
A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

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 stalking
4 victims is 10.1 days, rape victims 8.1 days, and for
5 victims of physical assault 7.2 days. Without paid
6 sick and safe days, these victims are in grave danger
7 of losing their jobs. The loss of employment can be
8 particularly devastating for victims of domestic
9 violence, who often need economic security to ensure
10 safety; and

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

15 The purpose of this Act is to:

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



- 1 (2) Diminish health care costs in the State by enabling
- 2 workers to seek early and routine medical care for
- 3 themselves and their family members;
- 4 (3) Protect employees in the State from losing their jobs
- 5 while they use sick and safe leave to care for
- 6 themselves or their families;
- 7 (4) Assist victims of domestic violence and their family
- 8 members by providing them with job protected time away
- 9 from work to allow them to receive treatment and to
- 10 take the necessary steps to ensure their safety and
- 11 protection;
- 12 (5) Safeguard the welfare, health, safety, and prosperity
- 13 of the people of the State; and
- 14 (6) Accomplish the purpose of this Act in a manner that is
- 15 feasible for employers.

16 SECTION 2. The Hawaii Revised Statutes is amended by
 17 adding a new chapter to be appropriately designated and to read
 18 as follows:

19 **"CHAPTER**

20 **PAID SICK AND SAFE LEAVE**

21 **§ -1 Definitions.** As used in this chapter, unless the
 22 context clearly requires otherwise:



1 "Department" means the department of labor and industrial
2 relations.

3 "Director" means the director of labor and industrial
4 relations.

5 "Domestic violence" has the same meaning as defined in
6 section 321-471.

7 "Employee" has the same meaning as in section 388-1, and
8 includes recipients of public benefits who are engaged in work
9 activity as a condition of receiving public assistance.

10 "Employer" has the same meaning as in section 388-1.

11 "Family member" means:

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

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

21 (3) A spouse, civil union partner, or reciprocal
22 beneficiary;



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

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

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

17 "Retaliatory personnel action" means the discharge,
18 suspension, or demotion by an employer of an employee or any
19 other adverse action taken by an employer against an employee,
20 and also includes any sanctions against a recipient of public
21 benefits.



1 "Sexual assault" means any conduct proscribed by chapter
2 707, part V.

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

19 "Stalking" has the same meaning as defined as in section
20 378-71.

21 **§ -2 Accrual of paid sick and safe leave.** (a) All
22 employees who work in the State for more than six hundred eighty



1 hours in a year have the right to paid sick and safe leave as
2 provided in this chapter.

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

8 (c) Employees of small businesses are not subject to this
9 chapter.

10 (d) Employees who are exempt from overtime requirements
11 pursuant to section 387-3, shall be assumed to work forty hours
12 in each work week for purposes of paid sick and safe leave
13 accrual unless their normal work week is less than forty hours,
14 in which case paid sick and safe leave accrues based upon that
15 normal work week.

16 (e) Paid sick and safe leave as provided in this chapter
17 shall begin to accrue at the commencement of employment.

18 (f) Employees shall be entitled to use any accrued paid
19 sick and safe leave beginning ninety calendar days following the
20 commencement of their employment.

21 (g) Paid sick and safe leave shall be carried over to the
22 following calendar year; provided that an employee's use of paid



1 sick and safe leave provided under this chapter in each calendar
2 year shall not exceed forty hours.

3 (h) An employer shall not be required to provide
4 additional paid sick and safe leave if the employer has a paid
5 leave policy that makes available an amount of paid leave
6 sufficient to meet the accrual requirements of this chapter and
7 that may be used for the same purposes and under the same
8 conditions as paid sick and safe leave under this chapter.

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

14 (j) If an employee is transferred to a separate division,
15 entity, or location, but remains employed by the same employer,
16 the employee shall be entitled to all paid sick leave accrued at
17 the prior division, entity, or location and shall be entitled to
18 use all paid sick leave as provided in this chapter. When there
19 is a separation from employment and the employee is rehired
20 within six months of separation by the same employer, previously
21 accrued paid sick and safe leave that had not been used shall be
22 reinstated. In addition, the employee shall be entitled to use



1 accrued paid sick and safe leave and accrue additional sick and
2 safe leave at the re-commencement of employment.

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

5 **§ -3 Use of paid sick and safe leave.** (a) Paid sick
6 and safe leave shall be provided to an employee by an employer
7 for:

8 (1) An employee's need for care of a mental or physical
9 illness, injury, or health condition; an employee's
10 need for medical diagnosis, care, or treatment of a
11 mental or physical illness, injury, or health
12 condition; or an employee's need for preventive
13 medical care;

14 (2) Care of a family member with a mental or physical
15 illness, injury, or health condition; care of a family
16 member who needs medical diagnosis, care, or treatment
17 of a mental or physical illness, injury, or health
18 condition; or care of a family member who needs
19 preventive medical care;

20 (3) Closure of the employee's place of business by order
21 of a public official due to a public health emergency;
22 an employee's need to care for a child whose school or

1 place of care has been closed by order of a public
2 official due to a public health emergency; or care of
3 a family member when it has been determined by the
4 health authorities having jurisdiction or by a health
5 care provider that the family member's presence in the
6 community would jeopardize the health of others
7 because of the family member's exposure to a
8 communicable disease, regardless of whether the family
9 member has actually contracted the communicable
10 disease; and

11 (4) Absence necessary due to domestic violence, sexual
12 assault, or stalking; provided that the leave is to:

13 (A) Seek medical attention for the employee or a
14 family member of the employee to recover from
15 physical or psychological injury or disability
16 caused by domestic or sexual violence;

17 (B) Obtain services from a victim services
18 organization;

19 (C) Obtain psychological or other counseling;

20 (D) Seek relocation due to the domestic violence,
21 sexual assault, or stalking; or



1 (E) Take legal action, including preparing for or
2 participating in any civil or criminal legal
3 proceeding related to the domestic violence,
4 sexual assault, or stalking.

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

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

15 (d) Accrued sick and safe leave may be used in less than
16 hourly increments or the smallest increment that the employer's
17 payroll system uses to account for absences or use of other
18 time.

19 (e) For paid sick and safe leave of more than three
20 consecutive days, an employer may require reasonable
21 documentation that the sick and safe leave is covered by



1 subsection (a). The following shall be considered reasonable
2 documentation:

3 (1) A written, signed statement by a health care
4 professional indicating that sick and safe leave is
5 necessary;

6 (2) A police report indicating that the employee or
7 employee's family member was a victim of domestic
8 violence, stalking, or sexual assault;

9 (3) A court order; or

10 (4) A signed statement from a victim and witness advocate
11 affirming that the employee is involved in legal
12 action related to domestic violence, stalking, or
13 sexual assault.

14 An employer may not require that the documentation explain the
15 details of the nature of the illness or the details relating to
16 domestic violence, sexual assault, or stalking as a condition of
17 providing paid sick and safe leave under this chapter. The
18 employer shall keep such documentation confidential pursuant to
19 section -8. If an employer chooses to require documentation
20 for sick and safe leave and the employee does not have health
21 insurance, the employer shall be responsible for paying all out
22 of pocket expenses the employee incurs in obtaining the



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

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

9 **§ -4 Exercise of rights protected; retaliation**

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

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

- 18 (1) Use paid sick and safe leave pursuant to this chapter;
- 19 (2) File a complaint or inform any person about any
20 employer's alleged violation of this chapter;
- 21 (3) Cooperate with the director in any investigation of
22 alleged violations of this chapter; and



1 (4) Inform any person of the person's potential rights
2 under this chapter.

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

7 (d) Protections of this section shall apply to any person
8 who mistakenly but in good faith alleges violations of this
9 chapter.

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

14 (1) Files a complaint with the director or a court
15 alleging a violation of any provision of this chapter;

16 (2) Informs any person about an employer's alleged
17 violation of this chapter;

18 (3) Cooperates with the director or other person in the
19 investigation or prosecution of any alleged violation
20 of this chapter;

21 (4) Opposes any policy, practice, or act that is unlawful
22 under this chapter; or



1 (5) Informs any person of the person's rights under this
2 chapter.

3 **§ -5 Notice and posting.** (a) An employer shall give
4 employees notice of the following:

5 (1) Employees are entitled to paid sick and safe leave;

6 (2) The amount of paid sick and safe leave to which
7 employees are entitled;

8 (3) The terms of sick and safe leave use as guaranteed
9 under this chapter;

10 (4) Retaliation against employees who request or use paid
11 sick and safe leave is prohibited; and

12 (5) Each employee has the right to file a complaint or
13 bring a civil action if paid sick and safe leave, as
14 required by this chapter, is denied by the employer,
15 or if the employee is retaliated against for
16 requesting or taking paid sick and safe leave.

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

19 (1) Individualized notice; or

20 (2) Displaying a poster in a conspicuous and accessible
21 place in each establishment where the employees are
22 employed.



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

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

8 (d) An employer who wilfully violates the notice and
9 posting requirements of this section shall be subject to a civil
10 fine in an amount not to exceed \$100 for each separate offense.

11 **§ -6 Employer records.** An employer shall retain records
12 documenting hours worked by employees and paid sick and safe
13 leave taken by employees for a period of five years and shall
14 allow the director access to the records, with appropriate
15 notice and at a mutually agreeable time, to monitor compliance
16 with the requirements of this chapter. When an issue arises as
17 to an employee's entitlement to paid sick and safe leave under
18 this chapter, it shall be presumed that the employer has
19 violated this chapter, absent clear and convincing evidence
20 otherwise, if the employer does not maintain or retain adequate
21 records documenting hours worked by the employee and paid sick



1 and safe leave taken by the employee or does not allow the
2 director reasonable access to the records.

3 **§ -7 Enforcement.** (a) An employee or other person may
4 report to the director any suspected violation of this chapter.
5 The director shall encourage reporting pursuant to this
6 subsection by keeping confidential, to the maximum extent
7 permitted by applicable laws, the name and other identifying
8 information of the employee or person reporting the violation;
9 provided that with the authorization of the person, the director
10 may disclose the person's name and identifying information as
11 necessary to enforce this chapter or for other appropriate
12 purposes.

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

19 (c) Any person aggrieved by a violation of this chapter,
20 or any entity a member of which is aggrieved by a violation of
21 this chapter, may file a complaint with the attorney general.



1 The filing of a complaint with the attorney general shall not
2 preclude the filing of a civil action.

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

5 (1) The full amount of any unpaid sick and safe leave;

6 (2) Actual damages suffered as the result of the
7 employer's violation of this chapter; and

8 (3) Reasonable attorney's fees.

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

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

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

17 **§ -8 Confidentiality and nondisclosure.** An employer
18 shall not disclose the reasonable documentation required under
19 section -3(e) of an employee using sick and safe leave of
20 more than three consecutive days. If an employer possesses
21 health information or information pertaining to domestic
22 violence, sexual assault, or stalking about an employee or



1 employee's family member, the information shall be treated as
2 confidential and shall not be disclosed except to the affected
3 employee or with the permission of the affected employee.

4 **§ -9 Encouragement of more generous sick and safe leave**
5 **policies; no effect on more generous policies.** (a) Nothing in
6 this chapter shall be construed to discourage or prohibit an
7 employer from the adoption or retention of a paid sick and safe
8 leave policy more generous than the one required by this
9 chapter.

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

15 (c) This chapter shall provide the minimum requirements of
16 paid sick and safe leave and shall not be construed to preempt,
17 limit, or otherwise affect the applicability of any other law,
18 rule, requirement, policy, or standard that provides for greater
19 accrual or use by employees of sick and safe leave, whether paid
20 or unpaid, or that extends other protections to employees."

21 SECTION 3. If any provision of this Act, or the
22 application thereof to any person or circumstance, is held



1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Paid Sick and Safe Leave

Description:

Requires certain 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. (SD1)

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

