
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, nearly forty per cent of private sector
7 workers are without any paid sick leave. In addition,
8 many workers who do have paid sick time either are
9 disciplined for using it or cannot use the time to
10 care for sick children. In the State, an estimated
11 forty-three per cent of private sector workers lack
12 paid sick leave;

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) Nearly two hundred fifty thousand people in the State
4 serve as unpaid family caregivers for family members,
5 work that has an aggregate value of \$1,900,000 per
6 year. Working family caregivers cannot adequately
7 care for their relatives without access to paid sick
8 leave;

9 (6) Paid sick leave would have a positive effect on the
10 public health of residents of the State by allowing
11 sick workers the option of staying home when the
12 worker is ill, thus lessening recovery time and
13 reducing the likelihood of spreading illness to other
14 members of the workforce and to the public;

15 (7) Paid sick leave will reduce health care expenditures
16 by promoting access to primary and preventive care.
17 Nationally, providing all workers with paid sick time
18 would result in \$1,100,000,000 in annual savings in
19 hospital emergency room costs, including more than
20 \$500,000,000 in savings to publicly funded health
21 insurance programs such as medicare, medicaid, and the
22 state children's health insurance program. Access to



1 paid sick leave can also help decrease the likelihood
2 that a worker will put off needed care and increase
3 the rates of preventive care among workers and their
4 children;

5 (8) Paid sick leave will allow parents to provide personal
6 care for their sick children. Parental care makes
7 children's recovery faster and can prevent future
8 health problems. Parents who do not have paid sick
9 time are more than twice as likely as parents with
10 paid sick days to send a sick child to school or
11 daycare and are five times as likely to report taking
12 their child or a family member to a hospital emergency
13 room because they were unable to take time off work
14 during their regular work hours;

15 (9) Paid sick leave will reduce contagion. Workers in
16 jobs with high levels of public contact, such as
17 restaurant workers and child care workers, are very
18 unlikely to have paid sick time. As a result, these
19 workers may have no choice but to go to work when they
20 are ill, thereby increasing the risk of passing
21 illnesses on to co-workers and customers while
22 jeopardizing their own health. Overall, people



1 without paid sick leave are 1.5 times more likely than
2 people with paid sick leave to go to work with a
3 contagious illness like the flu;

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

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

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



1 their paychecks and their jobs, many workers who lack
2 paid sick leave are unable to comply with these
3 requests;

4 (13) During the height of the H1N1 pandemic, workers with
5 lower rates of access to paid sick leave were more
6 likely than those with higher rates of access to paid
7 sick leave to go to work sick. As a result, the
8 pandemic lasted longer in their workplaces as the
9 virus spread from co-worker to co-worker. A new study
10 estimates that lack of paid sick leave was responsible
11 for five million cases of influenza-like illness
12 during the pandemic;

13 (14) Providing a minimal amount of paid sick leave is
14 affordable for employers. Paid sick leave results in
15 reduced worker turnover, which leads to reduced costs
16 incurred from advertising, interviewing, and training
17 new hires. Firing and replacing workers can cost
18 anywhere from twenty-five to two hundred per cent of
19 an employee's annual compensation;

20 (15) Paid sick leave will reduce the risk of
21 "presenteeism", or workers coming to work with
22 illnesses and health conditions that reduce their



1 productivity, a problem that costs the national
2 economy \$160,000,000,000 annually;

3 (16) Paid sick leave will reduce the competitive
4 disadvantage that many employers face when they choose
5 to provide sick time to their workers;

6 (17) Nearly one in four American women report physical or
7 sexual abuse by a husband or boyfriend at some point
8 in their lives. Each year, women experience about
9 4,800,000 intimate partner related physical assaults
10 and rapes. Men are the victims of about 2,900,000
11 intimate partner related physical assaults. Many
12 workers need time off to care for their health after
13 these incidents or to find solutions, such as a
14 restraining order or new housing, to avoid or prevent
15 physical or sexual abuse;

16 (18) Survivors of domestic and sexual violence are forced
17 to lose days of paid employment because of the
18 violence they face. The mean number of days of paid
19 work lost by survivors of rape is 8.1 days, by
20 survivors of physical assault 7.2 days, and by
21 survivors of stalking 10.1 days; and



1 (19) Without paid sick and safe leave, survivors are in
2 grave danger of losing their jobs. Loss of employment
3 can be particularly devastating for survivors of
4 domestic violence who often need economic security to
5 ensure their and their children's safety.

6 The purpose of this Act is to:

7 (1) Ensure that all workers in the State can address their
8 own health and safety needs and the health and safety
9 needs of their families by requiring employers to
10 provide a minimum level of paid sick and safe leave,
11 including time for family care;

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

15 (3) Protect public health in the State by reducing the
16 risk of contagion;

17 (4) Promote economic security and stability of workers and
18 their families in the State;

19 (5) Protect employees in the State from losing their jobs
20 while they use sick and safe leave to care for
21 themselves or their families;



- 1 (6) Assist victims of domestic violence and their family
- 2 members by providing them with job protected time away
- 3 from work to allow them to receive treatment and to
- 4 take the necessary steps to ensure their safety and
- 5 protection;
- 6 (7) Safeguard the public welfare, health, safety, and
- 7 prosperity of the people of the State; and
- 8 (8) Accomplish the purpose of this Act in a manner that is
- 9 feasible for employers.

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

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

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

16 "PART . . . PAID SICK AND SAFE LEAVE

17 §398- **Definitions.** As used in this part, unless the
18 context clearly requires otherwise:

19 "Domestic violence" has the same meaning as defined in
20 section 321-471.

21 "Employee" has the same meaning as defined in the federal
22 Fair Labor Standards Act, Title 29 United States Code section



1 203(e), and includes recipients of public benefits who are
2 engaged in work activity as a condition of receiving public
3 assistance.

4 "Employer" has the same meaning as defined in the federal
5 Fair Labor Standards Act, Title 29 United States Code section
6 203(d).

7 "Family member" means:

- 8 (1) A biological, adopted, or foster child, stepchild or
9 legal ward, a child of a civil union partner or
10 reciprocal beneficiary, or a child to whom the
11 employee stands in loco parentis;
- 12 (2) A biological, foster, stepparent, or adoptive parent
13 or legal guardian of an employee or an employee's
14 spouse, civil union partner, or reciprocal
15 beneficiary, or a person who stood in loco parentis
16 when the employee was a minor child;
- 17 (3) A spouse, civil union partner, or reciprocal
18 beneficiary;
- 19 (4) A grandparent, spouse, civil union partner, or
20 reciprocal beneficiary of a grandparent;
- 21 (5) A grandchild;



1 (6) A biological, foster, or adopted sibling, spouse,
2 civil union partner, or reciprocal beneficiary of a
3 biological, foster, or adopted sibling; and

4 (7) Any other individual related by blood or affinity
5 whose close association with the employee is the
6 equivalent of a family relationship.

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

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

14 "Retaliatory personnel action" means the discharge,
15 suspension, or demotion by an employer of an employee or any
16 other adverse action taken by an employer against an employee,
17 and also includes any sanctions against a recipient of public
18 benefits or interference with or punishment for participating in
19 an investigation, proceeding, or hearing under this part.

20 "Sexual assault" means any conduct proscribed by chapter
21 707, part V.



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

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

21 **§398- Accrual of paid sick and safe leave.** (a) All
22 employees who work in the State for more than eighty hours in a



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

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

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

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

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

20 (f) Employees shall be entitled to use accrued paid sick
21 and safe leave beginning on the ninetieth calendar day following
22 commencement of their employment. After the ninetieth calendar



1 day of employment, employees may use paid sick and safe leave as
2 it is accrued.

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



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

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

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

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

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



- 1 of a mental or physical illness, injury, or health
2 condition; care of a family member who needs
3 preventive medical care;
- 4 (3) Closure of the employee's place of business by order
5 of a public official due to a public health emergency,
6 or an employee's need to care for a child whose school
7 or place of care has been closed by order of a public
8 official due to a public health emergency, or care for
9 a family member when it has been determined by the
10 health authorities having jurisdiction or by a health
11 care provider that the family member's presence in the
12 community would jeopardize the health of others
13 because of the family member's exposure to a
14 communicable disease, regardless of whether the family
15 member has actually contracted the communicable
16 disease; and
- 17 (4) Absence necessary due to domestic violence, sexual
18 assault, or stalking; provided that the leave is to:
- 19 (A) Seek medical attention for the employee or a
20 family member of the employee to recover from
21 physical or psychological injury or disability
22 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 shall 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, in all languages spoken by more than five per cent
9 of the State's workforce, that contain the information required
10 under subsection (a) for the employer's use in complying with
11 this section.

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

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



1 part, absent clear and convincing evidence otherwise, if the
2 employer does not maintain or retain adequate records
3 documenting hours worked by the employee and paid sick and safe
4 leave taken by the employee or does not allow the director
5 reasonable access to the records.

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

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



1 (c) Any person aggrieved by a violation of this part, or
2 any entity a member of which is aggrieved by a violation of this
3 part, may file a complaint with the attorney general. The
4 filing of a complaint with the attorney general shall not
5 preclude the filing of a civil action.

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

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

9 (2) Actual damages suffered as the result of the
10 employer's violation of this part; and

11 (3) Reasonable attorney's fees.

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

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

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

20 §398- Confidentiality and nondisclosure. An employer
21 shall not require disclosure of details relating to domestic
22 violence, sexual assault, stalking, or the details of an



1 employee's medical condition as a condition of providing paid
2 sick and safe leave under this part. If an employer possesses
3 health information or information pertaining to domestic
4 violence, sexual assault, or stalking about an employee or
5 employee's family member, the information shall be treated as
6 confidential and shall not be disclosed except to the affected
7 employee or with the permission of the affected employee.

8 **§398- Encouragement of more generous sick and safe**
9 **leave policies; no effect on more generous policies. (a)**

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

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

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



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

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

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

18

INTRODUCED BY:

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Karl Rhoads

JAN 19 2012



H.B. NO. 2089

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, needs medical care, or is 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.

