

Oregon & Washington Sick Leave Law & COVID-19



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Oregon Sick Time – Refresher

- Sick time defined
 - Covered employer?
 - Who is an eligible employee?
- Legal requirements (ORS 653.601-653.661)
 - 1 hour of sick time for every 30 hours worked
 - Capped at 40 hours a year
 - Sick time is available after 90 days of employment
 - You must provide notice to employee sick time balances at least quarterly
 - Year = 12-month period (calendar year, e.g.)
 - Front loading permissible – full 40 hours
 - Exception for employees who begin after January 1st
 - Different system for full-time v. part-time

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Oregon Sick Time – Refresher

- Legal requirements – Paid v. Unpaid
 - Sick time is paid if you employ 10 or more employees (6 or more if have a location in Portland)
 - Unpaid if less
 - Size of the employer determined
 - Formula: average number of employees employed during any 20 workweeks in the calendar or fiscal year preceding an employee's sick time is to be taken;
 - Even if not consecutive weeks
 - Exception: An individual employed by that individual's parent, spouse, or child is not an "employee" for the purposes of the sick time law
 - Who is the employer?
 - Only applies to individual
 - BOLI says: "Corporations cannot have children or spouses"

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Oregon Sick Time – Use of Sick Time

- Used in 1-hour increments
- Hardship exception – increments of up to 4 hours
- Paid at regular rate of pay
- Employees paid a single hourly rate of pay: The same hourly rate the employee would have earned for the period of time in which sick time is used if the employee had worked
- Employees paid multiple rates of pay
 - The wages the employee would have been paid, if known, for the period of time in which sick time is used; or
 - The weighted average of all regular rates of pay during the previous pay period
- Salaried employees: The employee's total wages earned during the pay period covered by the salary divided by the number of hours agreed to be worked in the pay period which the salary is intended to compensate. For an employee paid a salary whose hours of work vary from workweek to workweek, for the purpose of calculating the regular rate of pay to be used for the payment of sick time, the employee is presumed to work 40 hours in each workweek.
- Employees paid on a commission or piece-rate basis or on the basis of the number of operations accomplished or quantity produced or handled: The employee must be paid no less than the applicable statutory minimum wage
- Employees paid an hourly, weekly, or monthly amount in addition to a piece-rate or commission: The rate equivalent to the employee's hourly, weekly or monthly rate, or the minimum wage, whichever is greater

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Oregon Sick Time Qualifying Uses

- To care for the employee or the employee's family member with a 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;
- To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability, completed within 12 months after birth or placement of the child;
- To recover from or seek treatment for a health condition of the employee that renders the employee unable to perform at least one of the essential functions of the employee's regular position;
- Absences associated with the death of a family member by:
 - Attending the funeral or alternative to a funeral of the family member;
 - Making arrangements necessitated by the death of the family member; or
 - Grieving the death of the family member

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Oregon Sick Time Qualifying Uses

- Absences related to domestic violence, harassment, sexual assault, or stalking
 - To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault, or stalking;
 - To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault or harassment or stalking of the eligible employee or the employee's minor child or dependent;
 - To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault, or stalking;
 - To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent; or
 - To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent

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Oregon Sick Time During COVID-19

- Employee:
 - Experiencing or recovering from a mental or physical illness, injury, or health condition
 - Seeking medical diagnosis, care, or treatment
 - Needing preventative medical care (e.g., vaccination)
 - Advised by HCP to quarantine or is excluded from the workplace
- Employee is caring for:
 - A family member for above reasons
 - Their child in the event of a closure of a school or place of care by order of a public official due to a public health emergency

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Oregon Sick Time – Documentation

- Medical Verification
 - 3+ days consecutive
 - Leave is foreseeable and will be gone 3+ consecutive days
 - Failure to follow policy re notice
 - Sufficient evidence to believe abuse
- Must pay for costs associated with medical verification

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Washington Sick Time

- Covered employers
- Minimum requirements:
 - One hour of paid sick leave for every 40 hours worked
 - Accrue for 1st day of employment
 - All hours that an employee works must be counted towards accrual, regardless of how many hours they work in a given week or pay period, including overtime hours
- There is no cap on the amount of paid sick leave hours an employee can accrue within your accrual year
 - Unused paid sick leave balances of 40 hours or less must carry over from one accrual year to the next
- You can provide a more generous rate of paid sick leave accrual or carryover

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Washington Sick Time

- Paid sick leave balances and availability
- You must allow employees to use their accrued paid sick leave no more than 90 calendar days after they start working for you. After that, they must be allowed to use accrued paid sick leave in a manner consistent with your normal payroll practices, but no more than 30 days after it is earned
- You must record and credit accrued paid sick leave to an employee's available balance during your usual pay cycle (e.g., weekly, biweekly, semi-monthly, monthly, etc.)
- At least once a month, employees must be given a notice that shows:
 - the amount of paid sick leave they **accrued** since the previous notice;
 - the amount of paid sick leave **used** since the previous notice; and
 - the employee's current, unused paid sick leave **balances** available for use
- Tip: Use payroll statement

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Washington Sick Time

- Time increments
 - You must allow employees to use paid sick leave in increments consistent with your normal payroll practices
 - For example:
 - If you track your employees' work in 15-minute increments, then employees can use their paid sick leave in 15-minute increments

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Washington Sick Time

- Hourly employees
 - You must calculate your employees' normal hourly compensation based on the hourly rate they **would have earned** during the time they used paid sick leave.
 - You must pay an employee the hours they were required to work when they used paid sick leave, or the part of their shift that they were absent
- Salaried employees
 - Non-exempt, overtime eligible salaried employees using paid sick leave must be paid the equivalent to their hourly wage.
 - To calculate the hourly wage for a salaried employee, divide their annual salary by 52 weeks, then divide by number of hours normally worked each week
 - $\$52,000 \text{ salary} \div 52 = \$1,000 \text{ per week}$ $\$1,000 \div 48 \text{ hours worked per week} = \20.83 per hour
 - **Note:** Overtime exempt, salaried employees in a bona fide executive, administrative, or professional position, or who are bona fide outside salespersons, **are excluded** from the paid sick leave law

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Washington Sick Time During COVID-19

- Possible exposure:
 - Employees can use but are not required to use sick leave to cover absence
- COVID-19 Symptoms
- Medical appointments related to COVID-19 exposure or symptoms for self or other covered absences (for family)
 - Vaccine appointments – may require notice, cannot require use
 - Note if vaccine is mandated, must be paid time
- Closure of workplace or school due to COVID-19
 - Includes remote learning or hybrid learning
 - Cannot require work from home instead if sick leave is available

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Washington Sick Time During COVID-19

- Adopt more generous policies?
- Allow employees to use paid sick leave for additional purposes beyond the minimum authorized purposes in statute. See [RCW 49.46.210\(1\)\(c\)](#)
- Temporarily choose to waive verification requirements or relax their existing policy for employees using paid sick leave in connection with COVID-19
- Develop and implement new policies to frontload paid sick leave to ensure that employees will have enough to cover absences related to COVID-19
 - I&I has model frontloading policies available online
- Provide employees with advances on wages, provided the terms of repayment comply with applicable deduction regulations
- Establish shared leave policies if they do not have them. They can also relax existing policies to allow employees with leave balances to donate leave to co-workers who do not have sufficient amounts to cover absences due to illness. See [WAC 296-128-710](#)

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Washington Paid Family & Medical Leave

- Refresher – Provides paid leave through state-run insurance leave for qualifying events
 - Washington ESD determines eligibility and if there is a “qualifying event”
 - Up to 12 weeks of medical leave for a serious health condition
 - Up to 16 weeks of combined medical and family leave
 - Up to 18 weeks of pregnancy related leave
- Qualifying events:
 - Self serious health condition or injury or family member
 - Welcome new child
 - Family members return for military or deployment
- Includes job protection and restoration rights

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Washington Paid Family & Medical Leave

- In the Context of COVID-19:
 - Worker severely ill with COVID-19
 - Worker is caring for a severely ill family member who has COVID-19
 - Other possible scenarios:
 - Worker is immune compromised and advised to self-quarantine

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Washington Family Care Act

- Allows employees to take paid leave offered by the employer to:
 - Provide treatment or supervision for a child with a health condition
 - Care for a qualifying family member with a serious or emergency health condition
- Potential sources of leave:
 - Paid sick leave
 - Vacation
 - Paid time off
 - Personal holidays
 - Compensatory time (government employers only)
 - Certain specific short-term disability plans

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Best Practices for Sick Time

- Beware of unlimited Sick Time/PTO
- Use leave requests and designation forms
- Be clear which leave is being used at any given time
- Be clear what leave is paid (versus unpaid), the source of the pay/basis of the leave and the rate of pay
- Require documentation after three consecutive absences, if you suspect abuse

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Best Practices for Sick Time

- Be flexible, but apply even-handedly
- Encourage sick workers to stay home
- Provide notice of alternatives – Washington Paid Family and Medical Leave, Oregon Family Medical Leave, FFCRA, Unemployment Insurance

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Thank You!



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