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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

PART I.

1           SECTION 1. The legislature finds that Hawaii's working  
2 families are not adequately supported during times of caregiving  
3 and illness. While the federal Family and Medical Leave Act of  
4 1993 allows twelve weeks of unpaid leave to employees who have  
5 worked at a business that employs fifty or more employees, the  
6 majority of Hawaii's workforce cannot afford to take unpaid  
7 leave to provide care to a newborn, bond with a new child, or  
8 care for a family member with a serious health condition. The  
9 legislature finds that the Hawaii family leave law further  
10 restricts eligibility by extending four weeks of unpaid leave  
11 only to those employees who work at a business with more than  
12 one hundred employees.

13           The legislature further finds that only eleven per cent of  
14 workers in the United States have access to paid family leave  
15 through their employers. Approximately 247,000 people in Hawaii  
16 serve as family caregivers. Hawaii has the fastest growing  
17 sixty-five-plus population in the nation, which is expected to



1 grow by eighty-one per cent by the year 2030. Of those who need  
 2 leave but cannot take it, nearly one in three need leave to care  
 3 for an ill spouse or parent. Women, as primary caregivers of  
 4 infants, children, and elderly parents, are affected  
 5 disproportionately by the unavailability of paid family and  
 6 medical leave.

7 The legislature further finds that paid sick leave does not  
 8 currently extend to most part-time food service workers. This  
 9 measure only affects large companies with or more  
 10 employees. Employers who already offer sick leave benefits,  
 11 including those with more generous sick leave benefit plans, are  
 12 unaffected by this measure.

13 The purposes of this Act are to:

- 14 (1) Require the office of the lieutenant governor and the
- 15 department of labor and industrial relations to have
- 16 an actuarial study prepared to determine the:
- 17 (a) Estimated liability and cost of implementing a
- 18 family leave insurance program that would provide
- 19 an employee with up to:
- 20 (i) Twelve weeks of paid family leave per
- 21 calendar year; and



1 (ii) Twelve weeks of paid family leave per  
 2 calendar year after any leave available  
 3 pursuant to the federal Family and Medical  
 4 Leave Act is exhausted; and

5 (b) Impact the family leave insurance program would  
 6 have on the existing temporary disability  
 7 insurance program; and

8 (2) Provide paid sick leave for service workers, which may  
 9 be used for caregiving purposes.

10 SECTION 2. The office of the lieutenant governor and the  
 11 department of labor and industrial relations shall retain  
 12 professional services to conduct an actuarial study and prepare  
 13 a report to determine the:

14 (1) Estimated cost and financial impact of implementing a  
 15 family leave insurance program that allows an  
 16 employee, as defined in section 398-1, Hawaii Revised  
 17 Statutes, to have up to:

18 (a) Twelve weeks of paid family leave as compared to  
 19 the four weeks of paid family leave per calendar  
 20 year currently provided by section 398-3, Hawaii  
 21 Revised Statutes; and



1 (b) Twelve weeks of paid family leave as compared to  
2 the four weeks of paid family leave per calendar  
3 year currently provided by section 398-3, Hawaii  
4 Revised Statutes, after any leave available  
5 pursuant to the federal Family and Medical Leave  
6 Act is exhausted;

7 (2) Projected figures for the number of employees eligible  
8 for the family leave insurance program and the  
9 percentage of eligible employees projected to  
10 participate in the family leave insurance program;

11 (3) Projected premium rates for the family leave insurance  
12 program;

13 (4) Projected fund balances for the family leave insurance  
14 trust fund; and

15 (5) Projected impact that the family leave insurance  
16 program would have on the existing temporary  
17 disability insurance program if it were to be  
18 implemented.

19 The office of the lieutenant governor and department of labor  
20 and industrial relations shall submit an interim report to the  
21 legislature no later than twenty days prior to the convening of



1 the 2016 regular session and a final report no later than twenty  
2 days prior to the convening of the 2017 regular session.

3 SECTION 3. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$ or so  
5 much thereof as may be necessary for fiscal year 2015-2016 and  
6 the same sum or so much thereof as may be necessary for fiscal  
7 year 2016-2017 for the purpose of conducting the actuarial study  
8 and preparing the report required by section 2 of this Act.

9 The sums appropriated shall be expended by the office of  
10 the lieutenant governor for the purposes of this Act.

11 PART II.

12 SECTION 4. Chapter 388, part I, Hawaii Revised Statutes,  
13 is amended by adding a new section to be appropriately  
14 designated and to read as follows:

15 "§388- Paid sick leave; service workers. (a) As used  
16 in this section:

17 "Child" means a:

- 18 (1) Biological, adopted, foster, or stepchild of a service
- 19 worker who is less than eighteen years of age;
- 20 (2) Legal ward of a service worker who is less than
- 21 eighteen years of age; or



1       (3) Child of a service worker who stands in loco parentis  
2       to the child who is:

3       (A) Less than eighteen years of age; or

4       (B) Eighteen years of age or older and incapable of  
5       self-care because of a mental or physical  
6       disability.

7       "Day or temporary worker" means:

8       (1) An individual who works for another person for less  
9       than twenty hours per week, except for an individual  
10      who works for a food establishment; or

11      (2) An individual who works:

12      (A) On a per diem basis; or

13      (B) As an occasional or irregular basis for only the  
14      time required to complete such work, whether the  
15      individual is paid by the person for whom work is  
16      performed or by an employment agency, as defined  
17      in section 373-1.

18      "Employer" has the same meaning as in section 388-1, but  
19      shall refer to employers who employ        or more individuals in  
20      the State in any one quarter in the previous year, which shall  
21      be determined on January 1, annually. The term "employer"



1 excludes any nationally chartered organization exempt from  
2 taxation under section 501(c)(3) of the Internal Revenue Code,  
3 as amended, that provides recreation, child care, or education  
4 services.

5 "Family violence" has the same meaning as in section 571-2.

6 "Food establishment" means:

- 7 (1) Any place or portion thereof maintained, used, or  
8 operated for the purpose of storing, preparing,  
9 servicing, manufacturing, packaging, transporting, or  
10 otherwise handling food at the retail or wholesale  
11 level;
- 12 (2) Any place used for cleaning food equipment or utensils  
13 in support of another food establishment; or
- 14 (3) Any operation that is conducted in, or in conjunction  
15 with, a mobile, stationary, temporary, or permanent  
16 facility or location where food is served or provided  
17 to the public, with or without charge, regardless of  
18 whether the food is consumed on or off the premises.

19 "Service worker" means an employee, including an employee  
20 of a food establishment, excluding a day or temporary worker,  
21 who is paid on an hourly basis, or is not exempt from the



1 minimum wage and overtime compensation requirements of the Fair  
2 Labor Standards Act of 1938 and the regulations promulgated  
3 thereunder, as amended.

4 "Sexual assault" means any sexual offense under part V of  
5 chapter 707.

6 "Spouse" means a person who is lawfully married to another  
7 person under the laws of the State or is in a civil union.

8 (b) An employer shall provide paid sick leave annually to  
9 each of the employer's service workers. The paid sick leave  
10 shall be earned, beginning January 1, 2016, or the date  
11 thereafter upon which the service worker commences employment,  
12 as follows:

13 (1) At a rate of at least one hour of paid sick leave for  
14 each forty hours actually worked; and

15 (2) In one-hour increments up to a maximum of forty hours  
16 per calendar year.

17 A service worker shall be entitled to carry over up to forty  
18 unused earned hours of paid sick leave from the current calendar  
19 year to the following calendar year; provided that no service  
20 worker shall be entitled to carry over more than an aggregate of  
21 eighty hours of earned sick leave.





1        (c) A service worker shall be entitled to the use of  
2 earned paid sick leave, as follows:

3        (1) If the service worker was hired prior to January 1,  
4 2016, upon the completion of the six-hundred-eightieth  
5 hour of employment from January 1, 2016; or

6        (2) If the service worker was hired on or after January 1,  
7 2016, upon the completion of the service worker's  
8 six-hundred-eightieth hour of employment from the date  
9 of hire, unless the employer agrees to an earlier  
10 date.

11 A service worker shall not be entitled to the use of earned paid  
12 sick leave if the service worker did not work an average of ten  
13 or more hours a week for the employer in the most recent  
14 complete calendar quarter.

15        (d) An employer shall be deemed to be in compliance with  
16 this section if:

17        (1) The employer offers any sick leave or other paid  
18 leave, or combination of other paid leave, that may be  
19 used for the purpose of subsection (g); and is earned  
20 at the greater rate described in subsection (b); or



1       (2) The employer has a sick leave policy approved by the  
2           director.

3       For the purposes of this subsection, "other paid leave" may  
4       include paid vacation, personal days, or paid time off.

5       (e) An employer shall pay each service worker for paid  
6       sick leave at a pay rate equal to the greater of either the  
7       normal hourly wage for that service worker, or the minimum wage  
8       under section 387-2 for the pay period during which the employee  
9       used paid sick leave. For any service worker whose hourly wage  
10       varies depending on the work performed by the service worker,  
11       the "normal hourly wage" shall mean the average hourly wage of  
12       the service worker in the pay period prior to the one in which  
13       the service worker used paid sick leave.

14       (f) Upon the mutual consent of the service worker and  
15       employer, a service worker who chooses to work additional hours  
16       or shifts during the same or following pay period, in lieu of  
17       hours or shifts missed, shall not use earned paid sick leave.

18       (g) An employer shall permit a service worker to use the  
19       paid sick leave earned under this section for the following  
20       purposes:

21       (1) For a service worker's:



- 1           (A) Illness, injury, or health condition;
- 2           (B) The medical diagnosis, care, or treatment of a
- 3                 mental illness or physical illness, injury, or
- 4                 health condition; or

5           (C) Preventative medical care; or

6       (2) For a service worker's child's or spouse's:

- 7           (A) Illness, injury, or health condition;
- 8           (B) The medical diagnosis, care, or treatment of a
- 9                 mental or physical illness, injury, or health
- 10                condition; or

11           (C) Preventative medical care.

12       (h) If a service worker is a victim of family violence or  
13 sexual assault, an employer shall permit that service worker to  
14 use the paid sick leave earned under this section for the  
15 following purposes:

16       (1) For medical care or psychological or other counseling  
17 for physical or psychological injury or disability;

18       (2) To obtain services from a victim services  
19 organization;

20       (3) To relocate due to the family violence or sexual  
21 assault; or



1           (4) To participate in any civil or criminal proceedings  
2                   related to or resulting from the family violence or  
3                   sexual assault.

4           (i) Unless an employee policy or collective bargaining  
5           agreement provides for the payment of earned fringe benefits  
6           upon termination, no service worker shall be entitled to payment  
7           of unused earned sick leave under this section upon termination  
8           of employment.

9           (j) Nothing in this section shall be construed to:

10           (1) Prevent employers from providing more paid sick leave  
11                   than is required under this section;

12           (2) Diminish any rights provided to any employee or  
13                   service worker under a collective bargaining  
14                   agreement; or

15           (3) Preempt or override the terms of any collective  
16                   bargaining agreement effective prior to January 1,  
17                   2016.

18           (k) A termination of a service worker's employment by an  
19           employer shall constitute a break in employment. If that  
20           service worker is subsequently rehired by the employer following  
21           a break in employment, the service worker shall:



- 1        (1) Begin to earn sick leave in accordance with this  
2        section; and
- 3        (2) Not be entitled to any unused hours of paid sick leave  
4        that had been earned prior to the service worker's  
5        break in service unless agreed to by the employer.
- 6        (1) An employer shall provide notice to each service  
7 worker of the following information:
- 8        (1) The entitlement to sick leave for service workers, the  
9        amount of sick leave provided to service workers, and  
10       the terms under which sick leave may be used; and
- 11       (2) That the service worker has a right to file a  
12       complaint with the department of labor and industrial  
13       relations for suspected violations of this section by  
14       the employer.
- 15 Employers may comply with this section by displaying a poster  
16 that contains the information required by this subsection and  
17 that is posted in a conspicuous place, accessible to service  
18 workers, at the employer's place of business."



1 PART III.

2 SECTION 5. This Act does not affect rights and duties that  
3 matured, penalties that were incurred, and proceedings that were  
4 begun before its effective date.

5 SECTION 6. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2059.



**Report Title:**

Family Leave

**Description:**

Requires the office of the lieutenant governor to work with the department of labor and industrial relations to conduct an actuarial study on the cost of implementing a family leave insurance program that would allow employees to take up to 12 weeks of paid family leave, including after any leave available pursuant to the federal Family and Medical Leave Act is exhausted, and the effect that the leave may have on the existing temporary disability insurance program and prepare a report to the legislature. Appropriates funds for the study and report. Provides that service workers shall be authorized to earn and carry over up to 80 hours of paid sick leave. Effective 7/1/2059. (SD2)

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

