

Eugene, Oregon Publishes Proposed Paid Sick Leave Rules

Published Date: January 15, 2015

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The city of Eugene, Oregon passed a mandatory paid sick leave ordinance last July, which is set to take effect later this year. The city has now published proposed rules that provide the all-important details about how the ordinance will actually work and what employers must do to comply. Below is a brief summary of the proposed rules.

Who Is Subject to the Ordinance?

The ordinance applies to businesses based both inside and outside of the city of Eugene. It operates not on an employer's location, but rather on where an employee performs work, even if that location changes from day to day. Under the ordinance, any employee performing work within Eugene must accrue paid sick leave. Accordingly, employees who occasionally travel into Eugene to make deliveries or visit customers, for example, may be entitled to paid sick leave.

Accrual of Paid Leave

Under the proposed rules, employees are entitled to accrue paid sick leave as soon as they start work or on the ordinance's effective date of July 1, 2015 (whichever is later).

Paid sick leave must accrue at a rate of at least 1 hour for every 30 hours worked. Accrual at any lesser rate or over any longer period of time will violate the ordinance.

Employees must be allowed to accrue up to 40 hours per year (whether it is a calendar year, fiscal year, leave year, or other predetermined 12-month period). As an alternative to accrual, employers may front-load an employee with 40 hours at the beginning of the year.

Use of Paid Leave

Although accrual must begin on the first day of work, employees may not use sick time until they have been employed at least 90 days. In addition, employees who are based outside of Eugene are not allowed to use accrued leave until they have worked at least 240 hours within the city. The 240-hour requirement does not apply to Eugene-based employees, however, which will generally result in part-time employees becoming eligible to use leave after working 90 days. Regardless of the amount of paid sick leave any employee accrues, however, no more than 40 hours can be used in a single year.

Eligible employees must be allowed to use paid sick leave for any of the following reasons:

- Diagnosis, care, or treatment of the employee or the employee's family members, including routine prenatal, medical, and dental visits;
- Time off related to domestic violence, harassment, sexual assault, or stalking;
- Time off necessitated by work, school, or child care closures; and
- Absences caused by an employee being excluded from the workplace for health reasons.

Because these reasons will often implicate the federal Family and Medical Leave Act and/or the Oregon Family Leave Act, employers should be mindful of the federal, state, and local laws each time an employee requests leave.

Carryover of Unused Paid Leave

At the end of each year, employees must be allowed to carry over up to 40 hours of unused leave. Employers that frontload paid sick leave each year, however, are not required to allow any carryover.

Existing Leave Policies

Employers with paid time off (PTO) or sick leave policies that equal or exceed the requirements of the ordinance will be deemed in compliance with the accrual and use sections of the ordinance. To meet this requirement, a PTO or other leave policy must accrue paid leave at the same or greater rate than the ordinance, and must allow use for the same reasons. Experience with other cities' leave laws has shown that many employers need to make changes to meet the legally mandated accrual rate.

Notices

Employees can be required to provide "reasonable" notice of absences for which they want to use accrued paid sick leave. But employers that do not have a written policy detailing their notice expectations are required under the proposed rules to establish a written policy.

Every employer subject to the ordinance will be required to both provide and post written notices regarding the ordinance to its employees. The notices must be in English as well as any other language the business uses to communicate with its employees. In addition to notifying employees about use, accrual, and other basic aspects of paid sick leave, employers must inform employees that retaliation for using or requesting sick leave is prohibited. Employers also must inform employees of their "right to file a complaint if sick time as required by the [o]rdinance and these [r]ules is denied by the employer, or if an employee is retaliated against for requesting or taking sick time." As currently drafted, however, the rules do not specify to which agency a complaint should be addressed.

In addition, employers must notify each employee at least quarterly about the amount of accrued and unused paid sick leave the employee has available.

What Should Employers Do Now?

Until the proposed rules become final, there is no need for employers to amend their policies or change their practices. There is, however, an opportunity to attempt to shape the final rules. Employers concerned about any aspect of the proposed rules, such as Eugene's

refusal to recognize collectively bargained leave terms, should send comments or objections to Jason Dedrick at the Eugene City Manager's office, 125 E. 8th Avenue, Eugene, Oregon, 97041, or via email at jason.p.dedrick@ci.eugene.or.us. Comments or objections must be received by 5:00 p.m. (PST) on January 21, 2015 to be considered.

The rules are expected to be finalized in early February 2015, and the ordinance is scheduled to take effect on July 1, 2015. Fortunately, Eugene does not plan to impose penalties for noncompliance for three months after the ordinance takes effect (i.e., through September 2015). Unfortunately, however, as soon as the ordinance takes effect, employees and their attorneys may file lawsuits seeking penalties even if the city does not. For that reason, once the final rules are published, employers should review their current policies, enact new compliant policies, prepare compliant notices, and update payroll or other leave tracking systems.

Additional Information

Should you have any questions about Eugene's paid leave ordinance or its impact on your workplace, contact the author, the Ogletree Deakins attorney with whom you normally work, or the Client Services Department at clientservices@ogletreedeakins.com.

Note: This article was published in the January 15, 2015 issue of the [Oregon eAuthority](#).

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