

Senate Bill 402

Sponsored by Senator FERRIOLI (Presession 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**.

Exempts agricultural workers from sick leave other than for agricultural worker who uses leave because of domestic violence, harassment, sexual assault, stalking or harm as result of certain felonies.

A BILL FOR AN ACT

1
2 Relating to use of sick leave by agricultural workers; amending ORS 653.601, 653.606, 653.616 and
3 653.626.

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

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

6 653.601. As used in ORS 653.601 to 653.661:

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

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

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

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

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

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

16 (c) "Employee" does not include:

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

18 (B) An independent contractor;

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

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

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

25 (F) An individual employed by that individual's parent, spouse or child[.]; **and**

26 (G) **An agricultural worker as defined in ORS 315.163.**

27 (2)(a) "Employer" means any person that employs one or more employees working anywhere in
28 this state, a political subdivision of the state and any county, city, district, authority, public corpo-
29 ration or entity, and any instrumentality of a county, city, district, authority, public corporation or
30 entity, organized and existing under law or charter.

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

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

2 (3) "Employer located in a city with a population exceeding 500,000" includes, but is not limited
3 to, an employer that maintains any office, store, restaurant or establishment in that city.

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

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

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

14 (6) "Paid sick time" means time off:

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

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

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

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

23 (8) "Year" includes any consecutive 12-month period, such as a calendar year, a tax year, a
24 fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of em-
25 ployment of the employee.

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

27 653.606. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall
28 implement a sick time policy that allows an employee to earn and use up to 40 hours of paid sick
29 time per year. Paid sick time shall accrue at the rate of at least one hour of paid sick time for every
30 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

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

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

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

43 (2)(a) The number of employees employed by an employer shall be ascertained by determining
44 that the per-day average number of employees is 10 or greater for each of 20 workweeks in the
45 calendar year or the fiscal year of the employer immediately preceding the year in which the leave

1 is to be taken.

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

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

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

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

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

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

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

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

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

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

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

29 (B) For an employee employed on a commission or piece-rate basis by an employer that employs
30 10 or more employees working anywhere in this state, the employer shall pay the employee for ac-
31 crued sick time used at the employee's regular rate of pay. If the employee is paid on a commission
32 or piece-rate basis and does not have a previously established regular rate of pay, the employer shall
33 pay the employee at a rate equal to at least the minimum wage specified in ORS 653.025.

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

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

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

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

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

45 (9) Upon mutual consent by the employee and the employer, an employee may work additional

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

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

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

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

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

19 (13) Employers located in a city with a population exceeding 500,000 shall comply with ORS
 20 653.601 to 653.661, except that:

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

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

27 **(14) Notwithstanding ORS 653.601 (1)(c)(G), if an agricultural worker takes leave under**
 28 **ORS 659A.192 or 659A.272, an employer with at least 10 agricultural workers working any-**
 29 **where in this state shall grant a pro rata percentage of the hours to which the agricultural**
 30 **worker would be entitled for an entire year, as if the agricultural worker were an employee**
 31 **who otherwise qualifies for leave under ORS 653.601 to 653.661, beginning on the date the**
 32 **agricultural worker first takes leave under ORS 659A.192 or 659A.272. Nothing in this sub-**
 33 **section is intended to limit an agricultural worker's right to paid or unpaid leave otherwise**
 34 **provided by ORS 659A.190 to 659A.198 or 659A.270 to 659A.285.**

35 **SECTION 3.** ORS 653.616 is amended to read:

36 653.616. An employee may use sick time earned under ORS 653.606:

37 (1) For an employee's mental or physical illness, injury or health condition, need for medical
 38 diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for
 39 preventive medical care.

40 (2) For care of a family member with a mental or physical illness, injury or health condition,
 41 care of a family member who needs medical diagnosis, care, or treatment of a mental or physical
 42 illness, injury or health condition or care of a family member who needs preventive medical care.

43 (3) Notwithstanding ORS 659A.153, for any other purpose specified in ORS 659A.159.

44 (4)(a) For a purpose specified in ORS 659A.272, notwithstanding ORS 659A.270 (1)[.]; or

45 **(b) As a crime victim, as defined in ORS 659A.190, notwithstanding ORS 659A.198.**

1 (5) To donate accrued sick time to another employee if the other employee uses the donated sick
 2 time for a purpose specified in this section and the employer has a policy that allows an employee
 3 to donate sick time to a coworker for a purpose specified in this section.

4 (6) In the event of a public health emergency. For purposes of this subsection, a public health
 5 emergency includes, but is not limited to:

6 (a) Closure of the employee’s place of business, or the school or place of care of the employee’s
 7 child, by order of a public official due to a public health emergency;

8 (b) A determination by a lawful public health authority or by a health care provider that the
 9 presence of the employee or the family member of the employee in the community would jeopardize
 10 the health of others, such that the employee must provide self care or care for the family member;
 11 or

12 (c) The exclusion of the employee from the workplace under any law or rule that requires the
 13 employer to exclude the employee from the workplace for health reasons.

14 **SECTION 4.** ORS 653.626 is amended to read:

15 653.626. (1)(a) If an employee takes more than three consecutive scheduled workdays of sick time
 16 for a purpose described in ORS 653.616 (1) to (4), an employer may require the employee to provide
 17 verification from a health care provider of the need for the sick time, **notice of the need for leave**
 18 **for purposes of ORS 659A.192 as provided in ORS 659A.196** or certification of the need for leave
 19 for purposes of ORS 659A.272 as provided in ORS 659A.280.

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

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

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

28 (B) Certification provided as specified in ORS 659A.280 **or notice provided as specified in ORS**
 29 **659A.196** shall be provided to the employer within a reasonable time after the employee receives the
 30 request for certification **or notice**.

31 (2) The employer shall pay any reasonable costs for providing medical verification, **notice** or
 32 certification required under this section, including lost wages, that are not paid under a health
 33 benefit plan in which the employee is enrolled.

34 (3)(a) An employer may not require that the verification, **notice** or certification required under
 35 this section explain the nature of the illness or details related to the domestic violence, sexual as-
 36 sault, harassment, or stalking that necessitates the use of sick time.

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

43 (4) As used in this section, “health care provider” has the meaning given that term in ORS
 44 659A.150.