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### NEW REGULATIONS IN PORTLAND EXPAND EMPLOYEE SICK LEAVE

This Newsletter is prepared by Shook, Hardy & Bacon's National Employment Litigation & Policy Practice<sup>SM</sup>. Contributors to this issue: [Bill Martucci](#) and [Ashley Schawang](#).

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Attorneys in the Employment Litigation & Policy Practice represent corporate employers throughout the United States in all types of employment matters. To learn more about the SHB employment group and its members, see [SHB.com](#).

Beginning January 1, 2014, companies that employ workers who perform job functions in Portland, Oregon, will be required to expand their sick leave policies under an ordinance passed by the Portland City Council and final regulations crafted by the city attorney. Employers that fail to comply with the regulations may be fined up to \$1,000.

The new rules require employers with six or more employees to provide an employee one hour of *paid* sick leave for every 30 hours of work performed. For those employers with fewer than six employees, one hour of *unpaid* sick leave is required for every 30 hours of work.

All employees who work for an employer are counted in determining the number of employees employed by a company, including full-time, part-time, and temporary employees and employees who work outside Portland. Temporary workers supplied by a staffing agency, however, are not counted. The number of employees working for an employer is computed quarterly. Even if this number falls below six, an employee must be allowed to use paid sick leave that he or she has accrued but has not used.

The regulations cover all employees who work at least 240 hours (including overtime hours) in a calendar year in Portland and who are either: (a) an employee under state wage payment or minimum wage and overtime laws, (b) an individual working as a condition of receiving public assistance, or (c) a home care worker. So long as an employee has worked at least 240 hours for an employer, he or she may begin to use accrued sick time on the 90th day after employment began.

An employee is considered to work in Portland if he or she physically performs job duties in the city. This includes employees who telecommute from Portland or who make brief stops in Portland to conduct work, such as to make deliveries, pickups or sales calls. Employees who perform work outside Portland are not covered for that time, and employees who travel through Portland without making job-related stops or who make incidental stops in Portland are not covered.

Employees are entitled to a maximum of 40 hours per year of sick time under the regulations, regardless of how many unused hours are carried

over from the previous year. For employers required to provide paid sick leave, the rate at which an employee must be paid is calculated according to the employee's hourly rate, even if the employee is paid by salary.

Employees must notify employers of their intent to use sick time as soon as practicable, and an employer may require reasonable documentation that leave was not used for a non-covered purpose if the absence is for more than three consecutive working days. An employer must normally pay for the cost of verification, but the employee bears this cost where abuse of sick leave is suspected. Further, an employee must make reasonable efforts to schedule sick time in a way that does not unduly disrupt the employer's operations.

An employer may not condition the use of sick leave on an employee finding a replacement worker or require the employee to work an alternate shift. Employers are also prohibited from retaliating against employees who use accrued sick leave and from requiring that sick leave be used at a future time.

The regulations mandate that employers provide notice of employees' rights, including notice of the entitlement to sick time, the amount of sick time and terms of use, the prohibition against retaliation, and the right to file a complaint if sick time is unlawfully denied or if unlawful retaliation occurs. Not only are employers required to keep records documenting hours worked and sick time accrued and used by employees, but the records also must document all "actual" hours worked for each week and each pay period and must indicate employee names, addresses, and occupations.

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