

House Bill 2786

Sponsored by Representative NELSON (Pre-session filed.)

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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes laws about unused sick leave and vacation leave payouts. (Flesch Readability Score: 74.8).

Requires employers who provide sick leave, vacation leave or personal business leave benefits to employees to compensate employees for all earned but unused accrued leave when employment terminates.

A BILL FOR AN ACT

1
2 Relating to compensation for accrued leave upon termination of employment; creating new pro-
3 visions; and amending ORS 652.140 and 653.606.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. If an employer provides vacation leave or personal business leave benefits**
6 **to an employee, the employer shall, upon the termination of the employment relationship,**
7 **compensate the employee, at the employee's regular rate of pay, for all earned but unused**
8 **accrued vacation leave and personal business leave in the manner, and within the time**
9 **frame, set forth by ORS 652.140 for the payment of all earned and unpaid wages when em-**
10 **ployment terminates.**

11 **SECTION 2.** ORS 652.140 is amended to read:

12 652.140. (1) When an employer discharges an employee or when employment is terminated by
13 mutual agreement, all wages earned and unpaid at the time of the discharge or termination become
14 due and payable not later than the end of the first business day after the discharge or termination.

15 (2)(a) When an employee who does not have a contract for a definite period quits employment,
16 all wages earned and unpaid at the time of quitting become due and payable immediately if the
17 employee has given to the employer not less than 48 hours' notice, excluding Saturdays, Sundays
18 and holidays, of intention to quit employment.

19 (b) Except as provided in paragraph (c) of this subsection, if the employee has not given to the
20 employer the notice described in paragraph (a) of this subsection, the wages become due and payable
21 within five days, excluding Saturdays, Sundays and holidays, after the employee has quit, or at the
22 next regularly scheduled payday after the employee has quit, whichever event first occurs.

23 (c) If the employee has not given to the employer the notice described in paragraph (a) of this
24 subsection and if the employee is regularly required to submit time records to the employer to en-
25 able the employer to determine the wages due the employee, within five days after the employee has
26 quit the employer shall pay the employee the wages the employer estimates are due and payable.
27 Within five days after the employee has submitted the time records, all wages earned and unpaid
28 become due and payable.

29 (3) For the purpose of this section, if employment termination occurs on a Saturday, Sunday or

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 holiday, all wages earned and unpaid shall be paid no later than the end of the first business day
 2 after the employment termination, except that if the employment is related to activities authorized
 3 under ORS chapter 565, all wages earned and unpaid shall be paid no later than the end of the
 4 second business day after the employment termination.

5 (4) The employer shall forward such wages by mail to any address designated by the employee
 6 if the employee requests the employer so to do. An employer may deposit such wages without dis-
 7 count in the employee's account in a financial institution, as defined in ORS 706.008, in this state,
 8 provided the employee and the employer have agreed to such deposit.

9 (5) This section does not apply to employment for which a collective bargaining agreement oth-
 10 erwise provides for the payment of wages upon termination of employment.

11 (6) When a termination of employment results from the sale of a business or business property
 12 and the purchaser employs or continues the employment of an individual employed at the business,
 13 this section does not apply to the payment to such an individual of wages for earned but unused
 14 accrued holiday leave, sick leave, vacation leave or other leave benefits payable upon termination
 15 of employment pursuant to a collective bargaining or other employment agreement or employer
 16 policy, if the following conditions are met:

17 (a) On the first day of such an individual's continued employment the purchaser of the business
 18 credits the individual with all such earned but unused accrued leave; and

19 (b) The leave, when used, is paid at a rate not less than the rate at which the leave was earned
 20 or, if paid at a lesser rate, the number of hours credited is increased to compensate the individual
 21 for any difference.

22 **(7) Except as provided in subsection (6) of this section, all wages earned and unpaid, as**
 23 **described under this section, include compensation for earned but unused accrued sick leave,**
 24 **vacation leave or personal business leave.**

25 **SECTION 3.** ORS 653.606 is amended to read:

26 653.606. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall
 27 implement a sick time policy that allows an employee to accrue at least one hour of paid sick time
 28 for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. Em-
 29 ployers may limit the number of hours of paid sick time that employees may accrue to 40 hours per
 30 year.

31 (b) Employers that employ fewer than 10 employees working anywhere in this state shall im-
 32 plement a sick time policy that allows an employee to accrue at least one hour of unpaid sick time
 33 for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works. Em-
 34 ployers may limit the number of hours of unpaid sick time that employees may accrue to 40 hours
 35 per year.

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

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

44 (2)(a) The number of employees employed by an employer shall be ascertained by determining
 45 that the per-day average number of employees is 10 or greater for each of 20 workweeks in the

1 calendar year or the fiscal year of the employer immediately preceding the year in which the leave
2 is to be taken.

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

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

10 (A) A director of a corporation who has a substantial ownership interest in the corporation;

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

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

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

15 (C) A partner of a limited liability partnership who has a substantial ownership interest in the
16 limited liability partnership; or

17 (D) A sole proprietor of a business.

18 (d) As used in paragraph (c) of this subsection, “substantial ownership interest” means a per-
19 centage of ownership equal to or greater than the average percentage of ownership of all owners,
20 but not less than 15 percent.

21 (3) An employee shall begin to earn and accrue sick time on the first day of employment with
22 an employer. The employee may carry over up to 40 hours of unused sick time from one year to a
23 subsequent year. However, an employer:

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

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

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

30 (A) If the employer has 10 or more employees working anywhere in this state, the employee will
31 be paid for all unused paid sick time at the end of the year in which the sick time is accrued and
32 the employer will credit the employee with an amount of paid sick time that meets the requirements
33 of this section on the first day of the immediately subsequent year; or

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

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

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

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

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

45 (B) For an employee who is paid on a commission or piece-rate basis by an employer that em-

1 employs 10 or more employees working anywhere in this state, the employer shall pay the employee
2 for accrued sick time used at a rate equal to at least the minimum wage specified in ORS 653.025.

3 (C) For an employee who is paid an hourly, weekly or monthly wage and is also paid on a
4 piece-rate or commission basis by an employer that employs 10 or more employees working any-
5 where in this state, the employer shall pay the employee for accrued sick time used at a rate
6 equivalent to the employee's hourly, weekly or monthly wage or equal to the minimum wage speci-
7 fied in ORS 653.025, whichever is greater.

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

12 (7)(a) *[Nothing in ORS 653.601 to 653.661 requires]* An employer *[to]* **shall** compensate an em-
13 ployee for accrued unused sick time upon the employee's termination, resignation, retirement or
14 other separation from employment **in the manner and within the time frame set forth in ORS**
15 **652.140.**

16 **(b)(A) The employer shall pay an employee for accrued but unused sick time at the reg-**
17 **ular rate of pay of the employee.**

18 **(B) For an employee who is paid on a commission or piece-rate basis, the employer shall**
19 **pay the employee for accrued unused sick time at a rate equal to at least the minimum wage**
20 **specified in ORS 653.025.**

21 **(C) For an employee who is paid an hourly, weekly or monthly wage and is also paid on**
22 **a piece-rate or commission basis, the employer shall pay the employee for accrued unused**
23 **sick time at a rate equivalent to the employee's hourly, weekly or monthly wage or equal to**
24 **the minimum wage specified in ORS 653.025, whichever is greater.**

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

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

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

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

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

37 *[(11)(a) An employer shall restore previously accrued unused sick time to an employee who is re-*
38 *employed by that employer within 180 days of separation from employment with the employer.]*

39 *[(b) If an employee leaves employment with an employer before the 91st day of employment and*
40 *subsequently is reemployed by that employer within 180 days of separation from employment, the em-*
41 *ployer shall restore the accrued sick time balance the employee had when the employee left the em-*
42 *ployment of the employer and the employee may use accrued sick time after the combined total of days*
43 *of employment with the employer exceeds 90 calendar days.]*

44 *[(12)]* (11) If an employee is transferred to a separate division, entity or location of the employer
45 but remains employed by that same employer, the employee is entitled to use all sick time accrued

1 while working at the former division, entity or location of the employer and is entitled to retain or
2 use all sick time as provided by ORS 653.601 to 653.661.

3 [(13)] (12) Employers located in a city with a population exceeding 500,000 shall comply with
4 ORS 653.601 to 653.661, except that:

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

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

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