

## Sick Leave, Vacation, and Holidays

**QUESTION:** I have been working at my current job for over a month. I called in sick yesterday and my supervisor told me that I did not have any sick leave available yet. He offered to authorize the day off as unpaid leave, which I agreed to since I was feeling lousy and did not want to go in to work. Isn't it illegal for my employer not to give me paid sick leave?

**ANSWER:** The accrual and use of sick leave - as well as vacation days, holidays, and other fringe benefits - is entirely a matter of employer policy. Oregon law does not require employers to provide employees with paid time off or with other employee benefits such as health insurance coverage. If employers do offer sick leave, vacation days, holiday time off, holiday pay, or other benefits, the employer is free to establish the rules regarding the employee's use of the benefits.

Employers routinely establish caps on vacation accrual, practice use-it-or-lose-it policies, require employees to utilize paid leave under certain circumstances and require employees to follow established procedures to obtain authorization for personal, sick or vacation leave (for example, requiring employees to fill out a leave request form or calling in to report absences by a specific time during the work day).

Employers may also offer different benefits to different employees, as long as they do not discriminate between employees based on race, color, national origin, sex, or other protected class. For example, an employer may offer supervisory employees more vacation time, or pay a higher employer contribution toward management employees' health insurance premiums. Employers are also generally free to negotiate benefits with each individual employee - that is, unless a collective bargaining agreement is in effect between the parties.

Also, employers may change the nature and terms of employee benefits without obtaining the employee's agreement to the changes. However, changes are limited to prospective changes that will apply to future benefit accrual and use; retroactive changes in benefits would violate the express or implied employment agreement between the employer and the employee. It may be helpful to think of it this way: once an employer provides notice to employees of a change to the terms of employment, employees implicitly agree to the changes by continuing to work for the employer.

When an employee quits or is terminated by the employer, payment of accrued vacation and/or sick leave is a matter of company policy. The departing employee is not automatically entitled to payment of accrued vacation or sick leave, but if the employer has a policy of compensating employees for accrued leave, or has done so in the past, the employer has an obligation to follow the established practice.

As for your situation, you should review your company's employee handbook and make sure you understand the benefits available to you. If your employer does not have its

policies in writing, ask your supervisor about sick leave and other types of paid leave available to you.

Employers and employees should also keep in mind that the Oregon Family Leave Act (OFLA) and the federal Family Medical Leave Act (FMLA) require employers subject to those laws to provide employees with time off for certain qualifying events, including an employee's own serious health condition.

For more information on this and other important information affecting Oregon employers, including seminars conducted by BOLI's Technical Assistance Unit, please visit our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta). You can also call us at 971-673-0824.