

House Bill 3233

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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**.

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 works at more than one
3 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 anywhere in this state shall
7 implement a sick time policy that allows an employee to earn and use up to 40 hours of paid sick
8 time per year. Paid sick time shall accrue at the rate of at least one hour of paid sick time for every
9 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

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

14 (c) Employers that employ at least 10 employees working anywhere in this state and front-load
15 for employees at least 40 hours of paid sick time or paid time off at the beginning of each year used
16 to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(a)
17 and (3) of this section.

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

22 (2)(a) The number of employees employed by an employer shall be ascertained by determining
23 that the per-day average number of employees is 10 or greater for each of 20 workweeks in the
24 calendar year or the fiscal year of the employer immediately preceding the year in which the leave
25 is to be taken.

26 (b) If the business of the employer was not in existence for the entire year preceding the de-
27 termination made under paragraph (a) of this subsection, the number of employees shall be based
28 on any 20 workweeks preceding the request for sick time, which may include workweeks in the
29 current year, the preceding year or a combination of workweeks in the current year and the pre-
30 ceding year.

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

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

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

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

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

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

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

17 (5)(a) An employee is eligible to use sick time beginning on the 91st calendar day of employment
 18 with the employer and may use sick time as it is accrued.

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

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

23 (B) For *[an employee employed on a commission or piece-rate basis by]* an employer that employs
 24 10 or more employees working anywhere in this state[,]:

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

29 (ii) If the employee is paid **solely** on a commission or piece-rate basis *[and does not have a*
 30 *previously established regular rate of pay]* **during the pay period**, the employer shall pay the em-
 31 ployee **for accrued sick time** at a rate equal to at least the minimum wage specified in ORS
 32 653.025.

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

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

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

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

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

44 (9) Upon mutual consent by the employee and the employer, an employee may work additional
 45 hours or shifts to compensate for hours or shifts during which the employee was absent from work

1 without using accrued sick time for the hours or shifts missed. However, the employer may not
2 require the employee to work additional hours or shifts authorized by this subsection. If the em-
3 ployee works additional hours or shifts, the employer must comply with any applicable federal, state
4 or local laws regarding overtime pay.

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

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

9 (b) If an employee leaves employment with an employer before the 91st day of employment and
10 subsequently is reemployed by that employer within 180 days of separation from employment, the
11 employer shall restore the accrued sick time balance the employee had when the employee left the
12 employment of the employer and the employee may use accrued sick time after the combined total
13 of days of employment with the employer exceeds 90 calendar days.

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

18 (13) Employers located in a city with a population exceeding 500,000 shall comply with ORS
19 653.601 to 653.661, except that:

20 (a) If an employer located in a city with a population exceeding 500,000 employs at least six
21 employees working anywhere in this state, the employer shall implement a policy consistent with
22 this section as it applies to employers with at least 10 employees working anywhere in this state.

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

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