

JAN 18 2013

S.B. NO. 534

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that:

2 (1) Most workers in the State, at some time during the
3 year, need temporary time off from work to take care
4 of personal health needs or the health needs of
5 members of their families;

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

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

17 (4) Providing workers time off to attend to their personal
18 health care needs and the health care needs of family



1 members would ensure a healthier and more productive
2 workforce in the State;

3 (5) Nearly two hundred fifty thousand people in the State
4 serve as unpaid family caregivers for family members,
5 work that had an aggregate value of more than
6 \$1,950,000,000 in 2009. Working family caregivers
7 cannot adequately care for their relatives without
8 access to paid sick leave;

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

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



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

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

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



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

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

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

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



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

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

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

19 (15) Paid sick leave will reduce the competitive
20 disadvantage that many employers currently face when
21 they choose to provide sick time to their workers;



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

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

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



1 The purpose of this Act is to establish, in a manner
2 feasible to employers, the right of workers in this State to
3 accrue paid sick and safe leave in order to:

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

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

12 (3) Protect public health in the State by reducing the
13 risk of contagion;

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

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

19 (6) Assist victims of domestic violence and their family
20 members by providing them with job protected time away
21 from work to allow them to receive treatment and to



1 take the necessary steps to ensure their safety and
2 protection; and
3 (7) Safeguard the public welfare, health, safety, and the
4 prosperity of the people of the State.

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

8 "CHAPTER

9 PAID SICK AND SAFE LEAVE

10 § -1 **Definitions.** As used in this chapter, unless the
11 context clearly requires otherwise:

12 "Department" means the department of labor and industrial
13 relations.

14 "Director" means the director of labor and industrial
15 relations.

16 "Domestic violence" has the same meaning as defined in
17 section 321-471.

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



1 the civil service laws of the State, a political subdivision, or
2 a public agency.

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

6 "Family member" means:

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



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

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

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

11 "Retaliatory personnel action" means the discharge,
12 suspension, or demotion by an employer of an employee or any
13 other adverse action taken by an employer against an employee,
14 including any sanctions against a recipient of public benefits
15 or any other interference with or punishment for participating
16 in an investigation, 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 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 workweek.

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

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

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



1 year shall not exceed forty hours for employees of small
2 businesses and seventy-two hours for employees of all other
3 businesses.

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

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

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



1 and safe leave shall be reinstated. In addition, the employee
2 shall be entitled to use accrued paid sick and safe leave and to
3 accrue additional sick and safe leave at the recommencement of
4 employment.

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

7 § -3 Use of paid sick and safe leave. (a) An employee
8 may use paid sick and safe leave during absences from work due
9 to:

- 10 (1) An employee's mental or physical illness, injury, or
11 health condition; an employee's need for medical
12 diagnosis or care, or treatment of a mental or
13 physical illness, injury, or health condition; or an
14 employee's need for preventive medical care;
- 15 (2) Care of a family member with a mental or physical
16 illness, injury, or health condition; care of a family
17 member who needs medical diagnosis or care, or
18 treatment of a mental or physical illness, injury, or
19 health condition; or care of a family member who needs
20 preventive medical care;
- 21 (3) Closure of the employee's place of business by order
22 of a public official due to a public health emergency,



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

12 (4) Absence necessary due to domestic violence, sexual
13 assault, or stalking; provided that the leave is to:

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

18 (B) Obtain services from a victim services
19 organization;

20 (C) Obtain psychological or other counseling;

21 (D) Seek relocation due to domestic violence, sexual
22 assault, or stalking; or



1 (E) Take legal action, including preparing for or
2 participating in any civil or criminal legal
3 proceeding related to domestic violence, sexual
4 assault, or stalking.

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

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

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

19 (e) If an employee uses sick and safe leave of more than
20 three consecutive workdays, an employer may require reasonable
21 documentation that the sick and safe leave is allowable under



1 subsection (a). The following shall be considered reasonable
2 documentation:

3 (1) A written, signed statement by a health care
4 professional indicating that sick and safe leave is
5 necessary;

6 (2) A police report indicating that the employee was a
7 victim of domestic violence, stalking, or sexual
8 assault;

9 (3) A court order; or

10 (4) A signed statement from a victim and witness advocate
11 affirming that the employee is involved in legal
12 action related to domestic violence, stalking, or
13 sexual assault.

14 An employer shall not require that the documentation explain the
15 nature of the illness or the details of the violence. If an
16 employer chooses to require documentation for sick and safe
17 leave and the employee does not have health insurance, the
18 employer shall be responsible for paying all out-of-pocket
19 expenses the employee incurs in obtaining the documentation. If
20 the employee has health insurance, the employer shall be
21 responsible for paying any costs charged to the employee by the



1 health care provider for providing the specific documentation
2 required by the employer.

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

7 § -4 **Exercise of rights protected; retaliation**

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

11 (b) An employer shall not take retaliatory personnel
12 action or discriminate against an employee because the employee
13 has exercised rights protected under this chapter. These rights
14 include the right to:

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

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

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

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



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

5 (d) Protections of this section shall apply to any person
6 who mistakenly, but in good faith, alleges violations of this
7 chapter.

8 (e) There shall be a rebuttable presumption of unlawful
9 retaliation under this section whenever an employer takes
10 adverse action against an employee within ninety days of the
11 time that the employee:

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

14 (2) Informs any person about an employer's alleged
15 violation of this chapter;

16 (3) Cooperates with the director or other person in the
17 investigation or prosecution of any alleged violation
18 of this chapter;

19 (4) Opposes any policy, practice, or act that is unlawful
20 under this chapter; or

21 (5) Informs any person of the person's rights under this
22 chapter.



1 § -5 **Notice and posting.** (a) An employer shall give
2 employees notice of the following:

3 (1) Employees are entitled to paid sick and safe leave;

4 (2) The amount of paid sick and safe leave granted
5 pursuant to this chapter;

6 (3) The terms of sick and safe leave use as guaranteed
7 under this chapter;

8 (4) That retaliation against employees who request or use
9 paid sick and safe leave is prohibited; and

10 (5) That each employee has the right to file a complaint
11 or bring a civil action if sick and safe leave, as
12 required by this chapter, is denied by the employer,
13 or if the employee is retaliated against for
14 requesting or taking paid sick and safe leave.

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

17 (1) Individualized notice; or

18 (2) Displaying a poster in a conspicuous and accessible
19 place in each establishment where the employees are
20 employed.



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

4 (c) The director shall create and make posters available
5 to employers, in all languages currently being used by the
6 department for other employment posters, which contain the
7 information required under subsection (a) for the employer's use
8 in complying with this section.

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

12 § -6 **Employer records.** An employer shall retain records
13 documenting hours worked by employees and paid sick and safe
14 leave taken by employees for a period of five years and shall
15 allow the director access to the records, with appropriate
16 notice and at a mutually agreeable time, to monitor compliance
17 with the requirements of this chapter. When an issue arises as
18 to an employee's entitlement to paid sick and safe leave under
19 this chapter, it shall be presumed that the employer has
20 violated this chapter, absent clear and convincing evidence
21 otherwise, if the employer does not maintain or retain adequate
22 records documenting hours worked by the employee and paid sick



1 and safe leave taken by the employee or does not allow the
2 director reasonable access to the records.

3 § -7 **Enforcement.** (a) An employee or other person may
4 report to the director any suspected violation of this chapter.
5 The director shall encourage reporting pursuant to this
6 subsection by keeping confidential, to the maximum extent
7 permitted by applicable laws, the name and other identifying
8 information of the employee or person reporting the suspected
9 violation; provided that with the authorization of the person,
10 the director may disclose the person's name and identifying
11 information as necessary to enforce this chapter or for other
12 appropriate purposes.

13 (b) The director, the attorney general, any person
14 aggrieved by a violation of this chapter, or any entity a member
15 of which is aggrieved by a violation of this chapter, may bring
16 a civil action in a court of competent jurisdiction against an
17 employer who violates this chapter. The action may be brought
18 without first filing an administrative complaint.

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

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



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

3 (3) Reasonable attorney's fees.

4 Aggrieved persons shall also be entitled to equitable relief, as
5 may be appropriate, to remedy the violation, including
6 reinstatement, back pay, and injunctive relief.

7 (d) The statute of limitations for a civil action brought
8 pursuant to this chapter shall be for a period of two years from
9 the date the alleged violation occurred.

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

12 § -8 **Confidentiality and nondisclosure.** An employer
13 shall not require disclosure of details relating to domestic
14 violence, sexual assault, stalking, or the details of an
15 employee's medical condition as a condition of providing paid
16 sick and safe leave under this chapter. If an employer
17 possesses health information or information pertaining to
18 domestic violence, sexual assault, or stalking about an employee
19 or employee's family member, the information shall be treated as
20 confidential and shall not be disclosed except to the affected
21 employee or with the permission of the affected employee.



1 § -9 Employer adoption of more generous sick and safe
2 leave policies; no effect on contracts, agreements, and plans
3 providing more generous sick and safe leave. (a) Nothing in
4 this chapter shall be construed to discourage or prohibit an
5 employer from the adoption or retention of a paid sick and safe
6 leave policy more generous than the one required by this
7 chapter.

8 (b) Nothing in this chapter shall be construed as
9 diminishing the obligation of an employer to comply with any
10 contract, collective bargaining agreement, employment benefit
11 plan, or other agreement providing more generous sick and safe
12 leave to an employee than required in this chapter.

13 (c) Nothing in this chapter shall be construed as
14 diminishing the rights of public employees regarding paid sick
15 and safe leave under a collective bargaining agreement or use of
16 sick and safe leave as provided by law.

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



1 SECTION 3. If any provision of this Act, or the
 2 application thereof to any person or circumstance, is held
 3 invalid, the invalidity does not affect other provisions or
 4 applications of the Act that can be given effect without the
 5 invalid provision or application, and to this end the provisions
 6 of this Act are severable.

7 SECTION 4. This Act shall take effect on July 1, 2013;
 8 provided that in the case of employees covered by a collective
 9 bargaining agreement in effect on July 1, 2013, this Act shall
 10 take effect on the date of the termination, renewal, or
 11 amendment of the collective bargaining agreement then in effect.
 12

INTRODUCED BY:

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S.B. NO. 534

Report Title:

Paid Sick and Safe Leave

Description:

Requires employers to provide a minimum amount of paid sick and safe leave to employees 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. Effective 7/1/13.

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

