

SB 588 Overview

- Takes Effect January 1, 2023.
- Removes broad exemption from Oregon Sick Leave Law (ORS 653.646) for employees covered by collective bargaining agreements.
- Employers who are signatory to a collective bargaining agreement to which the employer has agreed to contribute to a multiemployer-employee trust and employ 10 or more workers (6 if in Portland), must provide paid sick leave to employees. Employers are considered to have met the sick leave law requirements, but only if the CBA provides:
 1. A substantially equivalent to or more generous [plan] than the minimum requirements of ORS 653.601 to 653.661 for the benefit of employees - *ORS 653.646(1)(a)*.
 2. The contributions to the trust or benefit plan are made solely by the employer signatories to the agreement – *ORS 563.646(1)(c)*.



What is a “Substantially Equivalent” Plan?

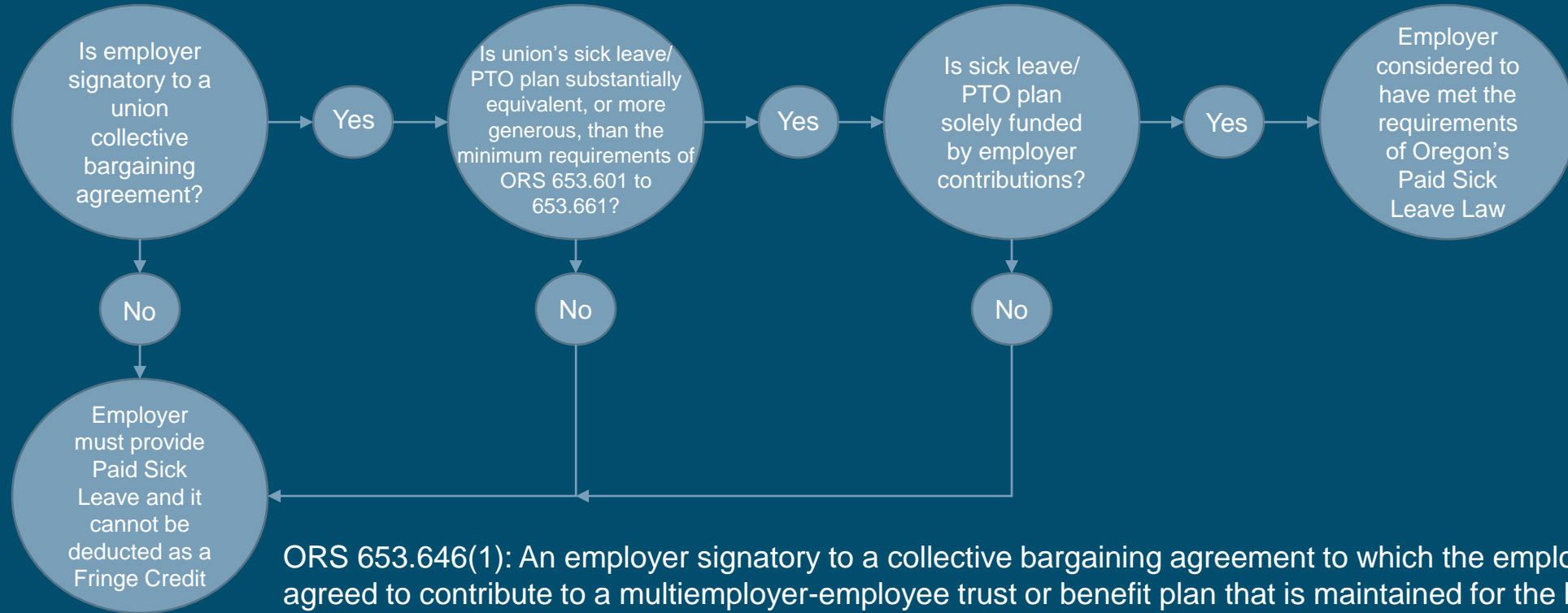
- We highly recommend reviewing BOLI’s Sick Time FAQ on website:
<https://www.oregon.gov/boli/workers/pages/sick-time.aspx>

Some of the Basics:

- Employees accrue 1 hour of paid sick time for every 30 hours worked.
- Employees must be able to use accrued sick time no later than the 91st day of employment.
- Employees are able to accrue up to 40 hours of paid sick leave in a year.
- Unused sick leave must be able to be carried over year-to-year, but employers are not required to provide more than 40 hours in any one year.
- Unused sick leave does not have to be paid out upon employment ending (revocable benefit).
- Employers must fully fund paid sick leave (i.e., no deductions from pay).
- No restrictions on use of sick time can be stipulated, unless specifically stated in ORS 653.646 (i.e., no advanced notice required to use leave).



How is Sick Leave Administered Now?



ORS 653.646(1): An employer signatory to a collective bargaining agreement to which the employer has agreed to contribute to a multiemployer-employee trust or benefit plan that is maintained for the benefit of the employees subject to the agreement shall be considered to have met the requirements of ORS 653.601 to 653.661 if:

ORS 653.646(1)(a): The terms of the agreement provide a sick leave policy or other paid time off program that is substantially equivalent to or more generous than the minimum requirements of ORS 653.601 to 653.661 for the benefit of employees

ORS 653.646(1)(c): The contributions to the trust or benefit plan are made solely by the employer signatories to the agreement.



How Does This Affect Prevailing Wage Rate?

- For employers that are a signatory to a collective bargaining agreement to which the employers have agreed, or will be planning in the future, to contribute to a multiemployer-employee benefit plan for paid sick leave, and if that plan is substantially equivalent to Oregon's Sick Leave Law, under the following circumstances the effects on PWR rates may be:
 1. A new benefit plan is established solely to comply with the sick leave law. In this scenario, the payment of these benefits will not be included the published PWR rate.
 2. An existing substantially equivalent plan (like existing Sick Leave or PTO) will be used to comply with Oregon's Sick Leave Law. If an existing paid leave plan's hourly contributions are already included as part of the union base or fringe rate, for inclusion in the PWR rate book, the union rate will have to be adjusted to exclude the sick leave benefit amount.
 3. A future sick leave plan is instituted and provides for more paid leave than required by law. Only paid leave contributions above the legally mandated amount will be included as part of the published prevailing wage rate.



What is a Fringe Benefit?

Per ORS 279C.800(1) & OAR 839-025-0040: For a benefit like sick leave to be considered a “bona fide” fringe benefit and be included in the fringe rate, the benefit must:

1. Provide an actual benefit to employees
2. Not be a “use it or lose it” benefit (irrevocable)
3. Pay out any earned but untaken benefit at employment termination
4. Plan must be communicated in writing to employees

And most importantly regarding sick leave benefits...

5. Cannot be required by law

As a result, because paid sick leave is legally mandated it cannot be considered a fringe benefit for the purposes of setting PWR rates. Here are some common funded and unfunded fringe benefits we receive:

Allowable Fringe Benefits:

- ✓ Health & Wellness Plans
- ✓ Pension/ Retirement Plans
- ✓ Apprenticeship Training
- ✓ Paid Leave (Only if irrevocable and not legally mandated)

Not Considered Fringe Benefits:

- X Any Deductions From Pay
- X Union Dues
- X Industry Promotional Funds
- X Labor Management Costs
- X Drug Testing

