

## Oregon Sick Leave Summary

This is a summary of the key provisions in Oregon's Sick Leave Law based on the legislation and BOLI's final rules (OAR 839-007-000 – OAR 839-007-0120).

This summary is subject to change.

- **Employees Covered**

- All full time, part time, temporary, hourly, salary, commission or piece rate employees who work in Oregon

- **Use**

- Employees entitled to use 40 hours of accrued sick leave per "leave year"
- Current employees begin accruing Oregon Sick Leave on January 1, 2016, and may use immediately upon accrual
- New employees begin accruing on start date and may use on 91st day of employment
- Employees may use Oregon Sick Leave in one hour increments, unless causes employer "undue hardship" (plus employee must accrue 56 hours of paid leave and get a BOLI notice)
- "Undue hardship" means that one hour increments would present significant difficulty and expense to the employer's business, considering cost of complying, overall financial recourses, number of employees and effect on worksite operations
- Use of sick leave can't result in reduction or loss in benefits

- **"Year" for Purposes of Oregon Sick Leave**

- Any consecutive 12 month period such as calendar year, tax year, fiscal year, contract year, or 12 month anniversary date of employment

- **Accrual**

- Non-exempt employees accrue 1 hour for every 30 hours worked, or 1 1/3 hours for every 40 hours worked.
- Exempt employees are presumed to work 40 hours per week and therefore accrue 1 1/3 hours of Oregon Sick Leave per week worked

- **Pay Rate While on Oregon Sick**

- Employees paid at "regular rate of pay," which is the hourly rate the employee would have earned in the workweek the employee used sick leave
- Pay rate includes shift differential incentives (i.e., night shift or swing shift)
- Hourly employees are paid at base hourly rate
- Employees who earn at multiple rates are paid at the weighted average rate or rate the employee would have been paid for period sick time was used
- Salaried employees are paid the total wages earned during period covered by salary, divided by hours worked
- Commissioned, piece rate or fee for service employees are paid at agreed upon rate or minimum wage, whichever is greater
- Pay rate does not include bonuses, overtime, holiday pay, or other premiums
- Sick Leave must be paid no later than next regular pay period (unless employer requires written documentation to verify (see requirements below), then employer does not have to pay until employee provides documentation)

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- **Qualifying purposes to use Oregon Sick Leave**
  - Employee’s own illness, injury, health condition, diagnoses, care, treatment, preventative medical care, pregnancy/prenatal care, dental/doctor visits.
  - Care of employee’s family member’s illness for same purposes above. Family members are same as OFLA definition
  - Any OFLA covered purpose, including bereavement and “sick child”
  - Qualifying reasons under domestic violence, harassment, sexual assault, stalking leave law
  - Public health emergencies (work or school closings, when presence of family member jeopardizes health) as determined by a public health official
  - Option use: If employer has leave donation policy, employee donating counts as “use”
- **Carryover, Cap, Use Limit**
  - 40 hour carryover year-to-year
  - Employer may cap accrued hours at 80 and employer may limit use to 40 hours per year
  - No carryover required if frontload, or payment at year end + frontload the next year:
    - Frontload: assign employees with at least 40 hours of annual sick leave at beginning of leave year, rather than accrual method, or
    - Payout at year end: if employer and employee mutually agree that employee will be paid out for all accrued unused sick leave at end of year, and employees frontloaded with at least 40 hours on the first day of subsequent leave year
- **Payout**
  - No payout required at termination
  - If terminated and rehired within 180 days, employer must restore employee’s accrued sick leave earned before termination
  - If employee is transferred within the employer or to another entity of the employer, the employee retains accrued sick leave
- **Employee Notice for Use**
  - Foreseeable Leave
    - Employer may require reasonable notice, not to exceed 10 days, for foreseeable leave
    - Employers may enforce written policy for reasonable advance notice
    - If employer does not maintain a written policy, any oral notice from employee is sufficient
    - Employer may require anticipated duration of requested time off for foreseeable leave
    - Employer may require employee to make reasonable effort to schedule foreseeable leave to minimally disrupt operations = key
  - Unforeseeable Leave (accident or sudden illness)
    - Employer may require employee notice of absence before the start of the employee’s shift pursuant to employer’s policy provided the policy does not interfere with employee’s right to take leave

- Employer may require anticipated duration of absence when the employee gives notice of need for leave
- Employer may discipline if employee fails to give notice or fails to make a reasonable effort to schedule foreseeable leave to minimally disrupt employer's operations only if notice provisions appear in written policies. Employers may not discipline for use of sick time.
- **Employer Notices regarding Oregon Sick Leave**
  - Employer must give written notice by the end of the first pay period after January 1, 2016. Notice must include right to accrue, pay rate, hours available for use and accrual, qualifying absences, prohibition of retaliation/discrimination and employee's right to file complaints for employer violations. Such written notice may be:
    - Personal delivery, by mail/email or with paychecks;
    - Incorporated into handbook/policy manual; or
    - Posted in a conspicuous/accessible location in every worksite
  - BOLI's Notice includes the key provisions and prohibitions of retaliation/discrimination and an employee's right to file a complaint
  - Employer must provide quarterly written notice to employees of amount of accrued/unused leave by end of first pay period in quarter. Paystubs or electronic notice sufficient
- **Verification**
  - Employer may require employee provide verification of need for leave if Employee is absent more than 3 full calendar/consecutive scheduled workdays for:
    - Employee's or employee's family member's illness or medical care (may require employees to provide notice within 15 calendar days)
    - Employee's OFLA leave
    - Employee's leave under domestic violence, sexual assault/harassment, stalking leave laws
  - Employer may require verification sooner if suspects pattern of sick leave abuse such as repeated unscheduled sick time on or adjacent to weekends, holidays, vacation or paydays
  - If employee fails to provide verification, employer not required to pay for sick time used until employee provides verification. Employer may discipline for failing to follow written policy, but not for using sick time
- **Employer Prohibitions**
  - Cannot require employee find a replacement for missed work
  - Cannot require employee work an alternate shift to make up for sick leave used
  - Cannot deny leave, interfere with right to take leave, fail to pay for leave, or retaliate/discriminate regarding leave
  - Cannot apply absence control policy that interferes with protected sick leave
- **PTO Policies**
  - BOLI rules make clear that a PTO policy may meet the law's requirements so long as it is "substantially equivalent" to the law. Current enforcement policy requires employers to track and protect all Oregon sick leave usage if a PTO policy allows for more than 40 hours of accrued leave.