

JAN 17 2014

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 one and a half times more



- 1 likely than people with paid sick leave to go to work
2 with a 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; and

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



- 1 (1) Ensure that all workers in the State can address their
2 own health needs and the health needs of their
3 families by requiring employers to provide a minimum
4 level of paid sick leave, including time for family
5 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 leave to care for themselves or
15 their families;
- 16 (6) Safeguard the public welfare, health, and safety, and
17 the prosperity of the people of the State; and
- 18 (7) Accomplish the purpose of this Act in a manner that is
19 feasible for employers.

20 SECTION 2. The Hawaii Revised Statutes is amended by
21 adding a new chapter to be appropriately designated and to read
22 as follows:



1 "CHAPTER

2 PAID SICK LEAVE

3 § -1 Definitions. As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Department" means the department of labor and industrial
6 relations.

7 "Director" means the director of labor and industrial
8 relations.

9 "Employee" has the same meaning as defined in the federal
10 Fair Labor Standards Act, Title 29 United States Code section
11 203(e), and additionally includes recipients of public benefits
12 who are engaged in work activity as a condition of receiving
13 public assistance and public employees who are not subject to
14 the civil service laws of the State, a political subdivision, or
15 a public agency.

16 "Employer" has the same meaning as defined in the federal
17 Fair Labor Standards Act, Title 29 United States Code section
18 203(d).

19 "Family member" means:

- 20 (1) A biological, adopted, or foster child; stepchild;
21 legal ward; a child of a reciprocal beneficiary; or a
22 child to whom the employee stands in loco parentis;



1 (2) A biological, foster, or adoptive parent; stepparent;
2 or legal guardian of an employee or an employee's
3 spouse or reciprocal beneficiary; or a person who
4 stood in loco parentis when the employee was a minor
5 child;

6 (3) A spouse or reciprocal beneficiary;

7 (4) A grandparent or a spouse or reciprocal beneficiary of
8 a grandparent;

9 (5) A grandchild;

10 (6) A biological, foster, or adopted sibling; or a spouse
11 or reciprocal beneficiary of a biological, foster, or
12 adopted sibling; and

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

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

18 "Labor organization" has the same meaning as defined in
19 section 378-1.

20 "Paid sick leave" means time away from work provided by an
21 employer to an employee that is compensated at the same hourly



1 rate and with the same benefits, including health care benefits,
2 as the employee normally earns during hours worked.

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

6 (b) All employees shall accrue a minimum of one hour of
7 paid sick leave for every thirty hours worked. Employees shall
8 not accrue more than nine days of paid sick leave in a calendar
9 year, unless the employer provides a higher limit.

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

17 (d) Paid sick leave as provided in this chapter shall
18 begin to accrue at the later of the commencement of employment
19 or the effective date of this chapter.

20 (e) Employees shall be entitled to use accrued paid sick
21 leave beginning on the ninetieth calendar day following



1 commencement of employment. After the ninetieth calendar day of
2 employment, employees may use paid sick leave as it is accrued.

3 (f) Paid sick leave shall be carried over to the following
4 calendar year; provided that an employee's use of paid sick
5 leave pursuant to this chapter in each calendar year shall not
6 exceed nine days for employees, unless the employer provides a
7 higher limit.

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

14 (h) Nothing in this section shall be construed as
15 requiring financial or other reimbursement to an employee from
16 an employer upon the employee's termination, resignation,
17 retirement, or other separation from employment for unused
18 accrued paid sick leave.

19 (i) If an employee is transferred to a separate division,
20 entity, or location, but remains employed by the same employer,
21 the employee shall be entitled to all paid sick leave accrued at
22 the prior division, entity, or location and shall be entitled to



1 use all paid sick leave as provided in this chapter. If an
2 employee is separated from employment and subsequently rehired
3 within six months of separation by the same employer, the
4 employee's previously accrued and unused paid sick leave shall
5 be reinstated. In addition, the employee shall be entitled to
6 use accrued paid sick leave and to accrue additional sick leave
7 as of the date of re-commencement of employment.

8 (j) An employer may advance paid sick leave to an employee
9 prior to its accrual by the employee.

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

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

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



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

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



1 (d) Accrued paid sick leave may be used in smaller than
2 hourly increments or the smallest increment that the employer's
3 payroll system uses to account for absences or use of other
4 time.

5 § -4 Notice and posting. (a) An employer shall give
6 its employees notice of the following:

- 7 (1) Employees are entitled to paid sick leave;
8 (2) The amount of paid sick leave granted pursuant to this
9 chapter; and
10 (3) The terms of paid sick leave use as guaranteed under
11 this chapter.

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

- 14 (1) Individualized notice; or
15 (2) Displaying a poster in a conspicuous and accessible
16 place in each establishment where its employees are
17 employed.

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

21 (c) The director shall create and make posters available
22 to employers, in all languages currently being used by the



1 department for other employment posters, that contain the
2 information required under subsection (a) for the employer's use
3 in complying with this section.

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

7 § -5 **Employer records.** An employer shall retain records
8 documenting hours worked by employees and paid sick leave taken
9 by employees for a period of five years and shall allow the
10 director access to the records, with appropriate notice and at a
11 mutually agreeable time, to monitor compliance with the
12 requirements of this chapter. If an issue arises as to an
13 employee's entitlement to paid sick leave under this chapter, it
14 shall be presumed that the employer has violated this chapter,
15 absent clear and convincing evidence otherwise, if the employer
16 does not maintain or retain adequate records documenting hours
17 worked by the employee and paid sick leave taken by the employee
18 or does not allow the director reasonable access to the records.

19 § -6 **Enforcement.** (a) An employee or other person may
20 report to the director any suspected violation of this chapter.
21 The director shall encourage reporting pursuant to this
22 subsection by keeping confidential, to the maximum extent



1 permitted by applicable laws, the name and other identifying
2 information of the employee or person reporting the suspected
3 violation; provided that with the authorization of the person,
4 the director may disclose the person's name and identifying
5 information as necessary to enforce this chapter or for other
6 appropriate purposes.

7 (b) The director, the attorney general, any person
8 aggrieved by a violation of this chapter, or any labor
9 organization a member of which is aggrieved by a violation of
10 this chapter, may bring a civil action in a court of competent
11 jurisdiction against an employer who violates this chapter. The
12 action may be brought without first filing an administrative
13 complaint.

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

- 16 (1) The full amount of any paid sick leave to which the
17 person is entitled;
- 18 (2) Actual damages suffered as the result of the
19 employer's violation of this chapter; and
- 20 (3) Reasonable attorney's fees.



1 Aggrieved persons shall also be entitled to equitable relief as
2 may be appropriate to remedy the violation including
3 reinstatement, back pay, and injunctive relief.

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

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

9 § -7 Confidentiality and nondisclosure. An employer
10 shall not require disclosure of details relating to the details
11 of an employee's medical condition as a condition of providing
12 paid sick leave under this chapter. If an employer possesses
13 health information or information pertaining to the details of a
14 medical condition about an employee or employee's family member,
15 the information shall be treated as confidential and shall not
16 be disclosed except to the affected employee or with the
17 permission of the affected employee.

18 § -8 Employer adoption of more generous sick and safe
19 leave policies; no effect on contracts, agreements, and plans
20 providing more generous sick and safe leave. (a) Nothing in
21 this chapter shall be construed to discourage or prohibit an
22 employer from the adoption or retention of a paid sick leave



1 policy more generous to the employee than the one required by
2 this chapter.

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

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

11 (d) This chapter shall provide the minimum requirements of
12 paid sick leave and shall not be construed to preempt, limit, or
13 otherwise affect the applicability of any other law, rule,
14 requirement, policy, or standard that provides for greater
15 accrual or use by employees of sick leave, whether paid or
16 unpaid, or that extends other protections to employees."

17 SECTION 3. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.



S.B. NO. 2493

1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. This Act shall take effect on July 1, 2014;
5 provided that in the case of employees covered by a collective
6 bargaining agreement in effect on July 1, 2014, this Act shall
7 take effect on the date of the termination, renewal, or
8 amendment of the collective bargaining agreement then in effect.

9

INTRODUCED BY: Ronald H. Baker
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S.B. NO. 2493

Report Title:

Paid Sick Leave

Description:

Requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

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

