

OREGON SICK LEAVE: ONE YEAR IN



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The Oregon Sick Leave law went into effect one year ago, and after countless discussions, seminars, and drafted policies, we wanted to pass on some of the quirks and traps we have found to those who have not yet updated their policies and to those who think that they need to tweak things since last updating those policies.

Complying with the law can be tricky. By BOLI's own admission, the law was not written to mesh easily into existing state (much less federal) law. Those issues are combined with BOLI's new change of gears from education to enforcement (and penalties).

Let's take a look at some things you will want to consider as we enter the first year of enforcement:

- You can offer paid time off ("**PTO**") instead of sick leave, so long as you meet all the other requirements for sick leave—including granting time off for sick child and bereavement leave.
- Many employers have offered different leave to different employee groups. For example, part-time and seasonal employees may only get sick leave that accrues at the statutory minimum of one hour for every thirty hours worked. Full time employees may instead get a lump sum of PTO.
- As most companies know, employers with ten or more employees are required to offer PTO (except for in one oddball city where the threshold is six employees—ahem, Portland). While the statutes expressly exclude owners from the count, BOLI has said anyone receiving W-2 wages counts as an "employee" regardless of whether the person is an owner.
- For piece-rate or other production employees, you can pay them at minimum wage, but you should have a written policy that states that this is your practice.
- Employees may use sick leave in increments of one hour or more. That is, of course, unless you have 25 or more employees and the leave is OFLA-qualifying (including sick child leave). In that case, you must allow the employee to use the smallest amount of time you track—usually not less than 15 minute increments.
- You can request medical verification (on your dime) if an employee has missed more than 3 consecutive scheduled work days, or if you suspect abuse of your policy. But, remember that you may be able to get verification under other leave laws, like OFLA/FMLA or the ADA. Contact a member of our employment team if you want to know more about verification under applicable laws.

If you are front-loading your leave, here are some things to keep in mind:

- Front-loading offers an option less administratively burdensome to employers, but places some risk on losing employees early in the year once all an employee's leave has been used up.
- You may require an employee to forfeit all unused leave at the end of each year.

If you follow the accrual method, there are some important things for you to know:

- What do you do with accrued but unused time at the end of the year? The law will not allow you to forfeit that leave. Rather, you may either carry over up to 40 hours of accrued but unused time, or offer a pay out of that time to employees. Employees cannot be forced to accept a payout, and the payout will be considered taxable income at the point the employee is eligible for it.
- Although your policy can limit leave to 40 hours a year, employers with 25 or more should keep in mind that employees can draw down on their leave banks for OFLA-qualifying reasons, regardless of policy limitation. For example, if an employee has 65 hours in his or her bank mid-year because the employee carried over 40 hours of last year's accrued but unused time, he or she can draw down all 65 hours for an OFLA-qualifying reason regardless of what the employer's policy says.

Remember, sick time is protected time. You can get sued if you deny, interfere with, restrain, retaliate or discriminate against the use of this time—or if an employee just thinks that you are.

Even if you believe that you have a generous policy that has worked for decades, double check to make sure that you are compliant with the Oregon Sick Leave law. And, if you are working on tweaking a policy to ensure compliance, run through the above traps to make sure you don't fall victim to one. As always, feel free to run your policy by one of our employment lawyers to make sure you are protected.