

Portland, Oregon, Mandates Employer-Provided Sick Leave

By Scott Osborne and Mark A. Crabtree

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Following examples set by San Francisco to the South, and Seattle to the North, the Portland, Oregon, City Council unanimously passed Portland's new sick leave ordinance. The new law imposes significant burdens on employers in addition to mandating up to 40 hours of annual sick leave. The new sick leave entitlements apply to all private-sector employers, regardless of location of the employer's primary place of business. The law goes into effect January 1, 2014.

Under the leave law, private employers with at least six employees will be required to provide qualifying employees up to 40 hours of *paid* sick leave per year. Employers with fewer than six employees still must provide up to 40 hours of *unpaid* sick leave per year.

All employees, regardless of whether they are temporary, part-time or full-time, have the right to use protected sick leave if they work in Portland at least 240 hours within a calendar year. Employees based elsewhere, but who travel to Portland for business, accrue only benefits for paid work hours within the city limits and are subject to the 240-hour threshold.

After the January 1, 2014, effective date, employees working in Portland will accrue sick leave at the minimum rate of one hour for every 30 hours worked. Newly hired employees accrue leave at the same 30:1 ratio from the outset of employment, but are subject to a 90-day waiting period before accrued leave may be taken.

Unused sick time can be carried over to the following calendar year, but an employee's annual use of sick time accrued under the new law is capped at 40 hours.

Employers may not require employees wishing to take leave accrued under the new law to find a replacement worker, nor may employers require employees to work an alternate shift to make up for time missed. Conversely, if an employer permits shift trading and a shift is available, employees must be permitted to trade shifts to avoid using accrued sick leave.

The law extends well beyond traditional "sick" leave. As an initial matter, the leave may be taken not only for an employee's own illness, injury or preventive medical care, but also for a qualifying family member's similar needs. "Family member" is broadly defined to include the employee's children, parents, parents-in-law, grandparents, grandchildren and registered same-sex domestic partners. Additionally, sick leave may be taken for absences resulting from 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.

The new law prohibits employers from taking any adverse action against employees who take leave accrued under the ordinance. Therefore, employers will find it difficult to enforce no-fault attendance policies lawfully in light of these new requirements. Further, because the new law mandates accrual and tracks usage on a calendar-year basis, employers with Portland-based employees likely will find it too onerous to implement time-off policies based on an employee's hire date. In addition to these and other systemic changes that may be necessary, employers are required under the law to develop and disseminate policies advising employees of the procedure for reporting absences. Adding extra complexity, successor employers are required to recognize sick leave accrued under the new law. Finally, covered employers will be required to post a notice describing the new law.

Covered employers that fail to comply with the sick leave obligations, including the new posting requirement, are subject to civil penalties. Employees who believe their employer interfered with or failed to provide them with the minimum benefits under the new law may bring an action for injunctive relief and back pay, as well as attorneys' fees and costs.

Meet the Authors



Scott Osborne

Principal
Portland 503-345-4151
Email



Mark A. Crabtree

Office Managing Principal and Office
Litigation Manager
Portland 503-229-0404
Email

Employers covered by the new requirements should review their existing policies carefully. While employers currently providing leave entitlements equal to or greater than Portland's new requirements may be exempted from providing additional leave, that exemption applies only if the existing policies are co-extensive with the new requirements. Consequently, many employers will need to modify their policies and may need to negotiate changes in collective bargaining agreements to integrate the law's new requirements.

Jackson Lewis attorneys routinely work with employers of every size throughout Oregon on compliance and implementation strategies, including the many nuances of this new leave requirement. If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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