

House Bill 3553

Sponsored by Representative NELSON

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**.

Requires employers who provide sick leave, vacation leave or personal business leave benefits to employees to compensate employees for all earned but unused accrued leave when employment terminates.

A BILL FOR AN ACT

1
2 Relating to compensation for accrued leave upon termination of employment; creating new pro-
3 visions; and amending ORS 652.140 and 653.606.

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

5 **SECTION 1. If an employer provides vacation leave or personal business leave benefits**
6 **to an employee, the employer shall, upon the termination of the employment relationship,**
7 **compensate the employee, at the employee's regular rate of pay, for all earned but unused**
8 **accrued vacation leave and personal business leave in the manner, and within the time**
9 **frame, set forth by ORS 652.140 for the payment of all earned and unpaid wages when em-**
10 **ployment terminates.**

11 **SECTION 2.** ORS 652.140 is amended to read:

12 652.140. (1) When an employer discharges an employee or when employment is terminated by
13 mutual agreement, all wages earned and unpaid at the time of the discharge or termination become
14 due and payable not later than the end of the first business day after the discharge or termination.

15 (2)(a) When an employee who does not have a contract for a definite period quits employment,
16 all wages earned and unpaid at the time of quitting become due and payable immediately if the
17 employee has given to the employer not less than 48 hours' notice, excluding Saturdays, Sundays
18 and holidays, of intention to quit employment.

19 (b) Except as provided in paragraph (c) of this subsection, if the employee has not given to the
20 employer the notice described in paragraph (a) of this subsection, the wages become due and payable
21 within five days, excluding Saturdays, Sundays and holidays, after the employee has quit, or at the
22 next regularly scheduled payday after the employee has quit, whichever event first occurs.

23 (c) If the employee has not given to the employer the notice described in paragraph (a) of this
24 subsection and if the employee is regularly required to submit time records to the employer to en-
25 able the employer to determine the wages due the employee, within five days after the employee has
26 quit the employer shall pay the employee the wages the employer estimates are due and payable.
27 Within five days after the employee has submitted the time records, all wages earned and unpaid
28 become due and payable.

29 (3) For the purpose of this section, if employment termination occurs on a Saturday, Sunday or
30 holiday, all wages earned and unpaid shall be paid no later than the end of the first business day
31 after the employment termination, except that if the employment is related to activities authorized

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 under ORS chapter 565, all wages earned and unpaid shall be paid no later than the end of the
 2 second business day after the employment termination.

3 (4) The employer shall forward such wages by mail to any address designated by the employee
 4 if the employee requests the employer so to do. An employer may deposit such wages without dis-
 5 count in the employee's account in a financial institution, as defined in ORS 706.008, in this state,
 6 provided the employee and the employer have agreed to such deposit.

7 (5) This section does not apply to employment for which a collective bargaining agreement oth-
 8 erwise provides for the payment of wages upon termination of employment.

9 (6) When a termination of employment results from the sale of a business or business property
 10 and the purchaser employs or continues the employment of an individual employed at the business,
 11 this section does not apply to the payment to such an individual of wages for earned but unused
 12 accrued holiday leave, sick leave, vacation leave or other leave benefits payable upon termination
 13 of employment pursuant to a collective bargaining or other employment agreement or employer
 14 policy, if the following conditions are met:

15 (a) On the first day of such an individual's continued employment the purchaser of the business
 16 credits the individual with all such earned but unused accrued leave; and

17 (b) The leave, when used, is paid at a rate not less than the rate at which the leave was earned
 18 or, if paid at a lesser rate, the number of hours credited is increased to compensate the individual
 19 for any difference.

20 **(7) Except as provided in subsection (6) of this section, all wages earned and unpaid, as**
 21 **described under this section, include compensation for earned but unused accrued sick leave,**
 22 **vacation leave or personal business leave.**

23 **SECTION 3.** ORS 653.606 is amended to read:

24 653.606. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall
 25 implement a sick time policy that allows an employee to accrue at least one hour of paid sick time
 26 for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. Em-
 27 ployers may limit the number of hours of paid sick time that employees may accrue to 40 hours per
 28 year.

29 (b) Employers that employ fewer than 10 employees working anywhere in this state shall im-
 30 plement a sick time policy that allows an employee to accrue at least one hour of unpaid sick time
 31 for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. Em-
 32 ployers may limit the number of hours of unpaid sick time that employees may accrue to 40 hours
 33 per year.

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

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

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

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

6 (c) As used in this subsection, “employee” does not include an individual or the parent, spouse
 7 or child of an individual who is:

8 (A) A director of a corporation who has a substantial ownership interest in the corporation;

9 (B) A member of a limited liability company who has:

10 (i) A right to vote on or consent to any matter submitted to a vote or requiring the consent of
 11 the members of the limited liability company; and

12 (ii) A substantial ownership interest in the limited liability company;

13 (C) A partner of a limited liability partnership who has a substantial ownership interest in the
 14 limited liability partnership; or

15 (D) A sole proprietor of a business.

16 (d) As used in paragraph (c) of this subsection, “substantial ownership interest” means a per-
 17 centage of ownership equal to or greater than the average percentage of ownership of all owners,
 18 but not less than 15 percent.

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

22 (a) May adopt a policy that limits an employee to accruing no more than 80 total hours of sick
 23 time; and

24 (b) May adopt a policy that limits an employee to using no more than 40 hours of sick time in
 25 a year.

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

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

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

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

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

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

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

43 (B) For an employee who is paid on a commission or piece-rate basis by an employer that em-
 44 ploys 10 or more employees working anywhere in this state, the employer shall pay the employee
 45 for accrued sick time used at a rate equal to at least the minimum wage specified in ORS 653.025.

1 (C) For an employee who is paid an hourly, weekly or monthly wage and is also paid on a
 2 piece-rate or commission basis by an employer that employs 10 or more employees working any-
 3 where in this state, the employer shall pay the employee for accrued sick time used at a rate
 4 equivalent to the employee's hourly, weekly or monthly wage or equal to the minimum wage speci-
 5 fied in ORS 653.025, whichever is greater.

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

10 (7)(a) *[Nothing in ORS 653.601 to 653.661 requires]* An employer *[to]* **shall** compensate an em-
 11 ployee for accrued unused sick time upon the employee's termination, resignation, retirement or
 12 other separation from employment **in the manner and within the time frame set forth in ORS**
 13 **652.140.**

14 **(b)(A) The employer shall pay an employee for accrued but unused sick time at the reg-**
 15 **ular rate of pay of the employee.**

16 **(B) For an employee who is paid on a commission or piece-rate basis, the employer shall**
 17 **pay the employee for accrued unused sick time at a rate equal to at least the minimum wage**
 18 **specified in ORS 653.025.**

19 **(C) For an employee who is paid an hourly, weekly or monthly wage and is also paid on**
 20 **a piece-rate or commission basis, the employer shall pay the employee for accrued unused**
 21 **sick time at a rate equivalent to the employee's hourly, weekly or monthly wage or equal to**
 22 **the minimum wage specified in ORS 653.025, whichever is greater.**

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

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

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

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

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

35 *[(11)(a) An employer shall restore previously accrued unused sick time to an employee who is re-*
 36 *employed by that employer within 180 days of separation from employment with the employer.]*

37 *[(b) If an employee leaves employment with an employer before the 91st day of employment and*
 38 *subsequently is reemployed by that employer within 180 days of separation from employment, the em-*
 39 *ployer shall restore the accrued sick time balance the employee had when the employee left the em-*
 40 *ployment of the employer and the employee may use accrued sick time after the combined total of days*
 41 *of employment with the employer exceeds 90 calendar days.]*

42 *[(12)]* **(11)** If an employee is transferred to a separate division, entity or location of the employer
 43 but remains employed by that same employer, the employee is entitled to use all sick time accrued
 44 while working at the former division, entity or location of the employer and is entitled to retain or
 45 use all sick time as provided by ORS 653.601 to 653.661.

1 [(13)] **(12)** Employers located in a city with a population exceeding 500,000 shall comply with
2 ORS 653.601 to 653.661, except that:

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

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

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