

# D R A F T

## SUMMARY

Allows sick leave to be counted as fringe benefit for purpose of prevailing wage. Defines employer location as location of headquarters. Limits requirements for substantial equivalency. Excludes joint employers from joint and several liability. Broadens multiemployer exception to include employers offering any benefit from a joint multiemployer-employee trust or benefit plan. Delays enforcement, civil and administrative actions until January 1, 2017.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to sick leave; creating new provisions; amending ORS 653.601,  
3 653.606, 653.611, 653.621, 653.626, 653.641, 653.646, 653.651 and 653.656 and  
4 section 22, chapter 537, Oregon Laws 2015; and declaring an emergency.

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

5 **SECTION 1.** ORS 653.601 is amended to read:

6 653.601. As used in ORS 653.601 to 653.661:

7  
8 (1)(a) "Employee" means an individual who renders personal services at  
9 a fixed rate to an employer if the employer either pays or agrees to pay for  
10 personal services or permits the individual to perform personal services.

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

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

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

15 (C) Individuals for whom withholding is required under ORS 316.162 to  
16 316.221; and

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

1 (c) "Employee" does not include:

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

3 (B) An independent contractor;

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

6 (D) A participant in a work-study program that provides students in sec-  
7 ondary or post-secondary educational institutions with employment opportu-  
8 nities for financial or vocational training;

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

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

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

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

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

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

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

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

31 (b) For employees employed by an employer for less than a full year,

1 “front-load” means to assign and make available to an employee as soon as  
2 the employee becomes eligible to use sick time a number of hours of sick  
3 time that is the pro rata percentage of the hours the employee would be en-  
4 titled to for an entire year [*based on the number of hours the employee was*  
5 *actually employed by the employer for the year*].

6 **(6) “Headquarters” means the location of an employer’s principal**  
7 **office in this state, an employer’s primary place of business in this**  
8 **state or the location that an employer refers to as its headquarters in**  
9 **this state.**

10 **(7) “Joint employer” means any situation in which an employee**  
11 **may be employed by more than one employer, including but not lim-**  
12 **ited to staffing agencies, employers who use labor contractors, tem-**  
13 **porary employment agencies, parent corporations, franchisors, leasing**  
14 **companies, contract payroll companies, labor organizations, profes-**  
15 **sional employment organizations or payroll or benefit administrators.**

16 [(6)] **(8) “Paid sick time” means time off:**

17 (a) That is provided to an employee by an employer that employs 10 or  
18 more employees;

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

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

24 [(7)] **(9) “Sick time” means time during which an employee is permitted**  
25 **to be absent from work for a reason authorized under ORS 653.616 without**  
26 **a reduction in benefits, including but not limited to health care benefits, that**  
27 **the employee earns from the employer.**

28 [(8)] **(10) “Year” includes any consecutive 12-month period, such as a**  
29 **calendar year, a tax year, a fiscal year, a contract year or the 12-month pe-**  
30 **riod beginning on the anniversary of the date of employment of the employee.**

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

1 653.606. (1)(a) Employers that employ at least 10 employees working any-  
2 where in this state shall implement a sick time policy that allows an em-  
3 ployee to earn and use up to 40 hours of paid sick time per year. Paid sick  
4 time shall accrue at the rate of at least one hour of paid sick time for every  
5 30 hours the employee works or 1-1/3 hours for every 40 hours the employee  
6 works.

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

12 (c) Employers that employ at least 10 employees working anywhere in this  
13 state and front-load for employees at least 40 hours, **or a pro rata per-**  
14 **centage of the hours the employee would be entitled to for the year,**  
15 of paid sick time or paid time off at the beginning of each year used to cal-  
16 culate the accrual and usage of sick time or time off need not comply with  
17 subsections (1)(a) and (3) of this section.

18 (d) Employers that employ fewer than 10 employees working anywhere in  
19 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 unpaid sick time or unpaid time off at the beginning of each year used to  
22 calculate the accrual and usage of sick time or time off need not comply with  
23 subsections (1)(b) and (3) of this section.

24 (2)(a) The number of employees employed by an employer shall be ascer-  
25 tained by determining that the per-day average number of employees is 10  
26 or greater for each of 20 workweeks in the calendar year or the fiscal year  
27 of the employer immediately preceding the year in which the leave is to be  
28 taken.

29 (b) If the business of the employer was not in existence for the entire year  
30 preceding the determination made under paragraph (a) of this subsection, the  
31 number of employees shall be based on any 20 workweeks preceding the re-

1 quest for sick time, which may include workweeks in the current year, the  
2 preceding year or a combination of workweeks in the current year and the  
3 preceding year.

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

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

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

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

12 (A) If the employer has 10 or more employees working anywhere in this  
13 state, the employee will be paid for all unused paid sick time at the end of  
14 the year in which the sick time is accrued and the employer will credit the  
15 employee with an amount of paid sick time that meets the requirements of  
16 this section on the first day of the immediately subsequent year; or

17 (B) If the employer has fewer than 10 employees working anywhere in this  
18 state, the employer will credit the employee with an amount of sick time that  
19 meets the requirements of this section on the first day of the immediately  
20 subsequent year.

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

24 (5)(a) An employee is eligible to use sick time beginning on the 91st cal-  
25 endar day of employment with the employer and may use sick time as it is  
26 accrued.

27 (b) An employer may authorize an employee to use accrued sick time prior  
28 to the 91st calendar day of employment.

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

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

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

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

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

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

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

20 (9) Upon mutual consent by the employee and the employer, an employee  
21 may work additional hours or shifts to compensate for hours or shifts during  
22 which the employee was absent from work without using accrued sick time  
23 for the hours or shifts missed. However, the employer may not require the  
24 employee to work additional hours or shifts authorized by this subsection.  
25 If the employee works additional hours or shifts, the employer must comply  
26 with any applicable federal, state or local laws regarding overtime pay.

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

30 (11)(a) An employer shall restore previously accrued unused sick time to  
31 an employee who is reemployed by that employer within 180 days of sepa-

1 ration from employment with the employer.

2 (b) If an employee leaves employment with an employer before the 91st  
3 day of employment and subsequently is reemployed by that employer within  
4 180 days of separation from employment, the employer shall restore the ac-  
5 crued sick time balance the employee had when the employee left the em-  
6 ployment of the employer and the employee may use accrued sick time after  
7 the combined total of days of employment with the employer exceeds 90 cal-  
8 endar days.

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

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

16 (a) If an employer located in a city with a population exceeding 500,000  
17 employs at least six employees working anywhere in this state, the employer  
18 shall implement a policy consistent with this section as it applies to em-  
19 ployers with at least 10 employees working anywhere in this state.

20 (b) If an employer located in a city with a population exceeding 500,000  
21 employs fewer than six employees working anywhere in this state, the em-  
22 ployer shall implement a policy consistent with this section as it applies to  
23 employers with fewer than 10 employees working anywhere in this state.

24 **(14) Notwithstanding ORS 279C.800 (1), the provision of sick leave**  
25 **under ORS 653.601 to 653.661 may be considered a fringe benefit for the**  
26 **purposes of ORS chapter 279C.**

27 **SECTION 3. If an employer following ORS 653.606 (1)(c) and (d) does**  
28 **not follow a calendar year, the employer may front-load a pro rata**  
29 **percentage of the hours the employee would be entitled to for the year**  
30 **on January 1, 2016, provided that the employer front-loads for the**  
31 **employee the remaining portion of the hours the employee would be**

1 **entitled to for the year at the beginning of the employer's fiscal or**  
2 **other year in 2016.**

3 **SECTION 4.** ORS 653.611 is amended to read:

4 653.611. (1) An employer with a sick leave policy, paid vacation policy,  
5 paid personal time off policy or other paid time off program that is sub-  
6 stantially equivalent to or more generous to the employee than the minimum  
7 requirements of [*ORS 653.601 to 653.661*] **ORS 653.606 and ORS 653.616** shall  
8 be deemed to be in compliance with the requirements of ORS 653.601 to  
9 653.661.

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

17 **SECTION 5.** ORS 653.621 is amended to read:

18 653.621. (1)(a) Upon request of an employee with accrued sick time avail-  
19 able, an employer must allow the employee to use sick time. If possible, the  
20 employee shall include the anticipated duration of the sick time requested  
21 in the request.

22 (b) Sick time earned under ORS 653.606 shall be taken in hourly incre-  
23 ments unless[:]

24 [(A) *To do so would impose an undue hardship on the employer; and*]

25 [(B)] The employer has a policy or combination of policies that allows an  
26 employee to use at least 56 hours of paid leave per year that may be taken  
27 in minimum increments of four hours and may be used for the purposes  
28 specified in ORS 653.616.

29 (c) The Commissioner of the Bureau of Labor and Industries shall adopt  
30 rules for the implementation and administration of this subsection. The rules  
31 adopted shall include, but need not be limited to, criteria for establishment

1 of undue hardship under this section that are based on the difficulty of se-  
2 curing a replacement worker while allowing the employer to apply a con-  
3 sistent policy to all employees.

4 (2) An employer may require the employee to comply with the employer's  
5 usual and customary notice and procedural requirements for absences or for  
6 requesting time off if those requirements do not interfere with the ability  
7 of the employee to use sick time.

8 (3) If the need to use sick time is foreseeable:

9 (a) The employer may require reasonable advance notice of the employee's  
10 intention to use sick time, not to exceed 10 days prior to the date the sick  
11 time is to begin or as soon as otherwise practicable; and

12 (b) The employee shall make a reasonable attempt to schedule the use of  
13 sick time in a manner that does not unduly disrupt the operations of the  
14 employer.

15 (4) If the need to use sick time is unforeseeable, the employee shall pro-  
16 vide notice to the employer as soon as practicable and must comply generally  
17 with the employer's notice or procedural requirements for requesting or re-  
18 porting other time off if those requirements do not interfere with the ability  
19 of the employee to use sick time.

20 **SECTION 6.** ORS 653.656 is amended to read:

21 653.656. The Commissioner of the Bureau of Labor and Industries:

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

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

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

29 **SECTION 7.** ORS 653.626 is amended to read:

30 653.626. (1)(a) If an employee takes more than three consecutive scheduled  
31 workdays of sick time for a purpose described in ORS 653.616 (1) to (4), an

1 employer may require the employee to provide verification from a health care  
2 provider of the need for the sick time, or certification of the need for leave  
3 for purposes of ORS 659A.272 as provided in ORS 659A.280.

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

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

11 (A) Medical verification shall be provided to the employer within 15 cal-  
12 endar days after the employer requests the verification; or

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

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

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

24 (b) If an employer suspects that an employee is abusing sick time, in-  
25 cluding engaging in a pattern of abuse, the employer may require verification  
26 from a health care provider of the need of the employee to use sick time,  
27 regardless of whether the employee has used sick time for more than three  
28 consecutive days. As used in this paragraph, “pattern of abuse” includes, but  
29 is not limited to, repeated use of unscheduled sick time on or adjacent to  
30 weekends, holidays, vacation days or paydays.

31 (4) As used in this section, “health care provider” has the meaning given

1 that term in ORS 659A.150.

2 **SECTION 8.** ORS 653.641 is amended to read:

3 653.641. (1) It is an unlawful practice for an employer or any other person  
4 to:

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

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

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

16 **(2) This section does not apply to employee incentive plans to en-  
17 courage attendance or employer policies regarding holiday pay.**

18 **SECTION 9.** ORS 653.646 is amended to read:

19 653.646. (1) The requirements of ORS 653.601 to 653.661 do not apply to  
20 an employee:

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

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

25 (c) [*Whose*] **Who receives an** employment-related [*benefits are provided*  
26 *by*] **benefit from** a joint multiemployer-employee trust or benefit plan.

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

29 (b) A policy for paid sick time for consumer employed home care workers  
30 implemented by the Home Care Commission that allows an eligible home  
31 care worker to accrue and use up to 40 hours of paid time off a year, in-

1 cluding but not limited to sick time, is deemed to meet the requirements of  
2 ORS 653.601 to 653.661 and is exempt from the provisions of ORS 653.601  
3 [(6)] (8), 653.606 (5), 653.611, 653.621, 653.626 and 653.631.

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

6 **SECTION 10.** Section 22, chapter 537, Oregon Laws 2015, is amended to  
7 read:

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

12 **SECTION 11.** (1) **Notwithstanding ORS 659A.885, a person may file**  
13 **a civil action in court alleging a violation of ORS 653.601 to 653.661 on**  
14 **or after January 1, 2017, only for alleged violations occurring on or**  
15 **after January 1, 2017.**

16 (2) **An administrative action commenced with or by the Bureau of**  
17 **Labor and Industries prior to the effective date of this 2016 Act for a**  
18 **violation of ORS 653.641 (1)(b) or (c) is terminated on the effective date**  
19 **of this 2016 Act.**

20 (3) **A civil action commenced in court prior to the effective date of**  
21 **this 2016 Act alleging a violation of ORS 653.601 to 653.661 is terminated**  
22 **on the effective date of this 2016 Act.**

23 **SECTION 12.** ORS 653.651 is amended to read:

24 653.651. (1) An employee asserting a violation of ORS 653.641 [(2) or (3)]  
25 (1)(a) or (b) may file a complaint with the Commissioner of the Bureau of  
26 Labor and Industries under ORS 659A.820 or a civil action as provided in  
27 ORS 659A.885.

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

31 **SECTION 13.** **This 2016 Act being necessary for the immediate**

1 **preservation of the public peace, health and safety, an emergency is**  
2 **declared to exist, and this 2016 Act takes effect on its passage.**

3 \_\_\_\_\_