

SICK LEAVE

653.601 Definitions for ORS 653.601 to 653.661. As used in ORS 653.601 to 653.661:

(1)(a) “Employee” means an individual who renders personal services at a fixed rate to an employer if the employer either pays or agrees to pay for personal services or permits the individual to perform personal services.

(b) “Employee” includes, but is not limited to:

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

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

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

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

(c) “Employee” does not include:

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

(B) An independent contractor;

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

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

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

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

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

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

(c) “Employer” does not include the federal government.

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

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

(5)(a) “Front-load,” except as provided in paragraph (b) of this subsection, means to assign and make available a certain number of hours of sick time to an employee as soon as the employee becomes eligible to use sick time and on the first day of the immediately subsequent year without regard to an accrual rate.

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

(6) “Paid sick time” means time off:

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

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

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

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

(8) “Year” includes any consecutive 12-month period, such as a calendar year, a tax year, a fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of employment of the employee. [2015 c.537 §2]

653.605 [1973 c.564 §1; repealed by 1975 c.114 §1]

653.606 Employee count; paid and unpaid sick time; rules; accrual, use and carryover amounts. (1)(a) Employers that employ at least 10 employees working anywhere in this state shall implement a sick time policy that allows an employee to earn and use up to 40 hours of paid sick time per year. Paid sick time shall accrue at the rate of at least one hour of paid sick time for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

(b) Employers that employ fewer than 10 employees working anywhere in this state shall implement a sick time policy that allows an employee to earn and use up to 40 hours of unpaid sick time per year. Unpaid sick time shall accrue at the rate of at least one hour of unpaid sick time for every 30 hours the employee works or 1-1/3 hours for every 40 hours the employee works.

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

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

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

(b) If the business of the employer was not in existence for the entire year preceding the determination made under paragraph (a) of this subsection, the number of employees shall be based on any 20 workweeks preceding the request for sick time, which may include workweeks in the current year, the preceding year or a combination of workweeks in the current year and the preceding year.

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

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

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

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

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

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

(b) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the determination of the number of employees employed by an employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If an employer located in a city with a population exceeding 500,000 employs fewer than six employees working anywhere in this state, the employer shall implement a policy consistent with this section as it applies to employers with fewer than 10 employees working anywhere in this state. [2015 c.537 §3]

Note: Section 5, chapter 537, Oregon Laws 2015, provides:

Sec. 5. Existing employees. Notwithstanding section 3 (5) of this 2015 Act [653.606 (5)], an employee who is employed by an employer on the effective date of this 2015 Act [January 1, 2016] is eligible to use any accrued sick time as it accrues on or after the effective date of this 2015 Act. [2015 c.537 §5]

653.610 [1973 c.564 §6; repealed by 1975 c.114 §1]

653.611 Substantially equivalent policies. (1) An employer with a sick leave policy, paid vacation policy, paid personal time off policy or other paid time off program that is substantially equivalent to or more generous to the employee than the minimum requirements of ORS 653.601 to 653.661 shall be deemed to be in compliance with the requirements of ORS 653.601 to 653.661.

(2) If an employee of an employer that has a policy for paid sick time, paid vacation leave, paid personal time off or other paid time off programs has exhausted all paid and unpaid leave available to the employee, the employer is not obligated to provide additional leave for paid or unpaid sick time as required by ORS 653.601 to 653.661. However, the employer may be obligated to provide paid or unpaid sick time by federal or state law that provides for paid or unpaid leave for similar purposes. [2015 c.537 §4]

653.615 [1973 c.564 §3; repealed by 1975 c.114 §1]

653.616 Allowable uses of sick time. An employee may use sick time earned under ORS 653.606:

(1) For an employee's mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care.

(2) For care of a family member with a mental or physical illness, injury or health condition, care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition or care of a family member who needs preventive medical care.

(3) Notwithstanding ORS 659A.153, for any other purpose specified in ORS 659A.159.

(4) For a purpose specified in ORS 659A.272, notwithstanding ORS 659A.270 (1).

(5) To donate accrued sick time to another employee if the other employee uses the donated sick time for a purpose specified in this section and the employer has a policy that allows an employee to donate sick time to a coworker for a purpose specified in this section.

(6) In the event of a public health emergency. For purposes of this subsection, a public health emergency includes, but is not limited to:

(a) Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency;

(b) A determination by a lawful public health authority or by a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others, such that the employee must provide self care or care for the family member; or

(c) The exclusion of the employee from the workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons. [2015 c.537 §6]

653.620 [1973 c.564 §5; repealed by 1975 c.114 §1]

653.621 Minimum use increments; notice to employer; rules. (1)(a) Upon request of an employee with accrued sick time available, an employer must allow the employee to use sick time. If possible, the employee shall include the anticipated duration of the sick time requested in the request.

(b) Sick time earned under ORS 653.606 shall be taken in hourly increments unless:

(A) To do so would impose an undue hardship on the employer; and

(B) The employer has a policy or combination of policies that allows an employee to use at least 56 hours of paid leave per year that may be taken in minimum increments of four hours and may be used for the purposes specified in ORS 653.616.

(c) The Commissioner of the Bureau of Labor and Industries shall adopt rules for the implementation and administration of this subsection. The rules adopted shall include, but need not be limited to, criteria for establishment of undue hardship under this section that are based on the difficulty of securing a replacement worker while allowing the employer to apply a consistent policy to all employees.

(2) An employer may require the employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting time off if those requirements do not interfere with the ability of the employee to use sick time.

(3) If the need to use sick time is foreseeable:

(a) The employer may require reasonable advance notice of the employee's intention to use sick time, not to exceed 10 days prior to the date the sick time is to begin or as soon as otherwise practicable; and

(b) The employee shall make a reasonable attempt to schedule the use of sick time in a manner that does not unduly disrupt the operations of the employer.

(4) If the need to use sick time is unforeseeable, the employee shall provide notice to the employer as soon as practicable and must comply generally with the employer's notice or

procedural requirements for requesting or reporting other time off if those requirements do not interfere with the ability of the employee to use sick time. [2015 c.537 §7]

653.625 [1973 c.564 §7; repealed by 1975 c.114 §1]

653.626 Medical verification. (1)(a) If an employee takes more than three consecutive scheduled workdays of sick time for a purpose described in ORS 653.616 (1) to (4), an employer may require the employee to provide verification from a health care provider of the need for the sick time, or certification of the need for leave for purposes of ORS 659A.272 as provided in ORS 659A.280.

(b) If the need for sick time is foreseeable and is projected to last more than three scheduled workdays and an employee is required to provide notice under ORS 653.621, the employer may require that verification or certification be provided before the sick time commences or as soon as otherwise practicable.

(c) If the employee commences sick time without providing prior notice required by the employer under ORS 653.621:

(A) Medical verification shall be provided to the employer within 15 calendar days after the employer requests the verification; or

(B) Certification provided as specified in ORS 659A.280 shall be provided to the employer within a reasonable time after the employee receives the request for certification.

(2) The employer shall pay any reasonable costs for providing medical verification or certification required under this section, including lost wages, that are not paid under a health benefit plan in which the employee is enrolled.

(3)(a) An employer may not require that the verification or certification required under this section explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.

(b) If an employer suspects that an employee is abusing sick time, including engaging in a pattern of abuse, the employer may require verification from a health care provider of the need of the employee to use sick time, regardless of whether the employee has used sick time for more than three consecutive days. As used in this paragraph, “pattern of abuse” includes, but is not limited to, repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days or paydays.

(4) As used in this section, “health care provider” has the meaning given that term in ORS 659A.150. [2015 c.537 §8]

653.630 [1973 c.564 §8; repealed by 1975 c.114 §1]

653.631 Accrual amount records. (1) An employer shall:

(a) Provide written notification at least quarterly to each employee of the amount of accrued and unused sick time available for use by the employee. Inclusion of the amount of accrued and used sick time on the statement required under ORS 652.610 meets the requirements of this paragraph.

(b) Provide written notice of the requirements of ORS 653.601 to 653.661 to each employee in accordance with rules adopted by the Commissioner of the Bureau of Labor and Industries.

(2) The notices provided under this section must be in the language the employer typically uses to communicate with the employee.

(3) The Bureau of Labor and Industries shall make available to employers a template that meets the required notice provisions of this section.

(4) Health information of an employee related to sick time is confidential and may not be released without the permission of the employee. Information pertaining to leave under ORS 659A.272 that is provided by an employee in accordance with ORS 653.601 to 653.661 is confidential as provided in ORS 659A.280. [2015 c.537 §9]

653.635 [1973 c.564 §11; repealed by 1975 c.114 §1]

653.636 Minimum requirements. ORS 653.601 to 653.661 establish minimum requirements pertaining to sick time and may not be construed to preempt, limit or otherwise affect the applicability of any employer policy, standard or collective bargaining agreement that provides for greater use of paid or unpaid sick time. [2015 c.537 §10]

653.640 [1973 c.564 §9; repealed by 1975 c.114 §1]

653.641 Unlawful practices. It is an unlawful practice for an employer or any other person to:

(1) Deny, interfere with, restrain or fail to pay for sick time to which an employee is entitled under ORS 653.601 to 653.661;

(2) Retaliate or in any way discriminate against an employee with respect to any term or condition of employment because the employee has inquired about the provisions of ORS 653.601 to 653.661, submitted a request for sick time, taken sick time, participated in any manner in an investigation, proceeding or hearing related to ORS 653.601 to 653.661, or invoked any provision of ORS 653.601 to 653.661; or

(3) Apply an absence control policy that includes sick time absences covered under ORS 653.601 to 653.661 as an absence that may lead to or result in an adverse employment action against the employee. [2015 c.537 §11]

653.645 [1973 c.564 §10; repealed by 1975 c.114 §1]

653.646 Multiemployer exception; mandate to establish sick time policy for home care workers. (1) The requirements of ORS 653.601 to 653.661 do not apply to an employee:

(a) Whose terms and conditions of employment are covered by a collective bargaining agreement;

(b) Who is employed through a hiring hall or similar referral system operated by the labor organization or a third party; and

(c) Whose employment-related benefits are provided by a joint multiemployer-employee trust or benefit plan.

(2)(a) The Home Care Commission created under ORS 410.602 shall establish a paid sick time policy for consumer employed home care workers.

(b) A policy for paid sick time for consumer employed home care workers implemented by the Home Care Commission that allows an eligible home care worker to accrue and use up to 40 hours of paid time off a year, including but not limited to sick time, is deemed to meet the requirements of ORS 653.601 to 653.661 and is exempt from the provisions of ORS 653.601 (6), 653.606 (5), 653.611, 653.621, 653.626 and 653.631.

(3) As used in this section, “consumer employed home care worker” has the meaning given the term “home care worker” in ORS 410.600. [2015 c.537 §12]

653.650 [1973 c.564 §12; repealed by 1975 c.114 §1]

653.651 Enforcement. (1) An employee asserting a violation of ORS 653.641 (2) or (3) may file a complaint with the Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action as provided in ORS 659A.885.

(2) The commissioner has the same enforcement powers with respect to the rights established under ORS 653.601 to 653.661 as are established in ORS chapters 652 and 653. [2015 c.537 §13]

Note: Sections 22 and 23, chapter 537, Oregon Laws 2015, provide:

Sec. 22. Except for penalties assessed for a violation of section 11 (2) or (3) of this 2015 Act [653.641 (2) or (3)], the Bureau of Labor and Industries may assess civil penalties against an employer only for violations of sections 2 to 16 of this 2015 Act [ORS 653.601 to 653.661] occurring on or after January 1, 2017. [2015 c.537 §22]

Sec. 23. Sections 2 to 16 of this 2015 Act [ORS 653.601 to 653.661] and the amendments to ORS 653.256 and 659A.885 by sections 17 and 18 of this 2015 Act apply to hours worked and sick time accrued or used on or after January 1, 2016. [2015 c.537 §23]

653.655 [1973 c.564 §13; repealed by 1975 c.114 §1]

653.656 Rules. The Commissioner of the Bureau of Labor and Industries:

(1) Shall enforce the provisions of ORS 653.601 to 653.661; and

(2) May adopt rules necessary for the implementation and enforcement of ORS 653.601 to 653.661. [2015 c.537 §14]

653.661 Preemption. The State of Oregon preempts all charter and statutory authority of local governments as defined in ORS 174.116 to set any sick leave requirements. [2015 c.537 §15]