

# FREQUENTLY ASKED QUESTIONS ABOUT SICK LEAVE

**AGENCIES SHOULD NOT RELY ONLY ON THIS GUIDE.** Always refer to relevant agency policies, [State HR policies](#), and any applicable collective bargaining [agreement](#) for specific information. If you have additional questions, please contact the [CHRO](#) or DOJ's Labor & Employment Section.

## **1. What is the new sick leave law?**

Senate Bill 454 requires statewide mandatory sick leave accrual for all Oregon workers. The law applies to all state government and private sector full and part-time workers.

## **2. When is the new law effective?**

The new legislation is effective on January 1, 2016.

## **3. Which employee groups are affected?**

For the Oregon state government, generally temporary employees are affected, however there are impacts to permanent, seasonal and limited duration status employees.

## **4. What is the sick leave accrual rate for temporary employees?**

Under the new law the accrual rate is one hour for every 30 hours worked. Beginning on January 1, 2016 temporary employees will begin to accrue up to 6.14 sick leave (TS) hours per month based on the monthly forecasted hours. Temporary employees who work less than their forecasted hours in a month will accrue sick leave on a pro-rata basis.

## **5. Will the accrual rate change for permanent, limited duration and seasonal status employees?**

No, the accrual rate for permanent, limited duration and seasonal status employees will remain 8 hours per month up to 96 hours per year.

## **6. When are temporary employees eligible to use their sick leave?**

Beginning on January 1, 2016 existing temporary employees are eligible to use accrued sick leave beginning February 1, 2016. Temporary employees hired on or after January 1, 2016 are eligible to use accrued sick leave on the 91st day of employment.

## **7. Is there a cap on the number of sick leave hours a temporary employee may use?**

Temporary employees may use up to 40 hours of accrued sick leave hours in a calendar year (January to December). Each January the "used" bucket will reset to zero and only allow up to the maximum of 40 hours per employee.

**8. How does the new law affect FLSA exempt employees?**

Exempt employees are presumed to work 40 hours per week unless their actual workweek consists of fewer hours.

**9. At separation from state service are permanent and temporary employees entitled to the cash value of any unused accrued sick leave?**

No, the state is not required to pay employees for any unused accrued sick leave upon separation.

**10. Are temporary employees entitled to restoration of any sick leave if rehired?**

Yes, temporary employees rehired by any state agency within 180 days of termination, are entitled to have any unused sick leave restored. If a temporary employee is rehired within 180 days but within the same calendar year, he or she will be able to use any remaining sick leave up to the 40 hour cap.

**11. What happens if a temporary employee terminates before he or she is eligible to use sick leave and is rehired before the 181st day?**

If a temporary employee terminates before meeting the 90 day eligibility requirement, and is rehired within 180 days of separation the employee is entitled to have any remaining accrued sick leave restored and may use the leave when the combined total of employment days exceeds 90.

**12. Does the two year restoration of unused sick leave hours change for permanent and limited duration employees who terminate?**

No, restoration for permanent and limited duration employees remains two years following the date of separation.

**13. What rate of pay is used to compensate an employee who takes sick leave?**

Employees must be paid for used sick time at their regular rate of pay.

**14. Are shift differentials considered an employee's regular rate of pay?**

Yes, shift differentials related to hours of work schedule are considered part of the employee's regular rate of pay for sick leave purposes. Please refer to the [Shift Differential Pay Code](#) list.

**15. Under what circumstances may an employee use accrued sick leave?**

Employees may use sick leave for any of the following purposes:

- **Illness or Injury:** for an employee's own or a family member'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.
- **Parental Leave:** 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.
- **Sick Child:** To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition, but requires home care.
- **Bereavement:** planning for and attending a family member's funeral and bereavement.

- **Safety:** to seek legal or law enforcement assistance or remedies related to domestic violence, harassment, sexual assault or stalking; to ensure the health and safety of the employee or the employee's minor child or dependent; and to obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent and 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.

**16. What is the definition of family member under the new law?**

"Family member" means an employee's spouse, same sex domestic partner, biological parent, custodial or non-custodial parent, adoptive or foster parent, stepparent, parent-in-law, a parent of an employee's same sex domestic partner, an employee's grandparent or grandchild, or a person with whom the employee is or was in a relationship of in loco parentis. "Family member" also includes the biological, adopted, foster child or stepchild of an employee or the child of an employee's same sex domestic partner. An employee's child in any of these categories may be either a minor or an adult.

**17. Will agency call-in procedures need to change?**

Employees must still comply with the agency's usual and customary call-in requirements. Agencies should consider ensuring employees understand call-in procedures.

**18. Can agencies require employees to find a replacement worker when they call in sick?**

No, agencies cannot require employees to find a replacement to cover a shift if the employee calls in sick.

**19. Can agencies require employees to work an alternate shift to make up for the use of sick leave?**

No, agencies may not require employees who call in sick to work an alternate shift. Agencies and employees may by mutual consent agree that the employee may work additional hours or shifts to make up for hours or shifts the employee called in sick.

**20. If the employee knows he or she will be taking sick leave in the future when is he or she required to provide the agency notice?**

If the need for leave is foreseeable, the employee must provide notice as soon as practicable in advance

**21. Can agencies require employees who have been out on sick leave for more than three consecutive work days provide a note from their health provider?**

Yes, agencies may require employees who use sick leave for more than three consecutive scheduled work days for a purpose provided in OL Ch. 537, Sec. 6 (1),(2)(4), 2015, ORS 659A.159(1)(b)-(d), or 659A.272 relating to domestic violence, sexual assault, harassment or stalking provide verification within 15 calendar days from a health provider. **Please note:** *Agencies are not required to ask for medical verification, however if an agency chooses to require a note, they must ensure similarly situated employees are treated the same.* "Three consecutive scheduled workdays" means three consecutive scheduled workdays, not including scheduled days off. For example, if an employee is scheduled to work Monday, Wednesday and Friday only, and the employee uses sick time for all three days, the employee has used sick leave for three consecutive scheduled workdays.

**22. How does the new law affect Tier 1 & 2 PERS retirees who return as temporary employees?**

Employees who retire under PERS full formula or formula plus annuity calculations are not entitled to have any sick leave reinstated if rehired as a temporary employee within 180 days of retirement. Employees who retire under PERS money match calculation are entitled to have sick leave hours restored from their sick leave bank and will have up to 40 hours of sick leave advanced for immediate use in their temporary assignment, if rehired within 180 days of retirement.

**23. What about employees who retire under OPSRP and are rehired as a temporary employee?**

Employees who retire under OPSRP are entitled to have sick leave hours restored or will have up to 40 hours of sick leave advanced for immediate use in their temporary assignment if rehired within 180 days of retirement.

**24. Do sick leave hours taken by a PERS retiree who returns to a temporary position count toward the 1039(Tier 1/2) or 599 (OPSRP) hours?**

Yes, any sick leave hours taken by a retiree who returns as a temporary employee are applied to the 1039 or 599 hours PERS limit. **Tier 1 or 2 Retirees** who work 1040 hours or more within and calendar year will become active members and PERS retirement benefits will cease and may need to be repaid. **OPSRP retirees** who work 600 hours or more in any calendar year as a temp in a non-qualifying position will return to active membership, retirement benefits will cease and may need to be repaid. **OPSRP retirees** returning to a qualifying position will return to active membership without an hour limit. Please review the PERS working after retirement rules carefully.

**25. How can agencies determine which calculation the employee retired under?**

Agencies should ask the retiree as part of the hiring process. If the retiree is not sure, they should contact PERS directly.

**26. How much sick leave will retirees accrue and is there a limit on the amount they can use as a temporary employee?**

All PERS retirees who return as temporary employees will accrue up to 6.14 hours of sick leave per month. Additionally retirees who return as temporary employees will be able to use up to 40 hours of accrued sick leave within the calendar year.

**27. What happens when an SEIU temporary employee accepts a permanent position with Oregon state government?**

SEIU temporary employees who accept permanent positions will receive credit for the difference between the 6.14 hours and eight hours accruals.

**28. What about seasonal employees who accept temporary employment at the end of the season?**

Seasonal employees will have two sick leave banks one related to their seasonal employment (SL) and the other related to their temporary employment (TS). The SL bank will continue to have a two-year restoration limit. The temporary bank will have a 180 day restoration limit. When seasonal employees move to a temporary position 40 hours will be fronted to the TS bank from the SL bank for immediate use.

**29. When a temporary employee accepts a permanent, limited duration or seasonal position what happens to the sick leave accrued?**

If the position is accepted prior to the 181<sup>st</sup> day of leaving the temporary position, all hours remaining in the TS bank move with the employee to the permanent, limited duration or seasonal position SL bank. Upon separation, the SL clearing account is set to expire at two years from date of separation.

**30. When a permanent or limited duration employee accepts a temporary position, what happens to the sick leave accrued?**

All sick leave hours accrued as a permanent, limited duration or seasonal employee will remain in the clearing house for two years, with the exception of 40 hours which are fronted to the TS leave bank for immediate use by the temporary employee. Should the employee terminate, any hours remaining from the fronted 40 hours are moved back to the 2-year SL clearing house. Any TS hours remaining is set with the 180-day expiration. The temporary employee is limited to use 40 hours in each calendar year.

**31. How will the new law affect employees of a staffing agency?**

Temporary employees who are employed through any staffing agency (including QRF's) are considered to be jointly employed by the staffing agency and the state agency. Sick leave hours accrued while the employee was employed with the staffing agency and working for Oregon state government will transfer over to the state, provided the employee is hired by any state agency within 180 days of separation from the staffing agency. Procurement is aware of this issue and will work with agencies to address staffing agency contracts.

**32. There is language in the new law allowing employees to donate sick leave if the employer has a policy allowing donations. Will state employees now be able to donate their sick leave?**

No, Oregon state government's Donated Leave policy 60.025.01 allows for permanent, limited duration and seasonal employees to donated vacation leave not sick leave.

**33. Are agencies responsible to provide notice to employees regarding the new law?**

Yes, agencies are required to provide notice to each employee of the requirements of the new law. The poster provided by BOLI will suffice as notice. The notice must be provided to employees no later than the end of the first pay period after the effective date of the new legislation. Additionally, agencies must provide notice to employees hired after the effective date of the law by the end of their first pay period.