

Employment Law Hot Topics

January 12, 2017

Presented by

**Amanda M. Walkup, Partner
Hershner Hunter, LLP**

Sick Leave



ORS 653.601 et seq. (Mandatory Sick Leave)

- Requires employer to provide sick leave to employees based on hours worked, and prohibits discrimination and retaliation based on an employee's use of sick leave
- Effective January 1, 2016



Which Employees Are Covered?

- Applies to all employees, including part-time, seasonal and temporary employees
- Includes all government employees except federal employees
- Does not apply to employees who are covered by a collective bargaining agreement and employed through a hiring hall or similar system



Is Leave Paid or Unpaid?

- Employers with ten or more employees are required to provide paid leave
- Employers with less than ten employees are required to provide unpaid leave
- Portland employers with at least six employees must provide paid leave



What Leave Purposes Are Covered?

- Minor illnesses, reasons allowed under Oregon Family Leave Act (“OFLA”), preventative medical care, domestic violence, sexual assault, stalking, criminal harassment, health-related school or business closures
- Family members are those designated under OFLA



How Much Leave Accrues?

- Accrual rate is one hour earned for every 30 hours worked
- Exempt employees are assumed to work 40 hours per week unless actual workweek is less
- Employees begin accruing leave on first day of employment
- Maximum leave required per year: 40 hours; can carry over up to 40 hours
- Employees who return to employment within 180 days of departure must be reinstated to benefits accrued upon departure



When Can Leave Be Used?

- Existing employees can begin using leave upon accrual; new employees can begin using leave on the 91st day of employment
- Employers can require employees to follow call-in procedures and mandate some advance notice if need for sick leave is foreseeable
- Employees may work additional shifts or trade shifts, but employers cannot require employee to do so

Other Issues


- Allows for PTO policy instead of sick leave so long as PTO policy is at least as generous as the law requires
- Allows front loading of leave to avoid bookkeeping obligations – minimum of 40 hours
- Allows for donation of sick leave if employer has a leave donation policy
- Employer can, but is not required to, cash out accrued sick leave upon termination



Other Issues

- Employers are required to post notices and provide quarterly reporting of accrual and usage of sick leave
- Employers may not obtain documentation about the absence until employee has missed three consecutive work days
 - An exception applies if the employer suspects abuse
- Employers are prohibited from denying, interfering with, failing to pay for or retaliating for using sick leave
- Employees have a private right of action


Minimum Wage



SB 1532

(Minimum Wage)


- Became effective July 1, 2016
- Creates three minimum wage tiers
 - Portland Metropolitan Area (Multnomah, Washington and Clackamas counties)
 - Certain non-urban counties
 - (Baker, Coos, Crook, Curry, Douglas, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wheeler)
 - All other areas of the state



SB 1532

(Minimum Wage)

- Generally the rate where the employer is “located” will be the applicable rate
 - But if the employer employs an employee in a different region for more than four hours in a workweek (not including travel), that region’s rate will apply
 - If the employee works in more than one region, employer must pay highest rate for all hours worked, or applicable rate for each hour worked
- Beginning in 2024, rates will be indexed to inflation



SB 1532

(Minimum Wage)

- Beware of new record-keeping rules
 - Employers must maintain records of the location where work was performed (if the employer works in more than one region)
 - Unless employer pays the highest rate for all hours worked

Which leads us to . . .


Payroll Records

SB 1587

(Payroll Records)

■ Beginning on January 1, 2017, all employers must provide employees with the following additional information each pay day:

- Date of payment
- Dates of work covered by payment
- Employee name
- Employer name and business identification number (Employment Department)
- Employer address and telephone number
- Rate (or rates) of pay
 - Regular rate and hours worked
 - Overtime rate and hours worked
 - Piece rates and number of completed pieces
- Manner of accrual (hourly, shift, day or week; salary, commission, piece-rate)
- Gross and net wages
- The amount and type of each deduction
- Allowances claimed as part of minimum wage



SB 1587

(Payroll Records)

- The information may be in electronic form if:
 - The statement contains all of the above information
 - The employee expressly agrees to receive the information in that format
 - The employee has the ability to print or store the information
- Law also requires an employer to produce all of the above information (dating back three years) within 45 days of employee's request



Thank You