



FAMILY FORWARD
OREGON

Smart policies for today's families.

April 10, 2017

Testimony in Opposition to SB 299-1: No Roll Backs to Paid Sick Time
Submitted by Kate Newhall, Family Forward Oregon

Thank you for the opportunity to provide this testimony on the SB 299-1 amendments. I appreciate this attempt to clarify sick time law and, while I am opposed to a couple of the provisions contained in the -1 amendments, I support many of the changes as truly technical corrections. Family Forward worked hard, with many others, in 2015 to pass a strong and inclusive paid sick time law for Oregon workers. This law is meant to ensure that workers are able to take paid time off when they or a family member are ill. This as an important public health measure and is a basic right to which all workers should be entitled. We are opposed to any changes to the new sick time law that roll back or eliminate sick time protections for any worker in Oregon.

We have always been open to truly technical fixes in the law, but will remain opposed to any changes that mean even a single worker loses access to paid or job protected sick time.

Our concerns with the SB 299-1 amendments related to the changes made to the definition of “employer located in a city with population exceeding 500,000” that exclude temporary locations from this definition. This is an issue that came up in rulemaking in 2016 and generated much discussion. We were not opposed to excluding locations that are truly temporary in nature from this definition, but wanted to make sure that a hard time limit was put on what can count as a “temporary location;” during rulemaking, we suggested a 2-month time limit on which locations could be considered temporary. We remain concerned that without a set time limit, this provision could be abused and locations that are not truly temporary in nature will be used to avoid Portland’s lower employer size threshold.

We also opposed the changes proposed in Section 3 and an equivalent PTO policy that is allowed to count as meeting sick time requirements. The changes to this provision will mean that workers with a combined PTO and sick time policy might not actually get 40 hours of job protected sick time to use, which was always the intent. If this change is adopted, a worker may not receive 40 hours of job protected sick time each year. This is easiest to illustrate with an example: if an employer gives 60 hours of combined PTO, sick, and vacation policy and an employee uses 40 hours in the beginning of the year for a vacation, that employee will have no job protection for sick time for the remainder of the year.

I appreciate the language around the LLC member exemption in Section 2 and recognize it is a significant improvement over the language originally proposed in SB 779. While we don’t like broadening the exemption for business owners and their parents, spouses and

children to include LLC members, we think setting an ownership threshold on this exemption is appropriate to ensure it doesn't get abused. As you will recall, our concern with SB 779 was that it would have allowed an infinite number of LLC members to be exempted from the overall employee count for purposes of the sick time law. We saw this as far too broad and would have created a huge loophole in sick time protections. We think setting a 51% ownership threshold will restrict this provision to one owner and their family members.

We support changes to the wage piece rate employees would be paid when out for sick time; the proposed change is in keeping with other labor law standards around piece rate employees. It has been argued that the legislative intent around piece rate workers is that they get paid minimum wage when out on sick time. This is only partially accurate in my mind. It's important to note that when legislators were having conversations around what a piece rate worker should be paid when they take sick time, one critical piece of information was missing from that discussion: nobody at that time realized that under minimum wage and overtime law, even a piece rate worker has a "regular rate of pay." Legislators working on SB 454 in 2015 wanted to ensure that piece rate workers were paid when they were out on sick time, but we were all under the impression that there wasn't a regular rate of pay for piece rate workers. But there is always a regular rate of pay for all workers, including piece rate and commission workers who don't have an established hourly rate. The regular rate of pay for these workers is the average wage they earned during hours worked below 40 hours in a 7-day period. This is the rate that must be used to determine overtime wages and this is the rate that must meet or exceed state minimum wage law.

We don't have any objections to the rewording done in Section 2 and ORS 653.606(1)(a) and (b), but don't think it actually changes anything in how the law applies or how much sick time a worker can accrue. We don't have any objections to the changes in Section 4 and to the definition of "payroll" for purposes of worker's compensation law.

Thank you for the opportunity to share our thoughts on SB 299-1 amendments. As one of the driving coalition partners behind the new sick time law, we want to make sure that law remains strong and, at the same time, that technical corrections are addressed