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10 things you need to know about Oregon's paid sick leave law

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Oregon's paid sick leave measure is now law. Governor [Kate Brown](#) signed SB 454 on Monday. Now the real work begins for Oregon employers, who must familiarize themselves with the new requirements and be ready to comply by Jan. 1, 2016. Here are 10 things you need to know.

Covered employers: If you employ even 1 employee in the State of Oregon, you must provide sick leave, with a few limited exceptions such as federal employees; work-study students; railroad workers; people employed by their parent, spouse or child; and most union-represented construction workers employed through a hiring hall. Employer size and location matter, though. Statewide, the general rule is that if you employ at least 10 employees anywhere in Oregon, the sick leave must be paid. For smaller employers, the sick leave may be unpaid. However, if you have a facility in Portland, then the threshold for providing paid leave kicks in if you have at least 6 employees anywhere in Oregon (similar to Portland's current threshold for paid sick leave).

No local ordinances: As of January 1, 2016, the sick leave ordinances in Portland and Eugene go away, because the bill preempts all local sick leave ordinances. For employers who have already been complying with Portland's ordinance, you should still have your attorney review your policy to determine whether any changes need to be made when the Oregon law takes effect.

Two earning methods: You have two options for determining the amount of sick leave employees may earn. The first option is the accrual method, in which employees earn at least 1 hour of sick leave for every 30 hours worked. Under the accrual method, employees may carry over up to 40 hours of unused sick time from one year into the next year. Also, you may have a policy that caps their accrual at 80 hours, or caps their use at 40 hours per year.

The second option is the front-loading method, in which you load up a new employee's bank as soon as he or she is eligible for leave, and then load it up again with 40 hours of sick leave at the beginning of each subsequent leave year. For new employees who work only part of a leave year, you have the option of pro-rating the amount of leave that is front-loaded into their leave bank during that first partial leave year.

No use in first 90 days of employment: Employees who are hired on or after January 2, 2016, begin earning sick leave immediately, but cannot use it until their 91st calendar day of employment. Everyone who is employed when the ordinance takes effect on January 1, 2016, including those with fewer than 91 days of service, may begin taking sick leave as soon as it is available to them.

Broad reasons for leave: An employee doesn't necessarily have to be sick in order to use sick leave. Employees may use sick leave not only for their own illness, injury, or health condition, but also for that of a family member (spouse, parent, parent-in-law, child, grandparent, or grandchild). Leave is also permitted to address domestic violence, harassment, sexual assault, or stalking of employees or their minor children or dependents. Employees may also take leave if a public health emergency excludes them from their workplace, excludes employees' children from school or a care facility, or requires employees to care for a covered family member.

Now, here are 5 traps to watch out for:

40 tardies per year: Chronically tardy employees could use the sick leave law as an easy way to be late 40 times during the year, with no consequences. The law generally allows employees to take paid sick leave in one-hour increments. In most cases, employers cannot ask for medical certification until someone uses three consecutive days of sick leave. So, employees could call in, saying they felt ill just before the shift started, and will be up to an hour late to work. Employers may ask for medical certification if they observe a "pattern of abuse," but depending on the type of alleged condition (allergies, migraine, etc.), it may be difficult for a health care provider to say that the employee didn't legitimately need to be late 40 times.

No exception for collective bargaining agreements: Outside the construction industry, employers with union-negotiated collective bargaining agreements (CBAs) need to be aware that the new law doesn't replace anything in their CBAs. The CBA is a binding contract, so unless the CBA expires before January 1, 2016, or the CBA's existing provisions for paid leave match up perfectly with the Oregon law, employers will find themselves in the difficult position of asking unions to negotiate mid-term changes to the CBA. If the unions refuse, employers may be stuck with providing Oregon sick leave on top of the benefits already contained in the CBA. As an alternative to implementing a sick leave policy under the new law, employers may use their own sick leave policy, paid vacation policy or paid personal time off (PTO) policy as a substitute as long as it is "substantially equivalent to or more generous to the employee" than the Oregon sick leave law. The problem is that most existing policies will need to be adjusted in order to comply.

Carryover versus payout: The general rule is that you must allow employees to carry over unused sick time from one leave year to the next. Some employers may prefer to clear the books at the end of a leave year and cash out unused sick leave. The new law allows this as an option only if you and the employee mutually consent to the cash-out, and you credit the employee with the amount of sick time available under the law at the beginning of the next leave year. For employers that are small enough to be permitted to provide unpaid

sick leave, since there isn't anything to cash out, they may (with the employee's consent) wipe the slate clean and then front-load the employee's balance with 40 hours.

Watch out for rehires: Oregon sick leave has no cash value upon termination, but if you rehire an employee within 180 days of separation from employment, you must restore the employee's unused sick leave balance.

Delayed enforcement doesn't mean delayed risk: The law is effective January 1, 2016, but it doesn't authorize the Oregon Bureau of Labor and Industries (BOLI) to begin issuing civil penalties for most violations that occur on or after January 1, 2017. However, during 2016, BOLI will have the power to assess civil penalties against employers who retaliate against employees for asking about or using Oregon sick leave, or who count Oregon sick leave against employees in attendance policies. Also, the delayed enforcement by BOLI doesn't stop employees from going directly to court to sue their employers for actions that occur on or after January 1, 2016.

The new law is complex, and no doubt it will be a learning process for employers across the state.