



COUNCIL ORDINANCE NO. 20537

COUNCIL BILL 5127

AN ORDINANCE CONCERNING SICK LEAVE; ADDING SECTIONS 4.570 THROUGH 4.584 TO THE EUGENE CODE, 1971; AMENDING SECTION 4.996 OF THAT CODE; ADOPTING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

ADOPTED: July 28, 2014

SIGNED: July 29, 2014

PASSED: 5:3

REJECTED:

OPPOSED: Clark, Poling, Pryor

ABSENT:

EFFECTIVE: August 29, 2014, except that the provisions of EC 4.576 through 4.580 become effective on July 1, 2015



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THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Sections 4.570 through 4.584 of the Eugene Code, 1971, are added to provide as follows:

SICK LEAVE

- 4.570** **Sick Leave - Purpose.** The purposes of sections 4.570 through 4.584 of this code are: (a) to promote a sustainable, healthy and productive workforce and school population by establishing minimum standards for sick leave for employers engaged in business inside the city; and (b) to ensure that all persons working inside the city will have the right to earn and use paid sick leave. When employers fail to provide sick days, employees who are ill must choose between coming to work sick, which could spread illnesses to co-workers and customers, or staying home and losing the income possibly needed for rent, food, clothes or utilities. Similarly, parents must choose between sending their sick children to school, which could infect other children and teachers, or staying home and losing income possibly needed to survive. Allowing employees to earn and take sick leave will maintain a healthier workforce and school population.
- 4.572** **Sick Leave – Applicability.**
- (1) The provisions of sections 4.570 through 4.584 of this code apply to employers engaged in business inside the city but only to the extent that employees are working in or scheduled to work inside the city.
 - (2) Notwithstanding subsection (1) of this section, the provisions of sections 4.570 through 4.584 of this code do not apply to:
 - (a) The United States Government;
 - (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;
 - (c) Any unit of local government as that term is defined by ORS 190.003, except for the City of Eugene, including any county, city, district, authority, public corporation, municipal utility or other public entity; or

- (d) Employees in the building and construction industry whose terms and conditions of employment are covered by a collective bargaining agreement.

4.574 **Sick Leave – Definitions.** For purposes of sections 4.570 through 4.584 of this code, the following words and phrases shall mean:

- (1) **Employee.** An individual who renders personal services to an employer where the employer either pays or agrees to pay for the personal services. “Employee” includes home care workers as defined by ORS 410.600(8).
- (2) **Employer.** The same as that term is defined in ORS 653.010(3).
- (3) **Family member.** The same as that term is defined in ORS 659A.150(4) and includes domestic partners as defined under ORS 106.310.
- (4) **Inside the city.** A physical location inside the geographic boundaries of the City of Eugene.
- (5) **Paid time off.** 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 sections 4.570 through 4.584 of this code.
- (6) **Sick leave.** Paid time off that has been accrued and may be used by an employee under sections 4.570 through 4.584 of this code.

4.576 **Sick Leave – Accrual of Sick Leave.**

- (1) Except as otherwise provided in sections 4.570 through 4.584 of this code, an employee shall earn a minimum of one hour of sick leave for every 30 hours of paid work performed inside the city.
- (2) Subject to subsection (1) of this section, employers shall allow employees to accrue a maximum of 40 hours of sick leave in a year, unless the employer chooses to allow greater accrual.
- (3) Sick leave accrued by an employee that is not used in a year may be used by the employee in the following year, except that employers are not required to allow employees to use more than 40 hours of sick leave in a year.
- (4) When an employee is separated from employment and rehired by the same employer within six months of separation, previously unused sick leave shall be reinstated.
- (5) Employees shall begin to accrue sick leave from an employer on July 1, 2015, or commencement of employment, whichever is later.
- (6) An employer with a sick leave or paid time off policy that provides the employee with accrual of leave that equals or exceeds the requirements of this section is compliant with this section.

4.578 Sick Leave – Use of Sick Leave.

- (1) Unless an employer allows use at an earlier time, an employee becomes eligible to use sick leave only after:
 - (a) The employee has been employed by the employer for 90 days; and
 - (b) If the employer does not have a physical location inside the city, the employee has performed work inside the city for that employer totaling at least 240 hours in a year. Once an employee becomes eligible to use sick leave, the employee remains eligible regardless of the number of hours worked for that employer in subsequent years.
- (2) An employee may use sick leave for the following qualifying absences:
 - (a) 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;
 - (b) One or more of the purposes set out in ORS 659A.272 related to domestic violence, harassment, sexual assault or stalking; and
 - (c) Any other reason listed in the administrative rules adopted pursuant to section 4.582 of this code.
- (3) An employee may use sick leave only during times that the employee is scheduled to perform work inside the city.
- (4) **Shift Trading.**
 - (a) An employer may not require an employee to find a replacement worker for his or her shift as a condition for the employee's use of sick leave, nor work an alternative shift in lieu of using accrued sick leave.
 - (b) 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 leave for the missed hours or shifts.
- (5) Nothing in sections 4.570 through 4.584 of this code requires an employer to compensate an employee for accrued unused sick leave upon the employee's termination, resignation, retirement, or other separation from employment.
- (6) An employer with a sick leave or paid time off policy that provides the employee with use of leave that equals or exceeds the requirements of this section is compliant with this section.

4.580 Sick Leave – Exercise of Rights Protected; Retaliation Prohibited.

- (1) It shall be unlawful for an employer to interfere with the exercise of any right protected under sections 4.570 through 4.584 of this code.
- (2) An employer shall not take retaliatory action or discriminate against an employee because the employee has exercised rights protected under sections 4.570 through 4.584 of this code.

4.582 **Sick Leave – Administrative Rules.** The city manager shall adopt, and as necessary amend, rules in the manner prescribed in section 2.019 of this code to assist in the implementation of sections 4.570 through 4.584 of this code, including but not limited to:

- (1) Establishing conditions under which an employee may use sick leave;
- (2) Adopting definitions, including more detailed definitions of the words and phrases in section 4.574 of this code;
- (3) Identifying record-keeping protocols for purposes of section 4.584 of this code;
- (4) Establishing enforcement protocols for administrative civil penalties and private rights of action;
- (5) Defining an equivalent or better policy that would be deemed in compliance with this ordinance;
- (6) Providing a methodology for establishing when an employee whose employer is located outside the city, is considered to be working inside the city;
- (7) Adopting provisions to ensure that employers may establish and enforce reasonable policies for employees in order to maintain workplace productivity and prevent possible abuse; and
- (8) Establishing a grace period after July 1, 2015, during which time compliance will be sought through education rather than imposition of fines and penalties.

4.584 **Sick Leave – Enforcement.**

- (1) The city manager may delegate authority to city staff, or may contract with the Oregon Bureau of Labor and Industries or another entity, to enforce sections 4.570 through 4.584 of this code.
- (2) If an employer complies with the recordkeeping protocols promulgated pursuant to section 4.582(3) of this code, and provides those records in response to a complaint of a violation of sections 4.576 or 4.578(1) of this code, then the burden shall be on the city or its agent to establish a violation of those provisions. If an employer chooses not to comply with those recordkeeping protocols, and a complaint is filed alleging that the employer has violated sections 4.576 or 4.578(1) of this code, then the burden shall be on the employer to demonstrate compliance with the requirements of those sections.
- (3) Subject to the administrative rules adopted pursuant to section 4.582 of this code, any employee claiming to be aggrieved by an employer's violation of sections 4.570 through 4.584 of this code shall have a cause of action for damages and such other remedies as may be appropriate.
 - (a) No employee may file a cause of action under this subsection until after the employee has first sought enforcement through subsection (1) of this section and completed whatever additional steps are required by the administrative rules referenced in this subsection (2).

(b) The court may grant such relief as it deems appropriate.

Section 2. Subsection (7) of Section 4.996 of the Eugene Code, 1971, is amended to provide as follows:

4.996 Administrative Civil Penalty.

(7) In addition to, and not in lieu of any other enforcement mechanism authorized by this code the city manager or designee may impose upon the person responsible for violation of sections 4.083 through 4.084, section 4.335, section 4.340, section 4.430 and sections 4.570 through 4.584 of this code, and violations of administrative rules adopted under sections 4.570 through 4.584 of this code, an administrative civil penalty as provided by section 2.018 of this code.

Section 3. The City Manager shall adopt the administrative rules required by Section 4.582 of the Eugene Code, 1971 (“EC”) not later than January 31, 2015. In addition to other requirements imposed by EC 2.019 for administrative rule-making, as part of this initial administrative rule adoption process, the City Manager shall consider at a minimum: (a) the Sick Leave Task Force report dated June 18, 2014; (b) similar ordinances adopted by other cities; and (c) input from a broad array of stakeholder perspectives including representatives of the business community, labor organizations and other workers, and advocates (both supporters and opponents). In addition, the city manager shall provide the Council with bi-weekly updates on the development of the administrative rules and a draft of the proposed rules for comment before adoption.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 5. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, the provisions of EC 4.576 through 4.580 shall not become effective until July 1, 2015.

Section 6. On or before July 1, 2017, the City Council shall review the sick leave program adopted by this Ordinance.

Passed by the City Council this
28th day of July, 2014

Approved by the Mayor this
29 day of July, 2014

Beth Louest
City Recorder

Kitty Pelley
Mayor