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Portland City Council Unanimously Passes Sick Leave Law

By Howard Rubin and Jennifer A. Nelson

On March 13, 2013, Portland, Oregon's City Council unanimously passed a sick leave ordinance that, effective January 1, 2014, will require private sector businesses with six or more employees to provide up to 40 hours per year of paid time off for sick leave. Businesses with less than six employees will be required to provide up to 40 hours per year of unpaid time off for sick leave. To qualify for this benefit, an employee must work at least 240 hours in a calendar year within the geographic boundaries of the City.

"Sick Time," as it is called, is accrued at a rate of one hour for every 30 hours of work performed by the employee, and will begin to accrue immediately for all current employees on January 1, 2014. New employees begin accruing Sick Time immediately on commencement of employment (although they cannot begin using it until 90 calendar days after they begin work). Notably, Sick Time "is calculated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked." Employers with six or more employees that provide a minimum of 40 hours per calendar year of "paid time off through a PTO policy," and employers with less than six employees that provide at least 40 hours of unpaid time off "that can be used under the same provisions" of the ordinance, do not have to provide any additional Sick Time. In addition, employers that have a sick leave or PTO policy that allows employees to accrue and use Sick Time that equals or exceeds the requirements of the ordinance are compliant with the new law.

Employees may use Sick Time in increments of one hour for the "diagnosis, care, or treatment" of their own or their family member's mental or physical illness, injury, or health condition. "Family members" include spouses, domestic partners, parents, children, grandparents, grandchildren, and parents-in-law. Sick Time also may be used for issues related to domestic violence, harassment, sexual assault, or stalking (as defined in ORS 659A.272).

The ordinance requires employers to establish a written policy or standard for employees to notify the employer of the employee's use of Sick Time, including calling a designated telephone number or using another reasonable and accessible means of communication identified by the employer. Employees are required to notify the employer before the start of the employee's shift, "or as soon as practicable." For absences of more than three consecutive days, employers may require verification from a health care provider. In addition, employers suspecting "Sick Leave abuse" may require, at the employee's expense, documentation from a health care provider verifying the

need for the leave. Indication of patterns of abuse may include, but are not limited to, repeated use of unscheduled Sick Time on or adjacent to weekends, holidays, or vacation, pay day, or when mandatory shifts are scheduled.

Employers will be required to provide and post a notice of the rights under the ordinance. The Bureau of Labor and Industries (BOLI) or the City will create a poster satisfying this requirement.

The ordinance allows the City to contract with BOLI to enforce the ordinance and, if allowed by the agreement, an aggrieved employee can file a complaint with BOLI and obtain injunctive relief and “actual damages.” In addition, the ordinance provides a private right of action to employees to pursue “damages and such other remedies as may be appropriate.”

It is expected that in the upcoming months, the City will adopt rules to implement the ordinance. Those rules will, it is hoped, address some of the ambiguities in the ordinance—for example, by explaining how an employer will calculate sick time “with the same benefits, including health care benefits, as the employee normally earns during hours worked.” In the meantime, employers with employees working in Portland will need to take a hard look at their sick and paid time-off policies to make sure that they comply with the ordinance, and begin updating their policies accordingly.

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