

City of Portland Passes Ordinance Requiring Employers to Provide Sick Leave

The Portland City Council passed an ordinance requiring private-sector employers to provide sick leave for employees who perform work within the City of Portland. The ordinance takes effect January 1, 2014, so you have time to adjust your policies accordingly. The key components of the ordinance are as follows.

- ***Covered Employers***

An employer does not need to be physically located in the City of Portland. The focus is on where the employee performs work. The ordinance applies to all employers with one or more employees who work at least 240 hours in a calendar year within the geographic boundaries of the City of Portland. This includes employees headquartered elsewhere, who may work at times in Portland. There is no distinction between part-time, full-time and temporary employees.

- ***Required Sick Leave***

Covered employers with *five or fewer* employees (working inside or outside of Portland) must provide employees with one hour of *unpaid* sick time for every 30 hours of work performed in the City of Portland. Covered employers with *six or more* employees (working inside or outside of Portland) must provide employees with one hour of *paid* sick time for every 30 hours of work performed in the City of Portland. When calculating sick leave accrual, salary exempt employees are presumed to work 40 hours per week.

- ***When Sick Leave Starts Accruing***

The ordinance takes effect January 1, 2014. On that date, sick leave begins to accrue for existing employees. Employers cannot restrict when existing employees may begin using accrued sick leave. For employees hired after January 1, 2014, sick leave begins to accrue on their hire date. Employers may restrict new employees from using accrued sick leave during the first 90 days of employment.

- ***Maximum Accrued Sick Leave***

A maximum of 40 hours of sick time may be accrued in a calendar year. Employees may carry over up to 40 hours of unused sick time from the previous calendar year. Employer policies may provide for more generous maximums and carry over.



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● *Use of Sick Leave*

Accrued sick time can be taken in as small as one hour increments, to cover all or part of a shift, and to cover up to 40 hours per calendar year. Sick time can be used for various health-related reasons, including: the diagnosis, care, or treatment of the employee or the employee's family member's mental or physical illness, injury, or health condition; to address domestic violence, harassment, sexual assault or stalking; or if an employee's child's school or business is closed due to a public health emergency. Employees cannot be forced to find a replacement or work an alternate shift as a condition of, or to make up for, their use of sick time.

● *End of Employment*

Covered employers are not required to, but may, pay out accrued sick leave to employees when they leave employment. Employers should clarify their policy in their employee handbook. If the employer sells, transfers, or otherwise assigns the business to another employer, retained employee's accrued sick time transfer to the new employer.

● *Record and Notice Requirements*

Covered employers must keep records documenting the number of hours worked, sick time accrued, and sick time used by employees, for a period of at least two years. Covered employers will also need to post a notice of employee rights related to sick leave when the required poster becomes available.

● *Employers Must Have Written Policies*

Covered employers will be required to establish or modify written employee sick leave policies in accordance with the ordinance. A paid time off ("PTO") plan or policy will comply with the ordinance if it meets the minimum accrual rates, and allows the employee to use PTO for at least the same purposes and under the same conditions prescribed by the ordinance. Written policies can require that for absences of more than three consecutive days, employees must provide reasonable documentation that their sick time is being used for one of the allowed purposes. Employers must pay for any uncovered cost (such as co-pays) owed by the employee as a consequence of obtaining such documentation.

● *Legal Protections For Employees*

Employee rights to use sick time are protected and no employer or other person may interfere with, restrain or deny the exercise of (or the attempt to exercise) any right related to sick leave. This means that an employee's use of earned sick leave cannot be the basis for discipline or termination. Employees can file a claim with BOLI or file a lawsuit against their employer.



DOL Issues New Rules Regarding FMLA Leave for Employees With Family Members In The Military

On February 6, 2013, the U.S. Department of Labor (DOL) published a final rule to implement amendments to the Family and Medical Leave Act (FMLA). The final rule took effect on March 8, 2013. Below is a summary of key provisions. For further details, consult an employment law attorney or the [DOL website](#).

● 1. *Extends Exigency Leave For Deployment Of Military Family Member*

FMLA eligible employees with a spouse, son, daughter, or parent in any branch of the Armed Forces can take FMLA leave to deal with exigencies related to their family member's deployment to a foreign country. This type of leave previously was available only to eligible employees with family members in the National Guard and Reserves.

● 2. *Extends Rest and Recuperation Leave*

The maximum amount of leave an eligible employee may take to spend time with a family member during rest and recuperation leave has been extended from 5 to 15 days.

● 3. *Provides Leave To Care For Seriously Ill or Injured Veterans*

Before the new rule, only eligible employees who were the spouse, parent, son, daughter, or next of kin of a *current* service member with a serious injury or illness were entitled to the special 26-week FMLA leave to provide care to members of their family. The new rule extends military caregiver leave to eligible employees caring for *veterans* (i.e. former service members) with serious injuries or illnesses. To be eligible, the veteran must have been discharged under conditions other than dishonorable at any time during the five-year period before the first day of leave taken to care for the veteran.

● 4. *Expand Definition of Serious Injury or Illness*

The rule expand the definition of a serious injury or illness to include serious injuries or illnesses that result from a condition that existed before the service member's active duty service being aggravated by service in the line of duty.



ACTION ALERTS

- ***Covered Employers Should Be Displaying the New FMLA Poster***

In conjunction with the recent revisions to the federal Family Medical Leave Act (FMLA), the US Department of Labor issued a revised FMLA notice poster. Beginning March 8, 2013, all employers subject to FMLA needed to display this new poster in a place where employees and applicants could see it. Employers not subject to FMLA do not need to display the poster.

- ***May 7, 2013 – All Employers Must Start Using New I-9 Form***

The US Customs and Immigration Services issued a revised I-9 form to be used by employers to verify worker eligibility. Employers must begin using the new form by May 7, 2013, unless the employer opts to use the E-Verify system. The new form can be completed by the employer and employee on-line at the USCIS I-9 Central website.

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If you have any questions about the content of this newsletter, please contact Shane P. Swilley at (503) 276-6074 or swilley@cosgravelaw.com.

Given these changes in the law, you need to review and update your employment policies and practices. Take advantage of our free consultation to review the current state of their employment policies and procedures. This service is invaluable to ensure compliance with current employment laws. For more information or to schedule an appointment, contact Shane Swilley.

If you or your company has been threatened with litigation, or a lawsuit or complaint has been filed, then contact the head of Cosgrave's Employment Law Group, Tim Coleman, at (503) 219-3810 or tcoleman@cosgravelaw.com for a consultation.