

D R A F T

SUMMARY

Allows employer to pay accrued sick leave to employee who is employed on fixed-rate, piece-rate or commission basis at employee's fixed hourly rate. Allows employer to pay accrued sick leave to employee who is employed solely on commission or piece-rate basis at amount no less than minimum wage.

A BILL FOR AN ACT

1
2 Relating to an employer's payment of accrued sick time to an employee who
3 works at more than one rate of pay; amending ORS 653.606.

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

5 **SECTION 1.** ORS 653.606 is amended to read:

6 653.606. (1)(a) Employers that employ at least 10 employees working any-
7 where in this state shall implement a sick time policy that allows an em-
8 ployee to earn and use up to 40 hours of paid sick time per year. Paid sick
9 time shall accrue at the rate of at least one hour of paid sick time for every
10 30 hours the employee works or 1-1/3 hours for every 40 hours the employee
11 works.

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

17 (c) Employers that employ at least 10 employees working anywhere in this
18 state and front-load for employees at least 40 hours of paid sick time or paid
19 time off at the beginning of each year used to calculate the accrual and us-

1 age of sick time or time off need not comply with subsections (1)(a) and (3)
2 of this section.

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

8 (2)(a) The number of employees employed by an employer shall be ascer-
9 tained by determining that the per-day average number of employees is 10
10 or greater for each of 20 workweeks in the calendar year or the fiscal year
11 of the employer immediately preceding the year in which the leave is to be
12 taken.

13 (b) If the business of the employer was not in existence for the entire year
14 preceding the determination made under paragraph (a) of this subsection, the
15 number of employees shall be based on any 20 workweeks preceding the re-
16 quest for sick time, which may include workweeks in the current year, the
17 preceding year or a combination of workweeks in the current year and the
18 preceding year.

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

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

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

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

27 (A) If the employer has 10 or more employees working anywhere in this
28 state, the employee will be paid for all unused paid sick time at the end of
29 the year in which the sick time is accrued and the employer will credit the
30 employee with an amount of paid sick time that meets the requirements of
31 this section on the first day of the immediately subsequent year; or

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

5 (b) The Commissioner of the Bureau of Labor and Industries shall adopt
6 rules for the determination of the number of employees employed by an em-
7 ployer.

8 (5)(a) An employee is eligible to use sick time beginning on the 91st cal-
9 endar day of employment with the employer and may use sick time as it is
10 accrued.

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

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

16 (B) For [*an employee employed on a commission or piece-rate basis by*] an
17 employer that employs 10 or more employees working anywhere in this
18 state[,]:

19 (i) **If the employee is employed at a fixed hourly rate for certain job**
20 **duties during the pay period and is employed on a commission or**
21 **piece-rate basis for other job duties during the pay period**, the employer
22 shall pay the employee for accrued sick time used at the employee's
23 [*regular*] **fixed hourly** rate of pay.

24 (ii) If the employee is paid **solely** on a commission or piece-rate basis
25 [*and does not have a previously established regular rate of pay*] **during the**
26 **pay period**, the employer shall pay the employee **for accrued sick time** at
27 a rate equal to at least the minimum wage specified in ORS 653.025.

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

1 case sick time accrues based on the actual workweek of the employee.

2 (7) Nothing in ORS 653.601 to 653.661 requires an employer to compensate
3 an employee for accrued unused sick time upon the employee's termination,
4 resignation, retirement or other separation from employment.

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

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

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

9 (9) Upon mutual consent by the employee and the employer, an employee
10 may work additional hours or shifts to compensate for hours or shifts during
11 which the employee was absent from work without using accrued sick time
12 for the hours or shifts missed. However, the employer may not require the
13 employee to work additional hours or shifts authorized by this subsection.
14 If the employee works additional hours or shifts, the employer must comply
15 with any applicable federal, state or local laws regarding overtime pay.

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

19 (11)(a) An employer shall restore previously accrued unused sick time to
20 an employee who is reemployed by that employer within 180 days of sepa-
21 ration from employment with the employer.

22 (b) If an employee leaves employment with an employer before the 91st
23 day of employment and subsequently is reemployed by that employer within
24 180 days of separation from employment, the employer shall restore the ac-
25 crued sick time balance the employee had when the employee left the em-
26 ployment of the employer and the employee may use accrued sick time after
27 the combined total of days of employment with the employer exceeds 90 cal-
28 endar days.

29 (12) If an employee is transferred to a separate division, entity or location
30 of the employer but remains employed by that same employer, the employee
31 is entitled to use all sick time accrued while working at the former division,

1 entity or location of the employer and is entitled to retain or use all sick
2 time as provided by ORS 653.601 to 653.661.

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

5 (a) If an employer located in a city with a population exceeding 500,000
6 employs at least six employees working anywhere in this state, the employer
7 shall implement a policy consistent with this section as it applies to em-
8 ployers with at least 10 employees working anywhere in this state.

9 (b) If an employer located in a city with a population exceeding 500,000
10 employs fewer than six employees working anywhere in this state, the em-
11 ployer shall implement a policy consistent with this section as it applies to
12 employers with fewer than 10 employees working anywhere in this state.

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