave requirements to employers with 25 or more employees. Maintains application of paid leave requirements to employers located in city with population exceeding 500,000 to employers with six or more employees. Excludes seasonal agricultural workers and temporary workers from employee count for purpose of determining whether employer must provide sick leave. Limits requirements for substantial equivalency compliance. Excludes joint employers from joint and several liability. Creates safe harbor from enforcement, civil and administrative actions until January 1, 2017. Limits statutory protection to employee's first 40 hours of sick leave.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sick leave; creating new provisions; amending ORS 653.601, 653.606, 653.611, 653.626,
3 653.641, 653.646, 653.651 and 653.656 and section 22, chapter 537, Oregon Laws 2015; and de-
4 claring an emergency.

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

6 **SECTION 1.** ORS 653.601 is amended to read:

7 653.601. As used in ORS 653.601 to 653.661:

8 (1)(a) "Employee" means an individual who renders personal services at a fixed rate to an em-
9 ployer if the employer either pays or agrees to pay for personal services or permits the individual
10 to perform personal services.

11 (b) "Employee" includes, but is not limited to:

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

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

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

16 (D) Home care workers as defined in ORS 410.600.

17 (c) "Employee" does not include:

18 (A) An employee who receives paid sick time under federal law;

19 (B) An independent contractor;

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

22 (D) A participant in a work-study program that provides students in secondary or post-secondary
23 educational institutions with employment opportunities for financial or vocational training;

24 (E) A railroad worker exempted under the federal Railroad Unemployment Insurance Act; and

25 (F) An individual employed by that individual's parent, spouse or child.

26 (2)(a) "Employer" means any person that employs one or more employees working anywhere in
27 this state, a political subdivision of the state and any county, city, district, authority, public corpo-

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 ration or entity, and any instrumentality of a county, city, district, authority, public corporation or
 2 entity, organized and existing under law or charter.

3 (b) "Employer" includes an employer located in a city with a population exceeding 500,000.

4 (c) "Employer" does not include the federal government.

5 (3) "Employer located in a city with a population exceeding 500,000" [*includes, but is not limited*
 6 *to, an employer that maintains any office, store, restaurant or establishment in that city*] **means any**
 7 **employer that maintains a headquarters within the city limits of a city with a population**
 8 **exceeding 500,000.**

9 (4) "Family member" has the meaning given that term in ORS 659A.150.

10 (5)(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and
 11 make available a certain number of hours of sick time to an employee as soon as the employee be-
 12 comes eligible to use sick time and on the first day of the immediately subsequent year without re-
 13 gard to an accrual rate.

14 (b) For employees employed by an employer for less than a full year, "front-load" means to as-
 15 sign and make available to an employee as soon as the employee becomes eligible to use sick time
 16 a number of hours of sick time that is the pro rata percentage of the hours the employee would be
 17 entitled to for an entire year [*based on the number of hours the employee was actually employed by*
 18 *the employer for the year*].

19 **(6) "Joint employer" means any situation in which an employee may be employed by more**
 20 **than one employer, including but not limited to staffing agencies, employers who use labor**
 21 **contractors, temporary employment agencies, parent corporations, franchisors, leasing**
 22 **companies, contract payroll companies, labor organizations, professional employment organ-**
 23 **izations or payroll or benefit administrators.**

24 [(6)] (7) "Paid sick time" means time off:

25 (a) That is provided to an employee by an employer that employs [10] 25 or more employees;

26 (b) That may be used for the purposes specified in ORS 653.616; and

27 (c) That is compensated at the regular rate of pay and without reductions in benefits, including
 28 but not limited to health care benefits, that the employee earns from the employer at the time the
 29 employee uses the paid sick time.

30 **(8) "Seasonal agricultural worker" means an employee who engages in the planting, cul-**
 31 **tivating, harvesting, production, handling or processing of seasonal crops or products.**

32 [(7)] (9) "Sick time" means time during which an employee is permitted to be absent from work
 33 for a reason authorized under ORS 653.616 without a reduction in benefits, including but not limited
 34 to health care benefits, that the employee earns from the employer.

35 **(10) "Temporary employee" means an employee who fills a position meant to cope with**
 36 **short-term, seasonal or unexpected workload demands when establishment of a permanent**
 37 **position is not feasible or appropriate.**

38 [(8)] (11) "Year" includes any consecutive 12-month period, such as a calendar year, a tax year,
 39 a fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of
 40 employment of the employee.

41 **SECTION 2.** ORS 653.606 is amended to read:

42 653.606. (1)(a) Employers that employ at least [10] 25 employees working anywhere in this state
 43 shall implement a sick time policy that allows an employee to earn and use up to 40 hours of paid
 44 sick time per year. Paid sick time shall accrue at the rate of at least one hour of paid sick time for
 45 every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

1 (b) Employers that employ fewer than [10] **25** employees working anywhere in this state shall
 2 implement a sick time policy that allows an employee to earn and use up to 40 hours of unpaid sick
 3 time per year. Unpaid sick time shall accrue at the rate of at least one hour of unpaid sick time for
 4 every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

5 (c) Employers that employ at least [10] **25** employees working anywhere in this state and front-
 6 load for employees at least 40 hours, **or a pro rata percentage of the hours the employee would**
 7 **be entitled to for the year**, of paid sick time or paid time off at the beginning of each year used
 8 to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(a)
 9 and (3) of this section.

10 (d) Employers that employ fewer than [10] **25** employees working anywhere in this state and
 11 front-load for employees at least 40 hours, **or a pro rata percentage of the hours the employee**
 12 **would be entitled to for the year**, of unpaid sick time or unpaid time off at the beginning of each
 13 year used to calculate the accrual and usage of sick time or time off need not comply with sub-
 14 sections (1)(b) and (3) of this section.

15 (2)(a) The number of employees employed by an employer shall be ascertained by determining
 16 that the per-day average number of employees **who are not seasonal agricultural workers or**
 17 **temporary employees** is [10] **25** or greater for each of 20 workweeks in the calendar year or the
 18 fiscal year of the employer immediately preceding the year in which the leave is to be taken.

19 (b) If the business of the employer was not in existence for the entire year preceding the de-
 20 termination made under paragraph (a) of this subsection, the number of employees **described under**
 21 **paragraph (a) of this subsection** shall be based on any 20 workweeks preceding the request for
 22 sick time, which may include 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 first day of employment with
 25 an employer. The employee may carry over up to 40 hours of unused sick time from one year to a
 26 subsequent year. However, an employer may adopt a policy that limits:

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

28 (b) An employee to using no more than 40 hours of sick time in a year.

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

31 (A) If the employer has [10] **25** or more employees working anywhere in this state, the employee
 32 will be paid for all unused paid sick time at the end of the year in which the sick time is accrued
 33 and the employer will credit the employee with an amount of paid sick time that meets the re-
 34 quirements of this section on the first day of the immediately subsequent year; or

35 (B) If the employer has fewer than [10] **25** employees working anywhere in this state, the em-
 36 ployer will credit the employee with an amount of sick time that meets the requirements of this
 37 section on the first day of the immediately subsequent year.

38 (b) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the determi-
 39 nation of the number of employees employed by an employer.

40 (5)(a) An employee **who is not a seasonal agricultural worker** is eligible to use sick time be-
 41 ginning on the 91st calendar day of employment with the employer and may use sick time as it is
 42 accrued.

43 (b) **A seasonal agricultural worker is eligible to use sick time beginning on the 121st**
 44 **calendar day of employment with the employer and may use sick time as it is accrued.**

45 [(b)] (c) An employer may authorize an employee to use accrued sick time prior to the [91st

1 *calendar*] day of employment **specified in paragraph (a) or (b) of this subsection.**

2 [(c)] (d)(A) An employer that employs [10] 25 or more employees working anywhere in this state
3 shall pay an employee for accrued sick time used at the regular rate of pay of the employee.

4 (B) For an employee employed on a commission or piece-rate basis by an employer that employs
5 [10] 25 or more employees working anywhere in this state, the employer shall pay the employee for
6 accrued sick time used at *[the employee's regular rate of pay. If the employee is paid on a commission*
7 *or piece-rate basis and does not have a previously established regular rate of pay, the employer shall*
8 *pay the employee at]* a rate equal to at least the minimum wage specified in ORS 653.025.

9 (6) An employee who is exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the
10 federal Fair Labor Standards Act of 1938 is presumed to work 40 hours in each workweek for the
11 purpose of accrual of sick time unless the actual workweek of the employee is less than 40 hours,
12 in which case sick time accrues based on the actual workweek of the employee.

13 (7) Nothing in ORS 653.601 to 653.661 requires an employer to compensate an employee for ac-
14 crued unused sick time upon the employee's termination, resignation, retirement or other separation
15 from employment.

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

17 (a) Search for or find a replacement worker as a condition of the employee's use of accrued sick
18 time; or

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

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

26 (10) An employee retains accrued sick time if the employer sells, transfers or otherwise assigns
27 the business or an interest in the business to another employer.

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

30 (b) If an employee **who is not a seasonal agricultural worker** leaves employment with an
31 employer before the 91st day of employment and subsequently is reemployed by that employer within
32 180 days of separation from employment, the employer shall restore the accrued sick time balance
33 the employee had when the employee left the employment of the employer and the employee may
34 use accrued sick time after the combined total of days of employment with the employer exceeds 90
35 calendar days.

36 (12) If an employee is transferred to a separate division, entity or location of the employer but
37 remains employed by that same employer, the employee is entitled to use all sick time accrued while
38 working at the former division, entity or location of the employer and is entitled to retain or use
39 all sick time as provided by ORS 653.601 to 653.661.

40 (13) Employers located in a city with a population exceeding 500,000 shall comply with ORS
41 653.601 to 653.661, except that:

42 (a) If an employer located in a city with a population exceeding 500,000 employs at least six
43 employees working anywhere in this state, the employer shall implement a policy consistent with
44 this section as it applies to employers with at least [10] 25 employees working anywhere in this
45 state.

1 (b) If an employer located in a city with a population exceeding 500,000 employs fewer than six
 2 employees working anywhere in this state, the employer shall implement a policy consistent with
 3 this section as it applies to employers with fewer than [10] **25** employees working anywhere in this
 4 state.

5 **SECTION 3. An employer following ORS 653.606 (1)(c) or (d) that does not follow a cal-**
 6 **endar year may front-load on January 1, 2016, a pro rata percentage of the hours the em-**
 7 **ployee would be entitled to for the year if the employer front-loads for the employee the**
 8 **remaining portion of the hours the employee would be entitled to for the year at the begin-**
 9 **ning of the employer's fiscal or other year in 2016.**

10 **SECTION 4.** ORS 653.611 is amended to read:

11 653.611. (1) An employer with a sick leave policy, paid vacation policy, paid personal time off
 12 policy or other paid time off program that is substantially equivalent to or more generous to the
 13 employee than the minimum requirements of [ORS 653.601 to 653.661] **ORS 653.606 and 653.616** shall
 14 be deemed to be in compliance with the requirements of ORS 653.601 to 653.661.

15 (2) If an employee of an employer that has a policy for paid sick time, paid vacation leave, paid
 16 personal time off or other paid time off programs has exhausted all paid and unpaid leave available
 17 to the employee, the employer is not obligated to provide additional leave for paid or unpaid sick
 18 time as required by ORS 653.601 to 653.661. However, the employer may be obligated to provide paid
 19 or unpaid sick time by federal or state law that provides for paid or unpaid leave for similar pur-
 20 poses.

21 **(3) ORS 653.601 to 653.661 apply only to the first 40 hours of sick time accrued or used**
 22 **by an employee in a year.**

23 **SECTION 5.** ORS 653.656 is amended to read:

24 653.656. The Commissioner of the Bureau of Labor and Industries:

25 (1) Shall enforce the provisions of ORS 653.601 to 653.661; and

26 (2) May adopt rules necessary for the implementation and enforcement of ORS 653.601 to 653.661
 27 **that are consistent with subsection (3) of this section.**

28 **(3) Notwithstanding any joint and several liability of joint employers as otherwise pro-**
 29 **vided by state law, rule or regulation, joint and several liability does not apply to joint em-**
 30 **ployers under ORS 653.601 to 653.661.**

31 **SECTION 6.** ORS 653.626 is amended to read:

32 653.626. (1)(a) If an employee takes more than three consecutive scheduled workdays of sick time
 33 for a purpose described in ORS 653.616 (1) to (4), an employer may require the employee to provide
 34 verification from a health care provider of the need for the sick time, or certification of the need
 35 for leave for purposes of ORS 659A.272 as provided in ORS 659A.280.

36 (b) If the need for sick time is foreseeable and is projected to last more than three scheduled
 37 workdays and an employee is required to provide notice under ORS 653.621, the employer may re-
 38 quire that verification or certification be provided before the sick time commences or as soon as
 39 otherwise practicable.

40 (c) If the employee commences sick time without providing prior notice required by the employer
 41 under ORS 653.621:

42 (A) Medical verification shall be provided to the employer within 15 calendar days after the
 43 employer requests the verification; or

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

1 (2) **Except for attorney fees or costs**, the employer shall pay any reasonable costs for pro-
 2 viding medical verification or certification required under this section, including lost wages, that
 3 are not paid under a health benefit plan in which the employee is enrolled.

4 (3)(a) An employer may not require that the verification or certification required under this
 5 section explain the nature of the illness or details related to the domestic violence, sexual assault,
 6 harassment, or stalking that necessitates the use of sick time.

7 (b) If an employer suspects that an employee is abusing sick time, including engaging in a pat-
 8 tern of abuse, the employer may require verification from a health care provider of the need of the
 9 employee to use sick time, regardless of whether the employee has used sick time for more than
 10 three consecutive days. As used in this paragraph, “pattern of abuse” includes, but is not limited to,
 11 repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days or pay-
 12 days.

13 (4) As used in this section, “health care provider” has the meaning given that term in ORS
 14 659A.150.

15 **SECTION 7.** ORS 653.641 is amended to read:

16 653.641. (1) It is an unlawful practice for an employer or any other person to:

17 [(1)] (a) Deny, interfere with, restrain or fail to pay for sick time to which an employee is enti-
 18 tled under ORS 653.601 to 653.661;

19 [(2)] (b) Retaliate or in any way discriminate against an employee with respect to any term or
 20 condition of employment because the employee has inquired about the provisions of ORS 653.601 to
 21 653.661, submitted a request for sick time, taken sick time, participated in any manner in an inves-
 22 tigation, proceeding or hearing related to ORS 653.601 to 653.661[,] or invoked any provision of ORS
 23 653.601 to 653.661; or

24 [(3)] (c) Apply an absence control policy that includes sick time absences covered under ORS
 25 653.601 to 653.661 as an absence that may lead to or result in an adverse employment action against
 26 the employee.

27 **(2) This section does not apply to employee incentive plans to encourage attendance or**
 28 **employer policies regarding holiday pay.**

29 **SECTION 8.** Section 22, chapter 537, Oregon Laws 2015, is amended to read:

30 **Sec. 22.** *[Except for penalties assessed for a violation of section 11 (2) or (3) of this 2015 Act,]* The
 31 Bureau of Labor and Industries may assess civil penalties against an employer only for violations
 32 of *[sections 2 to 16 of this 2015 Act]* **ORS 653.601 to 653.661** occurring on or after January 1, 2017.

33 **SECTION 9.** (1) **Notwithstanding ORS 653.651 and 659A.885, an employee may file a civil**
 34 **action in court alleging a violation of ORS 653.601 to 653.661 on or after January 1, 2017, only**
 35 **for alleged violations occurring on or after January 1, 2017.**

36 **(2) An employee may file a complaint with the Commissioner of the Bureau of Labor and**
 37 **Industries alleging a violation of ORS 653.601 to 653.661 on or after January 1, 2017, only for**
 38 **alleged violations occurring on or after January 1, 2017.**

39 **(3) An administrative action commenced with or by the Bureau of Labor and Industries**
 40 **prior to the effective date of this 2016 Act alleging a violation of ORS 653.601 to 653.661 is**
 41 **terminated on the effective date of this 2016 Act.**

42 **(4) A civil action commenced in court prior to the effective date of this 2016 Act alleging**
 43 **a violation of ORS 653.601 to 653.661 is terminated on the effective date of this 2016 Act.**

44 **SECTION 10.** ORS 653.646 is amended to read:

45 653.646. (1) The requirements of ORS 653.601 to 653.661 do not apply to an employee:

1 (a) Whose terms and conditions of employment are covered by a collective bargaining agree-
2 ment;

3 (b) Who is employed through a hiring hall or similar referral system operated by the labor or-
4 ganization or a third party; and

5 (c) Whose employment-related benefits are provided by a joint multiemployer-employee trust or
6 benefit plan.

7 (2)(a) The Home Care Commission created under ORS 410.602 shall establish a paid sick time
8 policy for consumer employed home care workers.

9 (b) A policy for paid sick time for consumer employed home care workers implemented by the
10 Home Care Commission that allows an eligible home care worker to accrue and use up to 40 hours
11 of paid time off a year, including but not limited to sick time, is deemed to meet the requirements
12 of ORS 653.601 to 653.661 and is exempt from the provisions of ORS 653.601 [(6)] (7), 653.606 (5),
13 653.611, 653.621, 653.626 and 653.631.

14 (3) As used in this section, “consumer employed home care worker” has the meaning given the
15 term “home care worker” in ORS 410.600.

16 **SECTION 11.** ORS 653.651 is amended to read:

17 653.651. (1) An employee asserting a violation of ORS 653.641 [(2) or (3)] (1)(b) or (c) may file
18 a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or
19 a civil action as provided in ORS 659A.885 **on or after January 1, 2017.**

20 (2) The commissioner has the same enforcement powers with respect to the rights established
21 under ORS 653.601 to 653.661 as are established in ORS chapters 652 and 653.

22 **SECTION 12. This 2016 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
24 **on its passage.**

25