

## The Use of Sick Leave During the State's Public Health Emergency

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This is one of two articles in this edition of the LGPI Newsletter intended to clarify for LGPI members their obligations to grant paid sick leave to employees under both Oregon's Sick Time Act and under the newly signed Families First Coronavirus Response Act. The latter Act also requires employers to grant employees a new type of *paid* family medical leave even if they employ fewer than 50 employees. This article addresses a purpose for which an employee may use paid sick leave under the Oregon Sick Time Act which, while rarely needed, was recently invoked by Governor Brown.

On March 8, Governor Brown declared a "state of emergency" due to the threat of the spread in Oregon of COVID-19 caused by a novel coronavirus. On March 12, she ordered the state's K-12 schools closed from March 16 to March 31. Then on March 17, she ordered the closure extended from March 31 to April 28. This is to remind LGPI members that the order by a public official closing the schools due to a public health emergency is a specific purpose for which employees may use accrued hours of sick leave under state law. ORS 653.616(6)(a) states:

An employee may use sick time earned . . .

(6) In the event of a public health emergency. For purposes of this subsection, a public health emergency includes, but is not limited 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;

Under the Oregon Sick Time Act then, upon employees notifying their employers of the need to use paid sick leave in accordance with their workplaces' notice and procedural requirements, employees who have children enrolled in a k-12 school that is closed by the Governor's order are entitled to use hours of accrued sick leave on any day their child's school is closed.

Under the new Families First Coronavirus Response Act which takes effect on April 2, the closure of an employee's child's school or the loss of childcare due to due to a public health emergency will further trigger the right of an employee to use paid family medical leave. (See companion article in this Newsletter).

The right of employees to use paid sick leave due to school's closed by a public health emergency under the Oregon Sick Time Act applies to biological, adoptive and foster children of the employee or a child with whom the employee is in a relationship of in loco parentis, meaning an adult who is responsible for children in the place of a parent. Beyond the statute, personnel policies or collective bargaining agreements at your organization may add other adult-child relationships that qualify the employee to use sick leave due to the closure, (e.g. stepparent – stepchild).

Further relevant to the present state of emergency, a determination by a health care provider or public health authority that the presence of an employee at work would jeopardize the health of others, such that the employee must provide self-care, triggers another purpose for which sick leave may be taken.

Imagine if an employee at your workplace tests positive for exposure to the novel coronavirus – but is not (or not yet) exhibiting symptoms of COVID-19: under the Sick Time Act, upon the determination by the employee's health care provider or a public health authority that the employee's presence on the job would jeopardize the health of co-workers or members of the public with whom the employee has contact, the employee would immediately be entitled under the Act to use accrued sick leave, even if they are not (yet) actually sick.

LGPI encourages its members to call LGPI to use the Technical Assistance benefit of their memberships for assistance on how to apply Oregon's Sick Time Act and collective bargaining agreements at their workplaces. Email me (Pierre Robert) at [probert@orcities.org](mailto:probert@orcities.org) or call me at (541) 359-9417. 