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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BLI 14-2021
CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

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ARCHIVES DIVISION
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& LEGISLATIVE COUNSEL

FILING CAPTION: Permissible Use of Sick Time

EFFECTIVE DATE: 08/06/2021 THROUGH 01/17/2022

AGENCY APPROVED DATE: 08/06/2021

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NEED FOR THE RULE(S):

On July 22, 2021, the agency filed temporary rules for the use of sick time for evacuation, air quality index, and/or heat index orders. This temporary rule clarifies that certain employees are not able to use sick leave for these purposes given the nature of their jobs and the impact their absence would have on public safety.

JUSTIFICATION OF TEMPORARY FILING:

This year has brought a series of public health emergencies that have jeopardized the health and safety of Oregonians. Currently, there are 24 active wildfires resulting in multiple communities and hundreds of Oregonians living under Level 2 or Level 3 evacuation orders and dangerous air quality conditions. Further, in June a deadly heat event set record-breaking temperatures in Oregon exposing workers to dangerous, unhealthy conditions that contributed to multiple workplace hospitalizations and fatalities.

It is predicted that drought conditions in Oregon combined with the summer of high-heat will result in additional wildfires, dangerous air quality conditions, and extreme heat events. In order to protect workers during these currently unfolding public health emergencies, it is necessary to adopt temporary rules that clearly identify when a public official orders an emergency evacuations or determines that air quality and heat index exposure jeopardize the health of an employee, the employee can use their accrued sick time.

Failure to adopt temporary rules to clarify that employees can utilize accrued sick time provided under Oregon Sick Time law when a public official with the authority orders emergency evacuations or determines that air quality and heat index exposure may:

- A) Jeopardize the health of workers;
- B) Prevent a worker from complying with evacuation order; or
- C) Result in job loss for a worker who needs to stay home.

By explicitly identifying these events as public health emergency in administrative rule, it will ensure that employers understand the allowable uses of sick time and avoid unintentionally violating the law and will ensure a worker will be able to protect their health and the health of their family without jeopardizing their health or employment.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 651 - https://www.oregonlegislature.gov/bills_laws/ors/ors651.html

ORS 653.601-653.661 - https://www.oregonlegislature.gov/bills_laws/ors/ors653.html

Oregon Wildfire Response and Recovery - <https://wildfire.oregon.gov/>

AMEND: 839-007-0020

SUSPEND: Temporary 839-007-0020 from BLI 9-2021

RULE TITLE: Permissible Use of Sick Time

RULE SUMMARY: Clarifies sick time used for evacuation orders or related to air quality or heat indexes is not a permissible use of sick time for first responders.

RULE TEXT:

Pursuant to ORS 653.616 and these rules an employee may use sick time for any of the following:

(1) For an employee's 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.

(2) For care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

(3) For the following purposes specified in ORS 659A.159:

(a) 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. Leave under this subsection must be completed within 12 months after birth or placement of the child, and an eligible employee is not entitled to any period of leave under this subsection after the expiration of 12 months after birth or placement of the child.

(b) To care for a family member with a serious health condition as defined in OAR 839-009-0210(20).

(c) To recover from or seek treatment for a serious health condition of the employee as defined in OAR 839-009-0210(20) that renders the employee unable to perform at least one of the essential functions of the employee's regular position.

(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition as defined in OAR 839-009-0210(20), but that requires home care.

(e) To deal with the death of a family member within 60 days of the date on which the eligible employee receives notice of the death of a family member by:

(A) Attending the funeral or alternative to a funeral of the family member;

(B) Making arrangements necessitated by the death of the family member; or

(C) Grieving the death of the family member.

(4) For the following purposes specified in ORS 659A.272:

(a) 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.

(b) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee's minor child or dependent.

(c) 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.

(d) To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent.

(e) To relocate, pursuant to OAR 839-009-0345, 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.

(5) To donate accrued sick time to another employee if the other employee uses the donated sick time for a purpose specified in this rule and the employer has a policy that allows an employee to donate sick time to a coworker for a purpose specified in this rule.

(6) In the event of a public health emergency, including, but not limited to:

(a) Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency;

(b) A determination by a lawful public health authority or by a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others, such that the employee must provide self-care or care for the family member;

(c) The exclusion of the employee from the workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons;

(d) The following public health emergencies are permissible uses of sick leave unless the employee is employed as a first responder:

(A) An emergency evacuation order of level 2 (SET) or level 3 (GO) issued by a public official with the authority to do so, if the affected area subject to the order includes either the location of the employer's place of business or the employee's home address; or

(B) A determination by a public official with the authority to do so that the air quality index or heat index are at a level where continued exposure to such levels would jeopardize the health of the employee.

(7) Sick time provided pursuant to the Oregon Family Leave Act in ORS 659A.159 or ORS Domestic Violence Leave in 659A.272 runs concurrently with sick time provided pursuant to ORS 653.601 to 653.661.

STATUTORY/OTHER AUTHORITY: ORS 651, ORS 653.601-653.661

STATUTES/OTHER IMPLEMENTED: OL Ch. 520 (2017), ORS 653.601-653.661