

A-Engrossed
Senate Bill 299

Ordered by the Senate April 21
Including Senate Amendments dated April 21

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Directs Bureau of Labor and Industries to study issue of sick leave in Oregon.] **Allows employers to limit number of hours of sick time that employees may accrue per year. Excludes certain individuals from determination of number of employees of employer. Modifies rate of pay for accrued sick time for certain individuals. Applies to hours worked and sick time accrued or used on or after January 1, 2018. Declares emergency, effective July 1, 2017.**

A BILL FOR AN ACT

1
2 Relating to sick leave; creating new provisions; amending ORS 653.601, 653.606 and 653.611; and
3 declaring an emergency.

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

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

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

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

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

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

16 (c) "Employee" does not include:

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

18 (B) An independent contractor;

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

7 (3)(a) "Employer located in a city with a population exceeding 500,000" includes, but is not
8 limited to, an employer that maintains any office, store, restaurant or establishment in that city.

9 **(b) "Employer located in a city with a population exceeding 500,000" does not include an**
10 **employer that maintains only a seasonal farm stand or a trailer that is used temporarily on**
11 **a construction site for office purposes only.**

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

13 (5)(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and
14 make available a certain number of hours of sick time to an employee as soon as the employee be-
15 comes eligible to use sick time and on the first day of the immediately subsequent year without re-
16 gard to an accrual rate.

17 (b) For employees employed by an employer for less than a full year, "front-load" means to as-
18 sign and make available to an employee as soon as the employee becomes eligible to use sick time
19 a number of hours of sick time that is the pro rata percentage of the hours the employee would be
20 entitled to for an entire year based on the number of hours the employee was actually employed by
21 the employer for the year.

22 (6) "Paid sick time" means time off:

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

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

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

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

31 (8) "Year" includes any consecutive 12-month period, such as a calendar year, a tax year, a
32 fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of em-
33 ployment of the employee.

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

35 653.606. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall
36 implement a sick time policy that allows an employee to [*earn and use up to 40 hours of paid sick*
37 *time per year. Paid sick time shall*] accrue [*at the rate of*] at least one hour of paid sick time for every
38 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. **Employers**
39 **may limit the number of hours of paid sick time that employees may accrue to 40 hours per**
40 **year.**

41 (b) Employers that employ fewer than 10 employees working anywhere in this state shall im-
42 plement a sick time policy that allows an employee to [*earn and use up to 40 hours of unpaid sick*
43 *time per year. Unpaid sick time shall*] accrue [*at the rate of*] at least one hour of unpaid sick time for
44 every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. **Em-**
45 **ployers may limit the number of hours of unpaid sick time that employees may accrue to 40**

1 **hours per year.**

2 (c) Employers that employ at least 10 employees working anywhere in this state and front-load
3 for employees at least 40 hours of paid sick time or paid time off at the beginning of each year used
4 to calculate the accrual and usage of sick time or time off need not comply with subsections (1)(a)
5 and (3) of this section.

6 (d) Employers that employ fewer than 10 employees working anywhere in this state and front-
7 load for employees at least 40 hours of unpaid sick time or unpaid time off at the beginning of each
8 year used to calculate the accrual and usage of sick time or time off need not comply with sub-
9 sections (1)(b) and (3) of this section.

10 (2)(a) The number of employees employed by an employer shall be ascertained by determining
11 that the per-day average number of employees is 10 or greater for each of 20 workweeks in the
12 calendar year or the fiscal year of the employer immediately preceding the year in which the leave
13 is to be taken.

14 (b) If the business of the employer was not in existence for the entire year preceding the de-
15 termination made under paragraph (a) of this subsection, the number of employees shall be based
16 on any 20 workweeks preceding the request for sick time, which may include workweeks in the
17 current year, the preceding year or a combination of workweeks in the current year and the pre-
18 ceding year.

19 **(c) As used in this subsection, “employee” does not include an individual or the parent,
20 spouse or child of an individual who is:**

21 **(A) A director of a corporation who has a substantial ownership interest in the corpo-
22 ration;**

23 **(B) A member of a limited liability company who has:**

24 **(i) A right to vote on or consent to any matter submitted to a vote or requiring the
25 consent of the members of the limited liability company; and**

26 **(ii) A substantial ownership interest in the limited liability company;**

27 **(C) A partner of a limited liability partnership who has a substantial ownership interest
28 in the limited liability partnership; or**

29 **(D) A sole proprietor of a business.**

30 **(d) As used in paragraph (c) of this subsection, “substantial ownership interest” means
31 a percentage of ownership equal to or greater than the average percentage of ownership of
32 all owners, but not less than 10 percent.**

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

36 *[(a) An employee to accruing no more than 80 hours of sick time; or]*

37 *[(b) An employee to using no more than 40 hours of sick time in a year.]*

38 **(a) May adopt a policy that limits an employee to accruing no more than 80 total hours
39 of sick time; and**

40 **(b) May adopt a policy that limits an employee to using no more than 40 hours of sick
41 time in a year.**

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

44 (A) If the employer has 10 or more employees working anywhere in this state, the employee will
45 be paid for all unused paid sick time at the end of the year in which the sick time is accrued and

1 the employer will credit the employee with an amount of paid sick time that meets the requirements
2 of this section on the first day of the immediately subsequent year; or

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

6 (b) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the determi-
7 nation of the number of employees employed by an employer.

8 (5)(a) An employee is eligible to use sick time beginning on the 91st calendar day of employment
9 with the employer and may use sick time as it is accrued.

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

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

14 (B) For an employee [*employed*] **who is paid** on a commission or piece-rate basis by an employer
15 that employs 10 or more employees working anywhere in this state, the employer shall pay the em-
16 ployee for accrued sick time used at [*the employee's regular rate of pay. If the employee is paid on*
17 *a commission or piece-rate basis and does not have a previously established regular rate of pay, the*
18 *employer shall pay the employee at*] a rate equal to at least the minimum wage specified in ORS
19 653.025.

20 **(C) For an employee who is paid an hourly, weekly or monthly wage and is also paid on**
21 **a piece-rate or commission basis by an employer that employs 10 or more employees working**
22 **anywhere in this state, the employer shall pay the employee for accrued sick time used at**
23 **a rate equivalent to the employee's hourly, weekly or monthly wage or equal to the minimum**
24 **wage specified in ORS 653.025, whichever is greater.**

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

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

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

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

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

36 (9) Upon mutual consent by the employee and the employer, an employee may work additional
37 hours or shifts to compensate for hours or shifts during which the employee was absent from work
38 without using accrued sick time for the hours or shifts missed. However, the employer may not
39 require the employee to work additional hours or shifts authorized by this subsection. If the em-
40 ployee works additional hours or shifts, the employer must comply with any applicable federal, state
41 or local laws regarding overtime pay.

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

44 (11)(a) An employer shall restore previously accrued unused sick time to an employee who is
45 reemployed by that employer within 180 days of separation from employment with the employer.

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

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

10 (13) Employers located in a city with a population exceeding 500,000 shall comply with ORS
11 653.601 to 653.661, except that:

12 (a) If an employer located in a city with a population exceeding 500,000 employs at least six
13 employees working anywhere in this state, the employer shall implement a policy consistent with
14 this section as it applies to employers with at least 10 employees working anywhere in this state.

15 (b) If an employer located in a city with a population exceeding 500,000 employs fewer than six
16 employees working anywhere in this state, the employer shall implement a policy consistent with
17 this section as it applies to employers with fewer than 10 employees working anywhere in this state.

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

19 653.611. (1) An employer with a sick leave policy, paid vacation policy, paid personal time off
20 policy or other paid time off program that is substantially equivalent to or more generous to the
21 employee than the minimum requirements of ORS 653.601 to 653.661 [*shall be deemed to be in com-*
22 *pliance with the requirements of ORS 653.601 to 653.661.*]:

23 (a) **Must, at a minimum, comply with the requirements of ORS 653.601 to 653.661 for the**
24 **first 40 hours that the employer's policy provides per year; and**

25 (b) **Need not comply with the requirements of ORS 653.601 to 653.661 beyond the first 40**
26 **hours that the employer's policy provides per year.**

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

33 **SECTION 4.** The amendments to ORS 653.601, 653.606 and 653.611 by sections 1 to 3 of this
34 2017 Act apply to hours worked and sick time accrued or used on or after January 1, 2018.

35 **SECTION 5.** This 2017 Act being necessary for the immediate preservation of the public
36 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
37 July 1, 2017.