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# 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 employers to  
19          provide a minimum level of paid sick and safe leave,  
20          including time for family care;



- 1 (2) Diminish public and private health care costs in the
- 2 State by enabling workers to seek early and routine
- 3 medical care for 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 public welfare, health, safety, and
- 13 prosperity 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 defined in the federal  
8 Fair Labor Standards Act, title 29 United States Code section  
9 203(e), and includes recipients of public benefits who are  
10 engaged in work activity as a condition of receiving public  
11 assistance.

12 "Employer" has the same meaning as defined in the federal  
13 Fair Labor Standards Act, title 29 United States Code section  
14 203(d).

15 "Family member" means:

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

20 (2) A biological, foster, stepparent, or adoptive parent  
21 or legal guardian of an employee or an employee's  
22 spouse, civil union partner, or reciprocal



1 beneficiary; or a person who stood in loco parentis  
2 when the employee was a minor child;

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

5 (4) A grandparent or spouse, civil union partner, or  
6 reciprocal beneficiary of a grandparent;

7 (5) A grandchild;

8 (6) A biological, foster, or adopted sibling, spouse,  
9 civil union partner, or reciprocal beneficiary of a  
10 biological, foster, or adopted sibling; and

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

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

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

21 "Retaliatory personnel action" means the discharge,  
22 suspension, or demotion by an employer of an employee or any





1 other adverse action taken by an employer against an employee,  
2 and also includes any sanctions against a recipient of public  
3 benefits.

4 "Sexual assault" means any conduct proscribed by chapter  
5 707, part V.

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



1 "Stalking" has the same meaning as defined as in section  
2 378-71.

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

7 (b) All employees shall accrue a minimum of one hour of  
8 paid sick and safe leave for every hours worked.

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

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

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



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

3 (f) Employees shall be entitled to use accrued paid sick  
4 and safe leave beginning on the calendar day following  
5 commencement of their employment. After the calendar day  
6 of employment, employees may use paid sick and safe leave as it  
7 is accrued.

8 (g) Paid sick and safe leave shall be carried over to the  
9 following calendar year; provided that an employee's use of paid  
10 sick and safe leave provided under this chapter in each calendar  
11 year shall not exceed hours for employees of small  
12 businesses and hours for employees of all other  
13 businesses.

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

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



1 retirement, or other separation from employment for accrued paid  
2 sick and safe leave that has not been used.

3 (j) If an employee is transferred to a separate division,  
4 entity, or location, but remains employed by the same employer,  
5 the employee shall be entitled to all paid sick leave accrued at  
6 the prior division, entity, or location and shall be entitled to  
7 use all paid sick leave as provided in this chapter. When there  
8 is a separation from employment and the employee is rehired  
9 within months of separation by the same employer,  
10 previously accrued paid sick and safe leave that had not been  
11 used shall be reinstated. In addition, the employee shall be  
12 entitled to use accrued paid sick and safe leave and accrue  
13 additional sick and safe leave at the re-commencement of  
14 employment.

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

17 **§ -3 Use of paid sick and safe leave.** (a) Paid sick  
18 and safe leave shall be provided to an employee by an employer  
19 for:

20 (1) An employee's need for care of a mental or physical  
21 illness, injury, or health condition; an employee's  
22 need for medical diagnosis, care, or treatment of a



1           mental or physical illness, injury, or health  
2           condition; or an employee's need for preventive  
3           medical care;

4           (2) Care of a family member with a mental or physical  
5           illness, injury, or health condition; care of a family  
6           member who needs medical diagnosis, care, or treatment  
7           of a mental or physical illness, injury, or health  
8           condition; or care of a family member who needs  
9           preventive medical care;

10          (3) Closure of the employee's place of business by order  
11          of a public official due to a public health emergency;  
12          an employee's need to care for a child whose school or  
13          place of care has been closed by order of a public  
14          official due to a public health emergency; or care of  
15          a family member when it has been determined by the  
16          health authorities having jurisdiction or by a health  
17          care provider that the family member's presence in the  
18          community would jeopardize the health of others  
19          because of the family member's exposure to a  
20          communicable disease, regardless of whether the family  
21          member has actually contracted the communicable  
22          disease; and



- 1           (4)   Absence necessary due to domestic violence, sexual  
2                    assault, or stalking; provided that the leave is to:
- 3                    (A)   Seek medical attention for the employee or a  
4                            family member of the employee to recover from  
5                            physical or psychological injury or disability  
6                            caused by domestic or sexual violence;
- 7                    (B)   Obtain services from a victim services  
8                            organization;
- 9                    (C)   Obtain psychological or other counseling;
- 10                  (D)   Seek relocation due to the domestic violence,  
11                           sexual assault, or stalking; or
- 12                  (E)   Take legal action, including preparing for or  
13                           participating in any civil or criminal legal  
14                           proceeding related to the domestic violence,  
15                           sexual assault, or stalking.

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

19           (c)   When the use of paid sick and safe leave is  
20 foreseeable, the employee shall make a good faith effort to  
21 provide notice of the need for the time to the employer in  
22 advance of the use of the sick and safe leave and shall make a

1 reasonable effort to schedule the use of sick and safe leave in  
2 a manner that does not unduly disrupt the operations of the  
3 employer.

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

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

12 (1) A written, signed statement by a health care  
13 professional indicating that sick and safe leave is  
14 necessary;

15 (2) A police report indicating that the employee was a  
16 victim of domestic violence, stalking, or sexual  
17 assault;

18 (3) A court order; or

19 (4) A signed statement from a victim and witness advocate  
20 affirming that the employee is involved in legal  
21 action related to domestic violence, stalking, or  
22 sexual assault.



1 An employer may not require that the documentation explain the  
2 nature of the illness or the details of the violence. If an  
3 employer chooses to require documentation for sick and safe  
4 leave and the employee does not have health insurance, the  
5 employer shall be responsible for paying all out of pocket  
6 expenses the employee incurs in obtaining the documentation. If  
7 the employee has health insurance, the employer shall be  
8 responsible for paying any costs charged to the employee by the  
9 health care provider for providing the specific documentation  
10 required by the employer.

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

15 **§ -4 Exercise of rights protected; retaliation**

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

20 (b) An employer shall not take retaliatory personnel  
21 action or discriminate against an employee because the employee





1 has exercised rights protected under this chapter. These rights  
2 include the right to:

3 (1) Use paid sick and safe leave pursuant to this chapter;

4 (2) File a complaint or inform any person about any  
5 employer's alleged violation of this chapter;

6 (3) Cooperate with the director in any investigation of  
7 alleged violations of this chapter; and

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

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

14 (d) Protections of this section shall apply to any person  
15 who mistakenly but in good faith alleges violations of this  
16 chapter.

17 (e) There shall be a rebuttable presumption of unlawful  
18 retaliation under this section whenever an employer takes  
19 adverse action against an employee within ninety days of the  
20 time that the employee:

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



- 1 (2) Informs any person about an employer's alleged
- 2 violation of this chapter;
- 3 (3) Cooperates with the director or other person in the
- 4 investigation or prosecution of any alleged violation
- 5 of this chapter;
- 6 (4) Opposes any policy, practice, or act that is unlawful
- 7 under this chapter; or
- 8 (5) Informs any person of the person's rights under this
- 9 chapter.

10 **§ -5 Notice and posting.** (a) An employer shall give  
11 employees notice of the following:

- 12 (1) Employees are entitled to paid sick and safe leave;
- 13 (2) The amount of paid sick and safe leave;
- 14 (3) The terms of sick and safe leave use as guaranteed
- 15 under this chapter;
- 16 (4) Retaliation against employees who request or use paid
- 17 sick and safe leave is prohibited; and
- 18 (5) Each employee has the right to file a complaint or
- 19 bring a civil action if sick and safe leave, as
- 20 required by this chapter, is denied by the employer,
- 21 or if the employee is retaliated against for
- 22 requesting or taking paid sick and safe leave.



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

3 (1) Individualized notice; or

4 (2) Displaying a poster in a conspicuous and accessible  
5 place in each establishment where the employees are  
6 employed.

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

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

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

17 **§ -6 Employer records.** An employer shall retain records  
18 documenting hours worked by employees and paid sick and safe  
19 leave taken by employees for a period of five years and shall  
20 allow the director access to the records, with appropriate  
21 notice and at a mutually agreeable time, to monitor compliance  
22 with the requirements of this chapter. When an issue arises as



1 to an employee's entitlement to paid sick and safe leave under  
2 this chapter, it shall be presumed that the employer has  
3 violated this chapter, absent clear and convincing evidence  
4 otherwise, if the employer does not maintain or retain adequate  
5 records documenting hours worked by the employee and paid sick  
6 and safe leave taken by the employee or does not allow the  
7 director reasonable access to the records.

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

18       (b) The director, attorney general, or any person  
19 aggrieved by a violation of this chapter, or any entity a member  
20 of which is aggrieved by a violation of this chapter, may bring  
21 a civil action in a court of competent jurisdiction against an



1 employer violating this chapter. The action may be brought  
2 without first filing an administrative complaint.

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

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

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

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

13 (3) Reasonable attorney's fees.

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

17 (e) The statute of limitations for a civil action brought  
18 pursuant to this chapter shall be a period of \_\_\_\_\_ years from  
19 the date the alleged violation occurred.

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



1           **§ -8 Confidentiality and nondisclosure.** An employer  
2 shall not require disclosure of details relating to domestic  
3 violence, sexual assault, stalking, or the details of an  
4 employee's medical condition as a condition of providing paid  
5 sick and safe leave under this chapter. If an employer  
6 possesses health information or information pertaining to  
7 domestic violence, sexual assault, or stalking about an employee  
8 or employee's family member, the information shall be treated as  
9 confidential and shall not be disclosed except to the affected  
10 employee or with the permission of the affected employee.

11           **§ -9 Encouragement of more generous sick and safe leave**  
12 **policies; no effect on more generous policies.** (a) Nothing in  
13 this chapter shall be construed to discourage or prohibit an  
14 employer from the adoption or retention of a paid sick and safe  
15 leave policy more generous than the one required by this  
16 chapter.

17           (b) Nothing in this chapter shall be construed as  
18 diminishing the obligation of an employer to comply with any  
19 contract, collective bargaining agreement, employment benefit  
20 plan, or other agreement providing more generous sick and safe  
21 leave 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 and safe leave or use of sick and safe leave as provided by law.

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

10 SECTION 3. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16 SECTION 4. This Act shall take effect upon its approval;  
17 provided that in the case of employees covered by a collective  
18 bargaining agreement in effect on July 1, 2012, this Act shall  
19 take effect on the date of the termination, renewal, or  
20 amendment of the collective bargaining agreement then in effect.



**Report Title:**

Paid Sick and Safe Leave

**Description:**

Requires employers to provide a minimum amount of paid sick and safe leave to employees to be used to care for themselves or a family member who is ill or a victim of domestic violence, sexual assault, or stalking. (Proposed SD1)

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

