

## Rule # 3-55

### Use and Misuse of Leave for Sick Leave Purposes

§§:

[3-55-005 Purpose](#)

[3-55-010 Policy](#)

[3-55-015 Verification of Use](#)

[3-55-020 Discipline](#)

[3-55-030 Exercise of Protected Sick Leave Rights](#)

[3-55-040 Retaliation](#)

#### § 3-55-005 Purpose

This rule is intended to improve productivity by providing better tools to manage poor attendance; to minimize costs associated with employee absences due to sick leave; to maintain overall County morale by ensuring each employee meets their own work requirements; and to ensure the expectations of supervisors and employees regarding sick leave use are consistent across all County departments. This rule applies to all classified and non-represented employees and does not amend or supersede any collective bargaining agreement.

#### § 3-55-010 Policy

The County provides for sick leave as outlined in MCPR § 2-45. Protected sick leave is limited to the first forty (40) hours of sick leave taken by an employee each calendar year. Sick leave taken in excess of forty (40) hours each calendar year is considered regular sick leave. Reliable and consistent attendance is an expectation of all County employees. Employees must only use sick leave for legitimate purposes and only for bona fide illness, as defined either by their collective bargaining agreement or these rules.

#### § 3-55-015 Verification

- A. Pursuant to Multnomah County policy, management must require the completion of a certification form by the employee's health care provider and any other verification required under the provisions of the [Family and Medical Leave Act \(FMLA\)](#), [Oregon Family Leave Act \(OFLA\)](#), or their successors.
- B. Management may require medical verification of absence for non-FMLA and non-OFLA protected illness or injury under the following conditions:
  1. The employee has been absent for more than three (3) consecutive work days; or
  2. The employee has requested sick leave that is scheduled to last more than three (3) scheduled work days; or
  3. The employee has exhausted all sick leave; or

4. The employee commences sick leave without providing prior notice required by the County; or
  5. Management reasonably believes that the absence may not be bona fide, including engaging in a pattern of sick leave abuse.
  6. If medical verification is requested, the County will pay any and all reasonable costs associated with obtaining medical verification.
- C. Medical verification may be required for regular (unprotected) sick leave under the following conditions:
1. The employee has been absent for more than three (3) consecutive work days; or
  2. The employee has exhausted all sick leave; or
  3. The employee has had five (5) or more events with less than twenty-four (24) hours' notice in a six (6) month period; or
  4. Management reasonably believes that the absence may not be bona fide.

### **§ 3-55-020 Discipline**

Use of accrued sick leave, without abuse of such leave, will not be cause for discipline. Subject to the limitations of law, including but not limited to those of the [Oregon Sick Leave Law](#), FMLA, OFLA, and the Americans with Disabilities Act ([ADA](#)) and its amendments, discipline up to and including termination may be imposed under the following conditions:

- A. Abuse of sick leave: Misuse of leave, or violation of orders, directives, personnel rules, or contractual requirements concerning the use of sick leave (and other forms of leave used in lieu of sick leave) is cause for disciplinary action up to and including termination.
- B. Excessive absenteeism: Every employee has a duty to be reliably present at work. Failure to confine sick leave usage to accrued and available sick leave is considered excessive absenteeism and may result in discipline up to and including termination. Such cases, however, are subject to just cause review and require systematic examination of relevant factors, including but not limited to:
  1. Any legal requirements, including, but not limited to those of the Oregon Sick Leave Law, FMLA OFLA, or the ADA and its amendments.
  2. The tenure and work history of the employee, including whether there have been previous instances of this pattern of absenteeism.
  3. Whether there is a likelihood of improvement within a reasonable period of time based on credible medical evidence.
  4. The particular attendance requirements of the employee's job.

5. The pattern of use, and whether the absences are clearly for bona fide sick leave purposes.

#### **§ 3-55-030 Exercise of Protected Sick Leave Rights**

The County will not count appropriate and lawful absences covered under protected sick leave as an absence that may lead to or result in an adverse employment action against the employee.

#### **§ 3-55-040 Retaliation**

The County will not tolerate the interference with, restraint of, or denial of the exercise or the attempted exercise of, “protected sick leave” as defined in MCPR § 2-45. The County will not tolerate retaliation or discrimination against an employee because the employee has exercised their rights of protected sick leave.

### **REFERENCES**

MCPR 2-45 Sick Leave

[Oregon Sick Leave Law](#)

[Family and Medical Leave Act \(FMLA\)](#)

[Oregon Family Leave Act \(OFLA\)](#)

[Americans with Disabilities Act \(ADA\)](#)