



January 6, 2022

RE: Oregon Bureau of Labor and Industries - Notice of Rulemaking

To Interested Parties,

An employee can utilize sick time accrued under the Oregon Sick Time law in the event of a public health emergency.

Current, administrative rules include, but are not limited to, several identified types of public health emergencies that an employee can use accrued sick time for. However, recent public health emergencies have jeopardized the health of workers and the lack of specificity in rule regarding permissible uses of sick time in the event of a public health emergency have prevented them from utilizing their accrued sick time. Therefore, it is necessary to amend the administrative rules related to permissible uses of sick time to clarify that when a public official with the authority orders 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. The amendment does not increase or change the total number of sick leave hours an employee can accrue.

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.

There will be a public hearing on January 26, 2022, 12:00 – 12:30 PM.

The hearing will be conducted using Microsoft Teams:

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 503-446-4951](tel:+15034464951), [550928839#](tel:+150928839) United States, Portland

Phone Conference ID: 550 928 839#

**The deadline for public comment is 5:00 p.m. on January 31, 2022.** Comments may be emailed to

[erin.seiler@boli.oregon.gov](mailto:erin.seiler@boli.oregon.gov)

A copy of the Notice and proposed rule are attached.

Sincerely,

Erin Seiler, Senior Policy Advisor

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839  
BUREAU OF LABOR AND INDUSTRIES

**FILED**

12/30/2021 2:55 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Use of sick time for evacuation, air quality index, or heat index orders

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/31/2022 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Erin seiler  
503-382-7934  
erin.seiler@boli.oregon.gov

800 NE Oregon  
Portland, OR 97232

Filed By:  
Erin Seiler  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 01/26/2022

TIME: 12:00 PM - 12:30 PM

OFFICER: Erin Seiler

ADDRESS: Microsoft Teams (see special instructions)

800 NE Oregon

Portland, OR 97232

SPECIAL INSTRUCTIONS:

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting:

[https://teams.microsoft.com/l/meetup-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQwNDVIMWQtOGQ1Yi00OTk2LTk0YjltODVIOTk4ZWQ3NzBj%40thread.v2/0?context=%7b%22Tid%7c%22%3a%223c0410d6-6a93-4cb1-9dd6-f50da0bd98fe%22%7d)

[join/19%3ameeting\\_ODQwNDVIMWQtOGQ1Yi00OTk2LTk0YjltODVIOTk4ZWQ3NzBj%40thread.v2/0?context=%7b%22Tid%7c%22%3a%223c0410d6-6a93-4cb1-9dd6-f50da0bd98fe%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODQwNDVIMWQtOGQ1Yi00OTk2LTk0YjltODVIOTk4ZWQ3NzBj%40thread.v2/0?context=%7b%22Tid%7c%22%3a%223c0410d6-6a93-4cb1-9dd6-f50da0bd98fe%22%7d)

Or call in (audio only)

+1 503-446-4951,,550928839# United States, Portland

Phone Conference ID: 550 928 839#

Find a local number | Reset PIN

The public may also submit written comments about the proposed rules until Monday, January 31, 2022, at 5 pm by emailing comments to [erin.seiler@boli.oregon.gov](mailto:erin.seiler@boli.oregon.gov).

Please contact Erin Seiler at

[erin.seiler@boli.oregon.gov](mailto:erin.seiler@boli.oregon.gov) or 503-382-7934 if you have questions or need assistance participating in the public comment process.

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## NEED FOR THE RULE(S)

An employee can utilize sick time accrued under the Oregon Sick Time law in the event of a public health emergency.

Current, administrative rules include, but are not limited to, several identified types of public health emergencies that an employee can use accrued sick time for. However, recent public health emergencies have jeopardized the health of workers and the lack of specificity in rule regarding permissible uses of sick time in the event of a public health emergency have prevented them from utilizing their accrued sick time. Therefore, it is necessary to amend the administrative rules related to permissible uses of sick time to clarify that when a public official with the authority orders 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. The amendment does not increase or change the total number of sick leave hours an employee can accrue.

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## DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 651: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors651.html](https://www.oregonlegislature.gov/bills_laws/ors/ors651.html)

ORS 653.601-653.661: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors653.html](https://www.oregonlegislature.gov/bills_laws/ors/ors653.html)

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

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## FISCAL AND ECONOMIC IMPACT:

The agency does not anticipate a fiscal or economic impact as a result of the rule.

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## COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) The proposed rule will have no economic impact on state agencies or units of local government. The proposed rule will have no economic impact on the public.

(2) Effect on Small Businesses:

(a) The proposed rule applies to any employer that employs one or more employees working anywhere in the state of Oregon. An employer with 10 or more employees (6 or more if they have a location in Portland), must provide paid sick time. An employer with less than 10 employees, sick time is protected, but not paid.

(b) Small businesses already administrator Oregon Sick Time, the proposed rule requires no new reporting, recordkeeping, or administrative activities.

(c) Small businesses already administrator Oregon Sick Time, the proposed rule requires no new professional services or equipment supplies.

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## DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of the rule.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An Administrative Rule Advisory Committee was not consulted. A committee was not necessary because the agency is seeking only to clarify what is an acceptable use of sick leave to ensure that employers understand the allowable uses of sick time and avoid unintentionally violating the law.

AMEND: 839-007-0020

RULE SUMMARY: Use of sick time for evacuation, air quality index, or heat index orders

CHANGES TO RULE:

839-007-0020

Permissible Use of Sick Time ¶¶

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; ~~or~~¶¶

(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