

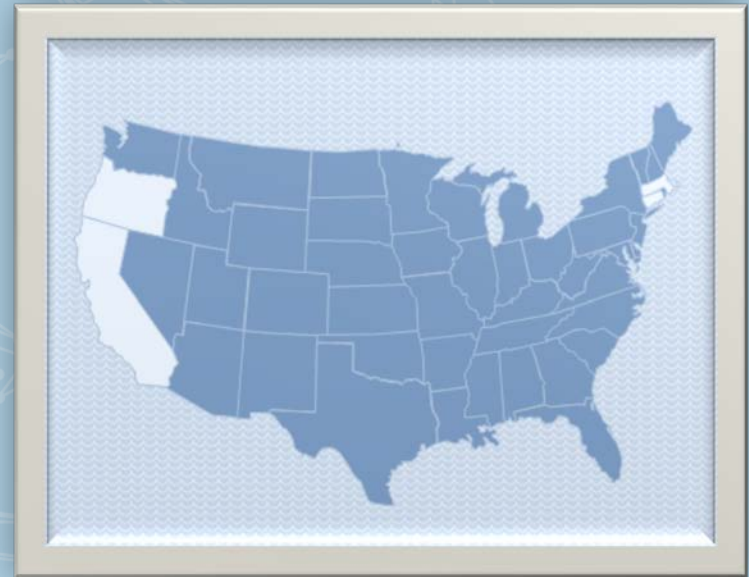
Oregon Paid Sick Leave Law

What Employers Need to Know

Presented by:
Ryan Gibson

Oregon Sick Leave: History

- Senate Bill 454 signed into law on June 12, 2015
- Effective on January 1, 2016
- Other states with paid sick leave:
 - California
 - Massachusetts
 - Connecticut



Oregon Sick Leave: History

Cities with paid sick leave ordinances:

Portland, Eugene*

Seattle, Tacoma

San Francisco, Oakland,

Emeryville, San Diego

Jersey City, Newark,

Montclair, Trenton...

Philadelphia, Pittsburgh

New York City

Washington, D.C.

Montgomery County,

MD

The “Bermuda Triangle” of Leave Laws

Workers’ Comp

Family
Leave
(OFLA/
FMLA)



Disability law
(ADA)

4

Oregon Paid Sick Leave Law
TUESDAY, NOVEMBER 3

 **STOEL RIVES** LLP
ATTORNEYS AT LAW

The “Bermuda Triangle”

State Injured Worker Laws	The ADA and State Disability Laws	FMLA and State Family Leave
<p>Leave and time loss if unable to work</p> <p>Provides for available, suitable (light duty) work</p> <p>Runs concurrent with FMLA</p> <p>Prohibits retaliation; reinstatement up to 3 years</p>	<p>Reasonable accommodation required for qualified employee with disability ... including leave</p> <p>Unless employer can show undue hardship or direct threat</p> <p>Reinstatement from leave may be required, but fact-dependent</p>	<p>12 weeks protected time off for:</p> <ul style="list-style-type: none"> • Employee’s serious health condition • Family member’s serious health condition • Parental leave • Military leave • Other state-mandated leave <p>Reinstatement to same or equivalent job</p>

Oregon Sick Leave: The Basics

- 10+ employees = employees must get at least 40 hrs / yr paid leave for covered sickness / illness
 - Except in Portland = 6 or more employees
- 0-10 employees = can be unpaid.



Who gets PSL? Who doesn't?

YES

- Employees
 - Exempt
 - Non-exempt
 - Full-time
 - Part-time
 - Temporary
- Home care workers

No

- Independent contractors
- Federal employees
- Work-study students
- Parents, spouse, children working for you

Accrual

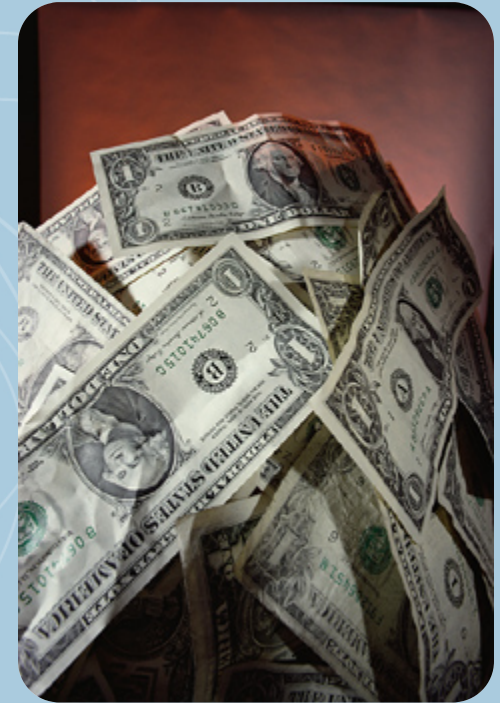
- Employees must accrue 1 hour of PSL for every 30 hours worked
- *Unless you frontload at least 40 hours*
- Employees begin accrual immediately

Use and carryover

- Employees can begin using accrued PSL on 91st day of employment
 - Can be waived by employer
 - Existing employees – can begin using immediately
- Carryover up to 40 hours a year *unless* you:
 - Frontload, and
 - Cash out every year

Cashout/returning employees

- You're not required to pay out unused leave at termination, but follow your policy/practice
- What if an employee leaves and comes back?
 - Sale of business
 - Return to old job



10

Covered absences

- Anything related to your illness, or a family member's
 - OFLA reasons (“serious health condition”, bereavement)
 - Non-OFLA: sickness, doctor visits
 - DV/public health reasons
- “Family member” = OFLA



What if you already have a sick leave or PTO policy?

No need to provide additional leave...

...as long as your current policy is “substantially equivalent” to OPSL

– Use, accrual rate, all employees covered, etc.

PTO policy can be easier to manage?

- No need to track use.

12

Gone fishing

Dear Karen and Missy,
Every employee at our company gets 40 hours of PTO at the beginning of the year. George used all his PTO to go fishing earlier this year. Now he's sick, and he wants to use his PSL. Do we have to give him *more* PTO?



13

Increments of use and notice

- One-hour increments unless:
 - Undue hardship
 - At least 56 hours of PTO per year + 4 hour increments
- Notice
 - Foreseeable leave: up to 10 days' notice
 - Unforeseeable leave: “as soon as practicable”

When can you require medical certification / doctor's note?

- Only for absences of more than three consecutive days
- Exception = if you suspect “abuse”
 - E.g. “pattern” of using sick time near weekends, holidays, vacation days, paydays
 - But be very careful here!

Notice requirements

- Notice of law by January 2016, or at hire.
 - BOLI to draft approved template notice
- Provide quarterly notice of PSL balance
 - Notice on paystubs is best/easiest?

No interference / retaliation

- Employers must provide required leave
- Employers cannot “interfere” or “retaliate”
 - Including “absence control policies,” “points” attendance systems!
- Remedies:
 - Employees can file BOLI charge or lawsuit
 - BOLI can assess civil penalties

17

What if you have a union?

- Limited carve-out for union employees who are:
 - Employed by a hiring hall, and
 - Receive benefits through a multi-employer trust or benefit plan
 - Especially - construction industry
- All other unions – bargain any changes!

Next steps:

- Proposed regulations being drafted by BOLI now...
- Audit and update leave policies for compliance before January 1, 2016

Follow up questions?



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