

## **A Response to: “How city’s sick leave law would affect employers” by Andy Lewis**

**The Eugene City Council is currently considering adopting a sick leave ordinance similar to the one recently adopted by the city of Portland. The proposed ordinance would entitle any worker providing services in Eugene to earn up to 40 hours of sick leave each year, and would protect employees against job loss for using sick leave.**

**In last month’s “blue chip” I described the Portland ordinance in detail. Here’s how Portland’s ordinance, if enacted in Eugene, will affect area businesses.**

**1. First mandatory paid benefit: Employers have traditionally been permitted to choose which nonwage benefits (such as vacation and sick leave) to provide their employees. This law would change that, and for the first time require employers with more than five employees to provide an additional paid benefit to workers.**

First, it should be noted that there is no policy yet in Eugene. *All answers here are reflective of Portland’s Protected Sick Time Ordinance*, which Eugene could use as a model for it’s proposed new law.

A Eugene sick days ordinance should be designed to create a floor level benefit for the over 25,000 workers who are currently unable to earn *even a single sick day* to use when they or a child is ill.

Employers who have an existing paid time off (PTO) policy that meets or exceeds the minimum accrual rates set out in the ordinance can use the PTO policy to comply with the required accrual and usage rates of the sick time ordinance provided that it can be used for the same purposes. If an employer has an existing PTO policy and counts it for required sick time accruals, they must also allow for their employees to use it for sick time. If an employee has exhausted their PTO accruals, no additional protected sick time is available to the employee; it doesn’t matter if the PTO was used for sick time or vacation.

**2. All employees are eligible: Employers historically have determined the criteria to be used when deciding which employees will earn nonwage benefits. For example, many employers require employees to work at least 20 hours per week before the employee is eligible to earn vacation or sick leave benefits. Under the proposed ordinance, all employees — temporary, part-time and full-time — will be eligible to earn sick leave.**

Yes, employers have historically determined the criteria to be used when deciding which employees will earn non-wage benefits. This has led to a public health problem wherein 78% of Eugene’s low-wage workers do not have access to a single paid sick day. Workers who have the least access to sick time are concentrated in fields such as food service, retail, childcare and eldercare where having a day off when they are ill is crucial not only to the employees health but the health of our entire community.

It is correct that all employees who work within the City of Eugene would be able to earn up to 40 hours of sick time (if the ordinance is based on Portland’s model). Employers are not restricted to only 40 hours, if they would like to provide benefits greater than the law. Employees start accruing sick time upon commencement of employment or whenever the law is implemented. However, employees will not be able to use the time until after a 90-day waiting period. This waiting period is meant to specifically address the issue of temporary and seasonal employees.

It is important that employees who work part-time have access to sick time just as other employees do. Women, in particular, are more likely to work in part-time jobs—many more than one part-time job. The increase in part-time and low-wage jobs as the economy has recovered means that many in the community are working without access to a single day off when they are ill, regardless of hours worked. Nationally, women make up nearly half the labor force.<sup>1</sup> Seven in ten mothers of children under 18 hold jobs,<sup>2</sup> and the vast majority contribute a substantial share of their families’ income.<sup>3</sup> In order to protect public health, child health and the economic stability of

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<sup>1</sup> 1 U.S. Bureau of Labor Statistics. (2012, August 3). *Employment status of the civilian population by sex and age*  
<sup>2</sup> U.S. Bureau of Labor Statistics. (2012, April 26). *Employment Characteristics of Families – 2011* [Press release] (p. 2). Retrieved 24 August 2012, from [http://www.bls.gov/news.release/archives/famee\\_04262012.pdf](http://www.bls.gov/news.release/archives/famee_04262012.pdf)

<sup>3</sup> Boushey, H., & O’Leary, A. (Eds.). (2009). *The Shriver Report: A Woman’s Nation Changes Everything*. Shriver Report Publication. Retrieved 22 August 2012, from <http://www.shriverreport.com/awn/shriverReport.pdf>

our families, we must recognize that the workplace has changed and all workers deserve to work with dignity.

Under the ordinance in Portland, a part-time employee working at 20 hours a week (earning 1 hour of sick time for every 30 hours worked) would take just over 15 months to earn up to the total 40 hours and in the first 12 months of work would earn only 32 hours. For a full-time worker- assuming 40 hours a week- it would take 7 ½ months to earn all 40 hours of time to take when they or their child is ill. Again, the employee would not be able to take that time for the first 90 days of employment. All people deserve to work with dignity and this modest benefit is a way for workers to earn paid time off to use when the inevitable, occasional, illness arises.

In addition, this time can be used in hourly increments, thus allowing people to attend doctor's appointments, pre-natal care appointments or to have access to legal and medical support relating to domestic violence. Not every employee who needs to take time will take a full day and experience in other cities where sick days have been implemented shows that people use this more like insurance and save it for when they really need it (see below for this data).

**3. It matters where the work is performed: Many commentators have said that if Eugene adopts a sick leave ordinance, businesses will move to Springfield. For many employers, however, moving their business outside of the city won't accomplish much, because the ordinance's focus is not on where the employer is physically located, but where the employee provides services. In other words, if an employee provides services within Eugene's city limits, that employee will be entitled to earn and use sick leave, even if the employer is located across the river, in another county, or in a different state.**

There are two answers to this question:

- 1) It is correct to say that employers will not move locations because of a paid sick days law (to Springfield or otherwise). In fact, evidence from locations where this has been implemented show that employers do not leave the cities where sick days are implemented and it does not discourage new employers from locating in the city. In San Francisco (which has had sick days since 2007) three

years after the law's implementation, more than 70 percent of employers reported no impact on profitability (another 15 percent said they didn't know) and two-thirds of employers expressed support for the law. *Although workers can earn up to nine paid sick days under the law, the typical worker used only three, and reports of abuse were exceptionally rare.*<sup>4</sup>

A 2013 audit of the sick days law in Washington, DC (in place since 2008) by the Office of the District of Columbia Auditor found no evidence that the law prompted businesses to leave the city or discouraged employers from establishing new businesses in it.<sup>5</sup>

- 2) Technically, employers will be required to allow employees to accrue and then provide sick leave only for time spent working within the geographical boundaries of the city. Meaning that sick time only has to be accrued for time an employee spent working in the city limits. Likewise, accrued time can also only be used for leave during times that would have been spent working in the city limits.

For employees who travel regularly inside and outside city limits, documenting and providing appropriate leave accruals should be relatively simple. Implementing rules on the sick leave ordinance in Portland allow an employer to make a "reasonable estimate" of time an employee spends working within the city limits based records such as dispatch logs, historical averages, delivery routes, etc. It is common business practice when working with employees who do regular delivery to keep track of when and where things are delivered; therefore, those employers should already have access to logs that they can use to make reasonable estimates.

If an employer chooses to frontload the earned sick time for an employee that can be used for the purposes of sick time, they are covered under the law.

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<sup>4</sup> Drago R. and Lovell, S. (2011, April). San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees. Institute for Women's Policy Research Publication. Retrieved 31 January 2014, from <http://www.iwpr.org/publications/pubs/San-Fran-PSD> (based on median number of days taken by employees in San Francisco)

<sup>5</sup> Branche, Y. (2013, June). Audit of the Accrued Sick and Safe Leave Act of 2008. Office of the District of Columbia Auditor. Retrieved 2 February 2014, from <http://dcauditor.org/sites/default/files/DCA092013.pdf>

**4. Union employers covered: Most employment laws recognize that union workplaces are different than traditional workplace settings in that the terms and conditions of employment are governed by a collectively bargained agreement. For that reason, many laws that impose obligations on employers contain an exception for employers governed by a collective bargaining agreement. Portland's sick leave ordinance does not contain that exception. As a result, many collective bargaining agreements between employers and unions will have to be renegotiated.**

It is not true that collective bargaining agreements will have to be renegotiated.

A city ordinance of this kind covers all employers in Eugene, including those who have union employees. There is precedent for laws that supercede bargaining, including the minimum wage, overtime protections and others. Contracts can be negotiated that exceed the standard, but these basic rights cannot be bargained away.

There are union members currently who do not have the basic protections that would be guaranteed by a Eugene sick time standard. This includes the over 400 UFCW members in the City of Eugene who have only third day sick pay. These grocery store and retail workers current bargaining agreement only allows them to use paid sick time after the third consecutive day they are ill. Thus, the first two days an employee is ill - the most contagious time in an illness- they are not able to take a paid sick day.

For employees working in low-wage jobs the first two days unpaid is 40% of their week's income- money that can make the difference between buying groceries or paying an electric bill. These employees, their families and our community cannot afford to have people working sick or living on the brink of poverty because they had the flu. This is not to mention the very serious impacts on public health- when the person making your deli sandwich is unable to take a day off when they really need it, on the first day when people are most contagious, we are all at risk.

**5. Recordkeeping: Under the proposed ordinance, employees will earn sick leave based on the amount of time spent providing services within Eugene's city limits. That means, for example, that a Springfield-based delivery driver who drives a daily route that takes her from Springfield to Eugene, to Veneta, then back through Eugene to Springfield will be required to record the time she spent in Eugene, because only that time will count toward the accrual of sick leave. Employers will then be required to track that time separately in order to ensure that the appropriate amount of sick leave is awarded and used.**

See answer to Number 3 above. Employers who hire delivery drivers already have in place tracking systems as to how much their employees already work, where they deliver, and general estimates of time in each place.

As stated above, employers will be required to allow employees to accrue and then provide sick leave only for time spent working within the geographical boundaries of the city. Meaning that time only has to be accrued for time an employee spent working in the city limits. Likewise, accrued time can also only be used for leave during times that would have been spent working in the city limits.

For employees who travel regularly inside and outside city limits, documenting and providing appropriate leave accruals should be relatively simple. Implementing rules on the sick leave ordinance in Portland allow an employer to make a "reasonable estimate" of time an employee spends working within the city limits based records such as dispatch logs, historical averages, delivery routes, etc. It is common business practice when working with employees who do regular delivery to keep track of when and where things are delivered; therefore, those employers should already have access to logs that they can use to make reasonable estimates.

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**6. Effect on attendance policies: Most employers have adopted attendance policies to help manage employee absences and ensure that service and production levels are met. The proposed ordinance will require employers to**

**relax those rules by permitting absences without prior notice and prohibiting employers in most cases from obtaining medical verification of the need for leave.**

This interpretation of Portland's ordinance does not answer the implied assumption: that employees will abuse sick time.

Evidence from across the country shows that workers do not abuse sick time and that they save it for when it is really needed. In addition, this modest benefit of 40 hours of earned paid sick time in a year will prevent employees from having to make the terrible choice between going to work sick and infecting their co-workers and customers or staying home and losing much needed pay.

Nationally, workers with access to paid sick time use an average of 2.2 days a year in small firms and 3.1 days a year in large firms.<sup>6</sup> In a 2009 survey about utilization of paid sick time in San Francisco (which passed a citywide paid sick time ordinance in 2007), the median utilization was just three days. Furthermore, more than a quarter of workers surveyed in San Francisco did not use any paid sick days in the previous year.<sup>7</sup>

The ordinance in Portland (understanding that something in Eugene could look different) includes the safeguards listed below, amongst other protections for employees and employers alike:

- 1) Abuse: 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. 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.
- 2) Employers may establish a written policy or standard for an Employee to notify the Employer of the Employee's use of Sick Time. Employers should

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<sup>6</sup> Institute for Women's Policy Research, Analysis of data from the 2008 National Health Interview Survey, 2010.

<sup>7</sup> Robert Drago and Vicky Lovell, "San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees," Institute for Women's Policy Research, February 2011. Accessed May 18, 2012 at: [http://www.iwpr.org/publications/pubs/San-Fran-PSD/at\\_download/file](http://www.iwpr.org/publications/pubs/San-Fran-PSD/at_download/file)

have a policy that outlines what they deem to be reasonable notice as a part of their absence control policies. For instance, an employer can reasonably ask an employee to inform them of an illness at a given time through a certain method (phone, email, etc.) before any given shift unless that is absolutely not possible (in emergency scenarios).

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.

3) 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.

4) 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 as indicated under the Protected Sick Time Act.

**A final note:** The law in San Francisco, implemented in 2007, was feared by some business owners. In a 2010 survey, two-thirds of San Francisco employers said they supported the law.<sup>8</sup> And business groups that were once skeptical now see the law differently: as the Executive Director of the Golden Gate Restaurant Association put it, *"paid sick days is the best public policy for the least cost."*<sup>9</sup>

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<sup>8</sup> Robert Drago and Vicky Lovell, "San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees," Institute for Women's Policy Research, February 2011. Accessed May 18, 2012 at: [http://www.iwpr.org/publications/pubs/San-Fran-PSD/at\\_download/file](http://www.iwpr.org/publications/pubs/San-Fran-PSD/at_download/file)

<sup>9</sup> James Warren, "Cough If You Need Sick Leave," BusinessWeek, June 30, 2010. Accessed April 17, 2012 at: [http://www.businessweek.com/magazine/content/10\\_24/b4182033783036.htm](http://www.businessweek.com/magazine/content/10_24/b4182033783036.htm)