

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.

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.

When is the new law effective?

The new legislation is effective on January 1, 2016.

Which employee groups are impacted?

Generally temporary employees, however there are impacts to regular status employees.

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 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.

Will the accrual rate change for regular status employees?

No, the accrual rate for regular employees will remain 8 hours per month up to 96 hours per year.

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.

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.

How does the new law impact exempt employees?

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

At termination 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 termination.

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

Yes, if the temporary employee is rehired within 180 days of termination, they are entitled to have any unused sick leave restored. If the temporary employee is rehired within 180 days but within the same calendar year, they will be able to use any remaining sick leave up to the 40 hour cap.

What happens if a temporary employee terminates before they are 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.

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 termination.

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.

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

Yes, shift differentials is considered part of the employee's regular rate of pay for sick leave purposes.

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.

What is the definition of family member under the new law?

"Family member" means an employee's spouse, same-gender domestic partner, biological parent, custodial and non-custodial parent, adoptive and foster parent, stepparent, parent-in-law, a parent of an employee's same-gender 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-gender domestic partner. An employee's child in any of these categories may be either a minor or an adult.

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.

If the employee knows they will be taking sick leave in the future when are they required to provide the agency notice?

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

Can agencies require employees who have been out on sick leave for 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 provide a note from their health provider. "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.

How does the new law affect PERS retirees who return as temporary employees?

Employees who retire under the PERS full-formula calculation and elect to sell sick leave to increase their pension, are not entitled to have any sick leave reinstated if rehired as a temporary employee within 180 days of retirement.

What about employees who retire under money match or OPSRP and are rehired as a temporary employee?

Employees who retire under PERS money match or OPSRP will have all sick leave reinstated if rehired within 180 days of retirement.

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 limited to use up to 40 hours of accrued sick leave within the calendar year.

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

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

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 and the other related to their temporary employment. The seasonal bank will continue to have a two year restoration limit. The temporary bank will have a 180 day restoration limit.

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

Temporary employees who are employed through a staffing agency 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 will transfer over to the state, provided the employee is hired 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.