

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO LABOR.

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

1 PART I

2 SECTION 1. The legislature finds that according to the  
3 National Conference of State Legislatures, nearly thirty states  
4 have no meal or rest break laws for adult workers. Of the  
5 states that do have such laws, the requirements vary  
6 significantly. The legislature further finds that Hawaii law  
7 requires an interval of at least thirty consecutive minutes for  
8 a rest or lunch period for no more than five continuous hours of  
9 work for minors who are at least fourteen years old. Federal  
10 law under the Patient Protection and Affordable Care Act  
11 requires employers to provide reasonable break time for an  
12 employee to express breast milk for her nursing child for one  
13 year after the child's birth each time the employee has a need  
14 to express the milk. Hawaii law prohibits employers from  
15 penalizing an employee who breastfeeds or expresses milk at the  
16 workplace. However, neither state law nor federal wage and hour  
17 law currently requires employers to provide employees who are



1 sixteen years of age or older with any meal break or rest break  
2 no matter how many consecutive hours an employee is required to  
3 work.

4 The legislature recognizes the benefits of meal and rest  
5 breaks to employees and the workplace through increased  
6 productivity and stress reduction. Employees who must work a  
7 full day or eight-hour shift or more should not be denied a  
8 reasonable period to rest and consume a meal as is required by  
9 states such as California, Colorado, Kentucky, Maryland, Oregon,  
10 Rhode Island, and Washington.

11 The purpose of this part is to require employers with five  
12 or more employees to provide meal and rest breaks to employees  
13 under certain conditions.

14 SECTION 2. Section 387-3, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§387-3 Maximum hours.** (a) No employer [~~shall~~], except  
17 as otherwise provided in this section, shall employ any employee  
18 for a workweek longer than forty hours unless the employee  
19 receives overtime compensation for the employee's employment in  
20 excess of the hours above specified at a rate not less than one



1 and one-half times the regular rate at which the employee is  
2 employed.

3 For the purposes of this section[+]:[+]

4 (1) "Salary" means a predetermined wage, exclusive of the  
5 reasonable cost of board, lodging, or other  
6 facilities, at which an employee is employed each pay  
7 period; and

8 (2) If an employee performs two or more different kinds of  
9 work for the same employer, the total earnings for all  
10 such work for the pay period shall be considered to  
11 have been earned for performing one kind of work.

12 (b) The regular rate of an employee who is employed on a  
13 salary shall be computed as follows:

14 (1) If the employee is employed on a weekly salary, the  
15 weekly salary and the reasonable cost of board,  
16 lodging, or other facilities, if furnished to the  
17 employee, shall be divided by forty[-];i

18 (2) If the employee is employed on a biweekly salary, the  
19 biweekly salary and the reasonable cost of board,  
20 lodging, or other facilities, if furnished to the



1           employee, shall be divided by two and the quotient  
2           divided by forty~~[-]~~;

3           (3) If the employee is employed on a semi-monthly salary,  
4           the semi-monthly salary and the reasonable cost of  
5           board, lodging, or other facilities, if furnished to  
6           the employee, shall be multiplied by twenty-four, the  
7           product divided by fifty-two and the quotient divided  
8           by forty~~[-]~~; and

9           (4) If the employee is employed on a monthly salary, the  
10          monthly salary and the reasonable cost of board,  
11          lodging, or other facilities if furnished to the  
12          employee, shall be multiplied by twelve, the product  
13          divided by fifty-two and the quotient divided by  
14          forty.

15          (c) The regular rate of an employee who is employed on a  
16          salary and in addition receives other wages such as, but not  
17          limited to, commissions, bonus, piecework pay, and hourly or  
18          daily pay shall be computed in the manner provided in this  
19          subsection. As used ~~[hereinabove,]~~ in this subsection, the term  
20          "other wages" shall not include the reasonable cost of board,  
21          lodging, or other facilities.



- 1 (1) If the employee's salary and the reasonable cost of  
2 board, lodging, or other facilities, if furnished to  
3 the employee, equal or exceed fifty per cent of the  
4 employee's total earnings for the pay period, the  
5 total earnings shall be reduced to a regular rate in  
6 the manner provided in [~~paragraph~~] subsection (b) (1),  
7 (2), (3), or (4) [~~of subsection (b)~~], whichever [~~is~~  
8 ~~applicable.~~] applies; and
- 9 (2) If the employee's salary and the reasonable cost of  
10 board, lodging, or other facilities, if furnished to  
11 the employee, are less than fifty per cent of the  
12 employee's total earnings for the pay period, the  
13 total earnings shall be reduced to a regular rate in  
14 the manner provided in [~~paragraph~~] subsection (b) (1),  
15 (2), (3), or (4) [~~of subsection (b)~~], whichever [~~is~~  
16 ~~applicable,~~] applies, except that the actual number of  
17 hours worked in the workweek shall be substituted for  
18 the final divisor of forty. Such an employee shall  
19 receive overtime compensation for employment in excess  
20 of forty hours in a workweek at a rate not less than  
21 one-half times the employee's regular rate.



1 (d) The regular rate of an employee whose compensation is  
2 based on other than salary shall be computed in the manner  
3 provided in [~~paragraph (2) of~~] subsection [~~(e).~~] (c)(2). The  
4 reasonable cost of board, lodging, or other facilities, if  
5 furnished to the employee, shall be included in computing the  
6 employee's regular rate. Such an employee shall receive  
7 overtime compensation for such employment in excess of forty  
8 hours in a workweek at a rate not less than one-half times the  
9 employee's regular rate.

10 (e) An employer[~~+~~] who:

11 (1) [~~who is~~] Is engaged in agriculture and in the first  
12 processing of milk, buttermilk, whey, skim milk, or  
13 cream into dairy products, or in the processing of  
14 sugar cane molasses or sugar cane into sugar (but not  
15 refined sugar) or into syrup, or in the first  
16 processing of or in canning or packing any  
17 agricultural or horticultural commodity, or in  
18 handling, slaughtering, or dressing poultry or  
19 livestock;

20 (2) [~~who is~~] Is engaged in agriculture and whose  
21 agricultural products are processed by an employer who



1 is engaged in a seasonal pursuit or in processing,  
2 canning, or packing operations referred to in  
3 paragraph (1); or  
4 (3) [~~Who is~~] Is at any place of employment engaged  
5 primarily in the first processing of, or in canning or  
6 packing seasonal fresh fruits[+],  
7 shall not be required to pay overtime compensation for hours in  
8 excess of forty in a workweek to any of the employer's employees  
9 during any of twenty different workweeks, as selected by the  
10 employer, in any yearly period commencing July 1, for employment  
11 in any place where the employer is so engaged. The employer,  
12 however, shall pay overtime compensation for such employment in  
13 excess of forty-eight hours in any such exempt workweek at the  
14 rate and in the manner provided in subsections (a), (b), (c) and  
15 (d), whichever [~~is applicable,~~] applies, except that the word  
16 "forty-eight" shall be substituted for the word "forty" wherever  
17 it appears in subsections (b), (c), and (d).  
18 (f) No employer shall employ any employee in split shifts  
19 unless all of the shifts within a period of twenty-four hours  
20 fall within a period of fourteen consecutive hours, except in  
21 case of extraordinary emergency.



1        (g) No employee shall be required to work eight hours or  
2 more continuously without an interval of at least thirty minutes  
3 for a meal break. Any employee who works six or more hours but  
4 less than eight hours on a shift shall be permitted a rest break  
5 of twenty minutes. An employer and employee may negotiate the  
6 terms of a meal break or rest break, including the employee's  
7 option to take no meal break or rest break. The option of  
8 having a meal break shall be offered to the employee at the time  
9 of negotiating the employee's terms of employment. A meal break  
10 or rest break may be unpaid. An employee shall be relieved of  
11 the employee's duties during any unpaid meal break or unpaid  
12 rest break.

13        For the purposes of this subsection, "employer" means any  
14 person with five or more employees.

15        [~~g~~] (h) This section shall not apply to any overtime  
16 hours worked by an employee of an air carrier subject to title  
17 II of the Railway Labor Act, 45 U.S.C. section 181 et seq. ;  
18 provided such overtime hours are the result of a voluntary  
19 agreement between employees to exchange work time or days off."





1 PART II

2 SECTION 3. The legislature finds that according to the  
3 federal Bureau of Statistics, about twenty-four per cent of  
4 United States civilian workers (private industry workers and  
5 state and local government workers combined), or roughly 33.6  
6 million people, do not have access to paid sick leave. In  
7 addition, the federal Bureau of Statistics' 2019 national  
8 compensation survey found that for civilian workers, paid sick  
9 leave, while nearly universal at the upper ends of the wage  
10 distribution, becomes scarcer the less money one makes.  
11 The legislature also finds that most workers in the State, at  
12 some time during the year, need temporary time off from work to  
13 take care of personal health needs or the health needs of family  
14 members. Furthermore, working family caregivers cannot  
15 adequately care for their relatives without access to paid sick  
16 leave. In fact, the coronavirus pandemic has magnified the need  
17 for paid sick leave.

18 The legislature further finds that paid sick leave would  
19 have a positive effect on the public health of residents of the  
20 State by allowing workers the option of staying home when ill,  
21 thus, lessening recovery time and reducing the likelihood of



1 spreading illness to other members of the workforce and the  
2 public. This essential time off would also lend to a healthier  
3 and more productive workforce.

4 Currently, thirteen states and Washington D.C. have enacted  
5 laws that require paid sick leave. According to the National  
6 Conference of State Legislatures, in 2011, Connecticut was the  
7 first state to require private-sector employers to provide paid  
8 sick leave to their employees. Arizona, California, Maine,  
9 Maryland, Massachusetts, Michigan, Nevada, New Jersey, Oregon,  
10 Rhode Island, Vermont, and Washington also have laws that  
11 provide paid sick leave coverage and benefits.

12 The purpose of this part is to establish the right for  
13 workers to accrue paid sick leave to:

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

19 (2) Diminish public and private health care costs in the  
20 State by enabling workers to seek early and routine  
21 medical care for themselves and their family members;



- 1 (3) Protect public health in the State by reducing the  
2 risk of contagion;
- 3 (4) Promote economic security and stability of workers and  
4 their families in the State;
- 5 (5) Protect employees in the State from losing their jobs  
6 when they use sick leave to care for themselves or  
7 their families;
- 8 (6) Safeguard public welfare, health, safety, and the  
9 prosperity of the people of the State; and
- 10 (7) Accomplish the purpose of this part in a manner that  
11 is feasible for employers.

12 SECTION 4. The Hawaii Revised Statutes is amended by  
13 adding a new chapter to be appropriately designated and to read  
14 as follows:

15 **"CHAPTER**

16 **PAID SICK LEAVE**

17 § -1 **Definitions.** As used in this chapter, unless the  
18 context clearly requires otherwise:

19 "Department" means the department of labor and industrial  
20 relations.



1 "Director" means the director of labor and industrial  
2 relations.

3 "Employee" has the same meaning as defined in the federal  
4 Fair Labor Standards Act, Title 29 United States Code section  
5 203(e), and additionally includes recipients of public benefits  
6 who are engaged in work activity as a condition of receiving  
7 public assistance and public employees who are not subject to  
8 the civil service laws of the State, a political subdivision, or  
9 a public agency. The term "employee" shall not include sole  
10 proprietors and independent contractors.

11 "Employer" has the same meaning as defined in the federal  
12 Fair Labor Standards Act, Title 29 United States Code section  
13 203(d).

14 "Family member" means:

- 15 (1) A biological, adopted, or foster child; stepchild;  
16 legal ward; a child of a reciprocal beneficiary; or a  
17 child to whom the employee stands in loco parentis;  
18 (2) A biological, adoptive, or foster parent; stepparent;  
19 legal guardian of an employee or an employee's spouse  
20 or reciprocal beneficiary; or a person who stood in  
21 loco parentis when the employee was a minor child;



1 (3) A spouse or reciprocal beneficiary; and

2 (4) A biological, adopted, or foster sibling; or a spouse  
3 or reciprocal beneficiary of a biological, adopted, or  
4 foster sibling.

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

7 "Labor organization" has the same meaning as defined in  
8 section 378-1.

9 "Paid sick leave" means time away from work provided by an  
10 employer to an employee that is compensated at the same hourly  
11 rate and with the same benefits, including health care benefits,  
12 as the employee normally earns during hours worked.

13 § -2 **Accrual of paid sick leave.** (a) All employees who  
14 work in the State for more than six hundred eighty hours in a  
15 year shall have the right to paid sick leave as provided in this  
16 chapter.

17 (b) All employees shall accrue a minimum of one hour of  
18 paid sick leave for every forty hours worked. Employees shall  
19 not accrue more than fifty-six hours of paid sick leave in a  
20 calendar year unless the employer provides a higher limit.



1 (c) Employees who are exempt from overtime requirements  
2 under the federal Fair Labor Standards Act, Title 29 United  
3 States Code section 213(a)(1), shall be assumed to work forty  
4 hours in each work week for purposes of paid sick leave accrual  
5 unless the employee's normal work week is less than forty hours,  
6 in which case paid sick leave shall accrue based upon the actual  
7 hours in the employee's normal work week.

8 (d) Employees shall be entitled to use accrued paid sick  
9 leave beginning on the seven hundred fiftieth hour following  
10 commencement of employment. After the seven hundred fiftieth  
11 hour of employment, employees may use paid sick leave as it is  
12 accrued.

13 (e) An employer shall not be required to provide  
14 additional paid sick leave if the employer has a paid leave  
15 policy that makes available an amount of paid leave sufficient  
16 to meet the accrual requirements of this chapter and that may be  
17 used for the same purposes and under the same conditions as paid  
18 sick leave under this chapter.

19 (f) Nothing in this section shall be construed as  
20 requiring financial or other reimbursement to an employee from  
21 an employer upon the employee's termination, resignation,



1 retirement, or other separation from employment for unused  
2 accrued paid sick leave.

3 (g) An employer may advance paid sick leave to an employee  
4 prior to its accrual by the employee.

5 **§ -3 Use of paid sick leave.** (a) An employee may use  
6 paid sick leave during absences from work due to:

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

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

18 (3) Closure of the employee's place of business by order  
19 of a public official due to a public health emergency,  
20 an employee's need to care for a child whose school or  
21 place of care has been closed by order of a public



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

10 (b) Paid sick leave shall be provided based on a manner  
11 deemed suitable by the employer.

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

18 **§ -4 Notice and posting.** (a) An employer shall give  
19 its employees notice of the following:

20 (1) That employees are entitled to paid sick leave;





1 (2) The amount of paid sick leave granted pursuant to this  
2 chapter; and

3 (3) The terms of paid sick leave use as guaranteed under  
4 this chapter.

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

7 (1) Individualized notice; or

8 (2) Displaying a poster in a conspicuous and accessible  
9 place in each establishment where its employees are  
10 employed.

11 (c) The director shall create and make posters available  
12 to employers, in all languages currently being used by the  
13 department for other employment posters, that contain the  
14 information required under subsection (a) for the employer's use  
15 in complying with this section.

16 § -5 **Confidentiality and nondisclosure.** An employer  
17 shall not require disclosure of details of an employee's medical  
18 condition as a condition of providing paid sick leave under this  
19 chapter. If an employer possesses health information or  
20 information pertaining to the details of a medical condition  
21 about an employee or employee's family member, the information



1 shall be treated as confidential and shall not be disclosed  
2 except to the affected employee or with the permission of the  
3 affected employee.

4       §   -6 **Applicability.** (a) Nothing in this chapter shall  
5 be construed to discourage or prohibit an employer from the  
6 adoption or retention of a paid sick leave policy more generous  
7 to the employee than the one required by this chapter. This  
8 chapter shall not apply to any employer who:

9       (1) Adopts or retains a paid sick leave policy that  
10           provides more paid sick leave than required by this  
11           chapter;

12       (2) Pays employees                   more than the minimum wage;  
13           or

14       (3) Employs less than               employees.

15       (b) Nothing in this chapter shall be construed as  
16 diminishing the obligation of an employer to comply with any  
17 contract, collective bargaining agreement, employment benefit  
18 plan, or other agreement providing more generous paid sick leave  
19 to an employee than required herein.



1 (c) Nothing in this chapter shall be construed as  
2 diminishing the rights of public employees regarding paid sick  
3 leave or use of sick leave as provided by law.

4 (d) This chapter shall provide the minimum requirements of  
5 paid sick leave and shall not be construed to preempt, limit, or  
6 otherwise affect the applicability of any other law, rule,  
7 requirement, policy, or standard that provides for greater  
8 accrual or use by employees of sick leave, whether paid or  
9 unpaid, or that extends other protections to employees."

10 PART III

11 SECTION 5. If any provision of this Act, or the  
12 application thereof to any person or circumstance, is held  
13 invalid, the invalidity does not affect other provisions or  
14 applications of the Act that can be given effect without the  
15 invalid provision or application, and to this end the provisions  
16 of this Act are severable.

17 SECTION 6. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20 SECTION 7. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



# S.B. NO. 681

1 SECTION 8. This Act shall take effect on July 1, 2021;  
2 provided that for part II of this Act, in the case of employees  
3 covered by a collective bargaining agreement in effect on July  
4 1, 2021, this Act shall take effect on the date of termination,  
5 renewal, or amendment of the collective bargaining agreement  
6 then in effect.

7

INTRODUCED BY:

V. S. O. J. J. J.  
by request



# S.B. NO. 601

**Report Title:**

Wage and Hour Law; Meal and Rest Breaks; Paid Sick Leave

**Description:**

Requires employers with five or more employees to provide meal and rest breaks under certain conditions. Requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

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

