

Labor and Employment Law Update **Lawyers for Employers®**

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Portland Passes Mandatory Sick Leave Ordinance

On March 13, Portland became the fourth city to pass a [mandatory sick leave ordinance](#), joining Seattle, San Francisco, Washington, D.C., and the state of Connecticut. The new law takes effect January 1, 2014, but will likely have significant impact on private sector employers, requiring them to prepare well in advance of the new year. Many employers operating in Seattle faced substantial challenges when modifying their policies to comply with the 2011 Seattle Paid Sick and Safe Leave Ordinance, on which the Portland ordinance appears to be modeled. Private sector employers with Portland operations, or whose employees perform work in Portland, are therefore encouraged to carefully review this new law along with their existing policies and practices so that they are prepared to comply when the law becomes effective.

Portland Sick Leave Ordinance Requires Sick Leave for All Employees Who Work in Portland at Least 240 Hours in a Calendar Year

The new law requires all private sector employers with at least six employees to provide employees who work at least 240 hours in a calendar year up to 40 hours of paid sick leave per year. All employees, whether temporary, part time, or full time, are entitled to accrue and use this leave, so long as they meet the 240-hour minimum. Employers with a maximum of five employees are still required to provide up to 40 hours of sick leave, but the leave may be unpaid. As of January 1, 2014, all employees will be entitled to accrue sick leave at the minimum rate of one hour of sick leave for every 30 hours worked. For purposes of accrual, exempt white collar employees are presumed to work 40 hours a week. Sick leave begins to accrue when employment begins, but employers may require employees hired after January 1, 2014, to wait up to 90 days before using their accrued sick leave. All other employees can use their accrued sick leave immediately. A paid time off (“PTO”) plan or policy will achieve compliance with the ordinance, provided that it meets the minimum accrual rates, and the leave may be used for the same purposes and under the same conditions as sick leave prescribed by the ordinance.

Employees who are not based full time in Portland are entitled to accrue sick leave under the ordinance if they work in Portland at least 240 hours within a calendar year. Any accrued sick leave must also be used while working in Portland.

The ordinance does not apply to employees who work for the federal government; the state of Oregon; any political subdivision of the state of Oregon; or any county, city, district, authority, public corporation or public entity other than the city of Portland. Employees employed by the city of Portland are covered.

Ordinance Permits Broad Use of Accrued Sick Leave

Sick time can be used in one-hour increments for an employee's own illness or that of a qualifying family member. Qualifying family members include the employee's spouse, children (biological, adoptive or foster children), parents, parents-in-law, grandparents, grandchildren and registered same-sex domestic partners. Absences from work for the purpose of obtaining preventative care are also covered, as are absences due to workplace or school closures, or for reasons related to domestic violence, sexual assault or stalking that affect the employee or the employee's family members. Employers are prohibited from requiring an employee using sick leave to find someone to cover their shift or from requiring the employee to work an alternate shift to make up for missed time. However, if the employer typically allows employees to trade shifts, it must allow employees to trade shifts in order to avoid using accrued sick time.

An employee must be permitted to accrue and use up to a maximum of 40 hours of sick time in a calendar year, unless the employer provides or is contractually obligated to provide more sick time. If an employee does not use all of his or her accrued sick time within the calendar year, the unused leave may be carried over to the following calendar year. An employer must permit at least 40 hours of accrued time to carry over to the following year.

The ordinance contemplates safeguards against sick leave abuse by allowing employers to require verification from a health care provider for absences of more than three consecutive days. If the cost of obtaining verification from the health care provider is not covered by insurance or another benefit plan, the employer must bear the cost. Additionally, employers may also require the employee to obtain documentation from a health care provider where patterns of sick leave use occur on or adjacent to weekends, holidays, vacation, pay day or when mandatory shifts are scheduled. In some cases, the ordinance may be preempted by other federal and state leave laws, such as the Family and Medical Leave Act.

Under the ordinance, employers will be required to provide and post a notice of employee rights in the workplace. Records concerning sick leave requests or use, as well as health information relating thereto, must be treated as confidential. Employers are required to retain for at least two years the records that document hours worked and sick time accrued and used by employees.

Covered employers who fail to comply with the law are subject to civil penalties, but an employer may avoid fines by showing good-faith compliance. Employees who believe their employer is not complying with the new law may bring an action for injunctive relief, back pay, damages, and attorneys' fees and costs.

What Should Employers Do Now to Prepare?

Private sector employers with six or more employees who already provide at least 40 hours per calendar year of paid time off (or unpaid time off for employers with a maximum of five employees) are not required to provide additional sick time under the ordinance. However, most employers will need to review and modify their existing leave policies to comply with the ordinance and regulations that will be adopted to implement the law. Some of those changes are highlighted below.

- Employers who currently provide sick leave or universal PTO policies must ensure that their policy meets or exceeds the requirements of the ordinance and regulations.

- “Use it or lose it” policies requiring leave to be used within the calendar year in which it accrues will not comply with the ordinance’s carryover requirements, so employers should prepare to transition.
- “No-fault” or absence-control policies may not count protected sick time as an absence that may lead to disciplinary action, so such policies will need to be modified.
- Employers will need to adopt policies informing employees how to call in sick, such as designating a phone number to call or other reasonable and accessible means of communication.
- Employers must ensure that employees are permitted to transfer accrued sick leave when transferring to a separate division, entity or location of the employer within Portland.
- Employers should be aware of sick leave reinstatement rules for employees rehired within six months of the separation of their employment.
- Employers must provide employees with written notice of employee rights under the ordinance, which they may satisfy by displaying the city of Portland’s poster. Large employers, particularly those who operate in multiple states, will need to review their policies and practices for earning and using accrued sick leave or PTO to determine whether the Portland law will be preempted in whole or in part by other federal and state laws.
- Employers should consider having their sick and PTO policies and practices reviewed by experienced legal counsel to ensure compliance with the Portland law and other applicable leave laws.
- Employers who are not currently required by local law to provide PTO should nonetheless be aware of these legislative developments and educate themselves regarding what is happening in or around their own jurisdictions.

**For more information, please contact the Labor and Employment Practice Group at
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