

# EARNED VACATION PAYOUT – HB 4094

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House District 44, North and NE Portland

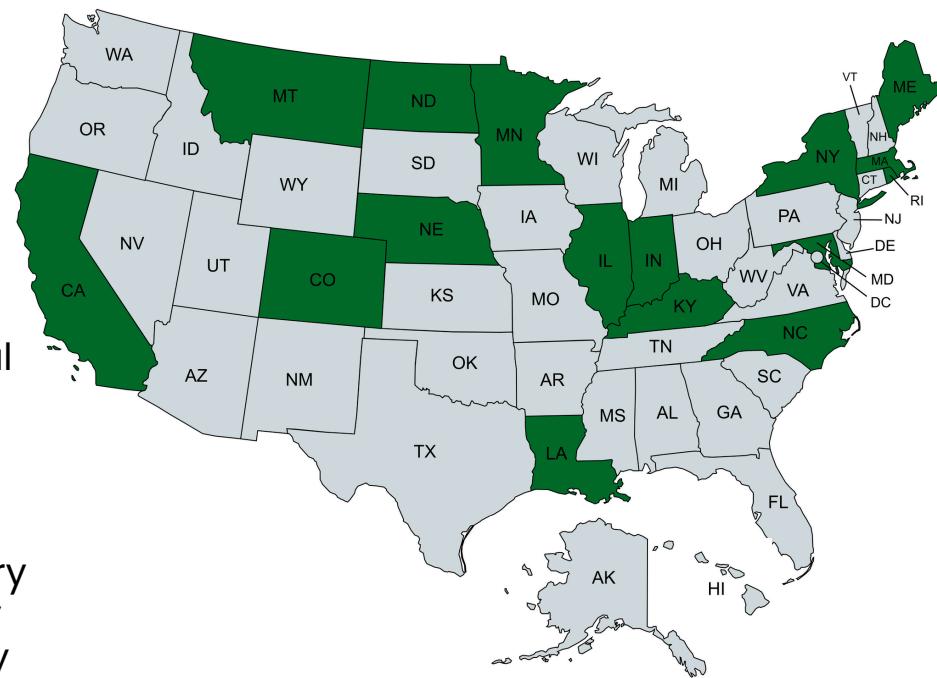
## Problem:

Employees who leave a job may be paid for unused vacation or PTO **only** if it is in their employment policy. Even if an employer fails to pay despite such a policy, the employee can file a complaint with BOLI, but typically only a warning is issued. To obtain the payment, the employee must pursue the matter through the courts. This leaves inconsistency in vacation payout policies with employees having little recourse to receive their earned leave payments.

Workers lose out on valuable income during a potentially challenging time.

## **Sixteen states have laws requiring vacation payout at the end of employment:**

- California (1892): Judicial
- Colorado (2019): Statutory
- Illinois (2014): Statutory
- Indiana (1831): Judicial
- Kentucky (1974): Statutory
- Louisiana (2002): Judicial
- Maine (2021): Statutory
- Maryland (2007): Judicial
- Massachusetts (2009): Judicial
- Minnesota (1973): Statutory
- Montana (1949): Judicial
- Nebraska (2007): Statutory
- New York (1979): Judicial
- North Carolina (1979): Statutory
- North Dakota (2015): Statutory
- Rhode Island (2004): Statutory



## Solution:

**If an employer offers earned vacation leave, those hours must be treated as wages and paid out to the employee at the end of employment. It will raise revenue for the state and help workers when they need it the most.**

### Details of the bill with upcoming amendment:

- Sick leave is exempt even when combined with vacation as PTO.
  - Minimum hours required by Oregon Sick Time Law will be exempt.
- Employers may have a “use it or lose it” policy as long as employees receive reasonable opportunities to take leave and a notice 90 days before leave hours expire. The end of employment is not to be treated as forfeiture of earned leave.
- Effective date will be January 1, 2027. The bill only applies to:
  - Vacation leave earned on or after the effective date; and
  - Contracts entered into, renewed, or extended on or after the effective date.
- Employers are **allowed** to limit payout to 300 hours but can offer more.
  - Employers can have a policy that limits how many hours of vacation can be earned and when they expire. This includes the ability to limit how many hours are earned that carry over for payout.

# FAQs

## How would this impact state workers and their PERS?

- Currently, both the executive branch and legislative branch pay out all unused accrued vacation leave up to 300 hours.
  - The amendment will allow to the state to maintain this policy.
- Executive branch employees currently have to be employed for six months before they are eligible payout their vacation leave at the end of employment.
  - There would be a small number of employees who leave before six months that would receive a vacation payout. Aligning with the legislative branch.
- This bill would have no effect on a members' PERS benefits beyond what currently happens with lump sum payouts. The few Tier One employees who are still in the workforce and are NOT already receiving vacation payout will see a change.

## How will this raise revenue?

- Employees who leave their employment will have all earned vacation hours paid out at 100% salary on their final paycheck and will be paying income taxes on those increased wages. Although there is no data on how much revenue will be raised, it is estimated to increase by a few million dollars once fully implemented.

## What is the current vacation payout law in Oregon?

- Employers must pay out unused vacation at the end of employment only if they have a payout policy in their employment agreement. This rule is based on case law, and BOLI has historically limited enforcement to warnings. As a result, employees must file a civil lawsuit to recover unpaid vacation leave.

## Will employers just stop offering vacation?

- Although some employers may choose to stop offering earned vacation, provisions in the bill specify that employers can change to a "use it or lose it" policy. Employers are more likely to change to this policy rather than risk losing employees due to a decrease in benefits.
- Employers are currently not required to offer vacation but chose to offer this benefit to attract qualified employees.
  - With this legislation, employers who offer earned vacation will either payout at the end of employment or give employees the opportunity to actually take time off.

## How will this impact a collective bargaining agreement?

- A union contract cannot reduce an employee's right to be paid for earned or accrued but unused vacation time guaranteed by the bill



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