



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

May 25, 2021

Representative Paul Holvey  
900 Court Street NE H277  
Salem OR 97301

Re: Senate Bill 588

Dear Representative Holvey:

You asked two questions concerning the operation of the provisions of Senate Bill 588.

1. Whether SB 588, as drafted, violates Article I, section 21 of the Oregon Constitution, which prohibits the enactment of a law that impairs the obligation of contracts.

The answer is no. Article I, section 10, of the United States Constitution, provides, in relevant part: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]" Article I, section 21, of the Oregon Constitution, provides, in relevant part: "No . . . law impairing the obligation of contracts shall ever be passed[.]"<sup>1</sup> Although analysis under the federal and state contracts clauses differs in some respects, each involve similar considerations.<sup>2</sup> In challenges brought on impairment of contract grounds that involve the effects of legislation on existing contracts between private parties, the court applies the same analysis under the Oregon impairment of contract provision as under the federal provision.<sup>3</sup>

Courts employ a three-level analysis to determine if a law unconstitutionally impairs an obligation of contract. A threshold question is whether the law operates to create a substantial impairment of a contractual relationship.<sup>4</sup> The U.S. Supreme Court and Oregon courts both recognize that the court's role is to apply a balancing test to determine whether a regulation interferes too far with parties' contractual rights to be constitutional.<sup>5</sup> Generally, the test requires the courts to find that a regulation that substantially impairs a contract violates the Contracts Clause unless it is reasonable in furtherance of a significant and legitimate public purpose.<sup>6</sup> Once a significant and legitimate public purpose has been identified, the final inquiry is whether the

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<sup>1</sup> We refer to both provisions collectively as the "Contracts Clause."

<sup>2</sup> See *Hughes v. State*, 314 Or. 1, 35 (1992) (noting that different analyses apply but reaching the same result under both clauses); *Eckles v. State*, 306 Or. 380, 390 (1988) (concluding that framers of Oregon Constitution meant to incorporate federal Contracts Clause into state Constitution, "though not necessarily every case decided under the federal provision.").

<sup>3</sup> See *Wilkinson v. Carpenter*, 277 Or. 557 (1977) (statutory increase in homestead exemption from execution of judgment that arose from contract between parties that was entered into before legislative change was not unconstitutional impairment of that contract); *Towerhill Condominium Association v. American Condominium Homes, Inc.*, 66 Or. App. 342, 347 (1983) (federal Constitution's limitation on law impairing obligation of contract is to be interpreted consistently with similar restriction in Oregon Constitution, *citing Wilkinson*).

<sup>4</sup> *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978).

<sup>5</sup> *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410-413 (1983); *Wilkinson*, 277 Or. 557.

<sup>6</sup> *Id.* at 412.

adjustment of the rights and responsibilities of the contracting parties is based upon reasonable conditions and is of appropriate character to the public purpose justifying the regulation.<sup>7</sup>

ORS 653.646 contains a multiemployer exception to the minimum sick time requirements which exempted employees who are covered by a collective bargaining agreement, employed through a hiring hall or similar referral model and whose employment-related benefits are provided by a joint multiemployer-employee trust or benefit plan from the application of those requirements. The provisions of Senate Bill 588 amend ORS 653.646 to remove that exemption. Given that there is no other exemption to the minimum sick time requirements that applies to such employees, the minimum sick time requirements under ORS 653.601 to 653.661 become applicable to employers of those employees. In other words, a multiemployer is subject to the minimum sick time requirements under ORS 653.601 to 653.661 and must provide sick leave benefits to its employees in accordance with the requirements.

In addition, SB 588 contains an emergency clause, which means that the affected employers must comply with the obligation to provide sick leave immediately upon the bill's passage, regardless of the existence of any preexisting collective bargaining agreement that covers its employees. That said, nothing in the bill requires a change or amendment of a term or condition of any preexisting collective bargaining agreement or abrogates a right or obligation under any such agreement. Therefore, we conclude that the provisions of SB 588 do not impair the obligation of contracts within the meaning of the Contracts Clause.

2. Whether multistate employer groups may “use their [collective bargaining agreement] to comply with the bill, or will they comply as other individual employers do?”

As noted above, the removal of the multiemployer exception from the sick time requirements operates to make those employers subject to the minimum sick time requirements under ORS 653.601 to ORS 653.661. Accordingly, those employers must satisfy the requirements in the same way as other individual employers in this state by establishing a sick time policy that allows employees to accrue sick time in accordance with the requirements under ORS 653.606 or by having some other paid time off policy that is substantially equivalent to or more generous than the minimum requirements under ORS 653.601 to 653.661.<sup>8</sup>

However, SB 588 provides that those employers may also meet the minimum sick time requirements if the employer is a signatory to a collective bargaining agreement to which the employer has agreed to contribute to a multiemployer-employee benefit plan and the following conditions are met: 1) the terms of the agreement provide a sick leave policy or other paid time off program that is substantially equivalent to or more generous to those employees described above; 2) the trustees of the trust or benefit plan have agreement to the level of benefits provided under the program or policy under the agreement; and 3) the contributions to the trust or benefit plan are made solely by the employer signatories to the agreement.<sup>9</sup> If all these criteria exist, those same employers shall be deemed to have met the minimum sick time requirements. That said, nothing in the provisions of the bill requires multiemployers to meet the sick time provisions in this way or prohibits such employers from meeting the sick time obligations in the same ways that are available for other individual employers.

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<sup>7</sup> *Id.*

<sup>8</sup> ORS 653.611.

<sup>9</sup> Senate Bill 588, section 1 (1).

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Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel

A handwritten signature in black ink, appearing to be 'js', written in a cursive style.

By  
Jessica A. Santiago  
Deputy Legislative Counsel