

1 "Employer":

2 (1) Means any person, firm, business, educational
3 institution, nonprofit agency, corporation, limited
4 liability company, or other entity that employs fifty
5 or more individuals in the State in any one quarter in
6 the previous year; and

7 (2) Does not include:

8 (A) Any manufacturing business classified in sector
9 31, 32, or 33 in the North American Industrial
10 Classification System;

11 (B) Any nationally chartered organization exempt from
12 taxation under section 501(c)(3) of the Internal
13 Revenue Code of 1986, as amended, that provides
14 all of the following services: recreation, child
15 care, and education; or

16 (C) The State or any of its political subdivisions.

17 "Retaliatory personnel action" means any termination,
18 suspension, constructive discharge, demotion, unfavorable
19 reassignment, refusal to promote, disciplinary action, or other
20 adverse employment action taken by an employer against an
21 employee or a service worker.



1 "Service worker" means an employee who is either paid on an
2 hourly basis or not exempt from the minimum wage and overtime
3 compensation requirements of the Fair Labor Standards Act of
4 1938 and the rules adopted thereunder, as amended; and is
5 primarily engaged in an occupation with one of the following
6 broad or detailed occupation code numbers and titles, as defined
7 by the federal Bureau of Labor Statistics Standard Occupational
8 Classification system or any successor system:

- 9 (1) 11-9050 Food service managers;
- 10 (2) 11-9110 Medical and health services managers;
- 11 (3) 21-1020 Social workers;
- 12 (4) 21-1093 Social and human service assistants;
- 13 (5) 21-1094 Community health workers;
- 14 (6) 21-1099 Community and social service specialists, all
15 other;
- 16 (7) 25-4020 Librarians;
- 17 (8) 29-1050 Pharmacists;
- 18 (9) 29-1070 Physician assistants;
- 19 (10) 29-1120 Therapists;
- 20 (11) 29-1140 Registered nurses;
- 21 (12) 29-1150 Nurse anesthetists;
- 22 (13) 29-1160 Nurse midwives;



- 1 (14) 29-1170 Nurse practitioners;
- 2 (15) 29-2020 Dental hygienists;
- 3 (16) 29-2040 Emergency medical technicians and paramedics;
- 4 (17) 29-2050 Health practitioner support technologists and
- 5 technicians;
- 6 (18) 29-2060 Licensed practical and licensed vocational
- 7 nurses;
- 8 (19) 31-1011 Home Health Aides;
- 9 (20) 31-1012 Nursing aides, orderlies, and attendants;
- 10 (21) 31-1013 Psychiatric aides;
- 11 (22) 31-9091 Dental assistants;
- 12 (23) 31-9092 Medical assistants;
- 13 (24) 33-9032 Security guards;
- 14 (25) 33-9091 Crossing guards;
- 15 (26) 35-1010 Supervisors of food preparation and serving
- 16 workers;
- 17 (27) 35-2010 Cooks;
- 18 (28) 35-2020 Food preparation workers;
- 19 (29) 35-3010 Bartenders;
- 20 (30) 35-3020 Fast food and counter workers;
- 21 (31) 35-3030 Waiters and waitresses;
- 22 (32) 35-3040 Food servers, nonrestaurant;



- 1 (33) 35-9010 Dining room and cafeteria attendants and
2 bartender helpers;
- 3 (34) 35-9020 Dishwashers;
- 4 (35) 35-9030 Hosts and hostesses, restaurant, lounge and
5 coffee shop;
- 6 (36) 35-9090 Miscellaneous food preparation and serving
7 related workers;
- 8 (37) 37-2011 Janitors and cleaners, except maids and
9 housekeeping cleaners;
- 10 (38) 37-2019 Building cleaning workers, all other;
- 11 (39) 39-3030 Ushers, lobby attendants, and ticket takers;
- 12 (40) 39-5010 Barbers, hairdressers, hairstylists, and
13 cosmetologists;
- 14 (41) 39-6010 Baggage porters, bellhops, and concierges;
- 15 (42) 39-9010 Child care workers;
- 16 (43) 39-9021 Personal care aides;
- 17 (44) 41-1010 First-line supervisors of sales workers;
- 18 (45) 41-2011 Cashiers;
- 19 (46) 41-2021 Counter and rental clerks;
- 20 (47) 41-2030 Retail salespersons;
- 21 (48) 43-3070 Tellers;
- 22 (49) 43-4080 Hotel, motel, and resort desk clerks;



- 1 (50) 43-4170 Receptionists and information clerks;
- 2 (51) 43-5020 Couriers and messengers;
- 3 (52) 43-6010 Secretaries and administrative assistants;
- 4 (53) 43-9010 Computer operators;
- 5 (54) 43-9020 Data entry and information processing workers;
- 6 (55) 43-9030 Desktop publishers;
- 7 (56) 43-9040 Insurance claims and policy processing clerks;
- 8 (57) 43-9050 Mail clerks and mail machine operators, except
- 9 postal service;
- 10 (58) 43-9060 Office clerks, general;
- 11 (59) 43-9070 Office machine operators, except computer;
- 12 (60) 43-9080 Proofreaders and copy markers;
- 13 (61) 43-9110 Statistical assistants;
- 14 (62) 43-9190 Miscellaneous office and administrative
- 15 support workers;
- 16 (63) 51-3010 Bakers;
- 17 (64) 51-3020 Butchers and other meat, poultry, and fish
- 18 processing workers;
- 19 (65) 51-3090 Miscellaneous food processing workers;
- 20 (66) 53-3010 Ambulance drivers and attendants, except
- 21 emergency medical technicians;
- 22 (67) 53-3020 Bus drivers; or



1 (68) 53-3040 Taxi drivers and chauffeurs.

2 "Service worker" does not include an individual who
3 performs work for another on a per diem basis or, on an
4 occasional or irregular basis, for only the time required to
5 complete the work, whether the individual is paid by the person
6 for whom the work is performed, an employment agency, or a
7 temporary help service.

8 "Sexual assault" means any act that constitutes a violation
9 of sections 707-730, 707-731, 707-732, or 707-733.

10 § -2 Sick leave for service workers. (a) Each employer
11 shall provide annual paid sick leave to each of the employer's
12 service workers in the State. Paid sick leave shall accrue:

13 (1) Beginning January 1, 2015, or for a service worker
14 hired after that date, beginning on the service
15 worker's date of employment;

16 (2) At a rate of one hour of paid sick leave for each
17 forty hours worked by a service worker; and

18 (3) In one-hour increments up to a maximum of forty hours
19 per calendar year.

20 Each service worker may carry over up to forty unused
21 accrued hours of paid sick leave from the current calendar year
22 to the following calendar year; provided that no service worker



1 may use more than the maximum number of accrued hours, as
2 described in paragraph (3), in any one year.

3 (b) A service worker may use accrued paid sick leave upon
4 the completion of the service worker's six-hundred-eightieth
5 hour of employment:

6 (1) From January 1, 2015, if the service worker was hired
7 prior to January 1, 2015; or

8 (2) If hired after January 1, 2015, upon the completion of
9 the service worker's six-hundred-eightieth hour of
10 employment from the date of hire, unless the employer
11 agrees to an earlier date.

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

16 (c) An employer shall be deemed to be in compliance with
17 this section if the employer offers any other paid leave, or
18 combination of other paid leave that:

19 (1) May be used for the purposes of section -3; and

20 (2) Is accrued in total at a rate equal to or greater than
21 the rate described in subsections (a) and (b).



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

3 (d) Each employer shall pay each service worker for paid
4 sick leave at a pay rate equal to the greater of either:

5 (1) The normal hourly wage for that service worker; or

6 (2) The minimum wage rate under section 387-2 in effect
7 for the pay period during which the employee used paid
8 sick leave.

9 For any service worker whose hourly wage varies depending
10 on the work performed by the service worker, the "normal hourly
11 wage" shall mean the average hourly wage of the service worker
12 in the pay period that immediately precedes the one in which the
13 service worker used paid sick leave.

14 (e) Notwithstanding any other law to the contrary, upon
15 the mutual consent of the service worker and employer, a service
16 worker who chooses to work additional hours or shifts during the
17 same or following pay period, in lieu of hours or shifts missed,
18 shall not use accrued paid sick leave.

19 § -3 Permitted uses for sick leave. (a) An employer
20 shall permit a service worker to use paid sick leave that is
21 accrued pursuant to section -2 for the following purposes:



- 1 (1) An illness, injury, or health condition of the service
2 worker;
- 3 (2) An illness, injury, or health condition of the service
4 worker's child or service worker's spouse;
- 5 (3) The medical diagnosis, care, or treatment of a mental
6 illness, physical illness, injury, or health condition
7 of, or preventative medical care for, the service
8 worker, the service worker's child, or service
9 worker's spouse; and
- 10 (4) For a service worker who is a victim of domestic abuse
11 or sexual assault:
 - 12 (A) Medical care or psychological or other counseling
13 for physical or psychological injury or
14 disability;
 - 15 (B) Obtaining services from a victim services
16 organization;
 - 17 (C) Relocation due to the domestic abuse or sexual
18 assault; or
 - 19 (D) Participation in any civil or criminal
20 proceedings related to or resulting from the
21 domestic abuse or sexual assault.



1 (b) If a service worker's need to use paid sick leave is
2 foreseeable, an employer may require advance notice, not to
3 exceed seven days prior to the date that the leave is scheduled
4 to begin, of the intention to use paid sick leave. If a service
5 worker's need to use paid sick leave is not foreseeable, an
6 employer may require a service worker to give notice of an
7 intention as soon as practicable. For paid sick leave of three
8 or more consecutive days, an employer may require reasonable
9 documentation that the leave is being taken for the purposes
10 permitted under subsection (a).

11 (c) If leave is permitted under subsection (a)(1), (2), or
12 (3), documentation signed by a health care provider who is
13 treating the service worker, service worker's child, or spouse
14 indicating the need for the number of days of leave shall be
15 deemed reasonable documentation. If leave is permitted under
16 subsection (a)(4), a court record or documentation signed by a
17 service worker or volunteer working for a victim services
18 organization, an attorney, a police officer, or other counselor
19 involved with the service worker shall be deemed reasonable
20 documentation.



1 (d) Nothing in this chapter shall require an employer to
2 provide paid sick leave for a service worker for any purpose
3 other than those described in this section.

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

9 (f) Nothing in this chapter shall be construed to prohibit
10 an employer from taking disciplinary action against a service
11 worker who uses paid sick leave for purposes other than those
12 described in this section.

13 § -4 Additional leave; donation of unused leave; breaks
14 in service. (a) Nothing in this chapter shall be construed to:

15 (1) Prohibit an employer from providing more paid sick
16 leave than is required under this chapter;

17 (2) Diminish any rights provided to any service worker
18 under a collective bargaining agreement; or

19 (3) Preempt or override the terms of any collective
20 bargaining agreement in effect prior to January 1,
21 2015.



1 (b) Nothing in this chapter shall be construed to prohibit
2 an employer:

3 (1) From establishing a policy under which a service
4 worker may donate unused accrued paid sick leave to
5 another service worker; and

6 (2) From limiting the amount of leave a service worker may
7 use for the purposes set out in section -3(a)(2),
8 (3), and (4), if the employer provides more paid sick
9 leave than is required under this chapter in order to
10 allow the service worker to use them for the purpose
11 of section -3(a)(1).

12 (c) Any termination of a service worker's employment by an
13 employer, whether voluntary or involuntary, shall be construed
14 as a break in service. If any service worker is subsequently
15 rehired by the employer following a break in service, the
16 service worker:

17 (1) Shall begin to accrue sick leave in accordance with
18 section -2; and

19 (2) Shall not be entitled to any unused hours of paid sick
20 leave that had been accrued prior to the service
21 worker's break in service, unless agreed to by the
22 employer.



1 § -5 Retaliatory personnel action prohibited. (a) No
2 employer shall take retaliatory personnel action or discriminate
3 against a service worker based upon the grounds that the service
4 worker:

5 (1) Requests or uses paid sick leave either in accordance
6 with sections -2 and -3 or in accordance with
7 the employer's own paid sick leave policy, as the case
8 may be; or

9 (2) Files a complaint with the director alleging the
10 employer's violation of this chapter.

11 (b) The director shall advise any service worker who:

12 (1) Is covered by a collective bargaining agreement that
13 provides for paid sick leave; and

14 (2) Files a complaint pursuant to subsection (a)(2);
15 of the service worker's right to pursue a grievance with the
16 service worker's collective bargaining representative.

17 (c) Any service worker who is aggrieved by a violation of
18 this chapter may file a complaint with the director. Upon the
19 receipt of a complaint, the director shall hold a hearing.

20 After the hearing, any employer who is found by a preponderance
21 of the evidence to have violated subsection (a) shall be liable
22 to the department for a civil penalty of \$500 for each



1 violation. Any employer who is found by a preponderance of the
2 evidence to have violated any other section of this chapter
3 shall be liable to the department for a civil penalty of up to
4 \$100 for each violation. The director may award the service
5 worker all appropriate relief, including payment for used paid
6 sick leave, rehiring or reinstatement to the service worker's
7 previous job, payment of back wages, and reestablishment of
8 employee benefits to which the service worker otherwise would
9 have been eligible if the service worker had not been subject to
10 retaliatory personnel action or discrimination. Any party
11 aggrieved by the decision of the director may appeal the
12 decision to the circuit court of the district in which the
13 service worker is employed.

14 § -6 Notice to service workers of sick leave
15 requirements. (a) Each employer subject to section -2 shall
16 provide notice to each service worker, at the time of hiring:

- 17 (1) Of the entitlement to sick leave for service workers,
18 the amount of sick leave provided to service workers,
19 and the terms under which sick leave may be used;
- 20 (2) That retaliation by the employer against the service
21 worker for requesting or using sick leave for which
22 the service worker is eligible is prohibited; and



1 (3) That the service worker has a right to file a
2 complaint with the director of labor and industrial
3 relations for any violation of this chapter.

4 (b) An employer may comply with this section by displaying
5 a notice that contains the information required by this section.
6 The notice shall be posted in a conspicuous place at the
7 employer's place of business that is accessible to service
8 workers. The director may adopt rules, pursuant to chapter 91,
9 to establish additional requirements concerning the means by
10 which employers shall provide the required notice."

11 SECTION 2. Section 378-32, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) It shall be unlawful for an employer or a labor
14 organization to bar or discharge from employment, withhold pay
15 from, or demote an employee because the employee uses accrued
16 and available sick leave; provided that:

17 (1) After an employee uses three or more consecutive days
18 of sick leave, an employer or labor organization may
19 require the employee to provide [~~written verification~~
20 ~~from a physician indicating that the employee was ill~~
21 ~~when the sick leave was used;~~] documentation or a



court record that the leave was taken for the purposes permitted under section -3(a);

(2) This subsection shall apply only to employers who:

(A) Have a collective bargaining agreement with their employees; and

(B) Employ one hundred or more employees; and

(3) Nothing in this subsection shall be construed to supersede any provision of any collective bargaining agreement or employment benefits program or plan that provides greater employee benefits or rights."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2015.

INTRODUCED BY:

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JAN 22 2014



H.B. NO. 2416

Report Title:

Service Workers; Paid Sick Leave

Description:

Requires private employers to provide their service workers with paid sick leave.

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

