Oregon’s Sick Time FAQ

Oregon signed into law Senate Bill (SB) 454 in June, 2015, making Oregon the fourth state to enact a statewide mandatory paid sick leave law. The SB was initially brought forward to ensure that employees had the ability to take leave for preventive medical care as well as for illnesses for both themselves and their family without losing their job. The new law requires Oregon employers to provide sick time to employees beginning on January 1, 2016. Employees are able to use the sick time for a wide range of illness or preventative care reasons as well as to take care of family members.

When SB 454 was introduced during the last legislative session, Oregon School Boards Association (OSBA) worked with drafters to seek an exemption for public schools and education service districts (ESD) due to the fact that Oregon Revised Statute (ORS) 332.507 already establishes sick leave requirements for education employers. OSBA staff were concerned any additional laws could create contradictory requirements. Unfortunately, OSBA was unable to obtain the necessary exemption for public education and the bill passed through the legislature without any major amendments for education employers. After the bill was signed by Governor Kate Brown, the Bureau of Labor and Industries (BOLI) began developing the administrative rules for the new law. Throughout this process OSBA participated in rule making sessions held by BOLI in which they voiced their concerns that education employers should be exempt from this law as well as identifying the areas where education employers needed increased clarity on specific requirements of the law and its implementation.

Finally, it is important to note that throughout this FAQ we have distinguished between sick leave (ORS 332.507) and sick time (SB 454). Because while one is a subset (SB 454) of the other (ORS 332.507), they are different laws with different purposes.

**Oregon Sick Time Provisions:**

- Can be used for customary sick time reasons plus expanded reasons similar to FMLA/OFLA.
- Provides a minimum of 40 hours for full-time employees who work a full year or sick time accrued at 1 hour for every 30 hours worked.
- Employees are eligible to use sick time on the 91st calendar day of employment.
- Accrues based on actual time worked or can be front loaded by the employer.
- There is a 180-day window of time after the employee last works for an employer to retain eligibility, accrual, and balance of sick time.
- Shall be used in 1 hour increments unless the employer can establish this results in an undue hardship.
- Must notify workers at least quarterly of balance.
- Applies to hours worked after January 1, 2016.
- Employers can not retaliate against employees who use sick time.
FAQs

Which employers are required to comply with SB 454?

Employers are defined in SB 454 as any person that employs one or more employees, working anywhere in this state, political subdivisions of the state and any county, city, district, authority, public corporation or entity organized and existing under law. While the definition of employer does not include the federal government, the definition is very broad and covers all other employers in the State of Oregon.

Are all employers required to provide paid sick time no matter the size of the organization?

No, while employers who employ less than 10 employees are still required to provide employees access to sick time, the sick time does not have to be paid time. If the employer employs 10 or more employees the sick time provided must be paid time.

How does the employer calculate the number of employees?

The number of employees is calculated based on the average number of employees employed by the employer per day during a minimum of a 20 workweek period in the calendar or fiscal year in which the employee’s leave is to be taken.

If the employer is in a city with a population exceeding 500,000 than the employer need only employ an average of 6 employees during a minimum 20 workweek period in the calendar or fiscal year in which the employee’s leave is to be taken to be required to provide paid sick time.

In determining whether or not the employer is above or below the minimum employee threshold, an employer is required to count all of the employees it employs in the State of Oregon.

What is the definition of a sick time year?

Districts can define the sick time year as any 12-month period of time, such as a calendar year, a fiscal year, a contract year, or a 12-month period of time following the employee’s date of hire. It will be important for the district to identify which method it intends to use for purposes of SB 454. OSBA recommends the district use a sick time year that is consistent, if possible, with all of its leave (e.g., OFLA/FMLA and ORS 332.507, etc.).

Who is considered an employee for purposes of sick time under SB 454?

Any individual to whom the district pays a salary, including payment of a stipend for an identified project, or task. This includes seasonal workers such as coaches and irregular workers such as temporary employees or substitute employees. Student workers who are employed and receiving cash compensation are considered employees as well. However, students who are working and receiving financial aid or credit as compensation are not considered employees for purposes of SB 454. While an employee may only be
temporary or seasonal it is important to note that if they return to work within 180 calendar days, after the temporary or seasonal job has ended, they are entitled to reinstatement of any unused accrued sick time.

The definition of employee does not include independent contractors or volunteers who perform tasks or duties but are not compensated for their time.

**What can SB 454 sick time be used for?**

Oregon’s sick time law allows employees to use sick time for a wide range of medical reasons whether they are planned or unforeseeable. An employee can use sick time for mental or physical illness, injury or health condition, need for medical diagnosis, treatment of a mental or physical illness, injury or health condition, any qualifying reason under Oregon’s Family Leave Law (OFLA) or Family and Medical Leave Act (FMLA) or to engage in preventive medical care.

Additionally, an employee can take sick time for the care of a family member that meets one of the preceding conditions. The definition of family under SB 454 is consistent with the definition of family under OFLA.

There are many cases where FMLA and OFLA leave are similar reasons outlined in SB 454. In those instances where SB 454 sick time is being used for purposes consistent with OFLA or FMLA, the sick time and FMLA/OFLA provisions may run concurrently.

**Can an employee use SB 454 sick time to deal with the death of a family member?**

Yes, an employee can use sick time to deal with the death of a family member within 60 days of receiving notice of the death. The employee can use the sick time to:

A. Attend the funeral or alternative to a funeral of the family member.
B. Make arrangements necessitated by the death of the family member.
C. Grieve the death of a family member.

**When are employees eligible to use accrued sick time?**

Employees may begin using their sick time once they have completed 90 calendar days of employment. Employers may allow employees to use the sick time sooner as long as the employer treats all employees in a similar fashion. For example: If a district front loads sick time at the beginning of the school year, it would allow the employee who had not worked 90 days to take the sick time concurrently with the sick leave and not create a need for tracking both forms of leave.

**How does the district calculate how much sick time an employee receives?**

An employee receives 1 hour of sick time for every 30 hours worked. The district also has the option to front load employees 40 hours of sick time per year unless the employer invokes the undue hardship provision, then the employer must front load 56 hours per year.
Employers are allowed to implement a reasonable method of calculating hours worked by an employee. For instance, the employer can use the number of hours agreed upon by the employee and employer (e.g., collective bargaining agreement); if the work schedule is predictable (e.g., 30 hours a week) the employer can use that increment of time to calculate the sick time for the employee; exempt employees will be presumed to work 40 hours a week unless the employer can establish they actually work less.

The following are examples of how these calculations would work:

1. The parties collective bargaining agreement establishes that for all full-time employees the work day is 8 hours or 40 hours a week. The work year is 190 days. The amount of time the employee will ultimately accrue is 8 hours x 190 days or 1,520 hours. This is then divided by 30 hours worked for a total of 50.67 hours of sick time a year for this employee.

2. For a 12-month employee who works 8 hours a day, the employee works 2,080 hours a year, which is then divided by 30 hours worked for a total of 69.33 hours of sick time for this employee.

All of the above examples may change if the district decides to limit the amount of sick time an employee can use to 40 hours of sick time each year.

**How much sick time can an employee accrue?**

Employees under this statute may accrue an unlimited amount of sick time. However, SB 454 gives the district the discretion to adopt a policy limiting an employee to accruing no more than 80 hours or using no more than 40 hours a year.

Because school employees have access to sick time above and beyond the sick time established in SB 454, OSBA’s recommendation is that districts either limit accrual of SB 454 sick time to 80 hours at any time or to limit use of sick time to no more than 40 hours a year.

**Can the district use the accrual method for new employees and then change to the front loading method after a period of time?**

Yes. The district can use the accrual method of providing sick time for new employees and then front load their sick time hours. If the district chooses this method, then the district must be consistent with the length of time the accrual method is used prior to moving to the front loading method.

An example of how this process could be used is a situation where an employee is subject to a probationary period, an employer may not want to front load 40 or 56 hours of sick time until the employee has satisfactorily completed his/her probationary period or reached his/her first anniversary with the employer. Upon completion of the probationary period or reaching his/her first anniversary, the employer would then move the employee over to the system of front loading sick time.
If the district decides to front load, does it have to front load sick time for all employees?

No, the district can award sick time differently for different classes of employees. It is important that if the district chooses to do this, that it awards sick time to employee groups based on its customary employment classifications. For example, districts could distinguish between full-time and part-time employees; exempt and non-exempt employees; regular employees and temporary/seasonal employees.

If we rehire an employee that has not been working for the district for awhile do we have to reinstate their previously accrued sick time?

An employee is allowed to have their previously accrued sick time balances restored if they are re-employed by the employer within 180 calendar days of the employee’s separation date.

What increments can employees take their accrued sick time?

SB 454 establishes employees have the right to take sick time in one hour increments. An employer can require that employees take sick time in multiple hour increments not to exceed four (4) hours if the district has notified employees of their decision to invoke the undue hardship provisions under SB 454. If a district invokes an undue hardship, they are then required to front load employees with 56 hours of sick time. This provision would allow the district to continue to coordinate licensed employees sick time with the statutory requirement to pay substitutes in four (4) hour blocks of time.

There is also a separate requirement that any sick time time used by substitutes is required to be used in 4 hour blocks of time.

What does the district have to do to invoke the undue hardship requirement?

The district is required to notify employees in writing of its decision to invoke the undue hardship requirement. BOLI has a notification form for employers to use. The notice is required to communicate to employees what increments of time they are going to be required to use (e.g., 4 hour blocks of time). Once implemented, the notice will be effective until the employer decides to revoke it or the employee leaves employment. Employers are required to retain copies of these notices for the length of the employees’ employment and for a minimum of 6 months following the employees’ termination date. Be sure to check the state record retention rules, this notice may be required to be maintained longer than the 6 months required by BOLI.

What notice is required from an employee in order to be able to use SB 454 sick time?

The rules developed by BOLI require that if an employer is going to implement a notice requirement, these requirements must be in writing in the district policy and provided to the employee. Notice requirements can include:
• A reasonable time by which the employee must notify the employer of the need to use sick time (both for foreseeable and unforeseeable sick time); and
• A reasonable means for notifying the employer they are not going to be coming to work.

When the use of sick time is unforeseeable the employer is allowed to establish a policy that requires the employee to provide notice before the start of their work day or shift. If circumstances prevent the employee from providing the employer notice before the start of their work day or shift they can be required to provide notice as soon as practical.

If the use of sick time is foreseeable, the employer may require an employee to comply with the usual written notice and procedure requirements as long as they do not interfere with the ability to take sick time. Employees are required to make reasonable efforts to schedule their sick time in a manner that does not unduly disrupt the operations of the employer. This includes the employee being responsible for making an effort to schedule medical appointments during slower periods of time, not when a time sensitive work project is due or when mandatory meetings are scheduled.

An employee may be subject to discipline for violating workplace policies and/or procedures if he/she fails to provide notice as required by the employer’s procedures or fails to schedule leave in a manner that does not unduly disrupt the employer’s operations. Any discipline would still need to be consistent with any relevant collective bargaining agreement or other applicable state and federal leave laws (e.g., OFLA/FMLA).

Can the district ask for medical verification if the employee has used sick time?

The district can ask for medical verification after the employee has used sick time for three consecutive workdays. Once the district requests medical verification the employee has 15 calendar days to provide documentation.

If an employer reasonably believes an employee is abusing sick time, this would include suspicion the employee is engaging in a pattern of abuse (e.g., absent every Friday), the employer may require medical verification regardless of whether the employee has used time for more than three consecutive days.

If the sick time is foreseeable and projected to last more than three consecutive workdays, the employer may require verification before the sick time commences or as soon as practicable.

Employers are also required to pay any reasonable costs the employee incurs in obtaining the medical verification that are not paid under the employee’s health plan. This could include any lost wages if the employee is required to use unpaid sick time in order to obtain the medical verification.

In instances where this sick time is running concurrent with other sick time provisions (e.g., ORS 332.507 or OFLA/FMLA), the district should ensure any medical verification request is also consistent with those sick time provisions.
Can an employee with accrued sick time from ORS 332.507 now use the leave for purposes outlined in SB 454?

Not necessarily. First, any leave accrued prior to January 1, 2016, is not impacted by SB 454. Secondly, while some of the reasons outlined in SB 454 are included in ORS 332.507 not every use outlined in SB 454 is required to be applied to leave employees accrue pursuant to ORS 332.507 (sick time for school employees).

These are two separate laws and while the district is required to comply with both, it is not required to allow employees to use sick time they have previously accrued or will accrue in the future under ORS 332.507 for reasons other than those provided in ORS 332.507 or the parties collective bargaining agreement in those situations where the parties have negotiated an expanded use.

Doesn’t SB 454 just create another type of leave for employees to use?

Not necessarily. SB 454 states that in those situations where employers have a substantially equivalent sick leave program already in place, employers are not required to provide additional sick time. Whether or not an employer’s program will be considered substantially equivalent will depend on: when an employee can use sick time (including eligibility, notice provisions and qualifying reasons), the rate of accrual, the rate of pay, documentation requirement and protections from adverse employment decisions due to an employee’s use of the sick time.

Both during the Legislative session and the rule-making process, OSBA was told that as long as school employers sick leave programs were substantially equivalent to the requirements of SB 454, no additional leave would be required.

In many districts the leave programs which are already in place meet most, if not all, of the criteria identified in SB 454 to evaluate substantial equivalency. While districts may satisfy many aspects of this equivalency requirement by simply designating the required number of hours within the current sick leave program as sick time pursuant to SB 454 and allowing employees to use the leave as provided for in SB 454, there are provisions of substantially equivalent in the law that is required that are not covered in sick leave programs.

For example, if a district front loads 80 hours of sick leave pursuant to ORS 332.507 for a full-time licensed employee, and the employer guarantees that 40 (or 56 if the district is requiring leave be taken in more than one (1) hour blocks of time) of those hours are available to the employee consistent with the terms and conditions outlined in SB 454 is not sufficient to meet the substantially equivalent standard because it does not address the other required components to be substantially equivalent under SB 454.

How do other leave laws (e.g., sick leave through ORS 332.507, City of Portland ordinance, OFLA/FMLA) interact with SB 454?

Employers are still going to be required to comply with ORS 332.507 or any other leave law which is applicable as well as the new SB 454 sick time law.
While we recognize the difficulty in administering multiple leave systems for your employees, OSBA suggests districts track the sick time employees are eligible to receive under the new sick time law separately from the leave he/she receives pursuant to ORS 332.507.

There are multiple reasons for this recommendation:

1. The accrual rates are different (minimum of 80 hours versus a maximum of 50.66 hours for a 190-day, 8 hour a day employee);
2. Sick leave under ORS 332.507 is subject to transfer requirements and SB 454 sick time is not eligible for transfer;
3. Sick leave under ORS 332.507 is subject to reporting to Public Employees Retirement System (PERS) while sick time pursuant to SB 454 is not eligible for reporting to PERS for retirement purposes;
4. While there are similarities, there are also some differences in the purposes of sick leave and sick time.

The substantial equivalency provisions create a presumption that where the sick time and sick leave program are used for the same purposes the two laws will operate concurrently. This results in SB 454 sick time being used simultaneously with ORS 332.507 sick leave for the first 40 or 50 or so hours. The actual number of hours employees receive under SB 454 is dependent on his/her full-time equivalency (e.g., the number of hours he/she actually works), how the employer decides to accrue the time and whether or not the employer invokes the hardship rules (these will be discussed later in the FAQs).

How does SB 454 impact any sick time banks maintained by the district?

Most sick leave banks are negotiated and included in collective bargaining agreements. In those instances where sick leave banks are part of collective bargaining agreements, the parties should address in their negotiations how sick time will interact with the preexisting sick leave bank.

SB 454 does not require the creation of sick leave banks for sick time provided pursuant to this law. The law only requires that an employer provide employees the option of allowing employees to donate sick time to another employee if the employer has a policy covering the employee that allows for such donations. Districts should review any sick leave policy to determine the applicability of those policies in this situation.

Does this change in state law require districts to negotiate over the implementation of the new sick time law?

Yes, the collective bargaining law in Oregon will require the district to provide the local union with a notice of the changes that will be made to the current leave provisions of the collective bargaining agreement and the district’s leave policies. Leave provisions, including sick time, is a mandatory subject of bargaining and while the changes to the district’s leave (e.g. sick time) program is a result of a State law, the Employment Relations Board (ERB) has held this does not relieve the district of its obligation to bargain over the impact of change in the working conditions caused by its implementation.
Upon receipt of the notice, the union has the option to bargain the proposed policy and the necessary changes to the collective bargaining agreement.

In those situations where the district’s collective bargaining agreement does not include any provisions related to sick time the district will only need to bargain over the district’s sick time policy.

**If the district receives notice from the union it wants to bargain, can the district use ORS 243.698, the interim expedited bargaining process?**

In most cases the answer to this question is – no.

It is important to remember that ORS 243.698 is limited to negotiations over mandatory subjects of bargaining that are not already a part of the collective bargaining agreement. So, if your district does not have a sick time or sick leave provision in its collective bargaining agreement *and* the parties only need to negotiate over the changes to the district’s sick time policy the interim expedited bargaining process can be used.

However, in those situations where sick time or sick leave is already included in the collective bargaining agreement, the parties will most likely be required to use ORS 243.712 which incorporates the standard 150-day bargaining period, 15 days of mediation, impasses and 30-day cooling off period. Remember these timelines are only relevant if the parties are unable to arrive at a settlement.

OSBA recommends the district discuss the new law’s impact on its collective bargaining agreement and its options with an OSBA labor consultant or the individual who conducts the district’s negotiations.

**Can the district start administering the sick time changes before or during a notice to bargain?**

No, the collective bargaining law in Oregon requires the parties to have completed negotiations over mandatory subjects of bargaining *prior* to implementation of proposed changes.

**How does SB 454 apply to coaches?**

Coaches fall within the law’s definition of employee, therefore they qualify for sick time under SB 454. There is no exemption in SB 454 for those employees who the district allows to take sick time when they are sick without having any corresponding reduction in his/her stipend. In other words, even though coaching stipends are not reduced when a coach is unable to work the employer is still obligated to provide them access to sick time under SB 454.

There continues to be some discussion that coaches may be considered volunteers because the amount of the stipends they receive is merely a nominal fee. Before a district decides to take this approach is it important to consult with an attorney to be sure the specific situation in question meets the rules of what constitutes a nominal fee.
In order to qualify as a volunteer the individual must satisfy the following test:

1. Perform a service for a public agency without promise or expectation of compensation. A volunteer can be reimbursed for expenses and/or receive a nominal fee;

2. Services must be offered freely without pressure or coercion (direct or implied);

3. The individual is not otherwise employed by the same public agency to perform the type of services as those for which the individual has volunteered.

The key in this analysis is on the nominal fee and whether or not the fee is actually analogous to a payment for services being performed. Factors which must be considered is how much the employer is paying the individual and how that compares to what it would cost to compensate someone else to perform the same services.

For instance, one factor that might be used to identify how much the employer is willing to pay for the work is to look at whether or not the district has negotiated a rate of pay for the position within a collective bargaining agreement. Such an agreement would seem to indicate the rate which is applicable in determining how much the district is willing to pay individuals considered to be employees.

If the amount of the stipend is no more than 20 percent of what the district would otherwise pay to hire a coach or an advisor, then the individual will most likely qualify as a volunteer and not be considered an employee. If however, the stipend paid to the individual is more than 20 percent the individual is more likely to be considered an employee.

In those situations where coaches qualify as employees, SB 454 requires the district provide them with sick time in compliance with the new sick time law. The application of this law to coaches is another reason why the district should seriously consider limiting the accrual (e.g., 80 hours) or the number of hours that can be used per year (e.g., 40 hours) - see earlier FAQs on accrual of hours.

**How does SB 454 apply to substitutes?**

The district that maintains the substitute on its payroll and issues the pay check for the time substitutes work are considered the employer for purposes of SB 454. In some instances this may be the local ESD or it may be each individual district for which the substitute works.

In those situations where individual districts are considered employers for substitutes, the district may want to consider developing and implementing a uniform policy for terminating a substitute’s employment with the district in those situations where substitutes do not continue to work for the district on a regular basis (e.g., over 90 days between assignments).
If the district decides to take this approach, it is important to remember that under SB 454 if an employee’s, (a substitute in this scenario), employment is terminated with your district and then returns to employment with the district within 180 calendar days of the separation, the district is required to restore any previously accrued unused sick time.

This is another scenario which may suggest that the district consider limiting the number of hours an employee may accrue (e.g., 80 hours) or use during any leave year (e.g., 40 hours).

In addition, as stated in an earlier FAQ substitutes are not eligible to use sick time in one hour increments but are specifically required under SB 454 to use sick time in four hour blocks of time.

**When is the district required to pay an employee that has used sick time?**

The district is required to pay an employee for used paid sick time no later than the next regularly scheduled pay period.

In those instances where the employer implements a cut off date for purposes of processing payroll and an employee uses sick time after the cut off period, OSBA’s advice is to consider the sick time as being used during the payroll period in which the date falls. For example, December 22nd is the cutoff date for the December payroll, any sick time used by the employee between December 23rd and December 31st would be required to be part of the January payroll.

**Is SB 454 sick time transferable to other education employers?**

No, there is no provision in SB 454 to allow employees to transfer sick time he/she has earned to other education employers when they terminate their employment with the district where the sick time was accrued.

**Do we have to report sick time to PERS?**

No. Employers are to report unused sick leave under ORS 332.507 to PERS, for eligible Tier One or Tier Two members, at the time of their retirement.

SB 454 establishes that employers are required to provide sick time for their employees under specific circumstances.

ORS 238.350 establishes the PERS Unused Sick Leave program that allow Tier One or Tier Two members who are employed in a covered position by an employer participating in the PERS unused sick leave program to have their accumulated unused sick leave converted to a monetary value at the time of retirement. That value is added to the member’s final average salary and may increase their retirement benefit.

A critical distinction between sick leave and sick time is the rate at which employees accrue these hours - ORS 238.350(2)(a) establishes the maximum number of sick leave hours that may be considered for a PERS benefit calculation. If employees are not normally entitled to sick leave, then they are likely to accrue sick time (at a different rate).
Sick time accrual is not covered by the PERS Unused Sick Leave program. In other words, PERS has stated that SB 454’s sick time does not impact the unused sick leave program and only sick leave hours should be reported by districts.

I heard there was an exemption for employees covered by a collective bargaining agreement. My district has a collective bargaining agreement for employees doesn’t that mean the district is exempt?

No. The exemption for employees covered by collective bargaining agreements is very narrow. It applies only to employees who are covered by a collective bargaining agreement, are employed through a hiring hall operated by a union, and the employees’ benefits are provided by a joint multi-employer-employee trust.

Record keeping requirements of SB 454

All records and information maintained by the employer for use in implementing the sick time law are confidential and may not be released without express permission of the employee or otherwise required by law (e.g., subpoena).