

# Sick leave questions and answers

Portland ordinance will take effect Jan. 1, 2014, so little time remains for employers to prepare

If you're a Portland-based employer, chances are good that you've been hearing a lot of buzz about the city's sick time ordinance. Here is what you need to know about the ordinance before it goes into effect on Jan. 1, 2014.



## COMPLIANCE CORNER

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### Is my place of work affected?

If you are a private-sector employer with six or more employees, you must provide up to 40 hours of paid sick time per year to those employees working at least 240 hours in a year within Portland city limits. If you employ five or fewer employees, you must provide up to 40 hours of unpaid sick leave. Note that it is not the location of the employer that matters, but whether the employee physically works within city limits.

### How is the number of employees calculated?

Follow the same method used in the Oregon Family Leave Act. For established employers, count the number of employees who were employed each working day each of 20 or more calendar work weeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding. For newer employers who have not been in business for 20 work weeks, calculate the average number of employees per calendar work week during the first 90 calendar days of the current calendar year.

### What gives the city of Portland the authority to enact this ordinance?

Employers anticipating hardship in complying with the ordinance may be asking this very question. The city's authority derives from Article XI, Section 2 of the Oregon Constitution. Portland

voters have the power to enact and amend the city's charter provided there is no conflict with the Oregon Constitution. As a city, Portland may take all actions necessary or convenient for the government of its local affairs. Portland's charter empowers the city to exercise within the city, all powers to make and enforce all necessary safety laws and regulations and to provide for the health and good order of the city.

### How do employees accrue sick time?

Employees must accrue one hour of sick leave for every 30 hours worked within the city limits, up to 40 hours a year. Employers are not required to provide sick time accrual during hours an employee spends on paid or unpaid leave. Sick time accrual, as well as use and carryover, can be based on any consecutive 12-month period of time normally used for calculating wages and benefits (calendar year, tax year, fiscal year, or the year running from the employee's date of employment, for example).

### What absences qualify for sick leave?

Employees must be able to use sick leave for the following reasons:

- For an employee's personal mental or physical illness, including pregnancy, childbirth and preventative medical care;
- To care for a family member with an

illness, injury or medical appointment;

- If the employee's place of business closes for a public health emergency, or to care for a child whose school or day care closes for a similar reason;
- For certain reasons related to domestic violence, harassment, sexual assault or stalking;
- To care for a family member whose presence in the community jeopardizes the health of others as determined by a lawful public health authority or by a health care provider; and
- If any law or regulation requires the employer to exclude the employee from the workplace for health reasons.

### When may an employee use sick time?

Although employees begin accruing sick time on day one of employment (or Jan. 1, 2014, for current employees) employees may not begin using sick time until the 91st calendar day of employment and until they also have worked a minimum of 240 hours for the employer within the city. Current employees who already meet these requirements on Jan. 1, 2014, will be able to use sick time right away.

While use of sick time may be capped at 40 hours in a year, employers must permit employees to carry over up to 40 hours for use in subsequent years. However, employers electing to provide front-loaded sick time (crediting employees with sick time at the beginning of the leave year rather than via accrual throughout the year) are not required to allow employees to carry over hours to a subsequent year. Employees may use sick time in minimum increments of one hour. In general, an employer may not require an employee

to take off a full shift as a condition of using sick time.

### What other rights and responsibilities attach to sick time?

Absences covered by sick time must be treated as protected absences and cannot be the basis for discipline or any adverse employment decision. Quite simply, employers cannot discriminate or retaliate against an employee for requesting, using or complaining that they are not receiving the required sick time. Separately, employers must provide written notice to all employees of their entitlement to sick time, including the amount of sick time, terms of use, the prohibition against retaliation, and the right to file a complaint. Employers also must provide employees written notice of a uniform call-in policy for the employee to give the employer notice of sick time use, and the employee must adhere to that policy. Additionally, employers must display a poster – which the city will publish – in each building and worksite.

### What should employers be doing now?

Employers must provide the written notice to current employees by the end of the first period in January 2014 and to new hires by the end of their first pay period. This means that employers have precious little time to adjust their current leave and attendance policies. Because the ordinance has many nuanced details as well as new record-keeping requirements, employers should work in conjunction with legal counsel to ensure compliance.

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