

D R A F T

SUMMARY

Defines employer location as location of headquarters. Limits application of paid leave requirements to employers with 25 or more employees. Maintains application of paid leave requirements to employers located in city with population exceeding 500,000 to employers with six or more employees. Excludes seasonal agricultural workers and temporary workers from employee count for purpose of determining whether employer must provide sick leave. Limits requirements for substantial equivalency compliance. Excludes joint employers from joint and several liability. Creates safe harbor from enforcement, civil and administrative actions until January 1, 2017. Limits statutory protection to employee's first 40 hours of sick leave.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to sick leave; creating new provisions; amending ORS 653.601, 653.606, 653.611, 653.626, 653.641, 653.646, 653.651 and 653.656 and section 22, chapter 537, Oregon Laws 2015; and declaring an emergency.

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

SECTION 1. ORS 653.601 is amended to read:

653.601. As used in ORS 653.601 to 653.661:

(1)(a) "Employee" means an individual who renders personal services at a fixed rate to an employer if the employer either pays or agrees to pay for personal services or permits the individual to perform personal services.

(b) "Employee" includes, but is not limited to:

(A) An individual who is paid on a piece-rate basis or the basis of the number of operations accomplished or quantity produced or handled;

(B) Individuals paid on an hourly, salary or commission basis;

(C) Individuals for whom withholding is required under ORS 316.162 to

316.221; and

(D) Home care workers as defined in ORS 410.600.

(c) "Employee" does not include:

(A) An employee who receives paid sick time under federal law;

(B) An independent contractor;

(C) A participant in a work training program administered under a state or federal assistance program;

(D) A participant in a work-study program that provides students in secondary or post-secondary educational institutions with employment opportunities for financial or vocational training;

(E) A railroad worker exempted under the federal Railroad Unemployment Insurance Act; and

(F) An individual employed by that individual's parent, spouse or child.

(2)(a) "Employer" means any person that employs one or more employees working anywhere in this state, a political subdivision of the state and any county, city, district, authority, public corporation or entity, and any instrumentality of a county, city, district, authority, public corporation or entity, organized and existing under law or charter.

(b) "Employer" includes an employer located in a city with a population exceeding 500,000.

(c) "Employer" does not include the federal government.

(3) "Employer located in a city with a population exceeding 500,000" *[includes, but is not limited to, an employer that maintains any office, store, restaurant or establishment in that city]* **means any employer that maintains a headquarters within the city limits of a city with a population exceeding 500,000.**

(4) "Family member" has the meaning given that term in ORS 659A.150.

(5)(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and make available a certain number of hours of sick time to an employee as soon as the employee becomes eligible to use sick time and on the first day of the immediately subsequent year without regard to

an accrual rate.

(b) For employees employed by an employer for less than a full year, “front-load” means to assign and make available to an employee as soon as the employee becomes eligible to use sick time a number of hours of sick time that is the pro rata percentage of the hours the employee would be entitled to for an entire year *[based on the number of hours the employee was actually employed by the employer for the year]*.

(6) “Joint employer” means any situation in which an employee may be employed by more than one employer, including but not limited to staffing agencies, employers who use labor contractors, temporary employment agencies, parent corporations, franchisors, leasing companies, contract payroll companies, labor organizations, professional employment organizations or payroll or benefit administrators.

[(6)] (7) “Paid sick time” means time off:

(a) That is provided to an employee by an employer that employs 25 or more employees;

(b) That may be used for the purposes specified in ORS 653.616; and

(c) That is compensated at the regular rate of pay and without reductions in benefits, including but not limited to health care benefits, that the employee earns from the employer at the time the employee uses the paid sick time.

(8) “Seasonal agricultural worker” means an employee who engages in the planting, cultivating, harvesting, production, handling or processing of seasonal crops or products.

[(7)] (9) “Sick time” means time during which an employee is permitted to be absent from work for a reason authorized under ORS 653.616 without a reduction in benefits, including but not limited to health care benefits, that the employee earns from the employer.

(10) “Temporary employee” means an employee who fills a position meant to cope with short-term, seasonal or unexpected workload demands when establishment of a permanent position is not feasible or

1 **appropriate.**

2 [(8)] (11) "Year" includes any consecutive 12-month period, such as a
3 calendar year, a tax year, a fiscal year, a contract year or the 12-month pe-
4 riod beginning on the anniversary of the date of employment of the employee.

5 **SECTION 2.** ORS 653.606 is amended to read:

6 653.606. (1)(a) Employers that employ at least [10] **25** employees working
7 anywhere in this state shall implement a sick time policy that allows an
8 employee to earn and use up to 40 hours of paid sick time per year. Paid sick
9 time shall accrue at the rate of at least one hour of paid sick time for every
10 30 hours the employee works or 1-1/3 hours for every 40 hours the employee
11 works.

12 (b) Employers that employ fewer than [10] **25** employees working any-
13 where in this state shall implement a sick time policy that allows an em-
14 ployee to earn and use up to 40 hours of unpaid sick time per year. Unpaid
15 sick time shall accrue at the rate of at least one hour of unpaid sick time
16 for every 30 hours the employee works or 1-1/3 hours for every 40 hours the
17 employee works.

18 (c) Employers that employ at least [10] **25** employees working anywhere
19 in this state and front-load for employees at least 40 hours, **or a pro rata**
20 **percentage of the hours the employee would be entitled to for the year,**
21 of paid sick time or paid time off at the beginning of each year used to cal-
22 culate the accrual and usage of sick time or time off need not comply with
23 subsections (1)(a) and (3) of this section.

24 (d) Employers that employ fewer than [10] **25** employees working any-
25 where in this state and front-load for employees at least 40 hours, **or a pro**
26 **rata percentage of the hours the employee would be entitled to for the**
27 **year,** of unpaid sick time or unpaid time off at the beginning of each year
28 used to calculate the accrual and usage of sick time or time off need not
29 comply with subsections (1)(b) and (3) of this section.

30 (2)(a) The number of employees employed by an employer shall be ascer-
31 tained by determining that the per-day average number of employees **who**

1 **are not seasonal agricultural workers or temporary employees** is [10]
2 **25** or greater for each of 20 workweeks in the calendar year or the fiscal year
3 of the employer immediately preceding the year in which the leave is to be
4 taken.

5 (b) If the business of the employer was not in existence for the entire year
6 preceding the determination made under paragraph (a) of this subsection, the
7 number of employees **described under paragraph (a) of this subsection**
8 shall be based on any 20 workweeks preceding the request for sick time,
9 which may include workweeks in the current year, the preceding year or a
10 combination of workweeks in the current year and the preceding year.

11 (3) An employee shall begin to earn and accrue sick time on the first day
12 of employment with an employer. The employee may carry over up to 40
13 hours of unused sick time from one year to a subsequent year. However, an
14 employer may adopt a policy that limits:

15 (a) An employee to accruing no more than 80 hours of sick time; or

16 (b) An employee to using no more than 40 hours of sick time in a year.

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

19 (A) If the employer has [10] **25** or more employees working anywhere in
20 this state, the employee will be paid for all unused paid sick time at the end
21 of the year in which the sick time is accrued and the employer will credit
22 the employee with an amount of paid sick time that meets the requirements
23 of this section on the first day of the immediately subsequent year; or

24 (B) If the employer has fewer than [10] **25** employees working anywhere
25 in this state, the employer will credit the employee with an amount of sick
26 time that meets the requirements of this section on the first day of the im-
27 mediately subsequent year.

28 (b) The Commissioner of the Bureau of Labor and Industries shall adopt
29 rules for the determination of the number of employees employed by an em-
30 ployer.

31 (5)(a) An employee **who is not a seasonal agricultural worker** is eligi-

ble to use sick time beginning on the 91st calendar day of employment with the employer and may use sick time as it is accrued.

(b) A seasonal agricultural worker is eligible to use sick time beginning on the 121st calendar day of employment with the employer and may use sick time as it is accrued.

[(b)] **(c)** An employer may authorize an employee to use accrued sick time prior to the [91st calendar] day of employment **specified in paragraph (a) or (b) of this subsection.**

[(c)] **(d)(A)** An employer that employs [10] **25** or more employees working anywhere in this state shall pay an employee for accrued sick time used at the regular rate of pay of the employee.

(B) For an employee employed on a commission or piece-rate basis by an employer that employs [10] **25** or more employees working anywhere in this state, the employer shall pay the employee for accrued sick time used at *[the employee's regular rate of pay. If the employee is paid on a commission or piece-rate basis and does not have a previously established regular rate of pay, the employer shall pay the employee at]* a rate equal to at least the minimum wage specified in ORS 653.025.

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

(7) Nothing in ORS 653.601 to 653.661 requires an employer to compensate an employee for accrued unused sick time upon the employee's termination, resignation, retirement or other separation from employment.

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

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

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

(9) Upon mutual consent by the employee and the employer, an employee

1 may work additional hours or shifts to compensate for hours or shifts during
2 which the employee was absent from work without using accrued sick time
3 for the hours or shifts missed. However, the employer may not require the
4 employee to work additional hours or shifts authorized by this subsection.
5 If the employee works additional hours or shifts, the employer must comply
6 with any applicable federal, state or local laws regarding overtime pay.

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

10 (11)(a) An employer shall restore previously accrued unused sick time to
11 an employee who is reemployed by that employer within 180 days of sepa-
12 ration from employment with the employer.

13 (b) If an employee **who is not a seasonal agricultural worker** leaves
14 employment with an employer before the 91st day of employment and subse-
15 quently is reemployed by that employer within 180 days of separation from
16 employment, the employer shall restore the accrued sick time balance the
17 employee had when the employee left the employment of the employer and
18 the employee may use accrued sick time after the combined total of days of
19 employment with the employer exceeds 90 calendar days.

20 (12) If an employee is transferred to a separate division, entity or location
21 of the employer but remains employed by that same employer, the employee
22 is entitled to use all sick time accrued while working at the former division,
23 entity or location of the employer and is entitled to retain or use all sick
24 time as provided by ORS 653.601 to 653.661.

25 (13) Employers located in a city with a population exceeding 500,000 shall
26 comply with ORS 653.601 to 653.661, except that:

27 (a) If an employer located in a city with a population exceeding 500,000
28 employs at least six employees working anywhere in this state, the employer
29 shall implement a policy consistent with this section as it applies to em-
30 ployers with at least [10] **25** employees working anywhere in this state.

31 (b) If an employer located in a city with a population exceeding 500,000

employs fewer than six employees working anywhere in this state, the employer shall implement a policy consistent with this section as it applies to employers with fewer than [10] **25** employees working anywhere in this state.

SECTION 3. An employer following ORS 653.606 (1)(c) or (d) that does not follow a calendar year may front-load on January 1, 2016, a pro rata percentage of the hours the employee would be entitled to for the year if the employer front-loads for the employee the remaining portion of the hours the employee would be entitled to for the year at the beginning of the employer's fiscal or other year in 2016.

SECTION 4. ORS 653.611 is amended to read:

653.611. (1) An employer with a sick leave policy, paid vacation policy, paid personal time off policy or other paid time off program that is substantially equivalent to or more generous to the employee than the minimum requirements of [ORS 653.601 to 653.661] **ORS 653.606 and ORS 653.616** shall be deemed to be in compliance with the requirements of ORS 653.601 to 653.661.

(2) If an employee of an employer that has a policy for paid sick time, paid vacation leave, paid personal time off or other paid time off programs has exhausted all paid and unpaid leave available to the employee, the employer is not obligated to provide additional leave for paid or unpaid sick time as required by ORS 653.601 to 653.661. However, the employer may be obligated to provide paid or unpaid sick time by federal or state law that provides for paid or unpaid leave for similar purposes.

(3) ORS 653.601 to 653.661 apply only to the first 40 hours of sick time accrued or used by an employee in a year.

SECTION 5. ORS 653.656 is amended to read:

653.656. The Commissioner of the Bureau of Labor and Industries:

(1) Shall enforce the provisions of ORS 653.601 to 653.661; and

(2) May adopt rules necessary for the implementation and enforcement of ORS 653.601 to 653.661 **that are consistent with subsection (3) of this section.**

(3) **Notwithstanding any joint and several liability of joint employers as otherwise provided by state law, rule or regulation, joint and several liability does not apply to joint employers under ORS 653.601 to 653.661.**

SECTION 6. ORS 653.626 is amended to read:

653.626. (1)(a) If an employee takes more than three consecutive scheduled workdays of sick time for a purpose described in ORS 653.616 (1) to (4), an employer may require the employee to provide verification from a health care provider of the need for the sick time, or certification of the need for leave for purposes of ORS 659A.272 as provided in ORS 659A.280.

(b) If the need for sick time is foreseeable and is projected to last more than three scheduled workdays and an employee is required to provide notice under ORS 653.621, the employer may require that verification or certification be provided before the sick time commences or as soon as otherwise practicable.

(c) If the employee commences sick time without providing prior notice required by the employer under ORS 653.621:

(A) Medical verification shall be provided to the employer within 15 calendar days after the employer requests the verification; or

(B) Certification provided as specified in ORS 659A.280 shall be provided to the employer within a reasonable time after the employee receives the request for certification.

(2) **Except for attorney fees or costs**, the employer shall pay any reasonable costs for providing medical verification or certification required under this section, including lost wages, that are not paid under a health benefit plan in which the employee is enrolled.

(3)(a) An employer may not require that the verification or certification required under this section explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.

(b) If an employer suspects that an employee is abusing sick time, in-

cluding engaging in a pattern of abuse, the employer may require verification from a health care provider of the need of the employee to use sick time, regardless of whether the employee has used sick time for more than three consecutive days. As used in this paragraph, “pattern of abuse” includes, but is not limited to, repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days or paydays.

(4) As used in this section, “health care provider” has the meaning given that term in ORS 659A.150.

SECTION 7. ORS 653.641 is amended to read:

653.641. (1) It is an unlawful practice for an employer or any other person to:

[(1)] (a) Deny, interfere with, restrain or fail to pay for sick time to which an employee is entitled under ORS 653.601 to 653.661;

[(2)] (b) Retaliate or in any way discriminate against an employee with respect to any term or condition of employment because the employee has inquired about the provisions of ORS 653.601 to 653.661, submitted a request for sick time, taken sick time, participated in any manner in an investigation, proceeding or hearing related to ORS 653.601 to 653.661[,] or invoked any provision of ORS 653.601 to 653.661; or

[(3)] (c) Apply an absence control policy that includes sick time absences covered under ORS 653.601 to 653.661 as an absence that may lead to or result in an adverse employment action against the employee.

(2) This section does not apply to employee incentive plans to encourage attendance or employer policies regarding holiday pay.

SECTION 8. Section 22, chapter 537, Oregon Laws 2015, is amended to read:

Sec. 22. *[Except for penalties assessed for a violation of section 11 (2) or (3) of this 2015 Act,]* The Bureau of Labor and Industries may assess civil penalties against an employer only for violations of *[sections 2 to 16 of this 2015 Act]* **ORS 653.601 to 653.661** occurring on or after January 1, 2017.

SECTION 9. (1) **Notwithstanding ORS 653.651 and 659A.885, an em-**

1 **ployee may file a civil action in court alleging a violation of ORS**
2 **653.601 to 653.661 on or after January 1, 2017, only for alleged violations**
3 **occurring on or after January 1, 2017.**

4 **(2) An employee may file a complaint with the Commissioner of the**
5 **Bureau of Labor and Industries alleging a violation of ORS 653.601 to**
6 **653.661 on or after January 1, 2017, only for alleged violations occurring**
7 **on or after January 1, 2017.**

8 **(3) An administrative action commenced with or by the Bureau of**
9 **Labor and Industries prior to the effective date of this 2016 Act alleg-**
10 **ing a violation of ORS 653.601 to 653.661 is terminated on the effective**
11 **date of this 2016 Act.**

12 **(4) A civil action commenced in court prior to the effective date of**
13 **this 2016 Act alleging a violation of ORS 653.601 to 653.661 is terminated**
14 **on the effective date of this 2016 Act.**

15 **SECTION 10.** ORS 653.646 is amended to read:

16 653.646. (1) The requirements of ORS 653.601 to 653.661 do not apply to
17 an employee:

18 (a) Whose terms and conditions of employment are covered by a collective
19 bargaining agreement;

20 (b) Who is employed through a hiring hall or similar referral system op-
21 erated by the labor organization or a third party; and

22 (c) Whose employment-related benefits are provided by a joint
23 multiemployer-employee trust or benefit plan.

24 (2)(a) The Home Care Commission created under ORS 410.602 shall es-
25 tablish a paid sick time policy for consumer employed home care workers.

26 (b) A policy for paid sick time for consumer employed home care workers
27 implemented by the Home Care Commission that allows an eligible home
28 care worker to accrue and use up to 40 hours of paid time off a year, in-
29 cluding but not limited to sick time, is deemed to meet the requirements of
30 ORS 653.601 to 653.661 and is exempt from the provisions of ORS 653.601
31 ~~[(6)]~~ (7), 653.606 (5), 653.611, 653.621, 653.626 and 653.631.

(3) As used in this section, “consumer employed home care worker” has the meaning given the term “home care worker” in ORS 410.600.

SECTION 11. ORS 653.651 is amended to read:

653.651. (1) An employee asserting a violation of ORS 653.641 [(2) or (3)] **(1)(b) or (c)** may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as provided in ORS 659A.885 **on or after January 1, 2017.**

(2) The commissioner has the same enforcement powers with respect to the rights established under ORS 653.601 to 653.661 as are established in ORS chapters 652 and 653.

SECTION 12. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.