

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

- 1           SECTION 1. The legislature finds that:
- 2           (1) Most workers in the State, at some time during the
- 3           year, need temporary time off from work to take care
- 4           of personal health needs or the health needs of
- 5           members of their families;
- 6           (2) Nationally, fifty-two per cent of all private sector
- 7           workers have paid sick time and only thirty per cent
- 8           of workers may use that time to care for sick
- 9           children. There are many workers in the State who do
- 10          not have any paid sick time, or who have inadequate
- 11          time, to care for their own health needs or the health
- 12          needs of members of their families;
- 13          (3) Low income workers are significantly less likely to
- 14          have paid sick leave than other members of the
- 15          workforce. Only one in five low income workers has
- 16          access to paid sick leave;
- 17          (4) Providing workers time off to attend to their personal
- 18          health care needs and the health care needs of family



1 members would ensure a healthier and more productive  
2 workforce in the State;

3 (5) Paid sick leave would have a positive effect on the  
4 public health of residents of the State by allowing  
5 sick workers the option of staying home when the  
6 worker is ill, thus lessening recovery time and  
7 reducing the likelihood of spreading illness to other  
8 members of the workforce and to the public;

9 (6) Paid sick leave would allow parents to provide  
10 personal care for their sick children. Parental care  
11 makes children's recovery faster, prevents more  
12 serious illnesses, and improves children's overall  
13 mental and physical health;

14 (7) Providing a minimal amount of paid sick leave is  
15 affordable for employers;

16 (8) Paid sick leave is good for business because employers  
17 who provide paid sick leave have greater employee  
18 retention and avoid the problem of workers coming to  
19 work sick and lowering productivity;

20 (9) Almost sixty per cent of those who provide unpaid care  
21 to an adult family member or friend must combine their



1            caregiving with employment to provide financially for  
2            their family member and themselves;

3            (10) Employees frequently lose their jobs or are  
4            disciplined for taking sick leave to care for sick  
5            family members or even to recover from their own  
6            illness. One in six workers report that they or a  
7            family member has been fired, suspended, punished, or  
8            threatened by an employer because they needed to take  
9            sick leave for themselves or a family member;

10           (11) Workers in jobs with high public contact, such as  
11           service workers and restaurant workers, are generally  
12           unlikely to have paid sick leave. Because of the lack  
13           of paid sick leave, these workers have no choice but  
14           to come to work when they are ill, which increases the  
15           risk of passing illnesses to co-workers and customers;

16           (12) In the event of an outbreak that presents a threat to  
17           public health, for example, the H1N1 outbreak of 2009,  
18           government officials request that sick workers stay  
19           home and keep sick children home from school or child  
20           care to prevent the spread of the virus and to  
21           safeguard workplace productivity. However, to protect  
22           their paychecks and their jobs, many workers who lack



1           paid sick leave are unable to comply with these  
2           requests;

3           (13) Many employers would like to provide their workers  
4           with paid sick leave but fear being at a competitive  
5           disadvantage because other employers do not;

6           (14) Nearly one in three American women report physical or  
7           sexual abuse by a husband or boyfriend at some point  
8           in their lives. Domestic violence results in an  
9           estimated 1,200 deaths and two million injuries among  
10          women annually. In 2007, 248,300 individuals were  
11          raped or sexually assaulted. Intimate partner  
12          violence also affects men. Women account for eighty-  
13          five per cent of the victims of intimate partner  
14          violence and men account for approximately fifteen per  
15          cent of the victims. Therefore, women  
16          disproportionately need time off to care for their  
17          health or to find solutions, such as obtaining a  
18          restraining order or housing, to avoid or prevent  
19          physical or sexual abuse;

20          (15) The Centers for Disease Control has estimated that  
21          domestic violence costs over \$700,000,000 annually due  
22          to victims' lost productivity in employment;



1 (16) Victims of domestic violence are forced to lose days  
2 of paid employment because of the violence they face.  
3 The mean number of days of paid work lost by rape  
4 victims is 8.1 days, for victims of physical assault  
5 7.2 days, and for stalking victims 10.1 days.  
6 Without paid sick and safe days, these victims are in  
7 grave danger of losing their jobs. The loss of  
8 employment can be particularly devastating for victims  
9 of domestic violence, who often need economic security  
10 to ensure safety; and

11 (17) The General Accounting Office found that twenty-five  
12 to fifty per cent of domestic violence victims  
13 reported losing a job due, at least in part, to  
14 domestic violence;

15 The purpose of this Act is:

16 (1) To ensure that all workers in the State can address  
17 their own health and safety needs and the health and  
18 safety needs of their families by requiring employers  
19 to provide a minimum level of paid sick and safe  
20 leave, including time for family care;

21 (2) To diminish public and private health care costs in  
22 the State by enabling workers to seek early and



1 routine medical care for themselves and their family  
2 members;

3 (3) To protect employees in the State from losing their  
4 jobs while they use sick and safe leave to care for  
5 themselves or their families;

6 (4) To assist victims of domestic violence and their  
7 family members by providing them with job protected  
8 time away from work to allow them to receive treatment  
9 and to take the necessary steps to ensure their safety  
10 and protection;

11 (5) To safeguard the public welfare, health, safety, and  
12 prosperity of the people of the State; and

13 (6) To accomplish the purpose of this Act in a manner that  
14 is feasible for employers.

15 SECTION 2. Chapter 398, Hawaii Revised Statutes, is  
16 amended by amending the title of part I to read as follows:

17 "PART I. [~~GENERAL PROVISIONS~~] FAMILY MEDICAL LEAVE"

18 SECTION 3. Chapter 398, Hawaii Revised Statutes, is  
19 amended by adding a new part to be appropriately designated and  
20 to read as follows:

21 "PART . PAID SICK AND SAFE LEAVE

1           §398-       Definitions. As used in this part, unless the  
2 context clearly requires otherwise:

3           "Domestic violence" has the same meaning as defined in  
4 section 321-471.

5           "Employee" has the same meaning as defined in the federal  
6 Fair Labor Standards Act, Title 29 United States Code section  
7 203(e), and includes recipients of public benefits who are  
8 engaged in work activity as a condition of receiving public  
9 assistance.

10          "Employer" has the same meaning as defined in the federal  
11 Fair Labor Standards Act, Title 29 United States Code section  
12 203(d).

13          "Family member" means:

14          (1) A biological, adopted, or foster child, stepchild or  
15             legal ward, a child of a civil union partner or  
16             reciprocal beneficiary, or a child to whom the  
17             employee stands in loco parentis;

18          (2) A biological, foster, stepparent, or adoptive parent  
19             or legal guardian of an employee or an employee's  
20             spouse, civil union partner, or reciprocal  
21             beneficiary, or a person who stood in loco parentis  
22             when the employee was a minor child;



- 1           (3) A spouse, civil union partner, or reciprocal  
2           beneficiary;
- 3           (4) A grandparent, spouse, civil union partner, or  
4           reciprocal beneficiary of a grandparent;
- 5           (5) A grandchild;
- 6           (6) A biological, foster, or adopted sibling, spouse,  
7           civil union partner, or reciprocal beneficiary of a  
8           biological, foster, or adopted sibling; and
- 9           (7) Any other individual related by blood or affinity  
10          whose close association with the employee is the  
11          equivalent of a family relationship.

12           "Health care professional" has the same meaning as defined  
13 in section 432E-1.

14           "Paid sick leave" and "paid sick and safe leave" means time  
15 that is compensated at the same hourly rate and with the same  
16 benefits, including health care benefits, as the employee  
17 normally earns during hours worked and is provided by an  
18 employer to an employee.

19           "Retaliatory personnel action" means the discharge,  
20 suspension, or demotion by an employer of an employee or any  
21 other adverse action taken by an employer against an employee,





1 and also includes any sanctions against a recipient of public  
2 benefits.

3 "Sexual assault" means any conduct proscribed by chapter  
4 707, part V.

5 "Small business" means any corporation, partnership, sole  
6 proprietorship, firm, institution, association, or private  
7 individual for which less than one hundred persons work for  
8 compensation during a given week. In determining the number of  
9 persons performing work for compensation during a given week,  
10 all persons performing work for compensation on a full-time,  
11 part-time, or temporary basis shall be counted, including  
12 persons made available to work through the services of a  
13 temporary services, staffing agency, or similar entity. In  
14 situations in which the number of persons who work for  
15 compensation per week fluctuates above and below one hundred or  
16 more per week over the course of a year, an employer is not  
17 considered a small business if the employer maintained one  
18 hundred or more employees on the payroll during twenty or more  
19 calendar workweeks in either the current or the preceding  
20 calendar year.

21 "Stalking" has the same meaning as defined as in section  
22 378-71.



1           §398-       Accrual of paid sick and safe leave. (a) All  
2 employees who work in the State for more than        hours in a  
3 year have the right to paid sick and safe leave as provided in  
4 this part.

5           (b) All employees shall accrue a minimum of one hour of  
6 paid sick and safe leave for every        hours worked. Employees  
7 shall not accrue more than        hours of paid sick and safe leave  
8 in a calendar year, unless the employer provides a higher limit.

9           (c) Employees of small businesses shall not accrue more  
10 than        hours of paid sick and safe leave in a calendar year,  
11 unless the employer provides a higher limit.

12           (d) Employees who are exempt from overtime requirements  
13 under the Federal Fair Labor Standards Act, Title 29 United  
14 States Code section 213(a)(1), shall be assumed to work forty  
15 hours in each work week for purposes of paid sick and safe leave  
16 accrual unless their normal work week is less than forty hours,  
17 in which case paid sick and safe leave accrues based upon that  
18 normal work week.

19           (e) Paid sick and safe leave as provided in this part  
20 shall begin to accrue at the commencement of employment.

21           (f) Employees shall be entitled to use accrued paid sick  
22 and safe leave beginning on the        calendar day following



1 commencement of their employment. After the calendar day of  
2 employment, employees may use paid sick and safe leave as it is  
3 accrued.

4 (g) Paid sick and safe leave shall be carried over to the  
5 following calendar year; provided that an employee's use of paid  
6 sick and safe leave provided under this part in each calendar  
7 year shall not exceed hours for employees of small  
8 businesses and hours for employees of all other businesses.

9 (h) An employer shall not be required to provide  
10 additional paid sick and safe leave if the employer has a paid  
11 leave policy that makes available an amount of paid leave  
12 sufficient to meet the accrual requirements of this part and  
13 that may be used for the same purposes and under the same  
14 conditions as paid sick and safe leave under this part.

15 (i) Nothing in this section shall be construed as  
16 requiring financial or other reimbursement to an employee from  
17 an employer upon the employee's termination, resignation,  
18 retirement, or other separation from employment for accrued paid  
19 sick and safe leave that has not been used.

20 (j) If an employee is transferred to a separate division,  
21 entity, or location, but remains employed by the same employer,  
22 the employee shall be entitled to all paid sick leave accrued at



1 the prior division, entity, or location and shall be entitled to  
2 use all paid sick leave as provided in this part. When there is  
3 a separation from employment and the employee is rehired  
4 within months of separation by the same employer, previously  
5 accrued paid sick and safe leave that had not been used shall be  
6 reinstated. In addition, the employee shall be entitled to use  
7 accrued paid sick and safe leave and accrue additional sick and  
8 safe leave at the re-commencement of employment.

9 (k) The employer may advance sick and safe leave to the  
10 employee prior to the accrual by the employee.

11 §398- Use of paid sick and safe leave. (a) Paid sick  
12 and safe leave shall be provided to an employee by an employer  
13 for:

14 (1) An employee's mental or physical illness, injury, or  
15 health condition; an employee's need for medical  
16 diagnosis, care, or treatment of a mental or physical  
17 illness, injury, or health condition; or an employee's  
18 need for preventive medical care;

19 (2) Care of a family member with a mental or physical  
20 illness, injury, or health condition; care of a family  
21 member who needs medical diagnosis, care, or treatment  
22 of a mental or physical illness, injury, or health



- 1 condition; care of a family member who needs  
2 preventive medical care;
- 3 (3) Closure of the employee's place of business by order  
4 of a public official due to a public health emergency,  
5 or an employee's need to care for a child whose school  
6 or place of care has been closed by order of a public  
7 official due to a public health emergency, or care for  
8 a family member when it has been determined by the  
9 health authorities having jurisdiction or by a health  
10 care provider that the family member's presence in the  
11 community would jeopardize the health of others  
12 because of the family member's exposure to a  
13 communicable disease, regardless of whether the family  
14 member has actually contracted the communicable  
15 disease; and
- 16 (4) Absence necessary due to domestic violence, sexual  
17 assault, or stalking; provided that the leave is to:
- 18 (A) Seek medical attention for the employee or a  
19 family member of the employee to recover from  
20 physical or psychological injury or disability  
21 caused by domestic or sexual violence;



- 1 (B) Obtain services from a victim services
- 2 organization;
- 3 (C) Obtain psychological or other counseling;
- 4 (D) Seek relocation due to the domestic violence,
- 5 sexual assault, or stalking; or
- 6 (E) Take legal action, including preparing for or
- 7 participating in any civil or criminal legal
- 8 proceeding related to the domestic violence,
- 9 sexual assault, or stalking.

10 (b) Paid sick and safe leave shall be provided upon the  
11 oral request of an employee. When possible, the request shall  
12 include the expected duration of the absence.

13 (c) When the use of paid sick and safe leave is  
14 foreseeable, the employee shall make a good faith effort to  
15 provide notice of the need for the time to the employer in  
16 advance of the use of the sick and safe leave and shall make a  
17 reasonable effort to schedule the use of sick and safe leave in  
18 a manner that does not unduly disrupt the operations of the  
19 employer.

20 (d) Accrued sick and safe leave may be used in the smaller  
21 of hourly increments or the smallest increment that the



1 employer's payroll system uses to account for absences or use of  
2 other time.

3 (e) For sick and safe leave of more than three consecutive  
4 days, an employer may require reasonable documentation that the  
5 sick and safe leave is covered by subsection (a). The following  
6 shall be considered reasonable documentation:

7 (1) A written, signed statement by a health care  
8 professional indicating that sick and safe leave is  
9 necessary;

10 (2) A police report indicating that the employee was a  
11 victim of domestic violence, stalking, or sexual  
12 assault;

13 (3) A court order; or

14 (4) A signed statement from a victim and witness advocate  
15 affirming that the employee is involved in legal  
16 action related to domestic violence, stalking, or  
17 sexual assault.

18 An employer may not require that the documentation explain the  
19 nature of the illness or the details of the violence. If an  
20 employer chooses to require documentation for sick and safe  
21 leave and the employee does not have health insurance, the  
22 employer shall be responsible for paying all out of pocket



1 expenses the employee incurs in obtaining the documentation. If  
2 the employee has health insurance, the employer shall be  
3 responsible for paying any costs charged to the employee by the  
4 health care provider for providing the specific documentation  
5 required by the employer.

6 (f) An employer may not require, as a condition of  
7 providing paid sick and safe leave, that the employee search for  
8 or find a replacement worker to cover the hours during which the  
9 employee is on paid sick and safe leave.

10 §398- Exercise of rights protected; retaliation

11 prohibited.\* (a) It shall be unlawful for an employer or any  
12 other person to interfere with, restrain, or deny the exercise  
13 of, or the attempt to exercise, any right protected under this  
14 part.

15 (b) An employer shall not take retaliatory personnel  
16 action or discriminate against an employee because the employee  
17 has exercised rights protected under this part. These rights  
18 include the right to:

19 (1) Use paid sick and safe leave pursuant to this part;

20 (2) File a complaint or inform any person about any

21 employer's alleged violation of this part;





1 (3) Cooperate with the director in any investigation of  
2 alleged violations of this part; and

3 (4) Inform any person of the person's potential rights  
4 under this part.

5 (c) It shall be unlawful for an employer to count paid  
6 sick and safe leave taken under this part as an absence that may  
7 lead to or result in discipline, discharge, demotion,  
8 suspension, or any other adverse action.

9 (d) Protections of this section shall apply to any person  
10 who mistakenly but in good faith alleges violations of this  
11 part.

12 (e) There shall be a rebuttable presumption of unlawful  
13 retaliation under this section whenever an employer takes  
14 adverse action against an employee within ninety days of the  
15 time that the employee:

16 (1) Files a complaint with the director or a court  
17 alleging a violation of any provision of this part;

18 (2) Informs any person about an employer's alleged  
19 violation of this part;

20 (3) Cooperates with the director or other person in the  
21 investigation or prosecution of any alleged violation  
22 of this part;



- 1 (4) Opposes any policy, practice, or act that is unlawful
- 2 under this part; or
- 3 (5) Informs any person of the person's rights under this
- 4 part.

5 §398- Notice and posting. (a) An employer shall give  
6 employees notice of the following:

- 7 (1) Employees are entitled to paid sick and safe leave;
- 8 (2) The amount of paid sick and safe leave;
- 9 (3) The terms of sick and safe leave use as guaranteed
- 10 under this part;
- 11 (4) That retaliation against employees who request or use
- 12 paid sick and safe leave is prohibited; and
- 13 (5) That each employee has the right to file a complaint
- 14 or bring a civil action if sick and safe leave, as
- 15 required by this part, is denied by the employer, or
- 16 if the employee is retaliated against for requesting
- 17 or taking paid sick and safe leave.

18 (b) An employer shall comply with this section by  
19 providing the information required in subsection (a) by:

- 20 (1) Individualized notice; or



1           (2)    Displaying a poster in a conspicuous and accessible  
2                    place in each establishment where the employees are  
3                    employed.

4   The notice and poster shall be in English and in any language  
5   that is the first language spoken by at least five per cent of  
6   the employer's workforce.

7           (d)    The director shall create and make posters available  
8   to employers that contain the information required under  
9   subsection (a) for the employer's use in complying with this  
10   section.

11          (e)    An employer who willfully violates the notice and  
12   posting requirements of this section shall be subject to a civil  
13   fine in an amount not to exceed \$100 for each separate offense.

14          **§398-       Employer records.**   An employer shall retain  
15   records documenting hours worked by employees and paid sick and  
16   safe leave taken by employees for a period of five years and  
17   shall allow the director access to the records, with appropriate  
18   notice and at a mutually agreeable time, to monitor compliance  
19   with the requirements of this part.   When an issue arises as to  
20   an employee's entitlement to paid sick and safe leave under this  
21   part, it shall be presumed that the employer has violated this  
22   part, absent clear and convincing evidence otherwise, if the



1 employer does not maintain or retain adequate records  
2 documenting hours worked by the employee and paid sick and safe  
3 leave taken by the employee or does not allow the director  
4 reasonable access to the records.

5 §398- Enforcement. (a) An employee or other person  
6 may report to the director any suspected violation of this part.  
7 The director shall encourage reporting pursuant to this  
8 subsection by keeping confidential, to the maximum extent  
9 permitted by applicable laws, the name and other identifying  
10 information of the employee or person reporting the violation;  
11 provided that with the authorization of the person, the director  
12 may disclose the person's name and identifying information as  
13 necessary to enforce this part or for other appropriate  
14 purposes.

15 (b) The director, attorney general, or any person  
16 aggrieved by a violation of this part, or any entity a member of  
17 which is aggrieved by a violation of this part, may bring a  
18 civil action in a court of competent jurisdiction against an  
19 employer violating this part. The action may be brought without  
20 first filing an administrative complaint.

21 (c) Any person aggrieved by a violation of this part, or  
22 any entity a member of which is aggrieved by a violation of this



1 part, may file a complaint with the attorney general. The  
2 filing of a complaint with the attorney general shall not  
3 preclude the filing of a civil action.

4 (d) Upon prevailing in an action brought pursuant to this  
5 section, aggrieved persons shall recover:

- 6 (1) The full amount of any unpaid sick and safe leave;
- 7 (2) Actual damages suffered as the result of the  
8 employer's violation of this part; and
- 9 (3) Reasonable attorney's fees.

10 Aggrieved persons shall also be entitled to equitable relief, as  
11 may be appropriate, to remedy the violation, including,  
12 reinstatement, back pay, and injunctive relief.

13 (e) The statute of limitations for a civil action brought  
14 pursuant to this part shall be for a period of        years from  
15 the date the alleged violation occurred.

16 (f) Actions brought pursuant to this part may be brought  
17 as a class action.

18 **§398- Confidentiality and nondisclosure.** An employer  
19 shall not require disclosure of details relating to domestic  
20 violence, sexual assault, stalking, or the details of an  
21 employee's medical condition as a condition of providing paid  
22 sick and safe leave under this part. If an employer possesses



1 health information or information pertaining to domestic  
2 violence, sexual assault, or stalking about an employee or  
3 employee's family member, the information shall be treated as  
4 confidential and shall not be disclosed except to the affected  
5 employee or with the permission of the affected employee.

6 §398- Encouragement of more generous sick and safe  
7 leave policies; no effect on more generous policies. (a)

8 Nothing in this part shall be construed to discourage or  
9 prohibit an employer from the adoption or retention of a paid  
10 sick and safe leave policy more generous than the one required  
11 by this part.

12 (b) Nothing in this part shall be construed as diminishing  
13 the obligation of an employer to comply with any contract,  
14 collective bargaining agreement, employment benefit plan, or  
15 other agreement providing more generous sick and safe leave to  
16 an employee than required herein.

17 (c) Nothing in this part shall be construed as diminishing  
18 the rights of public employees regarding paid sick and safe  
19 leave or use of sick and safe leave as provided by law.

20 (d) This part shall provide the minimum requirements of  
21 paid sick and safe leave and shall not be construed to preempt,  
22 limit, or otherwise affect the applicability of any other law,




1 rule, requirement, policy, or standard that provides for greater  
2 accrual or use by employees of sick and safe leave, whether paid  
3 or unpaid, or that extends other protections to employees."

4 SECTION 4. If any provision of this Act, or the  
5 application thereof to any person or circumstance, is held  
6 invalid, the invalidity does not affect other provisions or  
7 applications of the Act that can be given effect without the  
8 invalid provision or application, and to this end the provisions  
9 of this Act are severable.

10 SECTION 5. This Act shall take effect on July 1, 2012;  
11 provided that in the case of employees covered by a collective  
12 bargaining agreement in effect on July 1, 2012, this Act shall  
13 take effect on the date of the termination, renewal, or  
14 amendment of the collective bargaining agreement then in effect.

15

INTRODUCED BY:





**Report Title:**

Paid Sick and Safe Leave

**Description:**

Requires employers to provide a minimum amount of paid sick and safe leave to employees to be used to care for themselves or a family member who is ill or a victim of domestic violence, sexual assault, or stalking.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

