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Oregon Sick Leave: Applicability of Requirements to Employees Occasionally Working in State Unclear

Beginning January 1, 2016, Oregon will join a growing number of cities and states mandating that employers provide certain classes of employees with sick leave benefits. For the specific requirements imposed by the new legislation, including when sick leave must be paid, see our article, [Oregon Enacts Paid Sick Leave](#).

Recently, the Oregon Bureau of Labor and Industry ("BOLI") released initial draft implementation rules for the new sick leave law. While clarifying some requirements for accrual and use, notice and posting, and determining whether sick time is paid or unpaid, the proposed rules unfortunately do not clarify whether, or to what extent, the new sick leave requirements apply to workers based in other states who travel to Oregon for business.

Other states with statewide sick leave mandates have expressly addressed the applicability of their sick leave requirements for workers based out-of-state. The California sick leave requirements, for example, apply only to employees who work at least 30 days in California within a year from the commencement of their employment.

The Oregon sick leave legislation is silent with respect to out-of-state employees. Many employers had expected this would be addressed in the proposed rules, either by a standard similar to California's or one similar to the federal Family Medical Leave Act, which would provide that only employees based in Oregon would be subject to the accrual-and-use requirements of the law.

The proposed rules left unanswered whether employees traveling to Oregon, even for a short period, are entitled to accrue paid sick leave under the statute. Also unanswered is how employers are expected to administer mandated sick leave for workers only periodically in the state.

It remains to be seen whether BOLI will tackle this apparent legislative gap in subsequent versions of the proposed rules. Indeed, whether an administrative agency can constitutionally fill such a gap through an administrative rulemaking process is a real question.

For now, employers with operations outside of Oregon who send employees to work in Oregon would be well-advised to assess carefully what impact the new Oregon sick leave requirements will have on their operations.

2016 Oregon and Washington Minimums to Remain the Same

The minimum wage rates in Oregon and Washington will not change next year because the consumer price index (CPI) was almost unchanged. By law, these states' minimums are tied to the CPI.

Oregon's minimum wage will remain \$9.25 per hour, and Washington's minimum wage will remain \$9.47 per hour. For years, Washington's rate has been the highest state minimum in the country. That will change on January 1, 2016, when California and Massachusetts will increase their minimum wages to \$10 per hour.

Employer Motive Focus of Religious Discrimination

The U.S. Supreme Court has held that to prevail in a disparate treatment claim of discrimination under Title VII of the Civil Rights Act of 1964, a rejected applicant for employment must only show that his or her need for religious accommodation was a motivating factor in the employer's decision, not that the employer had knowledge of the applicant's need. For details of the decision, see [Supreme Court Refines Religious Discrimination Requirements under Title VII to Focus on Employer Motive](#).

If you have questions about these or other workplace developments, please contact a Jackson Lewis attorney in the [Portland](#) or [Seattle](#) office.

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