



**Eugene City Council**

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# EUGENE CITY COUNCIL AGENDA

June 18, 2014

12:00 PM CITY COUNCIL WORK SESSION

Harris Hall

125 East 8<sup>th</sup> Avenue

Eugene, Oregon 97401

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Meeting of June 18, 2014;  
Her Honor Mayor Kitty Piercy Presiding

**Councilors**

George Brown, President

Pat Farr, Vice President

Mike Clark

George Poling

Chris Pryor

Claire Syrett

Betty Taylor

Alan Zelenka

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**CITY COUNCIL WORK SESSION**

**Harris Hall**

**12:00 p.m. A. WORK SESSION:  
Sick Leave Ordinance**

*\*time approximate*

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# EUGENE CITY COUNCIL

## AGENDA ITEM SUMMARY




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### Work Session: Sick Leave Ordinance

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Meeting Date: June 18, 2014  
 Department: Central Services  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: A  
 Staff Contact: Jason Dedrick  
 Contact Telephone Number: 541-682-5033

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#### **ISSUE STATEMENT**

The purpose of this work session is to receive and discuss the Final Report from the Sick Leave Task Force.

#### **BACKGROUND**

The council has asked staff to move forward with a process to develop a draft ordinance that would establish minimum standards for earned paid sick time for workers within the city limits of Eugene. This effort is similar to legislation that has recently been passed in Portland, Seattle, San Francisco and Washington D.C.

In order to bring forward various policy decisions involved with an ordinance, a Sick Leave Task Force was convened to discuss and vet key information. The goal of the task force was to prepare a report to the City Council of their discussions and investigations. The group consisted of 15 members, including Mayor Piercy and Councilors Chris Pryor, Claire Syrett and Alan Zelenka (a full list of task force members is provided as an attachment to the report).

The task force has drafted a final report of their work that summarizes their process, their thoughts on several significant components of the ordinance, as well as considerations and outstanding questions for the council going forward (Attachment A). The task force co-chairs, George Rode and Sabrina Parsons, will summarize the report at the work session and will be available to answer questions.

#### **COUNCIL OPTIONS**

This is a discussion-only item, meant to help guide council efforts on this issue.

#### **CITY MANAGER'S RECOMMENDATION**

No City Manager recommendation is needed at this time.

Item A.

**SUGGESTED MOTION**

No suggested motions are needed at this time.

**ATTACHMENTS**

A. Sick Leave Task Force Final Report (will be sent separately prior to meeting)

**FOR MORE INFORMATION**

Staff Contact: Jason Dedrick  
Telephone: 541-682-5033  
Staff E-Mail: [jason.p.dedrick@ci.eugene.or.us](mailto:jason.p.dedrick@ci.eugene.or.us)

## **Sick Leave Task Force**

Final Report

June 18, 2014

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### **Sick Leave Task Force Members**

Mayor Kitty Piercy  
Councilor Chris Pryor  
Councilor Claire Syrett  
Councilor Alan Zelenka  
Kevin Billman  
Bob Bury  
Ed Gerdes  
David Hauser

Lili Hoag  
Stephen Michael  
Patty McConnell  
Sabrina Parsons  
George Rode  
Pat Smith  
Karen Stewart



## Sick Leave Task Force Report

This document serves as the final report of the work completed by the Sick Leave Task Force. The Eugene City Council has expressed an interest in looking more closely at a potential sick leave ordinance for the community. The ordinance could require businesses providing service within the city of Eugene to offer sick time to employees on an annual basis. The report contains the following components:

- Task Force Process Summary
- Thoughts on Six Core Ordinance Components
- Areas of Interest Discussed in Meetings
- Other Considerations for City Council
- Final Thoughts from Task Force Members

In addition to these components, the report includes several attachments. The attachments below reflect the materials that were presented to the Task Force or generated as a result of their meetings. These materials are not intended to be comprehensive, reflect the views of any individual task force member, nor are they representative of all of the information that was referred to or exists on these topics.

1. Task Force Scope
2. City of Portland Ordinance
3. City of Portland Administrative Rules
4. Meeting Minutes
5. Overview of Portland's Sick Leave Ordinance – Andy G. Lewis; Hershner Hunter Partner
6. Sick Leave Ordinance: The Yumm! Experience – C. Edward Gerdes; VP and General Counsel
7. Summary of Portland Commissioner Amanda Fritz's meeting presentation
8. Summary of presentation provided by BOLI staff

This report, supplement materials supplied by the Task Force and other community members, and information on the Council's discussion can be found on the City's website:

[www.eugene-or.gov/sickleave](http://www.eugene-or.gov/sickleave)

## Task Force Process Summary

The scope of the Sick Leave Task Force was to provide a report back for the June 18 City Council Work Session to inform Council's discussion of a potential ordinance. The Task Force was not charged with making a recommendation to Council, but rather vet options in order to provide community perspective to Council on various possibilities. Task Force members were asked to:

- Investigate issues and understand facts
- Objectively analyze potential policy options
- Listen to a broad spectrum of viewpoints
- Produce a report of findings addressed to Council

The 15-member Task Force convened four times with meetings ranging from two to three hours in length and facilitated by the Mayor and staff. Below is a brief sketch of each meeting:

- May 8 – Shared best & worst outcomes for the process; brainstormed a list of topics areas and questions the group wanted to learn more about to inform their discussion
- May 20 – Presentation\* on Portland ordinance by a local employment attorney; questions and detailed discussion on ordinance components
- May 29 – Presentation\* by a business representative with employees located in both Eugene and Portland ; detailed discussion on several ordinance components
- June 5 – Presentations\* by City of Portland and BOLI; detailed discussion on several ordinance components

\*These presentations made to the Task Force are attached at the end of this document as slides or a summary if no slides were used.

## Thoughts on Six Core Ordinance Components

This section summarizes the thoughts brought forward by Task Force members on six potential ordinance components identified in discussion. At the direction of City Council, the task force used the City of Portland's enacted sick leave ordinance in order to identify potential implications. City Council also expressed an interest in using Portland's ordinance as way to begin a conversation.

Statements below represent the thoughts of individual members and do not constitute consensus statements or formal recommendations.

### 1. Paid Time Off (PTO)

**In the City of Portland's ordinance, an employer with a PTO policy that provides for employee accrual of sick time that equals or exceeds the ordinance requirements is compliant (exempted). PTO includes traditional employee accounts as well as vacation pay accounts associated with construction trade union employees (Portland Ordinance Page 2 - Section H; Page 3 - Section K, Page 4 - Section M).**

- The Eugene ordinance could recognize PTO policies as being compliant by either allowing employee to carryover unused protected sick time or by allowing front loading of sick leave in advance (max hours of required sick leave) instead of requiring carryover of unused protected sick leave. Portland allows for carryover of up to 80 hours but does not allow for more than 40 hours to be used in any consecutive 12 month period (unless an employer chooses to provide more).
- There is a concern that an employee of a company with a PTO policy that includes vacation and sick leave, *must* use sick leave if sick. The result may be that they come to work sick in order to preserve their PTO to utilize for vacation.
- Building trades represented by a collective bargaining agreement could be exempted from the ordinance as they have a hiring hall situation that includes pooled sick/vacation time from multiple employers (vacation pay account).
- Important to note that even if an employer has PTO policy that is compliant with the ordinance; they may still have new administrative or tracking requirements as a result of the ordinance.

### 2. Paid Leave vs Unpaid Protected Leave and Size of Business

**In the City of Portland's ordinance, businesses that have five or fewer employees must provide unpaid sick leave; businesses with six or more employees are required to provide paid sick leave (Portland Ordinance Page 3, Sections A & B). All employees of an employer count toward the number of employees (temp, part time). Count is based on the number of employees employed each working day during each of 20 or more calendar work weeks (Portland Administrative Rule – SL 4.02).**

- The simpler the ordinance is and the fewer carve outs, the easier it may be administratively to implement
- Determining number of employees (and paid vs earned time) could be challenging if employee numbers change frequently.
- It is important that everyone has access to sick leave and can stay home when illness requires it.
- Some businesses have primarily part-time employees and will inherit more of a financial burden. Simple needs to equal fair.

Note: Statements in this section represent the thoughts of individual members and do not constitute consensus statements or formal recommendations.



- If the Eugene ordinance is based on the Portland ordinance it would be helpful to know what determines the basis for thresholds for cutoff of paid and unpaid leave. Most employers think in terms of Full Time Equivalents rather than number of people employed.
- Employers with part-time employees may not offer sick time so it may cost them to implement something they don't have (even if leave is unpaid, there is still an administrative cost to the employer).
- Discussion needs to be had on whether carve outs are effective in promoting public health and well-being of employees. Part-time employees in Oregon have increased in the past several years, and 2/3 are women who have caring responsibilities outside of work.
- Portland ordinance applies to both high school students and adult workers. Burden is greater on smaller businesses than larger businesses. One Task Force member would like to see us move past the "6" number to 10, 15, 25 (as a cutoff between earned and paid sick leave).
- Doesn't matter what size a company is, it's the average that counts. Studies show that even for smallest businesses, this may be affecting payroll by 1%.
- One company expressed that they average about 1% of payroll for sick pay, and that they have a richer program than what ordinance is offering.
- As a public health initiative, one member was not in favor of exempting employer based on size. In terms of burden administratively, the City should supply support so people don't feel they need to hire legal and/or consulting staff to implement a new sick leave policy to be in compliance.
- Temporary workers could be a potential tracking nightmare for accrual of one hour for every 30 worked, and couldn't really use sick-leave because of their limited time with company. Temporary agencies not being carved out may be a challenge in Portland and they may go to independent contractors.

### 3. Maximum Hours and Carryover

**In the City of Portland's ordinance, employees may accrue a maximum of 40 hours of sick time annually (unless the employer chooses or is required to allow for greater accrual). Sick time accrued that is not used in a calendar year may be used in following years, however employers are not required to allow for use of hours in excess of 40 hours (Portland Ordinance Page 3 - Sections F & G).**

- Being as consistent as possible with Portland's ordinance would simplify things for employers with locations in Eugene and Portland.
- As currently written, the Portland ordinance does not work for workers represented by a construction trade union. In addition to their vacation pay accounts (described under PTO), their higher wages are negotiated based on an expectation of down time and periods without work. If a construction worker works for an out-of-town contractor for 6 months, then the contractor leaves and never returns to the city, that worker's sick time accruals are essentially lost. Likewise, a worker who works for several employers over the course of a year will have to track himself or herself how much sick time is available by each employer. Additionally, because they work for multiple employers, they may never actually be able to use time they have accrued under previous employers.

**4. Effective Date**

**The City of Portland's ordinance was effective on January 1, 2014 (the first day of the year following ordinance adoption).**

- Portland's ordinance went into effect January 1, 2014 but had grace period to educate and not severely penalize people. No enforcement of penalty, but employer would be required to "make right". Eugene may want to have a similar grace period.
- Portland gave a lot of notice to employers via City Council meetings and educational seminars, but did not release administrative rules until early November which is not enough time for employers to implement or make changes to collective bargaining agreements should they choose to do so. The "average" employer may not be able to develop automated payroll systems and train employees in 6 month time frame. A longer frame of time for the period between rules coming out and the effective date is preferred by some.
- Requiring posters might be a burden for employers. One proposal that was discussed by the task force in Portland was to eliminate poster if employees were informed once a year. Telecommuting employees would need to have a poster at home. Recommended giving notice letter or electronic bulletin board.
- More time/information is needed:
  - This is a very short turn-around for businesses if Council adopts in July and it is effective in January (there was some discussion that July 1, 2015 might be a better effective date).
  - Information on how Portland's ordinance is working isn't available yet and a January or July start is being considered. Council may want to wait for data from Portland.
  - Council had a one year study for Willamette Street changes. Waiting one year to measure the effectiveness of Portland's ordinance before going forward is preferred by some.
  - A list of facts that weren't available would have been a preferred point of discussion for some. Some recognized the point about consistency with Portland's ordinance, but Portland may not be the only model, as there are many other examples. More time to discuss and analyze what's worked and what hasn't would be helpful to some.
- Need to implement as soon as possible:
  - There are cities that have been working on this since 2007. Portland spent a lot of time on their task force to collect and discuss information. For some it's about the people who have been waiting so long to get this and those people who have been working 20-years and not getting sick pay.
  - After reviewing Portland's Purpose statement, the longer this process goes, then it's that much longer that the purpose would not be fulfilled (if Eugene had similar purpose statement).
- Being as consistent as possible with Portland's ordinance would simplify things for employers with locations in Eugene and Portland.

## 5. Collective Bargaining Agreements

**The City of Portland's ordinance does not exempt employers that had employees subject to a collective bargaining agreement, nor does it require that these CBA's needed to be renegotiated.**

- Hearing the perspective of union workers is really helpful. It would be helpful to get management's perspective. Would like to focus on benefit vs. burden. Most of the other ordinances exempt collective bargaining agreements and it would be helpful know why.
- Construction trade unions request exemption because they already have generous pay and benefit packages, many of which include vacation pay accounts. They work for multiple employers over the course of a year and are dispatched through a hiring hall. Each employer pays their share of benefits and wages based on the CBA and there is no disruption in the employee's benefits based on their employer. Trade unions want to be supportive of other groups and unions, but it really doesn't work for these represented crafts of workers. Wages range from \$25-60 per hour, with benefit packages of \$15-20 per hour. This accounts for downtime and time off. There is a function of having a reserved account available when someone is not working and having multiple employers over the course of a year; trade unions are different and they feel like they have build this oddity into their bargaining agreements. In addition, it may be a false benefit if a contractor comes into town and leaves.
- The jury may still be out on how it will play out for union perspective. Sounds simple on front of it, but when one really dives into contractual agreements, some larger employers will argue that they have to amend contracts that apply to employees in many states. Suggest looking at Seattle ordinance as it doesn't exempt all union contracts in all cases.
- If this ordinance excludes collective bargaining agreements, people may get the message that they should to go to work on first day of being sick. Ordinance helps cover those workers some have expressed interest in covering, ensuring workers don't go to work sick.
- There have been a lot of assertions for advocacy for or against this exemption. It seems that if exemptions for collective bargaining agreements are not included then everyone else is swept in. Council could research how many collective bargaining agreements would be impacted by an ordinance and a proposed collective bargaining agreement exemption.

## 6. Two-City Commuter

**The City of Portland's ordinance requires that employees who travel to the City of Portland and make a stop for the purpose of conducting work will accrue benefits only for the hours they are paid to work in the City (Portland Ordinance Page 3 - Section E). Employees can only use sick time during the times they were scheduled to work in the City (Page 5 - Section D).**

- If an employer in Springfield has an employee who does minimum amount of work in Eugene it may be burdensome for employer to keep records.
- The 240 hour minimum in the Portland ordinance was established to help define who is eligible to receive paid sick leave. This also means that once an employee works 240 hours in the city, they do not have to be reestablished as an employee in the future.
- 240 hour minimum could be challenging if a person only works 220 hours.
- Current Portland ordinance is not clear on this issue and it could be an interpretation left to legal process. More detail is provided in the administrative rules, however.
- How might Council engage our regional partners in this decision given that the ordinance could affect employers in the area and multiple cities?

## Areas of Interest Discussed in Meetings

In order to provide Council a sense of Task Force members' interest and work, this section includes a list of topics covered at three of the four meetings. This scope was primarily developed at the first meeting on May 8 by members via a group conversation. Most of these items were addressed by presentations and group discussions and are highlighted under "Thoughts on Six Core Ordinance Components." Outstanding items are included in the next section "Other Considerations for City Council."

May 20

- Need to work on clarifying "snow days" and how they fit into Ordinance
- More clarification is needed for what is considered a "Public Health Emergency"
- We need to determine what's missing; address abuse such as "tardies"
- More clarification is needed around retaliation claims increasing as a result of the Ordinance
- More clarification on how FMLA and OFLA laws are related to Ordinance
- Would like more comparative data from other City Ordinances
- Implications of future regulations for businesses that may come that could put greater strain on business

May 29

- We need more clarity for employees about having to use sick-time if sick (i.e. coming to work sick, etc.)
- More information on hiring halls (building trades vacation pay accounts)
- More clarification on Administrative Rules used in Portland
- Look at possibility of employees having option of not taking sick-time or PTO
- More clarification around employees being counted as bodies vs FTE

June 5

- It would be helpful to get union management perspective on how collective bargaining agreements should be addressed in ordinance
- It would be helpful to understand why other cities chose to exempt collective bargaining agreements

## Other Considerations for City Council

This section includes areas of interest identified by the Task Force that either fall within the purview of City Council or were outstanding as of the last meeting.

- Connection to Council Goals – How is pursuing this ordinance related to existing Council Goals?
- Cost – What are the costs for the City to administer (as well as assist employers with complying with) a sick leave ordinance, and what costs will the City incur for being subject to and ordinance?
- Triple Bottom Line – Will a TBL analysis of the ordinance be completed?
- Comparison of timing to other City processes – How does the timeline from initiation to Council action compare to that of other recent projects?
- Input on draft ordinance – How will the public provide input?
- Research on Eugene companies – Will the Council pursue Eugene-specific data?
  - What are the actual costs to a business to provide and implement sick leave?
  - Who in Eugene currently receives paid sick leave?
  - Demographics of people that don't receive paid sick leave
- Information on public health, economic health and statistics of stable families – Request for more information and Council consideration of this information

## Final Thoughts from Task Force Members

At their final meeting, Task Force members were given an opportunity to share their final thoughts for Council during a two minute period. The following transcribes their comments. In two instances written comments were referenced by members verbally because they requested inclusion of these additional comments during their allotted two minute round. These written comments have been posted on the City website (see [www.eugene-or.gov/sickleave](http://www.eugene-or.gov/sickleave)) and also forwarded to City Council.

### **Claire Syrett – Eugene City Councilor**

Thank you very much for everyone's participation in this task force and the folks who come to witness and provide public comment and the folks who came to present and give us information. From my position it's been very, very helpful to illuminate the issues and the concerns and the challenges of crafting an ordinance that maybe will improve upon the ones that are out there. And helping us really identify what are the issues and values that we want to have reflected in what we craft here for Eugene. So I'm very appreciative of everyone's time and good thinking and the good thinking and time that we're going to put in. You will all continue to be a part of this process as we go through the next couple of months of this work so just wanted to express my gratitude.

### **Chris Pryor – Eugene City Councilor**

I've mostly been listening because I know I'm going to be weighing in on this later on so I wanted to make sure I heard everything that was being said here and give it the full weight it deserves. From what I've been hearing, for there are three principles core issues that we've been talking about. The first one is protection and safety, which I think is one I've not heard from anybody a really thoughtful argument why we shouldn't have protection and safety. I haven't heard anybody say I want the right to fire people when they're sick or I want the right to be able to make them come in when they're sick. And so I think that one if we were interest based, it would be one that we're all pretty much have a common interest in. The second one then is around compensation and equity. Should or should it not be paid, at what level should it be paid, how do you deal with pay. And I heard a little creeping in about this is an opportunity to create pay equity or a way to work on the issue of pay equity and I want us to be thoughtful about adding that element to this conversation and the degree to which it adds to and I'm not saying one way or another but it's an additional element and it's not this element it's another element. The third one for me is administration and for me a sovereignty issue and you're trying to accomplish the first two with the third one. While I agree we want to try and accomplish the first two if it's possible to do. I know we don't want to, in accomplishing the first two, create an enormous burden with the first one and that seems to be what we've been spending most of the time talking about is the third element, the administration and the sovereignty. Most of the stuff in this task force report is going to be around how you administer this, how do you do it in a way that to get one and two you don't create an enormous burden in number three and that will be my interest in the upcoming conversations. I want to get to one and two. I don't want to get to one and two at the expense of number three. I think that will be a lot of what we will want to investigate. And that's why it was so important to hear what everybody has to say, everybody here is invested in not creating problems in number three as we work to try and achieve our common interests.

### **Patty McConnell – President, Old Dominion Collision Repair**

First of all, thank you for inviting me to be part of the task force. I wrote a letter that I could read but I'm afraid that if I read it, I'm going to have to do it really fast so I'm requesting that it just be put in the document (see [www.eugene-or.gov/sickleave](http://www.eugene-or.gov/sickleave)). I also made copies so that the business owners that have been here can see it also because I was asked on behalf of hundreds of different businesses to represent them here. Their voices are really important to me and I'm having a difficult time putting my name on this because I do not feel like they've been heard so that's why I'm writing this letter. It is their voice and I would like to know that you have considered that. If you do pursue the sick pay ordinance, this is the most important thing to me and I believe to the people that have talked to me and called me and emailed me and stopped me on the street and approached me at grocery stores and restaurants and at my church and in

civic places. That you thoughtfully consider the unintended consequences, slow down the process, that you make sure there are City resources to help fund assistance if you do go forward with this, that you start no earlier than July of 2015 and allow a six month implementation and most importantly that you do listen to the voice of the small business community as they have much to offer to City Council.

**Bob Bury – CEO, Euphoria Chocolate Company**

First of all, I appreciate the process. It's been very civil which is really nice and I appreciate the time from the folks who come as well. I would really just like to urge the council to look at this on its own merit and not look at it as part of a daisy chain of things happening around the state. I think we need to look at it in terms of our own needs as a city. I believe in sick pay and other benefits. I provide it for my employees and I think it's an important thing but I recognize that I'm different from a temp agency, I'm different from the building trades, and a lot of other organizations so I hope that Council takes the time to look at all of those various situations and not feel like we have to make an exactly like somebody else's ordinance because this is Eugene. That's basically it and I hope we take the time to develop it properly and also to explain it properly. Portland said it takes a year and it's probably going to take that long.

**Stephen Michael – State Director, The Main Street Alliance of Oregon**

I actually also wrote a letter which I feel like would be rushed through if I tried to read the whole thing too so I'll pull a card from Patty and I'll send that in afterwards (see [www.eugene-or.gov/sickleave](http://www.eugene-or.gov/sickleave)). But definitely, thank you very much for the process. I think that getting the small business voice heard on this issue is incredibly important and obviously we've seen that small business is divided on this issue. That's something that we've been saying the whole time. We've talked to hundreds of business owners here in Eugene and over the course of the last year I've been walking the streets talking to people about this issue. Out of the folks we talked to, 34% didn't offer any kind of paid time off, paid sick time. Excuse me, 34% did offer it, 66% did not offer it. But out of those same people that answered that they weren't offering it, over half of them, 56% said that they would support it as a standard for all employers. So these are small business owners that care about their employees. They care about their community, they care about the health of their community, help the workforce of their customers. Its business owners that want to do the right thing but want to make sure there's a level playing field for everybody. So we see one key point is business is divided on this issue but it's the right thing to do. We see a lot of businesses, many of whom oppose this kind of benefit so their slowing down the process it seems just for the sake of slowing down the process but we also know that good business attract good employees and if you treat your employees well we've seen that they want to stick around and it reduces your costs overall and it increases work place moral and it does a whole bunch for your customers respect of you as a business owner and as a community member. I would just say thank you very much for taking the time outside of the already extensive City Council process of looking through it. Thank you.

**Alan Zelenka – Eugene City Councilor**

Thank you all for taking the time and spending your, what have actually been nice evenings here instead, and away from your family and businesses so I think it was very important to hear everybody's point of view and hear what you had to say. This task force is part of our input as council we have many other venues besides this one, we have the forums which have been going like gang busters, we've heard people talk at those, the public comment periods, we have this task force, we have the seven public meetings that the council has scheduled to talk about this, we have the public hearing, and people stop us at the store all of the time and talk to us, call us. There are lots of different ways that we get input and it's much, much broader about this. I did learn a great deal about this ordinance. It's a multidimensional thing. There's the public health issue, there's the equity issue, business impact issue, and then there's the administrative issue, and the rules part. I think we will Eugeneize it and we'll tweak it, and I think we'll make it better. I think a lot of that transpires in coming out of that legislative intent into the administrative rules. Fortunately we have lots of examples of administrative rules so we they're not going to have to start from

scratch which would be a horrendous feat for people to do. So they can use those as a starting point. I think that process once the ordinance, sometime after the ordinance gets proposed and the public hearing, maybe this group can reconvene and talk about that. Also with the administrative rules I hope that if it passes, you'll be participating in that as well.

**Kevin Billman – Director of Legislative & Community Affairs, United Food & Commercial Workers Local 555**

I just want to take a moment to thank you all for allowing me to be a part of this task force and thank my co participants on the task force for the time. I echo a little bit of what Alan said and I'm glad you are willing to take the time and the effort to be here and show dedication to this. I feel that this task force process has done a very good job of hearing the concern of business and allowing business to bring their concerns and I think we're at a point now where we really need to turn to hear the voices of the people, and ensure the needs of working people are addressed. The workers have been waiting and they can't wait anymore. Now's the time, now's the time to do this. We need to create a floor, a standard, and then we need to raise everyone up based on that standard. For UFCW specifically, we have over 400 workers in Eugene, they do have sick pay. The third day that they're scheduled to work that they miss, is when they can start receiving their sick pay. We need to ensure that all workers in Eugene are able to take sick time when they need it. Our workers in this area have direct contact with people. We handle their food, we handle their cash, we work at the deli counter, at the bakeries, we're cutting the meat that you're taking home. We want people to be able to stay home and take care of themselves without jeopardizing their family paychecks when they do it. They need time to recover if they're going to be healthy when they're dealing with the public. This policy would help them. They'd be able to take that first day sick and not have to work until the third day before being able to take it. So many illnesses, they just require that one day of rest. A child with a small stomach bug, a 24 hour stomach bug, an elderly parent that needs to support after surgery, many things can be taken care of in a day or two. Paid sick days are going to protect the economy and security of those families and the public health of the community at large. That's why I believe that the sooner we can act on this the better, and I encourage the City Council to act on this.

**Lili Hoag – Policy Director, Family Forward**

As a representative of the Everybody Benefits Coalition, I am also grateful that we had this task force. I certainly learned some new things. We've been talking to folks for the better part of a year about paid sick days in Eugene and we believe that after that discussion, including talking to 3200 members of the community that are in support of sick days. You know we believe that there should be a policy that's as inclusive as possible, and that's as easy to use for employees and employers and that the best way to do that is to include all workers. We also believe that this should include protections that are paid. This is important for those folks that are experiencing domestic violence or for people that are just working low wage jobs. They would not otherwise be able to use this time if they were not able to make money and they would have to choose between putting food on the table potentially or going to work sick. We don't see that right now as a real choice. We believe that one of the benefits that has not been talked about on this task force are the public health benefits. When people get preventative care they're less likely to use emergency services which will reduce costs on our overall health care system which we know is important to employers right now, certainly. I guess the broader point is that, you know, though this has been, there is a business task force that's discussed this, and you've all helped to raise some issues of concern for those that are here, there are 25,000 workers who also should have their voices heard. We have actually, as a coalition, done a poll that showed that 75% of Eugeniens support the council themselves passing a sick day ordinance. So while some people would say this is too fast, some would say that they've worked for 20 years without a single paid sick day and that they are done waiting.



**John Mohlis (for Pat Smith) – Secretary-Treasurer, Lane, Coos, Curry, Douglas Building Trades Council (Pat Smith)**

Thanks for allowing me to be here tonight. I represent the building trades and I'm basically going to repeat what I said earlier because I guess I need to do it to be on the record. For the union building trades we respectfully request to be exempted from this ordinance and the reason why, and I said it earlier, the transient nature of our industry where employees move not only from employer to employer to employer, not just on a weekly or monthly basis but from geographical jurisdiction, from city to county to different areas. We feel like we've already got, based on the wages we've negotiated, and our vacation pay, we've already got that built in to our pay and our collective bargaining agreements with our employers and we'd like to leave those intact and not have this affect that relationship. I'd like to point out too that this request is coming from the workers. It's coming from the workers themselves not management. Now you mentioned Seattle and if we have to bring our employers in and both of them would like to be exempt, we could do that. I guess that would be different from others that are asking for an exemption. This is the workers saying that we want to be exempted because of the relationship we have in our collective bargaining agreements with our employers. We think we're covered, thank you.

**Ed Gerdes – Vice President & General Counsel, Café Yumm!**

Thank you, Mayor. It was a privilege serving on this task force with all of you. Last week after I made my presentation, a member of the audience approached me and said, "Ed, excellent presentation, I have a question. What's your position?" So today let me advocate for our position for a minute and half. One, we believe employees deserve time off for sick leave. I agree with Councilor Pryor. Two, ideally all employers would be able to provide that time off. Three, barring that, government intervention is required. Ideally that would happen at the federal and the state level. Hasn't happened yet so we're at the city level. I would encourage the City to advocate at the state level for statewide sick leave policy. I know we will be doing that. For the City's ordinance, let's maintain consistency between the cities. Start with the Portland ordinance, adopt it uniformly, except for four changes. We can improve it in four ways. One, enforcement, let's allow administrative enforcement, not law suit enforcement. Two, exemptions. Adopt Seattle's collective bargaining agreement exemption so that's exempted. Volunteers, interns, and home based employees. Three, eligibility. Go with six months after hire rather than ninety days after hire. Four, accrual rate. One hour for every 40 hours worked. The rest of it, we can deal with in the administrative process. Thank you.

**Sabrina Parsons – CEO, Palo Alto Software**

Again I want to thank everyone and thank you for asking me to be on the task force. I would say as a person who runs a business, we already do this for our employees and I think all employees and all people who work should be afforded the right to stay home when they're sick. As a working parent, I feel even stronger about it. I can't even conceive of being in the position of having to make a decision between my sick child and am I going to get fired. I think it's an untenable place to put anyone. I think Eugene is a city that has often throughout history to be very progressive and it's time for Eugene to do that and say we're going to do the right thing. And we're going to do what the United States and the state hasn't done. As a country we fall woefully behind all other first world countries when it comes to maternity, paternity, time off. You know sometimes the government has to step in and advocate because we aren't doing it and it just feels like it's how do we let a single parent who should be staying home sending that child to school sick because there's no other choice and this poor, sick six year old ends up in the classroom when they shouldn't be. All of us have been sick and no one wants to be anywhere but home and when you're a kid. No parent ever, ever wants to make that choice. Do I put food on the table or do I stay home with my sick child. That is then why people spiral into homelessness and other more terrible situations. And then there are ramifications from a tax payer view on that side of it as well. I just feel very strongly that it shouldn't be about

government intervention or any of that. It should be about people.

**George Rode – Owner, Stadium Automotive, Euro-Asian Automotive and Autohaus**

First of all, I want to thank all of you particularly Kitty and the City staff, how incredible you are to workout. What I feel like, particularly after hearing from you two, is that I'm on a hill and there's a snowball. I mean you've gotten the snowball going at a very, very fast pace. I put out my hands and go what the heck is coming down the thing. I am a small business advocate. I'm also president of two non-profits that it's going to affect adversely. I feel that it hasn't been a playing field because you've been working on it for months, you say a year you've been down here polling. I do deal with a lot of small businesses and as a matter of fact, a lot of people come and testify. Every, 100% of small business that I start telling, they go, "What are you talking about? What? That's outrageous". I've heard more people get outraged at this and they don't know. They just have no idea that this is coming down. I also see a lot of small businesses fail. By the way, for the record, I have sick leave. I believe in sick leave. I'm a successful business man. I see a lot of small businesses go out of business. By the way, it's their baby, it's their livelihood, it's what they do. Talking to home health person, they can't afford this. They're going to sell out to the big wig that can charge more. Talking to somebody that is considering rebuilding in Eugene just yesterday. They said, "I don't think we're going to build here". It is a major employer, we're talking well over 150 people. They're probable not going to build in Eugene. I think small business community, it's going to be very hard on the economics of it. Keep in mind, businesses pay twice. Once for the property tax and once for the personal property tax so they're a very big income.

**Dave Hauser – President, Eugene Area Chamber of Commerce**

First of all I appreciate the opportunity to participate. The Eugene Chamber has been around for a long time. We're 100% locally owned and operated. I think that makes us unique. I really have appreciated everyone's participation. It's been a great collection of facts, assertions, and advocacy and hopefully that will all be helpful to the council. I honestly don't believe that moving forward with and ordinance is in the best interest of the community. I think it's one of those great cases where good intention does not necessarily translate into great policy and I think this is one of those times that premise will be true. I would have rather seen an approach where the City made some efforts initially to educate, encourage, and support businesses in their efforts to provide leave in a way that works for their business instead of sort of a clumsy sort of one size fits all ordinance. I understand that we're going to move forward and if that's the case I think the City would be well served to consider some modifications to the Portland ordinance to do what Alan said, Eugenify it. I think the guidance there should be based on burden and benefit and try not to solve every problem with this ordinance. I think a threshold for ten employees or more for paid sick leave makes sense. I think that represents 78% of the businesses in Eugene that have ten employees or less yet they don't represent a significant percentage of the employees. So by creating that threshold higher, you're relieving a burden from a very small group of businesses but you're not impacting a significant number of employees. I think the July 2015 or after implementation date is good, I think removing the private right of action is a step in the right direction. I honestly believe that a sunset that creates the formal review of the ordinance would make sense.

**Karen Stewart – Local Government Affairs Director, Century-Link**

Thank you very much for giving me the opportunity to participate in the task force. It's been a real privilege to meet everyone and to learn more about the city of Eugene, I have enjoyed that aspect of the process very much. Century-Link appreciates the opportunity to participate in the sick leave task force and provide comments regarding the City of Eugene's proposed changes to the city code that would require protective sick time for employees of businesses who work in the city of Eugene. Century-Link understands the council's goal of assuring that persons who work in Eugene businesses have adequate time away from work and receive compensations when experiencing medical issues that do not allow them to report to work. In determining benefit packages for its employees, Century-Link has similar goals and is proud of the

comprehensive benefit package it provides to its employees. Century-Link also spends a considerable amount of time negotiating with unions who represent many of its employees to offer a comprehensive set of benefits that addresses amongst other terms of employment, healthcare, disability, and time off provision. Century-Link honors and values its union contracts. Consequently, Century-Link requests that the City of Eugene adopt an ordinance, or provision, similar to the City of Seattle where collective bargaining contracts that unions agree, and more importantly union employees agree, that the terms of the negotiated union contract prevail in lieu of a strict application of a proposed ordinance. As I've already mentioned the CWA contract that covers employees in Portland, it's also covering employees here.

**Kitty Piercy – Mayor, City of Eugene**

I wanted to say thank you to all of you for agreeing to sit around the table and have this conversation even though sometimes it's hard as you have very strong views. I want to thank the staff for diligently trying to capture what you're saying and keep their opinions out of it because that's what their job is. And I thank everybody for coming that has given us their testimony and thoughts and I just want to appreciate you all. Now we're turning to the next chapter in this conversation. Thank you very much.

## Sick Leave Task Force

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### Objective:

The City Council has expressed an interest in looking more closely at a potential sick leave ordinance for the community. The ordinance could require businesses providing service within the city of Eugene to offer sick time to employees on an annual basis. The goal of the Sick Leave Task Force is to bring information to a work session on June 18 to inform Council's discussion of a potential ordinance. The Task Force will not make a recommendation to Council.

### Membership:

Councilor Syrett	Ed Gerdes
Councilor Zelenka	Patty McConnell
Bob Bury	Karen Stewart
Sabrina Parsons	Brittany Quick-Warner
George Rode	Lili Hoag
Pat Smith	Kevin Billman
Stephen Michael	Councilor Pryor

### Scope:

There are a range of policy decisions that could shape the ordinance. The Task Force can vet options in order to provide community perspective to Council on various possibilities. In order to do that the Task Force is asked to:

- Investigate issues and understand facts
- Objectively analyze potential policy options
- Listen to a broad spectrum of viewpoints
- Produce a report of findings addressed to Council

### Meetings:

The Task Force will hold four meetings. While formal representation is reflected above, technical experts will be asked to attend meetings as needed in order to provide information to the group. The Task Force will also have an opportunity to listen to interested parties during public comment periods held at most meetings.

- **Thursday, May 8, 4 – 6 p.m. at 940 Willamette Street, Suite 200, Chinook Conference Room**
- Tuesday, May 20
- Thursday, May 29
- Thursday, June 5
- City Council meeting on June 18

**EXHIBIT A --- AMENDED****TITLE 9 -- Protected Sick Time****Chapter 9.01 Protected Sick Time**

**9.01.010 Purpose.** The purpose of this Chapter is to promote a sustainable, healthy, and productive workforce by establishing minimum standards for Employers to provide sick leave and to ensure that all persons working in the City will have the right to earn and use paid sick time. Allowing employees to earn and take sick time will maintain a healthy workforce and promote a vibrant, productive, and resilient City. It is the City's aspiration that all persons working in the City will be provided the right to earn and use paid sick time.

**9.01.020 Definitions.**

For purposes of this Chapter, the following definitions apply:

- A. "City" means the City of Portland as defined in Title 1 of the Code of the City of Portland.
- B. "BOLI Commissioner" means the Commissioner of the Bureau of Labor and Industries (BOLI) of the State of Oregon as established by ORS 651.020.
- C. "Employee" means an individual who renders personal services to an Employer where the Employer either pays or agrees to pay for the personal services or suffers or permits the individual to perform the personal services. "Employee" includes Home Care Workers as defined by ORS 410.600(8).
- D. "Employee" does not include:
  - 1. A copartner of the Employer
  - 2. An Independent contractors
  - 3. A participant in a work training program administered under state or federal assistance laws;
  - 4. Those who are participating in a work study program that provides students in secondary or post secondary educational institutions with employment opportunities for financial and/or vocational training; or
  - 5. Railroad workers exempted under the Federal Railroad Insurance Act, 45 USC 363.
- E. "Employer" means the same as that term is defined in ORS 653.010(3), but does not include:
  - 1. The United States Government; or

2. The State of Oregon including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or
  3. Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City.
- F. "Family Member" means the same as that term is defined in ORS 659A.150 (4) and includes domestic partners as defined under ORS 106.310.
- G. "Health Care Provider" means the same as that term is defined in ORS 659A.150 (5)(a).
- H. "Paid Time Off" or PTO means:
1. A bank of time, including time accrued in regular increments according to an established formula, provided by an Employer to an Employee, that the Employee can use to take paid time off from work for any purpose, including the purposes covered by this Chapter; or
  2. A contribution made by an Employer to a vacation pay account, in the name of a construction trade union Employee covered by a collective bargaining agreement, that the Employee may cash out or use for any purpose, including the purposes covered by this Chapter.
- I. "Sick Time" means time that has been accrued and may be used by an Employee under this Chapter, and that is calculated at the same hourly rate and with the same benefits, including health care benefits, as the Employee normally earns during hours worked and is provided by an Employer to an Employee at the accrual rate described in Section 9.01.030.
- J. "Sick Leave" means time off from work using Sick Time.
- K. "Retaliatory Personnel Action" means:
1. Any threat, discharge, suspension, demotion, other adverse employment action against an Employee for the exercise of any right guaranteed under this Chapter, or
  2. Interference with, or punishment for, participating in any manner in an investigation, proceeding or hearing under this Chapter.
  3. Adverse employment actions based on Sick Leave use not covered in this Chapter are not Retaliatory Personnel Actions.
- L. "Year" means any consecutive 12-month period of time that is normally used by an Employer for calculating wages and benefits, including a calendar year, tax year, fiscal year, contract year, or the year running from an Employee's anniversary date of employment.

**9.01.030 Accrual of Sick Time.**

- A. Employers with a minimum of 6 Employees shall provide Employees with a minimum of one hour of paid Sick Time for every 30 hours of work performed by the Employee, within the geographic boundaries of the City, except as otherwise provided in this Chapter.
- B. Employers with a maximum of 5 Employees shall provide Employees with a minimum of one hour of unpaid Sick Time for every 30 hours of work performed by the Employee within the geographic boundaries of the City, except as otherwise provided in this Chapter.
- C. Employees who are paid base wage plus piece rate, tips or commission shall accrue and be paid Sick Time based on the base wage.
- D. Salaried executive, administrative or professional Employees under the federal Fair Labor Standards Act or the state minimum wage and overtime laws will be presumed to work 40 hours in each work week for purposes of earning and accruing Sick Time unless their normal work week is less than 40 hours, in which case Sick Time is earned and accrued based upon that normal work week.
- E. Employees who travel to the City and make a stop as a purpose of conducting their work accrue benefits under this Chapter only for the hours they are paid to work within the City.
- F. Employees may accrue a maximum 40 hours of Sick Time in a Year, unless the Employer provides, or is contractually obligated to provide, more. Sick Time equivalent to this amount may be given at the beginning of a Year to meet this requirement for accrual.
- G. Sick Time accrued by an Employee that is not used in a calendar year may be used by the Employee in the following Years. An Employer is not required to allow an Employee to carry over accrued hours in excess of 40 hours.
- H. If an Employee is transferred by an Employer to a separate division, entity or location of the Employer within the City, the Employee is entitled to all Sick Time accrued at the prior division, entity or location and is entitled to transfer and use all Sick Time as provided in this Chapter. If a Sick Time equivalent is given at the beginning of a Year, in accordance with subsection G of this section, the Employer is not required to allow an Employee to carry over accrued hours.
- I. Accrued Sick Time shall be retained by the Employee if the Employer sells, transfers or otherwise assigns the business to another Employer and the Employee continues to work in the City.
- J. An Employer shall provide previously accrued and unused Sick Time to an Employee who is rehired by that Employer within six months of separation from that Employer. The Employee shall be entitled to use previously accrued Sick Time immediately upon re-employment.
- K. An Employer with a minimum of 6 Employees who provides a minimum of 40 hours in a Year of paid time off through a PTO policy, or an Employer with a maximum of 5 Employees who provides a minimum of 40 hours per Year of unpaid time off, that can be

used under the same provisions of this Chapter, is not required to provide additional Sick Time.

- L. Sick Time will begin to accrue for Employees who are employed on the date this ordinance takes effect on the effective date. New Employees shall begin accruing Sick Time on commencement of employment.
- M. An Employer with a Sick Leave or PTO policy in effect that provides the Employee with accrual of Sick Time that equals or exceeds the requirements of this Section is compliant with this section.

**9.01.040 Use of Sick Time.**

- A. An Employee becomes eligible to use Sick Time when he or she has worked for an employer within the geographic boundaries of the City for at least 240 hours in a Year. Once an Employee becomes eligible to use Sick Time he or she remains eligible regardless of the number of hours worked for that employer in subsequent Years.
- B. An Employee may use Sick Time for the following qualifying absences:
  - 1. Diagnosis, care, or treatment of the Employee's, or the Employee's Family Member's, mental or physical illness, injury or health condition including, but not limited to, pregnancy, childbirth, post-partum care and preventive medical care;
  - 2. Purposes described in ORS 659A.272 Domestic Violence, Harassment, Sexual Assault or Stalking.
  - 3. An absence from work due to:
    - a. Closure of the Employee's place of business, or the school or place of care of the Employee's child, by order of a public official due to a public health emergency;
    - b. Care for a Family Member when it has been determined by a lawful public health authority or by a Health Care Provider that the Family Member's presence in the community would jeopardize the health of others; or
    - c. Any law or regulation that requires the Employer to exclude the Employee from the workplace for health reasons.
- C. An Employee may use Sick Time:
  - 1. In increments of one hour, unless a lesser time is allowed by the Employer. Where it is physically impossible for an Employee to commence or end work part way through a shift, the entire time an Employee is forced to be absent may be counted against an Employee's Sick Time.
  - 2. To cover all or part of a shift.
  - 3. To cover a maximum of 40 hours per Year, unless otherwise allowed by the Employer or as provided by law.



- D. An Employee may not use Sick Time:
1. If the Employee is not scheduled to work in the City on the shift for which leave is requested; or
  2. During the first 90 calendar days of employment, unless the Employer allows use at an earlier time.
- E. Except as allowed under subsection 9.01.040 G, An Employee, when absent from work for a qualifying reason under subsection 9.01.040 B, shall use accrued Sick Time hours on the first day and each subsequent day of absence until all accrued time has been used.
- F. An Employer may not require the Employee to:
1. Search for or find a replacement worker as a condition of the Employee's use of Sick Time.
  2. Work an alternate shift to make up for the use of Sick Time.
- G. If the Employer allows shift trading, and if an appropriate shift is available, then the Employer shall allow the Employee to trade shifts instead of using Sick Time.
- H. Employers shall establish a written policy or standard for an Employee to notify the Employer of the Employee's use of Sick Time, whether by calling a designated phone number or by using another reasonable and accessible means of communication identified by the Employer for the Employee to use.
- I. The Employee shall notify the Employer of the need to use Sick Time, by means of the Employer's established policy or standard, before the start of the employees scheduled work shift or as soon as practicable.
- J. When the need to use Sick Time is foreseeable, the Employee shall provide notice to the Employer by means of the Employer's established policy or standard as soon as practicable, and shall make a reasonable effort to schedule the Sick Leave in a manner that does not unduly disrupt the operations of the Employer. The Employee shall inform the Employer of any change to the expected duration of the Sick Leave as soon as practicable.
- K. For absences of more than 3 consecutive days, an Employer may require reasonable documentation that Sick Time has been used for one of the purposes listed in Subsection 9.01.040 AB, including but not limited to:
1. Documentation signed by a licensed Health Care Provider,
  2. Documentation for victims of domestic violence, harassment, sexual assault or stalking as provided in ORS 659A.280 (4), or
  3. A signed personal statement that the Sick Leave was for a purpose covered by Subsection 9.01.040 B.
- L. If an Employer chooses to require documentation of the purpose for the use of Sick Time, the Employer shall pay the cost of any verification by the Health Care Provider that is not covered by insurance or another benefit plan as provided in ORS 659A.168 (2).

- M. Employers suspecting Sick Leave abuse, including patterns of abuse, may require documentation from a licensed Health Care Provider verifying the Employee's need for leave at the Employee's expense. Indication of patterns of abuse may include but are not limited to, repeated use of unscheduled Sick Time on or adjacent to weekends, holidays, or vacation, pay day, or when mandatory shifts are scheduled.
- N. Nothing in this Chapter requires an Employer to compensate an Employee for accrued unused Sick Time upon the Employee's termination, resignation, retirement, or other separation from employment.
- O. An Employer with a Sick Time or PTO policy in effect that provides the Employee with use of Sick Leave that equals or exceeds the requirements of this Section is compliant with this section.

**9.01.050 Exercise of Rights Protected; Retaliation Prohibited.**

- A. It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.
- B. An Employer shall not take Retaliatory Personnel Action or discriminate against an Employee because the Employee has exercised rights protected under this Chapter.
- C. Retaliatory Personnel Action shall not be taken against any person who mistakenly, but in good faith, alleges violations of this Chapter.
- D. It shall be a violation for an Employer's absence control policy to count earned Sick Leave covered under this Chapter as an absence that may lead to or result in an adverse employment action against the Employee.

**9.01.060 Notice and Posting.**

- A. Employers shall provide and post notice of Employee rights under this Chapter. The notice shall be in English and other languages used to communicate with the Employer's workforce. The City may contract with the Bureau of Labor and Industries to create and disseminate the required poster. The City shall provide a template for the notice.
- B. In addition to providing Employees with written notice, Employers may comply with posting requirements of this section by displaying a poster in a conspicuous and accessible place in each establishment where Employees are employed. ,.
- C. An Employer who knowingly violates the notice and posting requirements of this section may be subject to a civil fine as provided in administrative rules.
- D. Fines shall not be assessed against any Employer who mistakenly, but in good faith, violates this Section.

**9.01.070. Employer Records.**

Employers shall retain records documenting hours worked, and Sick Time accrued and used by Employees, for a period of at least two years as required by ORS 653.045(1). Employers shall allow access to such records by BOLI or other agency authorized to enforce this Chapter.

**9.01.080 Administrative Rules Implementing this Chapter.**

- A. The City Attorney may adopt rules, procedures and forms to assist in the implementation of the provisions of this Chapter.
- B. All rules adopted to implement this Chapter shall be subject to a public review process.
- C. Not less than ten or more than thirty days before such public review process, a notice shall be published in a newspaper of general circulation and sent to stakeholders who have requested notice. The notice shall include the place and time, when the rules will be considered and the location at which copies of the full text of the proposed rules may be obtained.
- D. The duration of public review process shall be a minimum of 21 calendar days from the date of notification for written comment.
- E. During the public review process a designee of the City shall hear testimony or receive written comment concerning the proposed rules.
- F. The City shall review and consider the comments received during the public review process, and shall either adopt, modify, or reject the proposed rules.
- G. All initial rules shall be effective January 1<sup>st</sup>, 2014, and all subsequent rules shall be effective 30 days after adoption by the City Attorney and shall be filed in the office of the City Auditor.
- H. Notice of changes in Administrative Rules shall be published in a newspaper of general circulation, sent to stakeholders who have requested notice and posted on the BOLI and City web sites.

**9.01.090 Enforcement.**

- A. The City may contract with BOLI to enforce this Chapter.
- B. Pursuant to agreement between BOLI and the City, enforcement may be governed by the procedures established pursuant to ORS 659A.800 *et. seq.*, ORS. Chapter 652 or ORS Chapter 653, or such other procedures as may be agreed upon by BOLI and the City. Rules adopted by the City pursuant to Section 9.01.090 of this Chapter may also be used to implement enforcement and administration of this Chapter.

- C. Pursuant to agreement between BOLI and the City, any person claiming to be aggrieved by an unlawful employment practice under this Chapter may file a complaint with BOLI under procedures established under ORS 659A.820, ORS Chapter 652 or ORS Chapter 653, or such other procedures as BOLI or the City may establish for taking complaints which shall include options for resolution of complaints through such means as mediation.
- D. Pursuant to agreement, BOLI shall have the same enforcement powers with respect to the rights established under this Chapter as are established under ORS 659A.820 *et. seq.*, ORS Chapter 652 and ORS Chapter 653, and if the complaint is found to be justified, the complainant may be entitled to any remedies provided under ORS 659A.850 *et. seq.*, ORS Chapter 652 and ORS Chapter 653 and their implementing regulations and any additional remedies, provided that those remedies are specified in the agreement between the City and the BOLI Commissioner.
- E. Any person claiming to be aggrieved by a violation of this Chapter shall have a cause of action for damages and such other remedies as may be appropriate. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be handled as provided for in ORS 659A.870 *et. seq.* The court may grant such relief as it deems appropriate.

**9.01.100 Confidentiality and Nondisclosure.**

- A. If the Employer obtains health information about an Employee or Employee's Family Member, such information shall be treated as confidential to the extent provided by law.
- B. All records and information kept by an Employer regarding an Employee's request or use of Sick Time under subsection 9.01.040 (A)(2) shall be confidential as described in ORS 659A.280(5).

**9.01.110 Other Legal Requirements.**

This Chapter provides minimum requirements pertaining to Sick Time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by Employees of Sick Time, whether paid or unpaid, or that extends other protections to Employees.

**9.01.120 Public Education and Outreach.**

The City shall develop and implement an outreach program to inform Employers and Employees about the requirements for Sick Time under this Chapter.

**9.01.130 Severability.**

If any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or application of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

**9.01.140 Application.**

This Chapter is effective January 1, 2014.

## SL1. GENERAL PROVISIONS

### SL 1.01 Construction of Rules

These rules shall be liberally construed to promote the purposes of Portland City Code Chapter 9 (“Ordinance”) and permit the City or BOLI to accomplish its administrative duties and to secure the just and efficient determination of the merits of all complaints received.

### SL 1.02 Definitions

1. “City” means the City of Portland, Oregon, or the area within the territorial City limits of the City of Portland, Oregon, and such territory outside this City over which the City has jurisdiction or control by virtue of ownership or any Constitutional or Charter provisions, or law.
2. “BOLI Commissioner” means the Commissioner of the Bureau of Labor and Industries (BOLI) of the State of Oregon.
3. “Employer” means any person who employs another person, but does not include:
  - a. The United States Government; or
  - b. The State of Oregon, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or
  - c. Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City.
4. “Employee” means any individual who renders personal services to an Employer where the Employer either pays or agrees to pay for the personal services, or suffers or permits the individual to perform the personal services. “Employee” includes Home Care Workers.
5. “Home Care Worker” means a person:
  - a. Who is hired directly by an elderly person or a person with a physical disability, or by a parent or guardian of an elderly person or a person with a physical disability;
  - b. Who receives moneys from the Department of Human Services for the purpose of providing care to the elderly person or the person with a physical disability;
  - c. Whose compensation is funded in whole or in part by the Department of Human Services, an area agency, or other public agency; and

- d. Who provides either hourly or live-in Home Care Services; or
  - e. Who is a Personal Support Worker.
6. “Personal Support Worker” means a person:
- a. Who is hired by a person with a developmental disability or mental illness, or a parent or guardian of a person with a developmental disability or mental illness;
  - b. Who receives moneys from the Department of Human Services for the purpose of providing care to the person with a developmental disability or mental illness;
  - c. Whose compensation is provided in whole or in part through the Department of Human Services, a support services brokerage, or other public agency; and
  - d. Who provides Home Care Services in the home or community.
7. “Home Care Service” means assistance with activities of daily living, activities of community inclusion, and self-management provided by a Home Care Worker or Personal Support Worker.
8. “Employee” does not include:
- a. A co-partner of the Employer;
  - b. An independent contractor;
  - c. A participant in a work training program administered under state or federal assistance laws;
  - d. A participant in a work study program that provides students in secondary or post-secondary educational institutions with employment opportunities for financial and/or vocational training; or
  - e. Railroad workers exempted under the Federal Railroad Insurance Act.
9. “Family Member” means the spouse or domestic partner of an Employee, the biological, adoptive, or foster parent or child of the Employee, the grandparent or grandchild of the Employee, a parent-in-law of the Employee, or a person with whom the Employee was or is in a relationship of in loco parentis. As used herein:
- a. “Domestic Partner” means an individual joined in a domestic partnership.
  - b. “Domestic Partnership” means a civil contract described in ORS 106.300 to 106.340 entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon.

10. “Health Care Provider” means a physician, podiatrist, dentist, psychologist, optometrist, naturopath, registered nurse, nurse practitioner, direct entry midwife, licensed practical nurse, social worker, or chiropractic physician who is primarily responsible for providing health care to an Employee or a Family Member of an Employee and who is performing within the scope of the person’s professional license or certificate.
11. “Paid Time Off” or “PTO” means:
  - a. A bank of time, including time accrued in regular increments according to an established formula, provided by an Employer to an Employee, that the Employee can use to take paid time off from work for any purpose, including the purposes covered by the Ordinance; or
  - b. A contribution made by an Employer to a vacation pay account, in the name of a construction trade union Employee covered by a collective bargaining agreement, that the Employee may cash out or use for any purpose, including the purposes covered by the Ordinance.
12. “Sick Time” means time that has been accrued and may be used by an Employee for purposes described in the Ordinance, and that is calculated at the same base rate of pay and with the same benefits, including health care benefits, as the Employee normally earns during hours worked and is provided by an Employer to an Employee at the accrual rate described in the Ordinance.
13. “Sick Leave” means time off from working using Sick Time.
14. “Retaliatory Personnel Action” means:
  - a. Any discharge, suspension, demotion, or other adverse employment action or threat of adverse employment action against an Employee for the exercise of any right guaranteed under the Ordinance; or
  - b. Interference with, or punishment for, participating in any manner in an investigation, proceeding or hearing under Portland City Code Chapter 9.
  - c. Adverse employment actions based on use of Sick Time not covered in the Ordinance are not retaliatory personnel actions. For example, a discipline action for absences that exceed the amount of accrued leave is not an adverse employment action.
15. “Year” means any consecutive 12-month period of time that is normally used by an Employer for calculating wages and benefits, including a calendar year, tax year, fiscal year, contract year, or the year running from an Employee’s anniversary date of employment.



## SL 2. EMPLOYEES

### SL 2.01 Working in City

1. **In General.** Employees who perform work in the City are covered by the Ordinance regardless of where their Employer is located. For example, Employees who travel to the City and make a stop as a purpose of conducting their work (e.g., to make pickups, deliveries, or sales calls) are covered by the Ordinance for all hours that they perform work in the City.
2. **Telecommuting.** An Employee who performs work for an Employer by telecommuting is covered by the Ordinance for the hours the Employee is physically located in the City, even if the Employer is physically located outside the City. Conversely, an Employee who performs work for an Employer by telecommuting is not covered by the Ordinance for the hours the Employee is not physically located in the City, even if the Employer is physically located in the City.
3. **Work Outside the City.** Employees who perform work outside the City, even if the Employer is based in the City, are not covered by the Ordinance for hours worked outside the City.
4. **Traveling Through the City**
  - a. Employees who travel through the City but do not stop in the City as a purpose of their work are not covered by the Ordinance for the time spent traveling through the City.
  - b. Employees who travel through the City and only make incidental stops (e.g. purchasing gas, eating a meal, or changing a flat tire) are not considered to be making a stop as a purpose of their work.
  - c. An Employer may make a reasonable estimate of an Employee's time spent working in the City for purposes of leave accrual and use. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, delivery addresses and estimated travel times, or historical averages.

### SL 2.02 Temporary Workers

1. **In General.** Temporary workers are covered by the Ordinance if they perform work in the City.
2. **Staffing Agencies.** A temporary worker supplied by a staffing agency or similar entity shall be considered an Employee of the staffing agency for all purposes of the Ordinance.

### **SL 3. ACCRUAL OF SICK TIME**

#### **SL 3.01 Start of Accrual**

Employees shall begin to accrue Sick Time on the date this Ordinance goes into effect on January 1, 2014, or at the commencement of their employment if they are hired after January 1, 2014.

#### **SL 3.02 Rate of Sick Time Accrual**

1. **In General.** Employers with six (6) or more Employees shall provide Employees with a minimum of one hour of paid Sick Time for every thirty (30) hours of work performed by the Employee within the City. Employers with five (5) or fewer Employees shall provide Employees with a minimum of one hour of unpaid Sick Time for every thirty (30) hours of work performed by the Employee within the City. Employers are not required to provide Sick Time accrual during hours spent on paid or unpaid leave.
2. **Salaried Employees.** Salaried Employees who are exempt from overtime under the Fair Labor Standards Act will be presumed to work forty (40) hours each work week for purposes of accruing Sick Time, unless their regular work week is less than forty (40) hours, in which case Sick Time is earned and accrued based on their regular work week.
3. **Overtime.** Overtime hours shall be included in hours worked for Employees covered by the Fair Labor Standards Act and/or state wage and hour laws.

#### **SL 3.03 Frontloading**

An Employer's provision of Sick Time in advance of accrual shall be permissible frontloading, provided that the frontloading otherwise meets the requirements of the Ordinance for accrual, use, and carryover.

#### **SL 3.04 Maximum Accrual of Sick Time**

Employees may accrue a maximum of forty (40) hours of Sick Time in a Year. Employers may allow greater accrual.

#### **SL 3.05 Carryover of Accrued and Unused Sick Time**

1. **In General.** Employees may carry over up to forty (40) hours of unused Sick Time to the following Year. Employers that provide frontloaded Sick Time are not required to allow an Employee to carry over accrued hours.
2. **Use After Carryover.** An Employee may use only forty (40) hours of Sick Time per Year regardless of how many hours of unused Sick Time the Employee carries over from the previous Year. For example, an Employee carries over forty

(40) hours of unused Sick Time from one Year to the next Year. The Employee uses forty (40) hours of Sick Time in the new Year. The Employee may accrue additional Sick Time in the new Year but may not use more Sick Time until the following Year, unless otherwise allowed by the Employer.

### **SL 3.06 Existing Policy**

Employers with Sick Leave or PTO policies that provide their Employees with Sick Time that equals or exceeds the requirements of the Ordinance shall be deemed in compliance with the accrual and use sections of the Ordinance.

## **SL 4. PAID AND UNPAID SICK TIME**

### **SL 4.01 In General**

1. Employers with six (6) or more Employees must provide paid Sick Time to all Employees and must allow Employees to use paid Sick Leave for qualifying absences as defined in SL 5.
2. Employers with five (5) or fewer Employees must provide unpaid Sick Time to all Employees and must allow Employees to use unpaid Sick Leave for qualifying absences as defined in SL 5.

### **SL 4.02 Calculating Number of Employees**

1. All Employees who work for the Employer shall be counted for the purpose of determining the number of Employees an Employer has, including full-time Employees, temporary Employees, part-time Employees, and Employees who work outside the City or outside the State of Oregon.
2. For established Employers, the number of Employees shall be calculated based on the number of Employees who were employed each working day during each of twenty (20) or more calendar work weeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.
3. For Employers that did not have any Employees for at least twenty (20) work weeks in the previous or current calendar year, the number of Employees shall be calculated based upon the average number of Employees per calendar work week during the first ninety (90) calendar days of the current calendar year.

## **SL 5. QUALIFYING ABSENCES**

### **SL 5.01 Diagnosis, Care, or Treatment**

An Employee may use Sick Time for the diagnosis, care, or treatment of the Employee or the Employee's Family Member's mental or physical illness, injury, or health

condition, including preventive medical care. For example, Sick Time may be used for pre-natal visits and routine medical and dental visits.

### **SL 5.02 Domestic Violence, Harassment, Sexual Assault, or Stalking**

An Employee may use Sick Time if the Employee needs leave for any of the purposes set out in ORS 659A.272. For example, Sick Time may be taken to seek legal or law enforcement assistance or remedies, medical treatment, counseling, the services of a victim services provider, or to relocate or secure an existing home for the Employee or the Employee's minor child or dependent.

### **SL 5.03 Work, School, or Child Care Closure**

An Employee may use Sick Time if either the Employee's place of business or the Employee's child's school or day care is closed by order of a public official due to a public health emergency.

### **SL 5.04 Family Member's Health is a Public Health Concern**

An Employee may use Sick Time to care for a Family Member whose presence in the community jeopardizes the health of others as determined by a lawful public health authority or by a Health Care Provider.

### **SL 5.05 Employee Excluded From Workplace for Health Reasons**

An Employee may use Sick Time if any law or regulation requires the Employer to exclude the Employee from the workplace for health reasons.

## **SL 6. USE OF SICK TIME**

### **SL 6.01 Time Period**

1. **240 Hours.** Employees must have worked 240 hours in a Year within the City to be eligible to use Sick Time. Employees do not need to reestablish eligibility in subsequent Years unless they change employers or are separated from their employer for more than six (6) months.
2. **90 Calendar Days.** Employees may not use Sick Time during the first ninety (90) calendar days of employment unless the Employer chooses to allow otherwise. Employees may use Sick Time beginning on the 91st calendar day after the commencement of their employment, so long as the Employee has worked a minimum of 240 hours for the Employer within the City.

### **SL 6.02 Location of Use**

Employees may use their Sick Time only during times that they are scheduled to perform work in the City.

### SL 6.03 Increments and Coverage

1. **In General.** An Employee may use accrued Sick Time in increments of one hour to cover all or part of a shift, unless a lesser increment is allowed by the Employer.
2. **Full Shift.** Employers may not require an Employee to take off a full shift as a condition to using Sick Time. However, when it is physically impossible for an Employee to commence or end work partway through a shift, the entire time an Employee is absent may be counted against an Employee's Sick Time.
3. **Availability.** Sick Time is available to Employees to use as soon as they accrue it, if the Employee meets all other criteria for use of Sick Time. Employers may not make Sick Time available only at the end of a pay period or some other future point in time.
4. **Use Required.** Employees must use Sick Time hours when they are absent for a qualifying reason as defined in SL 5.

### SL 6.04 Rate of Pay

1. **In General.** When using paid Sick Time, an Employee shall be compensated at the same base rate of pay as the Employee would have earned during the time the paid leave is taken. Employees are not entitled to compensation for lost tips or commissions and compensation shall only be required for hours that an Employee was scheduled to have worked.
2. **Calculating Pay for Sick Time**
  - a. **Hourly Rate of Pay.** For Employees paid an hourly wage, the hourly rate of pay shall be the same hourly wage the Employee would have earned during the time which Sick Time is used. Employers are not required to pay Employees at the overtime rate when an Employee uses Sick Time for hours that would have been overtime hours if worked.
  - b. **FLSA Exempt Employees.** For Employees who are paid an annual salary and are exempt from overtime laws as provided under the Fair Labor Standards Act and/or state wage and hour laws, the hourly rate of pay shall be determined by dividing the annual salary by 52 to get the weekly salary and dividing the weekly salary by the number of hours of the Employee's normal work week.
  - c. **Shifts of Indeterminate Length.** For Employees who are scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the Employer may determine payment for Sick Time based on hours worked by a replacement employee in the same shift or similarly situated Employees who worked that same or similar shift in the past.

- d. **Payment of Sick Time.** Sick Time must be paid no later than the payday for the next regular payroll period after the Sick Time was used by the Employee. However, if the Employer has asked for documentation of use of Sick Time, the Employer is not obligated to pay Sick Time until the Employee has provided documentation verifying that the absence was for a qualifying reason as defined in SL 5.
- e. **Cashing Out.** Employers may, but are not required to, cash out an Employee's unused Sick Time upon termination of employment.

### **SL 6.05 Shift Trading**

- 1. **In General.** If the Employer allows shift trading, and if an appropriate shift is available, an Employee may choose to work additional hours or shifts without using available Sick Time for the missed hours or shifts.
- 2. **Prohibitions.** An Employer may not require an Employee (1) to find a replacement worker for his or her shift as a condition for the Employee's use of Sick Time, or (2) to work an alternative shift in lieu of using accrued Sick Time.

### **SL 6.06 Transferred Employees**

- 1. **In General.** If an Employee is transferred by an Employer to a separate division, entity, or location of the Employer within the City, the Employee is entitled to all Sick Time accrued prior to the transfer, except as provided below.
- 2. **Transfer To Work Outside The City.** If an Employee is transferred by an Employer to a separate division, entity, or location of the Employer outside the City, the Employer shall retain records of unused Sick Time for two (2) years and reinstate that Sick Time should the Employee be transferred back to a separate division, entity, or location of the Employer within the City.

### **SL 6.07 Successor Employers**

Unused Sick Time shall be retained by the Employee if the Employer sells, transfers, or otherwise assigns the business to another Employer and the Employee continues to work in the City.

### **SL 6.08 Breaks in Service**

- 1. **In General.** When an Employee is separated from employment and rehired by the same Employer within six (6) months of separation, previously unused Sick Time shall be reinstated. The previous period of employment shall be counted for purposes of determining the Employee's eligibility to use Sick Time. For example, the hours worked during the previous period of employment shall count towards the 240-hour requirement for eligibility under SL 6.01.

2. **Separation After Eligibility.** When an Employee is separated from employment after becoming eligible to use Sick Time and is rehired by the same Employer within six (6) months of separation, the Employee is not subject to the 90 calendar day waiting period under SL 6.01.

## SL 7. EMPLOYEE NOTICE

### SL 7.01 Notice Policy and Procedures

1. **In General.** An Employer may require an Employee to provide reasonable notice of an absence for Sick Time.
2. **Reasonable Notice.** Reasonable notice means compliance with an Employer's written policy or standard for an Employee to notify the Employer of the Employee's use of Sick Time. The policy or standard may include notice by calling a designated phone number, applying a uniform call-in procedure or by using another reasonable and accessible means of communication.
3. **Written Policy.** If an Employer does not have a written policy or standard for providing reasonable notice, the Employer must establish such policy or standard in writing.

### SL 7.02 Notice for Foreseeable Leave

1. **In General.** If the reason for Sick Leave is a foreseeable absence, such as a pre-scheduled medical appointment, the Employee shall provide written notice as soon as practicable, in advance of the leave, or as otherwise provided in the Employer's written policy.
2. **Reasonable Scheduling.** When an Employee uses Sick Time for a foreseeable absence, the Employee shall make a reasonable effort to schedule the leave in a manner that does not unduly disrupt the operations of the Employer. For example, the Employee should make a reasonable attempt not to schedule medical appointments during peak work hours, when work is time-sensitive or when mandatory meetings are scheduled.
3. **Changes in Duration.** The Employee shall inform the Employer of any change in the expected duration of the Sick Leave as soon as is practicable.

### SL 7.03 Notice for Unforeseeable Leave

If the reason for Sick Leave is unforeseeable, the Employee shall provide notice before the start of the Employee's shift or as soon as is practicable. In all cases, whether and when an Employee can practicably provide notice depends upon the individual facts and circumstances of the situation.

### **SL 7.04 Failure to Provide Notice**

An Employer may deny Sick Time to an Employee if the Employee fails to provide notice under SL 7.01 – 7.03 or if the Employee fails to make a reasonable effort to schedule leave in a manner that does not unduly disrupt the operations of the Employer under SL 7.02(2).

## **SL 8. EMPLOYEE DOCUMENTATION**

### **SL 8.01 Documentation**

1. **In General.** When an Employee uses Sick Time for more than three consecutive days, an Employer may require reasonable documentation that the Sick Time is being used for a qualifying absence as defined in SL 5.
2. **Consecutive Days.** “Consecutive days” means consecutive full calendar days, 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 Time for three consecutive days.
3. **Permissible Documentation.** An Employer, including an Employer with a PTO policy, may require reasonable documentation for Sick Time. Any of the following types of documentation may be required:
  - a. A signed statement by a Health Care Provider indicating that Sick Time is necessary;
  - b. Documentation that the Employee or the Employee’s minor child or dependent is a victim of domestic violence, harassment, sexual assault, or stalking, which may consist of:
    - i. A copy of a police report indicating that the employee or the employee’s minor child was a victim of domestic violence, harassment, sexual assault, or stalking;
    - ii. A copy of a protective order or other evidence from a court, administrative agency, or attorney that the employee appeared in or was preparing for a civil, criminal, or administrative proceeding related to domestic violence, harassment, sexual assault, or stalking; or
    - iii. Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy, or victim services provider that the employee or the employee’s minor child or dependent was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, harassment, sexual assault, or stalking; or



- c. A personal statement signed by the Employee that he or she is using Sick Time for a qualifying absence. An Employee's signed statement does not need to be in an affidavit format or notarized but shall be legible if handwritten and shall make clear the Employee's identity and, if applicable, the Employee's relationship to the Family Member and the general purpose for which Sick Time is being used. For example, an Employee may notify his Employer that he needs to take Sick Leave to care for his sick child; the Employee does not need to indicate the nature of the child's illness.

### **SL 8.02 Confidentiality**

1. **In General.** If the Employer obtains health information about an Employee or an Employee's Family Member, such information shall be treated as confidential to the extent provided by law.
2. **Domestic Violence, Harassment, Sexual Assault, or Stalking.** All records and information kept by an Employer regarding use of Sick Time for purposes related to domestic violence, harassment, sexual assault, or stalking, including the fact that the Employee has requested or obtained use of Sick Time, are confidential and may not be released without the express permission of the Employee, unless otherwise required by law.

### **SL 8.03 Payment for Documentation**

1. **Second Opinion.** An Employer may not require an Employee to obtain the opinion of a second Health Care Provider for the purpose of medical verification of the use of Sick Time.
2. **Cost of Verification.** If an Employer requires documentation of the purpose for the use of Sick Time, the Employer shall pay the cost of any verification by the Health Care Provider that is not covered by insurance or another benefit plan.

### **SL 8.04 Documentation for Suspected Sick Time Abuse**

1. **In General.** If an Employer suspects Sick Time abuse, including patterns of abuse, the Employer may require documentation from a Health Care Provider verifying the Employee's need to use Sick Time.
2. **Indications of a Pattern of Abuse.** Indications of a pattern of abuse include, but are not limited to, repeated use of unscheduled Sick Time on or adjacent to weekends, holidays, vacation, or pay day, regardless of whether the Employee has used Sick Time for more than three consecutive days.

### **SL 8.05 Failure to Provide Documentation**

If the Employee fails to provide documentation as required by this section, the Employer may deny the use of Sick Time for the absence taken until the Employee provides documentation verifying that the absence was for a qualifying reason as defined in SL 5.

## **SL 9. EMPLOYER NOTICE AND POSTING REQUIREMENTS**

### **SL 9.01 In General**

Employers shall provide and post written notice to all Employees who work in the City of their entitlement to Sick Time; the amount of Sick Time and the terms of its use guaranteed under the Ordinance; the prohibition of retaliation against Employees who request or use Sick Time; and an Employee's right to file a complaint if Sick Time as required by the Ordinance is denied by the Employer, or if an Employee is retaliated against for requesting or taking Sick Time.

### **SL 9.02 Written Notice**

Employers shall provide the written notice required by SL 9.01 to Employees no later than the end of the Employer's first pay period in 2014 or, for new Employees, the end of the first pay period for those Employees. The written notice shall be in English and, if applicable, any additional language or languages the Employer normally uses to communicate with its Employees. The written notice may be provided in any way that complies with the terms of this section, including in pay stub statements, through accessible online programs, and by electronic delivery.

### **SL 9.03 Poster**

Employers shall display a poster with the information required by SL 9.01 in each building and worksite in an area accessible to, and regularly frequented by, Employees. The poster shall be in English and, if applicable, any additional language or languages the Employer normally uses to communicate with its Employees.

### **SL 9.04 Quarterly Notice of Available Sick Time**

At a minimum, Employers shall provide written notification each quarter to each Employee of the amount of accrued and unused Sick Time available for use by that Employee.

## **SL 10. EMPLOYER RECORDS REQUIREMENTS**

### **SL 10.01 In General**

Employers shall retain records for a period of at least two years indicating:

1. The name, address, and occupation of each Employee;

2. The amount of Sick Time or PTO accrued and used by each Employee; and
  - a. For hourly Employees, the hours actually worked in the City during each pay period by each Employee; or
  - b. For salaried Employees who work in the City on a regular basis, the hours of a normal work week for each Employee; or
  - c. For salaried Employees who work in the City on an occasional basis, the hours actually worked in the City during each pay period by each Employee; or
  - d. For Employers that choose to front-load their Employees' Sick Time or PTO, the amount of Sick Time or PTO front-loaded and the dates on which the Sick Time or PTO is available to the Employee to use.

### **SL 10.02 Paid Time Off (PTO) Policies**

An Employer with a PTO policy in compliance with the Ordinance is not required to maintain records showing Employee reasons for use of the paid leave.

### **SL 10.03 Access**

Employers shall allow access to such records by BOLI or other agency authorized to enforce the Ordinance.

## **SL 11. RETALIATION**

### **SL 11.01 In General**

It is unlawful for an Employer to take any Retaliatory Personnel Action against any person for exercising rights or attempting to exercise rights guaranteed by the Ordinance.

### **SL 11.02 Absence Control Policies**

Authorized use of Sick Time under the Ordinance cannot be used as a reason for taking an adverse employment action against an Employee under an Employer's absence control policy. For example, an Employer cannot take an Employee's authorized Sick Leave into account when rating that employee's attendance record for the purpose of awarding a benefit, such as a raise, premium, or bonus.

### **SL 11.03 Response to Misuse of Sick Time**

If the Employer determines that the Employee used Sick Time for an impermissible purpose, including a pattern of abuse, or that the Employee's documentation of the

need to take Sick Time was falsified or untrue, the Employer's action against the Employee for these acts shall not constitute a retaliatory personnel action under the Ordinance.

## **SL 12. RELATIONSHIP TO OTHER LAWS**

### **SL 12.01 In General**

The Ordinance does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by Employees of Sick Time, whether paid or unpaid, or that extends other protections to Employees.

### **SL 12.02 Relationship to Other Leave**

1. **Other Paid Leave.** Except for PTO, an Employee may not use Sick Time while on any other paid leave provided by the Employer, unless allowed by the Employer. For example, an Employee may not use Sick Time while receiving worker's compensation benefits unless the Employer permits such use.
2. **Concurrent Leave.** An Employee's use of Sick Time may qualify for concurrent leave under federal, state or other local laws, such as leave under the Oregon Family Leave Act or the federal Family Medical Leave Act.

## **SL 13. ENFORCEMENT**

### **SL 13.01 In General**

The City has contracted with BOLI to enforce PCC Chapter 9.01. Enforcement of all or any part of Chapter 9.01 by BOLI shall be governed by the procedures established in ORS Chapters 652 and 653 and their implementing regulations.

### **SL 13.02 Filing a Complaint**

1. Any person claiming to be aggrieved by a violation of PCC Chapter 9.01.030 or 9.01.040 may file a complaint with the BOLI Commissioner using the procedures established under ORS 652.330 or 653.055, as applicable.
2. Any person claiming to be aggrieved by a violation of PCC Chapter 9.01.050 may file a complaint with the BOLI Commissioner using the procedures established under ORS 652.355 or 653.060, as applicable.

### **SL 13.03 Enforcement Powers**

The BOLI Commissioner shall have the same enforcement powers under PCC Chapter 9.01 as under ORS Chapters 652 and 653. If a complaint is found to be justified, the

complainant shall be entitled to the same remedies available under ORS Chapters 652 or 653 as in the case of any other complaint filed under ORS 652 or 653.

### **SL 13.04 Civil Penalties**

1. The BOLI Commissioner may assess civil penalties for violations of PCC Chapter 9.01 as provided in ORS 652.900 or ORS 653.256, as applicable.
2. Notwithstanding the preceding section, no civil penalty shall be assessed against an Employer that fails to provide and post notice as required by PCC section 9.01.060 due to an excusable mistake or a circumstance over which the Employer had no control. This does not include a lack of knowledge of the law, including these rules.
3. Except as provided in subsection 4 below, any civil penalties assessed by the BOLI Commissioner shall be payable directly to the City.
4. If an Employee requests to use Sick Time to which the Employee is entitled under PCC Chapter 9.01 and that request is refused by an Employer, resulting in the Employee working on a day he or she would otherwise have taken Sick Time, the BOLI Commissioner may assess a civil penalty equal to three times the dollar amount of Sick Time the Employee was refused, or \$250.00, whichever is greater. This civil penalty shall be payable directly to the affected Employee.

### **SL 13.05 Orders Issued**

Any order issued by the BOLI Commissioner under PCC Chapter 9.01 shall be viewed as one issued by a hearings officer employed by the City within the meaning of ORS 3.136(3) and shall be fully enforceable by the City.

### **SL 13.06 Remedies Not Exclusive**

None of the remedies provided herein are intended to be exclusive. Any other remedy afforded by law, including but not limited to any other remedy afforded by ORS Chapters 652, 653 or 659A shall be available to any person claiming to be aggrieved by an act made unlawful under the provisions of PCC Chapter 9.01. Specifically but without limitation, any such person shall have a private right of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate, subject to the terms and procedural requirements of ORS 659A.870 et seq.

### **Sick Leave Task Force Best & Worst Outcomes**

#### The worst outcome of City Council adopting a sick leave ordinance...

- That undue burdens would be placed on businesses, e.g., unnecessary paperwork, less flexibility for employees and legal problems with ordinance.
- 12% of businesses go under. Eugene is not a place business wants to locate. 5% of businesses move out of Eugene. I get sued for written notice for being late to work. 3% of businesses cheat, don't pay and then have an unfair advantage.
- If ordinance is written to generally, difficulty in some cases to track hours and imposing on businesses/entities that are already "doing the right thing" for their workers.
- That people feel all the facts are not on the table or that misinformation was given. That the issues are insufficiently and unfairly analyzed and that the decision has unintended consequences on the well-being of employees and employers and the community as a whole.
- A hastily drafted ordinance that is not sufficiently based on local data about the level of the problem (how many workers without sick time and local needs) and therefore is based on another community's economic reality.
- Misinformation surrounding a sick leave ordinance could leave many businesses thinking the City Council is "against business." This is a good ordinance, good for everyone, and businesses should see benefits in retention and less sickness at work.
- The facts regarding the need for the ordinance for Eugene workers, and the data showing that similar ordinances in other cities did not place an undue burden on businesses will continue to be ignored or dismissed by opponents of the proposal.
- If the ordinance excludes workers from the ability to have paid sick leave. The more workers excluded, the worse. This would be bad for workers and unfair to the public. The purpose is to protect the public from exposure to illness.
- Backlash from people who are uninformed. Fear about projected consequences.
- If there are carve-outs for certain business sizes, that would just add unnecessary complication. We need a policy that covers everyone. It's about public health.
- Small businesses would be forced to reduce personnel and reduce output due to increased absenteeism with no reasonable way to cover employees who choose to use sick pay/abuse sick pay. That this would be the "camel's nose under the tent" in terms of regulating businesses.
- That the ordinance would not be expansive enough to cover all the members of the community who need paid sick days for their own and their family's health and wellbeing.

The best outcome of these meetings and the report to City Council...

- That we have gone over a proposed ordinance line-by-line and used all available and accurate data to inform our report to Council, including using information already available so as not to reinvent the wheel.
- To ensure that all sides and views have been clearly articulated, represented and expressed and that the City Council has all the correct information to make the decision that's best for the entire community.
- A process that leads to a fair, equitable law that protects the public health, provides a stable workforce and is accepted by a large majority of the populace.
- Clear understanding from everyone on recommending an ordinance that helps all workers and is beneficial to businesses. An understanding that providing sick leave to employees can be done in such a way as to benefit all employees and be positive for the businesses as well. A feeling that we are recommending something that works and is also the "right" thing to do.
- Let go of any arbitrary deadline and take the time to do this well. That we clearly understand who is impacted (positively and negatively) and how.
- If all potentially affected by the ordinance have been represented at the table and their representative has a thorough understanding of the ordinance and content.
- The Task Force report offers factual guidance to the city council that provides concrete suggestions for crafting a straightforward earned paid sick time ordinance that covers workers currently without protection and that is clear and easy to interpret.
- That after more time, everyone has had the opportunity to defend/discuss their position and that we can come to a consensus on a fair ordinance versus language just agreeing to disagree.
- That this is neither done or modified greatly so it works well.
- Council and public are comfortable that issues have been vetted, that the ordinance would not result in businesses moving or closing and that the public goals were reviewed.
- We have thoroughly vetted the information and all agree on its accuracy. That we make clear to Council/community the goals and policy options.
- Council would slow down their rush to pass this ordinance and have discussions with small businesses to find out what their concerns and roadblocks would be. Increased trust by businesses for City Council.

### **Sick Leave Task Force Information Needs and Areas of Interest**

- Connection to Council goals
- Triple Bottom Line
- Legislative efforts (City, State, federal)
- Cost to City (implementation, administration, employee)
- Comparison of timing to other City processes
- Input on draft ordinance
- Information available to public
- Information from other countries and cities that have an ordinance including:
  - outcomes
  - process, timelines others have used
  - details of implementation
  - details by sector
  - data on business relocation
- Overview of Portland ordinance
- Before and after testimony from businesses that are subject to ordinance
- Viewpoints from multiple business sectors
- Research on Eugene companies, actual cost to provide and implement sick leave
- Who in Eugene currently receives paid sick leave
- Demographics of people that don't receive paid sick leave
- Information on public health, economic health, and statistics of stable families
- Payroll and tracking implications, understand potential burden on employees
- Enforcement
- Documentation requirements
- Interaction with PTO
  - hours earned
- Difference between hourly and salary
- Notification of illness
- CBA's – who's doing what
- Telecommuting
- Thorough approach to data (properly vetted, vetted data vs. not, distinction is important)
- Impact on temporary employers/services





**Sick Leave Task Force**  
**Tuesday, May 20, 2014**  
**4:00 – 6:30pm**  
**Chinook Conference Room**

**Agenda Minutes:**

**1. Welcome and Introductions**

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- Jason Dedrick facilitated welcome & introductions of people on the Task Force.
- Present: Mayor Kitty Piercy, Councilor Claire Syrett, Councilor Alan Zelenka, Kristie Hammitt, Mia Cariaga, Jason Dedrick, Andy Lewis, Stephen Michael, Karen Stewart, David Hauser (in place of Brittany Quick-Warner), Ed Gerdes, Patty McConnell, George Rode, Pat Smith, Lili Hoag, Bob Bury, Kevin Billman
- Absent: Councilor Chris Pryor, Sabrina Parsons

**2. Review of Portland's Ordinance**

---

- Andy Lewis, *Hershner Hunter LLP*, presented power point reviewing Portland's Ordinance.
- The presenter clarified points within the Portland Ordinance highlighting several areas that included the following: the purpose of the Ordinance, employee eligibility, employer responsibility, various items related to "leave" and "accrual", possible benefits and challenges, and how exististing systems in place relate to the Ordinance.
- ***A copy of the presentation is attached.***

**3. Discussion**

---

- Jason Dedrick facilitated a discussion amongst the Task Force members stating the main goal was to understand Portland's Ordinance.
- Some Task Force Members expressed appreciation for the presentation. Some, in addition, also expressed concern about the nature of some of the facts presented as being left to interpretation and would welcome other viewpoints. Other topics of interests included the following: accrued leave designations; how FMLA and OFLA laws are related to Ordinance; comparative data from other City Ordinances; abuse of "leave" by employees; how employees are counted/designated; and retaliation claims. Task Force also had follow-up questions and requests to be addressed by facilitator in future discussions.

**4. 30-minute Public Comment Period**

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- Five respective representatives from five various Eugene businesses had comments and questions for the Task Force which included the following: businesses are just now coming out of recession; uncertainties about being regulated on how to administer business practices; future regulations that may come that could put greater strain on businesses.

**5. Future meeting topics and next steps**

---

- Jason Dedrick presented closing remarks about there being good reinforcement on items that need to be covered.
- Task Force Members were encouraged to look at packet and determine what questions need to be asked, and/or items that need to be covered in future meetings including generating some best and worst outcomes.
- The next scheduled meeting is on Thursday, May 29<sup>th</sup> at 4pm. Location TBA.



**Sick Leave Task Force  
Thursday, May 29, 2014  
4:00 – 7:00pm  
Sloat Conference Room**

**Agenda Minutes:**

**1. Welcome and Agenda Review**

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- Mayor Piercy facilitated welcome & introductions of people on the Task Force.
- Present: Mayor Kitty Piercy, Councilor Claire Syrett, Councilor Alan Zelenka, Councilor Chris Pryor, Stephen Michael, Karen Stewart, David Hauser, Ed Gerdes, Patty McConnell, George Rode, Tin Frew (electrical workers), Lili Hoag, Bob Bury, Kevin Billman, Sabrina Parsons
- Staff: Kristie Hammitt, Mia Cariaga, Jason Dedrick, John Scholl
- Absent: Pat Smith

**2. Presentation on Café Yumm Experience with Portland Ordinance**

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- Ed Gerdes, *V.P. & General Counsel at Beau Delicious! International, LLC dba Cafe Yumm!*, presented power point reviewing Portland's Ordinance and Café Yumm's application. The data used was based on what worked for Café Yumm in administering the Ordinance.
- The presenter clarified points within the Portland Ordinance, from his perspective, highlighting several areas that included the following: basic company statistics, cost/employee, benefits and cost of sick leave policy, general and specific ordinance considerations (i.e. – consistency, accrual, eligibility, shift-trading, exemptions, retaliatory action, suspected abuse, and private rights of action).
- ***A copy of the presentation is attached.***

**3. Process for Remaining Task Force Meetings**

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- Mayor Piercy facilitated a discussion regarding the use of the "Sick Leave Area of Interests" grid. The 1<sup>st</sup> page list items that need to be addressed, subsequent pages are items that will be addressed next week or have already been addressed. Items can be added to the "grid".
- The meeting on Thursday, June 5<sup>th</sup> is currently the last scheduled meeting.

**4. Discussion**

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- Mayor Piercy facilitated a discussion amongst the Task Force members stating the main goal was work through the "Areas of Interests" grid.
- PTO Considerations/Implications
  - Clarification needed for sick-time usage requirements in Portland Ordinance.
  - Consider how front loading, carryover, shift-trading fit into Ordinance.
    - Helps people who don't have coverage
    - Allows employee to carryover and frontload
    - Forces business to provide something they may not be providing
    - Employees will have to use sick time unless shift trading is allowed
    - Additional administrative costs and time for business whether fully compliant or not
  - Consider how building trades will be protected/treated within Ordinance, and if all collective bargaining agreements should be part of the ordinance.
  - Not applicable
    - Employee decides when they want to work or not (through hiring haul)
    - Employees are transitory-work themselves out of job or leave whenever <sup>46</sup>

- PTO is put in vacation account
  - Requested review of administrative rules for tracking.
- Number of employees (paid vs earned) considerations/implications
  - Consider how employees will be counted (temporary, part-time, FTE, bodies) and what “cutoff” carve out would be.
    - Fewer carve-outs means easier to implement
    - Carve-outs allow everyone access
    - Greater burden could be placed on smaller businesses b/c cutoff
    - Does carve-out promote public health?
    - Carve-out hard to interpret for temp employees → temp agencies may go to independent contractors
  - Consider what costs employer, City, and/or other organization(s) may be responsible for.
    - More part-time/temp employees could mean more financial burden b/c it’s not something they currently offer
    - Smaller businesses could have more financial burden (only 1% of payroll)
    - Employer may have to pay for more “benefits” in the future
    - COE could incur costs to assist companies administratively
- Maximum hours and carryover considerations/implications
  - Consistency of ordinances would possibly simplify things.
- Effective date considerations/implications
  - Consider timeline on education, implementation, rule distribution, and accountability.
    - Sooner implementation allows people (in need) to be helped sooner
    - Later implementation allows more time for data analysis
    - BOLI can be included as part of accountability
    - Portland Ordinance had lead time for education and rules, but employers needed more time
  - Consider additional administrative requirements that may be placed on employers.
    - More work for businesses not fully in compliance with educating employees (e.g.- hanging posters)
    - Could require more flexible guidelines of educating employer and employees
    - Employers will be required to do various amounts of tracking for “counts”, compliance, educating

#### 5. 30-minute Public Comment Period

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- Nine respective representatives from nine various Eugene businesses had comments and questions for the Task Force which included the following: more time is needed to reflect on Portland Ordinance; new costs would force some businesses to remove health care benefits; trade unions aren’t affected by Ordinance, but they do support it; costs for COE/citizens could rise as well if City gets involved in assisting insufficient businesses.

#### 6. Future meeting topics and next steps

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- Task Force Members were encouraged to look at “grid” and determine what questions need to be asked, and/or items that need to be covered in future meetings.
- The next scheduled meeting is on Thursday, June 5<sup>th</sup> at 4pm. Location TBA.



**Sick Leave Task Force**  
**Thursday, June 5, 2014**  
**4:00 – 7:00pm**  
**Sloat Conference Room**

**Agenda Minutes:**

**1. Welcome and Agenda Review**

---

- Mayor Piercy facilitated welcome & introductions of people on the Task Force.
- Present: Mayor Kitty Piercy, Councilor Claire Syrett, Councilor Alan Zelenka, Councilor Chris Pryor, Stephen Michael, Karen Stewart, David Hauser, Ed Gerdes, Patty McConnell, George Rode, John Mohlis (in for Tim Frew, Pat Smith), Lili Hoag, Bob Bury, Kevin Billman, Sabrina Parsons
- Staff: Kristie Hammitt, Mia Cariaga, Jason Dedrick, John Scholl

**2. Presentation, questions and answers on Portland Ordinance**

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- City of Portland Commissioner Amanda Fritz, presented points reviewing Portland's Ordinance.
- The presenter clarified points within the Portland Ordinance highlighting several areas that included the following: Process and timeline of Ordinance development and implementation; some challenges that have arisen; exemption of collective bargaining agreements; sick-time usage, tracking and accrual for EE and ER; PTO vs. sick-time; and BOLI's involvement.
- Task Force inquired more about topics that included the following: addressing patterns of abuse; two-city workers; the purpose and processes for the Portland Ordinance; addressing public health and private right of action; anticipated review period of the impact for businesses and City; State Legislature Ordinance implications; partnership with BOLI to educate and roll out ordinance with employees and business owners.
- ***The presenter did not distribute any materials to the Sick Leave Task Force but did refer to the City of Portland website as for reference materials.***

**3. Presentation, questions and answers from Bureau of Labor and Industries**

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- Jennifer Germundson, BOLI Technical Assistance Program Manager, and Paloma Sparks, BOLI Legislative Director, presented points referencing specific questions about Portland Ordinance.
- The presenters clarified points within the Portland Ordinance highlighting several areas that included the following: Employee abuse; enforcement; and training.
- Task Force inquired more about topics that included the following: Employee abuse; enforcement; costs to City and employers; calculating paid time amount (straight time vs. time and half; and the relation of Ordinance to FMLA and OFLA.
- ***The presentors did not distribute any materials to the Sick Leave Task Force but did refer to the City of Portland website as for reference materials.***

**4. Discussion**

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- Mayor Piercy facilitated a discussion amongst the Task Force members stating the main goal was work through the remaining "Areas of Interests" grid.
  - Maximum hours and carryover considerations/implications (revisited)
    - Accruing and using sick time
      - EE can carryover 40 hours, but only use 40 hours in qualifying year
      - ER can allow frontloading, and not require carryover
      - Trade businesses have reserve account that can be used as needed
      - Accrued time can only be used when scheduled to work in city of Ordinance
      - EE would lose sick time accrued if never worked in city of Ordinance again
      - Consistency of ordinances would possibly simplify things.
  - Collective bargaining agreements considerations/implications
    - Exemption
      - Would set a base for trade union industry

- Other ordinances have exempted – would be good to get management’s perspective
- Trade union industry has EE moving around to various ERs, cities, etc.
- Reserve accounts are currently created for when EE are unemployed
- Review Seattle Ordinance as it doesn’t exempt all union contracts
- This could mean that people will have to go to work on first day of being sick
- Tracking of accrual not needed, but 2-years of hours worked would still be needed
- Council can determine who is under agreement
- Frontloading can still apply, which can be used after 90<sup>th</sup> day of Ordinance implementation
- Consistency of ordinances would possibly simplify things.
- Two-city commuter considerations/implications
  - Tracking
    - More burdensome record keeping for ER and EE
    - Frontloading could reduce record keeping
    - Once 240 work hours established in qualifying year, person doesn’t need to requalify unless unemployed 6+ months
    - 240 can be seen as another waiting period
    - EE can only claim sick time while working in city or scheduled to work in city.
    - EE can only use if scheduled to work in city where benefits accrued.
    - Everyone who works in Eugene could be covered
    - Initial conversations with Commissioner Liken and Mayor Lundberg
    - Consistency of ordinances would possibly simplify things.

## 5. Process for Final Report

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- Jason Dedrick presented the proposed outline for the Final Report. Members reviewed and provided input. The report will represent all view points and concerns shared during the course of the four meetings including the Task Force’s considerations/implications for each of the six core issues discussed (PTO; Number of employees (paid vs earned); Maximum hours and carryover; Effective date; Collective Bargaining Agreements; Two-city commuter).
- A full draft report will be sent electronically to all team members on Monday, June 9. Feedback will be incorporated and the draft report will be sent out one more time to the full group, with final approval for the report coming from the subcommittee process team (Mayor Piercy, Councilor Syrett, and Co-Chairs George Rode and Sabrina Parsons).

## 6. Final Thoughts

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- Task Force Members each received 2-minutes to share their final thoughts regarding the Task Force, the process, ordinance language, and anything else they deemed necessary for City Council to consider when discussing a proposed sick leave ordinance. Each member’s final thoughts were recorded and will be included in the final report.

# Overview of Portland's Sick Leave Ordinance

City of Eugene Sick Leave Task Force

May 20, 2014

Presented by  
Andrew G. Lewis, Partner

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**HERSHNER HUNTER**  
LLP

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## Stated Purpose of Portland's Ordinance

- *“To promote a sustainable, healthy and productive workforce by establishing minimum standards for Employers to provide sick leave and to ensure that all persons working in the City will have the right to earn and use paid sick time.”*
- *“Allowing employees to earn and take sick time will maintain a healthy workforce and promote a vibrant, productive and resilient City. It is the City's aspiration that all persons working in the City will be provided the right to earn and use paid sick time.”*

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**HERSHNER HUNTER**  
LLP

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## The Portland ordinance provides two benefits to employees:

- Entitles any worker providing services in the city to earn up to 40 hours of sick leave each year
- Protects employees against job loss or other retaliation for having used sick leave

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HERSHNER HUNTER<sub>LLP</sub>

## Who is Covered?

- Applies to all private employers (union and non-union), including staffing agencies and non-profits
- Includes employers who are outside city limits, if their employees provide services within city limits
- Applies to all employees, including temporary and part-time employees
  - That means your benefit eligibility criteria won't apply
- Does not apply to independent contractors, interns and owners

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HERSHNER HUNTER<sub>LLP</sub>

## Paid or Unpaid?

- For employers with five or fewer employees:
  - The leave is unpaid.
  
- For employers with six or more employees:
  - The leave is paid.

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HERSHNER HUNTER  
LLP

## When Can Sick Leave Be Used?

- Diagnosis, care and treatment of the employee or a family member
  - Includes preventive medical and dental care
- Domestic violence, harassment, sexual assault and stalking purposes
- Work, school or childcare closure due to a public health emergency
- If the employee or a family member is excluded from the workplace or the community by law for health reasons

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HERSHNER HUNTER  
LLP



## Definition of “Family Member”

The employee’s:

- Spouse or same-sex domestic partner
- Biological, adoptive or foster parent
- Biological, adoptive or foster child
- Grandparent or grandchild
- Parent-in-law
- A person with whom the employee was or is in a relationship of *in loco parentis*

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HERSHNER HUNTER  
L.P.

## How Does Leave Accrue?

- Employees accrue one hour of leave for every 30 hours worked in the city.
  - Hours worked outside the city do not count.
- Overtime hours count as hours worked.
- Time spent on paid or unpaid leave does not count as hours worked.

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HERSHNER HUNTER  
L.P.

## How Much Leave Accrues?

- The ordinance requires that a maximum of 40 hours be awarded each year.
  - The employer can award more.
- Employees can carry over a maximum of 40 hours from year to year.
- Use in any given year is capped at 40 hours.
- No required pay-out on separation.

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HERSHNER HUNTER  
L.P.

## When Can Employees Start Using Earned Leave?

- Employee cannot use sick leave until the employee has worked 240 hours (six weeks at 40 hours per week) in a year within the city.
- In no event can an employee use earned sick leave within first 90 days of employment.
- Employees can only use leave during times they were scheduled to work in the city.
- Employees **MUST** use sick leave if they are absent for a qualifying reason.

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HERSHNER HUNTER  
L.P.

## What Pay Rate Applies?

- Employee must be paid at the regular rate of pay applicable when the leave is used.
- Does not include bonuses or commissions.

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HERSHNER HUNTER  
LP

## Notice and Other Issues

- Employer can require “reasonable notice.”
- Verification is limited:
  - No proof required for single day absences;
  - Verification only after three consecutive absences;
  - Employer can require doctor’s note if abuse is suspected.
- A PTO policy that is as generous as the sick leave ordinance will be sufficient.

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HERSHNER HUNTER  
LP

## Enforcement

- Portland has contracted with BOLI to enforce Code violations.
- Aggrieved employees are entitled to unpaid wages and penalties of up to three times' the value of the refused sick time, plus all discrimination-based remedies.

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**HERSHNER HUNTER**  
LLP

## The Good, the Bad and the Ugly of Portland's Sick Leave Ordinance

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**HERSHNER HUNTER**  
LLP

## The Good

- The ordinance expands the legal protections for absences based on illness to all employees.
- The ordinance provides a paid benefit that otherwise might not be available.
- The ordinance allows employers to avoid onerous timekeeping requirements by permitting the use of PTO policies that are as generous as the ordinance.

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HERSHNER HUNTER<sub>LLP</sub>

## The Bad

- Increased labor costs for employers
- Administrative burden of tracking leave/compliance
- Diminished ability to enforce attendance policies
- Diminished ability to curb abuse
- Increased risk of retaliation claims

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HERSHNER HUNTER<sub>LLP</sub>

## The Ugly

- The policy applies to tardies, providing employees with 40 job-protected excuses for being late or leaving early each year.
- The verification requirements are difficult to administer (apply only after three consecutive work days or a pattern of abuse).

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HERSHNER HUNTER<sub>LLP</sub>

## What's Missing from the Discussion?

- An Assessment of Need
- An Awareness of What Already Exists

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HERSHNER HUNTER<sub>LLP</sub>



## Existing Job Protections

- All Oregon employers with six or more employees are already required to provide employees with a reasonable amount of leave for domestic violence-related purposes.
- All Oregon employers with 25 or more employees are already required to provide employees with up to 12 weeks of sick child leave and serious health condition leave.

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**HERSHNER HUNTER**  
LLP



## Existing Paid Leave

- Any Oregon employee who works for an employer with six or more employees is already entitled to use any available paid leave for domestic violence-related leave.
- Any Oregon employee who works for an employer with 25 or more employees is already entitled to use any available paid leave for sick child or serious health condition leave.

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**HERSHNER HUNTER**  
LLP



**CAFÉ  
YUMM!**

## **Sick Leave Ordinance: The Yumm! Experience**

**C. Edward Gerdes  
Vice President and  
General Counsel**



Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



### **Active in These Groups**

- **International Franchise Association**
- **Chamber of Commerce**
- **Oregon Restaurant Association**
- **Willamette Valley Food & Farm Coalition**
- **GreenLane Sustainable Business Network**
- **Willamette Valley Sustainable Foods Alliance**
- **Portland Business Alliance**
- **Lane Transit District – Budget Committee**



Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!





## Business Structure

- Franchisor = Beau Delicious! International, LLC
- Café Yumm! restaurants, mftr, warehouse
- Affiliated entities: Eugene (4) & Portland (1)
- Non-affiliated Franchisees (8): independently owned
- Franchisees in Portland (1) & Seattle (1)
- Team Members in Eugene: 100+

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Public Benefit Company

- BDI Articles of Organization state:  
“... the Company commits to creating a general public benefit.”
- Established by 2013 legislature.
- Café Yumm! was one of first to register.

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



# Triple Bottom Line



Ideal #5. Steadfastly nurture and protect the beating heart of the Triple Bottom Line of social, environmental, and economic considerations.

YUMM! YUMM! YUMM! YUMM! YUMM! YUMM! YUMM! YUMM! YUMM!



**OSB Founding Partner in Sustainability**  
**Bold Steps Toward Sustainability**  
**Certified RE:think Business**  
**Most Environmentally Friendly**  
**Chamber of Commerce Env't'l Values**



YUMM! YUMM! YUMM! YUMM! YUMM! YUMM! YUMM! YUMM! YUMM!



## Team Member Support

- **Before Affordable Care Act – 35+ hrs**  
*Health, Dental, Life Insurance*
- **One meal per shift - all**
- **Retirement Plan – all w/\$5,000 wages**
- **Anniversary Bonus – possible for all**
- **Annual Bonus – possible for all**
- **Holiday – full-time**
- **Vacation – 35+ hrs**
- **Sick Leave Portland 1/1/14 – all**

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Employee Cost: Min. Wage

- 40 hrs wk times 52 wks times \$9.10= \$18,928
- Mandated benefits = \$ 2,410
- Discretionary benefits = \$ 5,786
- Total employer cost at minimum wage = \$ 27,124
- With paid time off, actual hrly wage = \$13.78

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Benefits of Sick Leave Policy

- **Earlier call-ins giving manager more time to react**
- **Lowers Team Member life stress**
- **Perception that lower stress hastens recovery**
- **Team Members appreciate benefit**
- **Greater sense of caring, pride, part of Team**
- **Fulfills Café Yumm! Mission Statement**
- **Positive community perception**

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Cost of Sick Leave Benefit

- **Financial Admin:** \$125 yr/each  
     100 Team Members = **\$12,500**
- **Duplicate pay** - 40hrs x \$9.10 = \$364 each  
     100 Team Members = **\$36,400**
- **Policy Creation** = **\$6,000**
- **Other**
  - Lost productivity
  - BOLI complaint
  - Private lawsuit **Unknown**

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Ordinance Considerations Generally

- **San Francisco – average employee used 3 days per year.** *Institute for Women's Policy Research 2011*
- **Connecticut - 47% of employers offset mandatory sick leave by:** *Employment Policies Institute 2013*
  - increasing prices
  - reducing other benefits/lowering wages
  - reducing hours
- **90% of all Oregon Businesses have under 20 employees.** *US Bank Survey May 2014*

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Ordinance Considerations Specifically

1. **Consistency of ordinance between cities**
2. **Accrual - 1:40 not 1:30 ratio**
3. **Eligibility - Employed for 6 months not 90 days**
4. **Ensure shift-trading is allowed**
5. **Exemptions –**
  - Collective Bargaining Agreements
  - Home-based employees
  - Volunteers
  - Interns

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Ordinance Considerations Specifically

6. Retaliatory Personnel Action . . . i.e., “adverse employment action against an Employee” define to exclude bonuses.

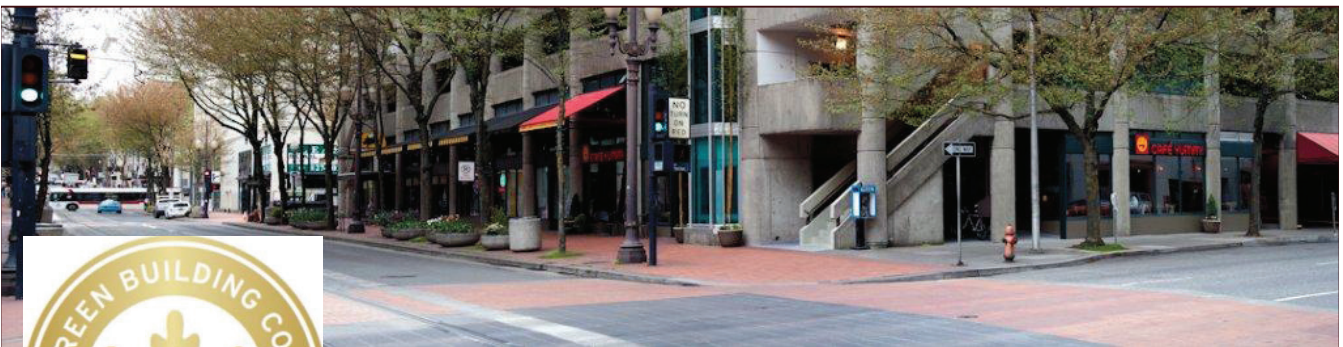
7. Suspected Sick Time Abuse is too vague.

8. Do not allow private rights of action. BOLI enforcement is sufficient.

Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!



## Café Yumm! Portland – LEED Gold Certified



Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm! Yumm!

### Summary of Portland Commissioner Amanda Fritz's Presentation Meeting Presentation

Below is a summary of a verbal presentation that Commissioner Fritz provided to the Task Force at their June 5, 2014 meeting:

- Ordinance framed in terms of Public Health
- Hearing in Jan of 2013; adopted Mar 2013; implemented Jan 2014
- Took 6 months detailing administrative rules
- Used comparisons of ordinances in Seattle, San Francisco, and Connecticut
- Our goal was to make it simpler and more comprehensive
- We looked at PTO bank for vacation or sick-time vs. sick-time
- Changing vacation to PTO for preventative care and domestic violence was addressed
- Started Mar 2012 and worked on 1-yr before adopting
- Most countries do have PTO for family illnesses
- Minimum of 40hr paid or unpaid sick time accrued at one hour earned per 30 hr. worked
- Businesses with 6+ employees would be paid, businesses with 5 or fewer employees would not
- Ask legislature to all be paid
- Ran into issue where employee was required to take sick time if they had it (can use 40hr of protected sick time where employee can't be penalized)
- Would work better if employer and employee agreed that employee should take sick time
- Need to determine when employees start accruing sick time (we used day 1 of start date of ordinance)
- New employee can only use after 90-days after start date of Ordinance
- Collective bargaining agreements – trade unions not exempt, but if they have paid bank, employees can cash out or use as sick time
- Tracking of time inside city – many employees can front-load 40hr and use whatever year they want to use (calendar, FY, employee anniversary)
- Lots of info about EE abuses included in Ordinance, but so far it hasn't come up
- There has been a lot of technical assistance needed – BOLI has helped (4 seminars, help enforcing policies)
- Still really popular with employees, and employers are starting to see benefit

### **Summary of Presentation Provided by BOLI Staff**

Below is a summary of a verbal presentation that Paloma Sparks (Legislative Director) and Jennifer Germundson (Technical Assistance Program Manager) provided to the Task Force at their June 5, 2014 meeting:

- Here to answer questions they were presented by staff that came from Task Force
- BOLI helped develop materials for training and enforcement (complaint driven enforcement)
- City contracted in Dec and Jan to do 4 seminars
- FAQ are very useful on Portland website
- Employers are required to inform employees of their sick leave accrual on a quarterly basis
- BOLI still receiving 5-15 phone calls/day
- Process for complaints is that employees would reach out to BOLI and file complaint, BOLI sends a letter to employer with instructions to comply within 30days, if not, then BOLI would investigate
- Haven't had many complaints and only a handful have gone through investigation process – letter seems to be doing the job
- Wage and Hour Division has specific forms for employees to fill out if they don't feel they've been treated fairly
- How is employee abuse addressed? Employee gets 3 consecutive days before a request for medical information from an employer. Under civil rights law employer might have to pay for documentation if they need medical documentation with patterns of abuse.



# Sick Leave Ordinance Update & Task Force Report

-71-

June 18, 2014



# Presentation Outline

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- Process to Date
- Task Force Update
  - Process
  - Final Report Structure
- Process Going Forward
- Task Force Final Report
- Questions

# Process to Date

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- Council Work Sessions
  - February & April – initiate process, scoping
- Task Force – appointed by Mayor
  - Four meetings in May and early June
  - Final Report
- Public Input
  - E-mails to staff, Mayor & Council
  - Public Testimony at Council Meetings
  - Public Comment at Task Force meetings

-73-

# Task Force Final Report

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- Page 2 – Summary & attachments
- Page 3 – Summary of TF and meetings
- Pages 4-7 – TF thoughts on 6 core ordinance components
- Page 8 – Other areas of interest
- Page 9 – Considerations for Council
- Page 10-15 – TF members final thoughts
- Attachments

-74-



# Task Force Core Ordinance Components

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- Paid Time Off (PTO) – In Portland, employer w/PTO policy that equals or exceeds ordinance is compliant. Includes traditional as well as vacation pay accounts (building trades)
  - Compliant plan w/frontloading = less tracking but still some new administrative requirements
  - Concern with employees not taking sick time as it would impact vacation time
  - Building trades

-75-

# Task Force Core Ordinance Components

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- Paid Leave vs Unpaid Protected Leave; Size of Business
  - In Portland, businesses w/5 or fewer employees provide unpaid leave; w/6 or more employees provide paid leave (includes temp and part-time employees)
    - Some feel that all employees should receive paid leave, regardless of business size
    - Why 6 as the cutoff, why not 10, 15 or 25 employees?
    - Bigger impact on businesses that rely primarily on temp or part-time employees (home health care, etc.)

# Task Force Core Ordinance Components

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- Maximum Hours & Carryover – In Portland’s ordinance, employees accrue max of 40 hours annually. May be used in following years, however employer not required to allow for employees to use more than 40 hours annually.
  - Little discussion of different accrual or carryover provisions
  - Make Eugene ordinance as consistent as possible with Portland (employers working in both cities)
  - Concern if building trades are not exempted

-77-

# Task Force Core Ordinance Components

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- Effective Date – Portland’s ordinance was effective 1/1/14 (first of the year following ordinance adoption)
  - May want to have a grace period for enforcement
  - More time is needed
    - See how Portland’s ordinance does (wait one year)
    - Study other cities ordinances
  - The time is now
    - A lot of work went into Portland ordinance; don’t need to redo
    - Workers have been waiting for this



# Task Force Core Ordinance Components

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- Collective Bargaining Agreements – Portland’s ordinance does not exempt employers that have employees subject to a CBA, nor does it require them to renegotiate.
  - Most other cities did exempt CBA’s. Why?
    - Seattle – exempts if both union and workers agree
  - Some employers may feel they need to amend CBA’s
  - More research on how many CBA’s would be impacted and what an exemption might look like

-79-

# Task Force Core Ordinance Components

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- Two-City Commuter – Portland’s ordinance requires that employees who travel to Portland and make a stop to conduct work, will accrue leave for the hours in the city. Can only use the leave if scheduled to work in the city.
  - Could be burdensome for employers in our region (employees in multiple cities). Need to engage regional partners.
  - 240 hour minimum to earn benefits
    - Helps define what an “employee” is
    - Could be hard for employee who only works 220 hours



# Task Force Considerations for Council

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- Connection to Council Goals
- Costs to City
- Relationship to Triple Bottom Line
- Timeline as compared to other City projects
- Public input on draft ordinance
- Eugene-specific data
- Information on public health, statistics of stable families

-81-

# Task Force Members

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- Comments from Task Force Co-Chairs
- Comments from Councilors on Task Force
- Questions for Task Force Members

