
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

PART I.

1 SECTION 1. The legislature finds that Hawaii's working
2 families are not adequately supported during times of caregiving
3 and illness. While the federal Family and Medical Leave Act of
4 1993 allows twelve weeks of unpaid leave to employees who have
5 worked at a business that employs fifty or more employees, the
6 majority of Hawaii's workforce cannot afford to take unpaid
7 leave when needing to provide care to a newborn, bond with a new
8 child, or care for a family member with a serious health
9 condition. The legislature finds that the Hawaii family leave
10 law further restricts eligibility by extending four weeks of
11 unpaid leave only to those employees who work at a business with
12 more than one hundred employees. Paid sick leave does not
13 currently extend to most part-time food service workers.

14 The legislature further finds that only eleven per cent of
15 workers in the United States have access to paid family leave
16 through their employers. Approximately 247,000 people in Hawaii
17 serve as family caregivers. Hawaii has the fastest growing



1 sixty-five-plus population in the nation, which is expected to
2 grow by eighty-one per cent by the year 2030. Of those who need
3 leave but cannot take it, nearly one in three need leave to care
4 for an ill spouse or parent. Women, as primary caregivers of
5 infants, children, and elderly parents, are affected
6 disproportionately by the unavailability of paid family and
7 medical leave.

8 The legislature further finds that paid sick leave does not
9 currently extend to most part-time food service workers. This
10 measure only affects those large companies with 50 or more
11 employees. Employers who already offer sick leave benefits,
12 including those with more generous sick leave benefit plans, are
13 unaffected by this measure.

14 The purpose of this Act is to require the office of the
15 lieutenant governor and the department of labor and industrial
16 relations to have an actuarial study prepared to determine the
17 estimated liability and cost of implementing a family leave
18 insurance program that would provide an employee with up to
19 twelve weeks of paid family leave per calendar year and the
20 impact the family leave insurance program would have on the



1 existing temporary disability insurance program, and by adding a
2 new section addressing paid family leave.

3 SECTION 2. The office of the lieutenant governor and the
4 department of labor and industrial relations shall retain
5 professional services to conduct an actuarial study and prepare
6 a report to determine the:

- 7 (1) Estimated cost and financial impact of implementing a
8 family leave insurance program that allows an
9 employee, as defined in section 398-1, Hawaii Revised
10 Statutes, to have up to twelve weeks of paid family
11 leave as compared to the four weeks of paid family
12 leave per calendar year currently provided by section
13 398-3, Hawaii Revised Statutes;
- 14 (2) Projected figures for the number of employees eligible
15 for the family leave insurance program and percentage
16 of eligible employees projected to participate in the
17 family leave insurance program;
- 18 (3) Projected premium rates for the family leave insurance
19 program;
- 20 (4) Projected fund balances for the family leave insurance
21 trust fund; and



1 (5) Projected impact that the family leave insurance
2 program would have on the existing temporary
3 disability insurance program if it were to be
4 implemented.

5 The office of the lieutenant governor and department of labor
6 and industrial relations shall file the report with the
7 legislature no later than twenty days prior to the convening of
8 the 2016 regular session.

9 SECTION 3. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2015-2016 and
12 the same sum or so much thereof as may be necessary for fiscal
13 year 2016-2017 for the purpose of conducting the actuarial study
14 and preparing the report required by section 2 of this Act.

15 The sums appropriated shall be expended by the office of
16 the lieutenant governor for the purposes of this Act.

17 PART II.

18 SECTION 4. Chapter 388, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:



1 "§388- Paid sick leave; service workers. (a) As used
2 in this section:

3 "Child" means a:

4 (1) Biological, adopted, foster, or step-child of a
5 service worker who is less than eighteen years of age;

6 (2) Legal ward of a service worker who is less than
7 eighteen years of age; or

8 (3) Child of a service worker who stands in loco parentis
9 to the child who is:

10 (A) A person who is born alive and less than eighteen
11 years of age; or

12 (B) Eighteen years of age or older and incapable of
13 self-care because of a mental or physical
14 disability.

15 "Day or temporary worker" means:

16 (1) An individual who works for another person for less
17 than twenty hours per week, except for an individual
18 who works for a food establishment; or

19 (2) An individual who works:

20 (A) On a per diem basis; or



1 (B) As an occasional or irregular basis for only the
2 time required to complete such work, whether the
3 individual is paid by the person for whom work is
4 performed or by an employment agency, as defined
5 in section 373-1.

6 "Employer" shall have the same meaning as in section 388-1,
7 but shall refer to employers who employ fifty or more
8 individuals in the State in any one quarter in the previous
9 year, which shall be determined on January 1, annually. The
10 term "employer" excludes any nationally chartered organization
11 exempt from taxation under section 501(c)(3) of the Internal
12 Revenue Code as amended, that provides recreation, child care,
13 or education services.

14 "Family violence" shall have the same meaning as in section
15 571-2.

16 "Food establishment" means:

- 17 (1) Any place or portion thereof, maintained, used, or
18 operated for the purpose of storing, preparing,
19 servicing, manufacturing, packaging, transporting, or
20 otherwise handling food at the retail or wholesale
21 level;



1 (2) Any place used for cleaning food equipment or utensils
2 in support of another food establishment; or

3 (3) Any operation that is conducted in or in conjunction
4 with a mobile, stationary, temporary, or permanent
5 facility, or location where food is served or provided
6 to the public, with or without charge, regardless of
7 whether the food is consumed on or off the premises.

8 "Service worker" means an employee, including an employee
9 of a food establishment, excluding a day or temporary worker,
10 who is paid on an hourly basis, or is not exempt from the
11 minimum wage and overtime compensation requirements of the Fair
12 Labor Standards Act of 1938 and the regulations promulgated
13 thereunder, as amended.

14 "Sexual assault" means any sexual offense under part V of
15 chapter 707.

16 "Spouse" means a person who is lawfully married to another
17 person under the laws of the State or is in a civil union.

18 (b) An employer shall provide paid sick leave annually to
19 each of the employer's service workers. The paid sick leave
20 shall be earned as follows:



1 (1) Beginning January 1, 2016, or the date thereafter on
2 which the service worker commences employment;

3 (2) At a rate of at least one hour of paid sick leave for
4 each forty hours actually worked; and

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

7 A service worker shall be entitled to carry over up to forty
8 unused earned hours of paid sick leave from the current calendar
9 year to the following calendar year, but no service worker shall
10 be entitled to carry over more than an aggregate of eighty hours
11 of earned sick leave.

12 (c) A service worker shall be entitled to the use of
13 earned paid sick leave, as follows:

14 (1) If the service worker was hired prior to January 1,
15 2016, upon the completion of the six-hundred-eightieth
16 hour of employment from January 1, 2016; or

17 (2) If the service worker was hired on or after January 1,
18 2016, upon the completion of the service worker's
19 six-hundred-eightieth hour of employment from the date
20 of hire, unless the employer agrees to an earlier
21 date.



1 A service worker shall not be entitled to the use of earned paid
2 sick leave if the service worker did not work an average of ten
3 or more hours a week for the employer in the most recent
4 complete calendar quarter.

5 (d) An employer shall be deemed to be in compliance with
6 this section if:

7 (1) The employer offers any sick leave or other paid
8 leave, or combination of other paid leave, that may be
9 used for the purpose of subsection (g); and is earned
10 at the greater rate described in subsection (b); or

11 (2) The employer has a sick leave policy approved by the
12 director.

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

15 (e) An employer shall pay each service worker for paid
16 sick leave at a pay rate equal to the greater of either the
17 normal hourly wage for that service worker, or the minimum fair
18 wage under section 387-2 for the pay period during which the
19 employee used paid sick leave. For any service worker whose
20 hourly wage varies depending on the work performed by the
21 service worker, the "normal hourly wage" shall mean the average



1 hourly wage of the service worker in the pay period prior to the
2 one in which the service worker used paid sick leave.

3 (f) Upon the mutual consent of the service worker and
4 employer, a service worker who chooses to work additional hours
5 or shifts during the same or following pay period, in lieu of
6 hours or shifts missed, shall not use earned paid sick leave.

7 (g) An employer shall permit a service worker to use the
8 paid sick leave earned under this section for the following
9 purposes:

10 (1) For a service worker's:

11 (A) Illness, injury, or health condition;

12 (B) The medical diagnosis, care, or treatment of a
13 mental illness or physical illness, injury, or
14 health condition; or

15 (C) Preventative medical care; or

16 (2) For a service worker's child's or spouse's:

17 (A) Illness, injury, or health condition;

18 (B) The medical diagnosis, care, or treatment of a
19 mental illness or physical illness, injury, or
20 health condition; or

21 (C) Preventative medical care.



1 (h) If a service worker is a victim of family violence or
2 sexual assault, an employer shall permit a service worker to use
3 the paid sick leave earned under this section for the following
4 purposes:

5 (1) For medical care or psychological or other counseling
6 for physical or psychological injury or disability;

7 (2) To obtain services from a victim services
8 organization;

9 (3) To relocate due to the family violence or sexual
10 assault; or

11 (4) To participate in any civil or criminal proceedings
12 related to or resulting from the family violence or
13 sexual assault.

14 (i) Unless an employee policy or collective bargaining
15 agreement provides for the payment of earned fringe benefits
16 upon termination, no service worker shall be entitled to payment
17 of unused earned sick leave under this section upon termination
18 of employment.

19 (j) Nothing in this section shall be construed to:

20 (1) Prevent employers from providing more paid sick leave
21 than is required under this section;



- 1 (2) Diminish any rights provided to any employee or
2 service worker under a collective bargaining
3 agreement; or
- 4 (3) Preempt or override the terms of any collective
5 bargaining agreement effective prior to January 1,
6 2016.
- 7 (k) A termination of a service worker's employment by an
8 employer shall constitute a break in employment. If that
9 service worker is subsequently rehired by the employer following
10 a break in employment, the service worker shall:
- 11 (1) Begin to earn sick leave in accordance with this
12 section; and
- 13 (2) Not be entitled to any unused hours of paid sick leave
14 that had been earned prior to the service worker's
15 break in service unless agreed to by the employer.
- 16 (1) An employer shall provide notice to each service
17 worker of the following information:
- 18 (1) The entitlement to sick leave for service workers, the
19 amount of sick leave provided to service workers, and
20 the terms under which sick leave may be used; and



Report Title:

Family Leave

Description:

Requires the office of the lieutenant governor to work with the department of labor and industrial relations to conduct an actuarial study on the cost of implementing the family leave insurance program and the effect that it may have on the existing temporary disability insurance program and prepare a report to the legislature. Appropriates funds for the actuarial study and report. Appropriates moneys to administer the trust fund. Establishes a partial wage replacement for leave trust fund funded by employee wage withholdings. Uses the trust fund to provide partial wage replacement for four weeks of family leave. Takes effect on 07/01/2015.

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

