

JAN 17 2013

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 this
8 State, an estimated forty-three per cent of private
9 sector workers lack paid sick leave;

10 (3) Low income workers are significantly less likely to
11 have paid sick leave than other members of the
12 workforce. Only one in five low income workers has
13 access to paid sick leave;

14 (4) Providing workers time off to attend to their personal
15 health care needs and the health care needs of family
16 members would ensure a healthier and more productive
17 workforce in the State;



- 1 (5) Nearly two hundred fifty thousand people in the State
2 serve as unpaid family caregivers for family members,
3 work that has an aggregate value of \$1,900,000 per
4 year. Working family caregivers cannot adequately
5 care for their relatives without access to paid sick
6 leave;
- 7 (6) Paid sick leave would have a positive effect on the
8 public health of residents of the State by allowing
9 workers the option of staying home when ill, thus
10 lessening recovery time and reducing the likelihood of
11 spreading illness to other members of the workforce
12 and to the public;
- 13 (7) Paid sick leave will reduce health care expenditures
14 by promoting access to primary and preventive care.
15 Nationally, providing all workers with paid sick leave
16 would result in \$1,100,000,000 in annual savings in
17 hospital emergency room costs, including more than
18 \$500,000,000 in savings to publicly funded health
19 insurance programs such as Medicare, medicaid, and the
20 state children's health insurance program. Access to
21 paid sick leave can also help decrease the likelihood
22 that a worker will put off needed care and increase



1 the use of preventive care among workers and their
2 family members;

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

13 (9) Paid sick leave will reduce contagion. Workers in
14 jobs with high levels of public contact, such as
15 restaurant workers and child care workers, are very
16 unlikely to have paid sick leave. As a result, these
17 workers may have no choice but to go to work when they
18 are ill, thereby increasing the risk of passing
19 illnesses on to co-workers and customers while
20 jeopardizing their own health. Overall, people
21 without paid sick leave are 1.5 times more likely than



1 people with paid sick leave to go to work with a
2 contagious illness like the flu;

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) When an outbreak that presents a threat to public
11 health occurs, for example the H1N1 outbreak of 2009,
12 government officials request that sick workers stay
13 home and keep sick children home from school or child
14 care to prevent the spread of the illness and to
15 safeguard workplace productivity. However, to protect
16 their paychecks and their jobs, many workers who lack
17 paid sick leave are unable to comply with these
18 requests;

19 (12) During the height of the H1N1 pandemic, workers with
20 lower rates of access to paid sick leave were more
21 likely than those with higher rates of access to paid
22 sick leave to go to work sick. As a result, the



1 pandemic lasted longer in their workplaces as the
2 virus spread from co-worker to co-worker. A new study
3 estimates that lack of paid sick leave was responsible
4 for five million cases of influenza-like illness
5 during the pandemic;

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

13 (14) Paid sick leave will reduce the risk of
14 "presenteeism", or workers coming to work with
15 illnesses and health conditions that reduce their
16 productivity, a problem that costs the national
17 economy \$160,000,000,000 annually;

18 (15) Paid sick leave will reduce the competitive
19 disadvantage currently faced by the many employers
20 that do choose to provide sick time to their workers;

21 (16) Nearly one in four American women report physical or
22 sexual abuse by a husband or boyfriend at some point



1 in their lives. Each year, approximately 4,800,000
2 intimate partner-related physical assaults and rapes
3 are committed against women. Men are the victims of
4 about 2,900,000 intimate partner-related physical
5 assaults. Many workers need time off to care for
6 their health after these incidents or to find
7 solutions such as a restraining order or new housing
8 to avoid or prevent further physical or sexual abuse;

9 (17) Survivors of domestic and sexual violence are forced
10 to lose days of paid employment because of the
11 violence they face. The mean number of days of paid
12 work lost by survivors of rape is 8.1 days, by
13 survivors of physical assault 7.2 days, and by
14 survivors of stalking 10.1 days; and

15 (18) Without paid sick and safe leave, survivors of
16 domestic and sexual violence are in grave danger of
17 losing their jobs. Loss of employment can be
18 particularly devastating for survivors of domestic
19 violence, who often need economic security to ensure
20 their own and their children's safety.

21 The purpose of this Act is to establish workers' right to
22 accrue paid sick and safe leave in order to:



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- 1 (1) Ensure that all workers in the State can address their
2 own health and safety needs and the health and safety
3 needs of their families by requiring employers to
4 provide a minimum level of paid sick and safe leave,
5 including time for family care;
- 6 (2) Diminish public and private health care costs in the
7 State by enabling workers to seek early and routine
8 medical care for themselves and their family members;
- 9 (3) Protect public health in the State by reducing the
10 risk of contagion;
- 11 (4) Promote economic security and stability of workers and
12 their families in the State;
- 13 (5) Protect employees in the State from losing their jobs
14 when they use sick and safe leave to care for
15 themselves or their families;
- 16 (6) Assist victims of domestic violence and their family
17 members by providing them with protected time away
18 from work to allow them to receive treatment and to
19 take the necessary steps to ensure their safety and
20 protection;
- 21 (7) Safeguard the public welfare, health, and safety, and
22 the prosperity of the people of the State; and



1 (8) Accomplish the purpose of this Act in a manner that is
2 feasible for employers.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 **"CHAPTER**

7 **PAID SICK AND SAFE LEAVE**

8 § -1 **Definitions.** As used in this chapter, unless the
9 context clearly requires otherwise:

10 "Department" means the department of labor and industrial
11 relations.

12 "Director" means the director of labor and industrial
13 relations.

14 "Domestic violence" has the same meaning as in section 321-
15 471.

16 "Employee" has the same meaning as defined in the federal
17 Fair Labor Standards Act, Title 29 United States Code section
18 203(e), and additionally includes recipients of public benefits
19 who are engaged in work activity as a condition of receiving
20 public assistance and public employees who are not subject to
21 the civil service laws of the State, a political subdivision, or
22 a public agency.



1 "Employer" has the same meaning as defined in the federal
2 Fair Labor Standards Act, Title 29 United States Code section
3 203(d).

4 "Family member" means:

- 5 (1) A biological, adopted, or foster child; stepchild;
6 legal ward; a child of a reciprocal beneficiary; or a
7 child to whom the employee stands in loco parentis;
8 (2) A biological, foster, or adoptive parent; stepparent;
9 or legal guardian of an employee or an employee's
10 spouse or reciprocal beneficiary; or a person who
11 stood in loco parentis when the employee was a minor
12 child;
13 (3) A spouse or reciprocal beneficiary;
14 (4) A grandparent or a spouse or reciprocal beneficiary of
15 a grandparent;
16 (5) A grandchild;
17 (6) A biological, foster, or adopted sibling; or a spouse
18 or reciprocal beneficiary of a biological, foster, or
19 adopted sibling; and
20 (7) Any other individual related by blood or affinity
21 whose close association with the employee is the
22 equivalent of a family relationship.



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

3 "Labor organization" has the same meaning as defined in
4 section 378-1.

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

10 "Retaliatory personnel action" means the discharge,
11 suspension, or demotion by an employer of an employee or any
12 other adverse action taken by an employer against an employee,
13 including any sanctions against a recipient of public benefits,
14 or any other interference with or punishment for using paid sick
15 and safe leave or for participating in an investigation,
16 proceeding, or hearing under this chapter.

17 "Sexual assault" means any conduct that would constitute an
18 offense under chapter 707, part V.

19 "Small business" means any corporation, partnership, sole
20 proprietorship, firm, institution, association, or private
21 individual for which fewer than ten persons perform work for
22 compensation during a given week. The number of persons



1 performing work for compensation during a given week shall
2 include all persons performing work for compensation on a full-
3 time, part-time, or temporary basis and persons made available
4 to work through the services of a temporary staffing agency or
5 similar entity. If the number of persons who work for
6 compensation per week fluctuates over the course of a year, an
7 employer shall not be considered a small business if the
8 employer maintained ten or more employees on the payroll during
9 twenty or more calendar workweeks in either the current or the
10 preceding calendar year. If an employer has more than one
11 business location, the employer's status as a small business
12 shall be determined by aggregating the number of employees on
13 the employer's payroll at all locations in the State.

14 "Stalking" has the same meaning as defined as in section
15 378-71.

16 § -2 **Accrual of paid sick and safe leave.** (a) All
17 employees who work in the State for more than eighty hours in a
18 year have the right to paid sick and safe leave as provided in
19 this chapter.

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

22 Employees shall not accrue more than seventy-two hours of paid



1 sick and safe leave in a calendar year, unless the employer
2 provides a higher limit.

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

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

13 (e) Paid sick and safe leave as provided in this chapter
14 shall begin to accrue at the later of the commencement of
15 employment or the effective date of this chapter.

16 (f) Employees shall be entitled to use accrued paid sick
17 and safe leave beginning on the ninetieth calendar day following
18 commencement of employment. After the ninetieth calendar day of
19 employment, employees may use paid sick and safe leave as it is
20 accrued.

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



1 sick and safe leave pursuant to this chapter in each calendar
2 year shall not exceed forty hours for employees of small
3 businesses and seventy-two hours for employees of all other
4 employers, unless the employer provides a higher limit.

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

11 (i) Nothing in this section shall be construed as
12 requiring financial or other reimbursement to an employee from
13 an employer upon the employee's termination, resignation,
14 retirement, or other separation from employment for unused
15 accrued paid sick and safe leave.

16 (j) If an employee is transferred to a separate division,
17 entity, or location, but remains employed by the same employer,
18 the employee shall be entitled to all paid sick and safe leave
19 accrued at the prior division, entity, or location and shall be
20 entitled to use all paid sick and safe leave as provided in this
21 chapter. If an employee is separated from employment and
22 subsequently rehired within six months of separation by the same



1 employer, the employee's previously accrued and unused paid sick
2 and safe leave shall be reinstated. In addition, the employee
3 shall be entitled to use accrued paid sick and safe leave and to
4 accrue additional sick and safe leave as of the date of re-
5 commencement of employment.

6 (k) An employer may advance paid sick and safe leave to an
7 employee prior to its accrual by the employee.

8 § -3 **Use of paid sick and safe leave.** (a) An employee
9 may use paid sick and safe leave during absences from work due
10 to:

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

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



1 (3) Closure of the employee's place of business by order
2 of a public official due to a public health emergency,
3 an employee's need to care for a child whose school or
4 place of care has been closed by order of a public
5 official due to a public health emergency, or care for
6 a family member when it has been determined by the
7 health authorities having jurisdiction or by a health
8 care provider that the family member's presence in the
9 community would jeopardize the health of others
10 because of the family member's exposure to a
11 communicable disease, regardless of whether the family
12 member has actually contracted the communicable
13 disease;

14 (4) Domestic violence, sexual assault, or stalking;
15 provided that the leave is to:

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

20 (B) Obtain services from a victim services
21 organization;

22 (C) Obtain psychological or other counseling; or



1 (D) Seek relocation due to domestic violence, sexual
2 assault, or stalking; or

3 (5) Participation in legal action, including preparing for
4 or participating in any civil or criminal legal
5 proceeding, whose primary subject matter is the
6 illness of, injury of, domestic violence against,
7 sexual assault of, or stalking of an employee or
8 employee's family member.

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

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

19 (d) Accrued paid sick and safe leave may be used in
20 smaller than hourly increments or the smallest increment that
21 the employer's payroll system uses to account for absences or
22 use of other time.



1 (e) If an employee uses paid sick and safe leave more than
2 three consecutive work days, an employer may require reasonable
3 documentation that the paid sick and safe leave is allowable
4 under subsection (a). The following shall be considered
5 reasonable documentation:

6 (1) A written, signed statement by a health care
7 professional indicating that paid sick and safe leave
8 is necessary;

9 (2) A police report indicating that the employee was a
10 victim of domestic violence, stalking, or sexual
11 assault;

12 (3) A court order;

13 (4) A signed statement from a victim and witness advocate
14 affirming that the employee is involved in legal
15 action related to domestic violence, stalking, or
16 sexual assault; or

17 (5) Documentation from a licensed attorney affirming that
18 the employee is involved in legal action related to an
19 illness or injury that qualifies for use of paid sick
20 and safe leave.

21 An employer shall not require that the documentation explain the
22 nature of the illness or the details of the violence. If an



1 employer chooses to require documentation for paid sick and safe
2 leave and the employee does not have health insurance, the
3 employer shall be responsible for paying all out of pocket
4 expenses the employee incurs in obtaining the documentation. If
5 the employee has health insurance, the employer shall be
6 responsible for paying any costs not covered or reimbursed by
7 the employee's health insurance charged to the employee by the
8 health care provider or other professional for providing the
9 specific documentation required by the employer.

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

14 **§ -4 Exercise of rights protected; retaliation**

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

18 (b) An employer shall not take retaliatory personnel
19 action or discriminate against an employee because the employee
20 has exercised rights protected under this chapter. These rights
21 include the right to:

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



1 (2) File a complaint with the director or a court or
2 inform any person about an employer's alleged
3 violation of this chapter;

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

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

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

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

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

19 (1) Requests or uses paid sick and safe leave;

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



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

10 § **-5 Notice and posting.** (a) An employer shall give
11 its 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 granted
- 14 pursuant to this chapter;
- 15 (3) The terms of paid sick and safe leave use as
- 16 guaranteed under this chapter;
- 17 (4) That retaliation against employees who request or use
- 18 paid sick and safe leave is prohibited; and
- 19 (5) That each employee has the right to file a complaint
- 20 or bring a civil action if paid sick and safe leave,
- 21 as required by this chapter, is denied by the
- 22 employer, or if the employee is retaliated against for



1 requesting or taking paid sick and safe leave or for
2 exercising any other right pursuant to this chapter;

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

5 (1) Individualized notice; or

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

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

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

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

20 § -6 **Employer records.** An employer shall retain records
21 documenting hours worked by employees and paid sick and safe
22 leave taken by employees for a period of five years and shall



1 allow the director access to the records, with appropriate
2 notice and at a mutually agreeable time, to monitor compliance
3 with the requirements of this chapter. If an issue arises as to
4 an employee's entitlement to paid sick and safe leave under this
5 chapter, it shall be presumed that the employer has violated
6 this chapter, absent clear and convincing evidence otherwise, if
7 the employer does not maintain or retain adequate records
8 documenting hours worked by the employee and paid sick and safe
9 leave taken by the employee or does not allow the director
10 reasonable access to the records.

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

21 (b) The director, the attorney general, any person
22 aggrieved by a violation of this chapter, or any labor



1 organization a member of which is aggrieved by a violation of
2 this chapter, may bring a civil action in a court of competent
3 jurisdiction against an employer who violates this chapter. The
4 action may be brought without first filing an administrative
5 complaint.

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

8 (1) The full amount of any paid sick and safe leave to
9 which the person is entitled;

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

12 (3) Reasonable attorney's fees.

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

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

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

21 § -8 **Confidentiality and nondisclosure.** An employer
22 shall not require disclosure of details relating to domestic



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

10 § -9 **Employer adoption of more generous sick and safe**
11 **leave policies; no effect on contracts, agreements, and plans**
12 **providing more generous sick and safe leave.** (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 to the employee than the one required
16 by this 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 paid sick and
21 safe 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 does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 5. This Act shall take effect on July 1, 2013;
20 provided that in the case of employees covered by a collective
21 bargaining agreement in effect on July 1, 2013, this Act shall



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- 1 take effect on the date of the termination, renewal, or
- 2 amendment of the collective bargaining agreement then in effect.
- 3

INTRODUCED BY: *Franzanne Chun Cleveland*

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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.

