

JAN 28 2015

A BILL FOR AN ACT

RELATING TO MANDATORY SICK LEAVE.

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;



- 1 (4) Providing workers time off to attend to their personal
2 health care needs and the health care needs of family
3 members would ensure a healthier and more productive
4 workforce in the State;
- 5 (5) Nearly two hundred fifty thousand people in the State
6 serve as unpaid family caregivers for family members,
7 work that had an aggregate value of more than
8 \$1,950,000,000 in 2009. Working family caregivers
9 cannot adequately care for their relatives without
10 access to paid sick leave;
- 11 (6) Paid sick leave would have a positive effect on the
12 public health of residents of the State by allowing
13 workers the option of staying home when ill, thus
14 lessening recovery time and reducing the likelihood of
15 spreading illness to other members of the workforce
16 and to the public;
- 17 (7) Paid sick leave will reduce health care expenditures
18 by promoting access to primary and preventive care.
19 Nationally, providing all workers with paid sick time
20 would result in \$1,100,000,000 in annual savings in
21 hospital emergency room costs, including more than



1 \$500,000,000 in savings to publicly funded health
2 insurance programs such as medicare, medicaid, and the
3 state children's health insurance program. Access to
4 paid sick leave can also help decrease the likelihood
5 that a worker will put off needed care and increase
6 the use of preventive care among workers and their
7 children;

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

18 (9) Paid sick leave will reduce contagion. Workers in
19 jobs with high levels of public contact, such as
20 restaurant workers and child care workers, are very
21 unlikely to have paid sick time. As a result, these



1 workers may have no choice but to go to work when they
2 are ill, thereby increasing the risk of passing
3 illnesses on to co-workers and customers while
4 jeopardizing their own health. Overall, people
5 without paid sick leave are 1.5 times more likely than
6 people with paid sick leave to go to work with a
7 contagious illness like the flu;

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

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



1 paid sick leave are unable to comply with these
2 requests;

3 (12) During the height of the H1N1 pandemic, workers with
4 lower rates of access to paid sick leave were more
5 likely than those with higher rates of access to paid
6 sick leave to go to work sick. As a result, the
7 pandemic lasted longer in their workplaces as the
8 virus spread from co-worker to co-worker. A new study
9 estimates that lack of paid sick leave was responsible
10 for five million cases of influenza-like illness
11 during the pandemic;

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

19 (14) Paid sick leave will reduce the risk of
20 "presenteeism", or workers coming to work with
21 illnesses and health conditions that reduce their



1 productivity, a problem that costs the national
2 economy \$160,000,000,000 annually;

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

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

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



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

6 The purpose of this Act is to establish, in a manner
7 feasible to employers, the right of workers in this State to
8 accrue paid sick leave in order to:

9 (1) Ensure that all workers in the State can address their
10 own health and safety needs and the health and safety
11 needs of their families by requiring employers to
12 provide a minimum level of paid sick leave, including
13 time for family care;

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

17 (3) Protect public health in the State by reducing the
18 risk of contagion;

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



1 (5) Protect employees in the State from losing their jobs
2 when they use sick leave to care for themselves or
3 their families;

4 (6) Assist victims of domestic violence and their family
5 members by providing them with job protected time away
6 from work to allow them to receive treatment and to
7 take the necessary steps to ensure their safety and
8 protection; and

9 (7) Safeguard the public welfare, health, safety, and the
10 prosperity of the people of the State.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 "CHAPTER

15 PAID SICK LEAVE

16 § -1 Definitions. As used in this chapter, unless the
17 context clearly requires otherwise:

18 "Department" means the department of labor and industrial
19 relations.

20 "Director" means the director of labor and industrial
21 relations.



1 "Domestic violence" has the same meaning as defined in
2 section 321-471.

3 "Employee" has the same meaning as defined in the federal
4 Fair Labor Standards Act, Title 29 United States Code section
5 203(e), and additionally includes recipients of public benefits
6 who are engaged in work activity as a condition of receiving
7 public assistance and public employees who are not subject to
8 the civil service laws of the State, a political subdivision, or
9 a public agency.

10 "Employer" has the same meaning as defined in the federal
11 Fair Labor Standards Act, Title 29 United States Code section
12 203(d).

13 "Family member" means:

- 14 (1) A biological, adopted, or foster child, stepchild;
15 legal ward; a child of a reciprocal beneficiary; or a
16 child to whom the employee stands in loco parentis;
17 (2) A biological, foster, or adoptive parent; stepparent;
18 or legal guardian of an employee or an employee's
19 spouse, reciprocal beneficiary, or civil union
20 partner; or a person who stood in loco parentis when
21 the employee was a minor child;



- 1 (3) A spouse, reciprocal beneficiary, or civil union
2 partner;
- 3 (4) A grandparent or a spouse, reciprocal beneficiary, or
4 civil union partner of a grandparent;
- 5 (5) A grandchild;
- 6 (6) A biological, foster, or adopted sibling; or a spouse,
7 reciprocal beneficiary, or civil union partner of a
8 biological, foster, or adopted sibling; and
- 9 (7) Any other individual related by blood or affinity
10 whose close association with the employee is the
11 equivalent of a family relationship.

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

14 "Paid sick leave" means time away from work provided by an
15 employer to an employee that is compensated at the same hourly
16 rate and with the same benefits, including health care benefits,
17 as the employee normally earns during hours worked.

18 "Retaliatory personnel action" means the discharge,
19 suspension, or demotion by an employer of an employee or any
20 other adverse action taken by an employer against an employee,
21 including any sanctions against a recipient of public benefits



1 or any other interference with or punishment for participating
2 in an investigation, proceeding, or hearing under this chapter.

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

5 "Small business" means any corporation, partnership, sole
6 proprietorship, firm, institution, association, or private
7 individual for which fewer than ten persons perform work for
8 compensation during a given week. The number of persons
9 performing work for compensation during a given week shall
10 include all persons performing work for compensation on a full-
11 time, part-time, or temporary basis and persons made available
12 to work through the services of a temporary staffing agency or
13 similar entity. If the number of persons who work for
14 compensation per week fluctuates over the course of a year, an
15 employer shall not be considered a small business if the
16 employer maintained ten or more employees on the payroll during
17 twenty or more calendar workweeks in either the current or the
18 preceding calendar year. If an employer has more than one
19 business location, the employer's status as a small business
20 shall be determined by aggregating the number of employees on
21 the employer's payroll at all locations in the State.



1 "Stalking" has the same meaning as defined in section
2 378-71.

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 fifty-six hours of paid sick leave in a
9 calendar year, unless the employer provides a higher limit.

10 (c) Employees of small businesses shall not accrue more
11 than forty hours of paid sick leave in a calendar year, unless
12 the employer provides a higher limit.

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

20 (e) Paid sick leave as provided in this chapter shall
21 begin to accrue at the commencement of employment.



1 (f) Employees shall be entitled to use accrued paid sick
2 leave as it is accrued.

3 (g) An employer shall not be required to:

4 (1) Allow employees to carry over unused paid sick leave
5 to the following calendar year; or

6 (2) Provide additional paid sick leave if the employer has
7 a paid leave policy that makes available an amount of
8 paid leave sufficient to meet the accrual requirements
9 of this chapter and that may be used for the same
10 purposes and under the same conditions as paid sick
11 leave under this chapter.

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

17 (i) If an employee is transferred to a separate division,
18 entity, or location, but remains employed by the same employer,
19 the employee shall be entitled to all paid sick leave accrued at
20 the prior division, entity, or location and shall be entitled to
21 use all paid sick leave as provided in this chapter. When an



1 employee is separated from employment and subsequently rehired
2 within six months of separation by the same employer, the
3 employee's previously accrued and unused paid sick leave shall
4 be reinstated. In addition, the employee shall be entitled to
5 use accrued paid sick leave and to accrue additional sick leave
6 at the recommencement of employment.

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

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

11 (1) An employee's mental or physical illness, injury, or
12 health condition; an employee's need for medical
13 diagnosis or care, or treatment of a mental or
14 physical illness, injury, or health condition; or an
15 employee's 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 or care, or
19 treatment of a mental or physical illness, injury, or
20 health 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; and
- 14 (4) Absence necessary due to domestic violence, sexual
- 15 assault, or stalking; 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;



- 1 (C) Obtain psychological or other counseling;
- 2 (D) Seek relocation due to domestic violence, sexual
- 3 assault, or stalking; or
- 4 (E) Take legal action, including preparing for or
- 5 participating in any civil or criminal legal
- 6 proceeding related to domestic violence, sexual
- 7 assault, or stalking.

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

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

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

20 (e) If an employee uses sick leave of more than three
21 consecutive workdays, an employer may require reasonable



1 documentation that the sick leave is allowable under subsection
2 (a). The following shall be considered reasonable
3 documentation:

- 4 (1) A written, signed statement by a health care
5 professional indicating that sick leave is 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 leave and the
17 employee does not have health insurance, the employer shall be
18 responsible for paying all out-of-pocket expenses the employee
19 incurs in obtaining the documentation. If the employee has
20 health insurance, the employer shall be responsible for paying
21 any costs charged to the employee by the health care provider



1 for providing the specific documentation required by the
2 employer.

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



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

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

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

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

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

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

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



- 1 (4) Opposes any policy, practice, or act that is unlawful
- 2 under this chapter; or
- 3 (5) Informs any person of the person's rights under this
- 4 chapter.

5 **§ -5 Notice and posting.** (a) An employer shall give

6 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;
- 10 (3) The terms of sick leave use as guaranteed under this
- 11 chapter;
- 12 (4) That retaliation against employees who request or use
- 13 paid sick leave is prohibited; and
- 14 (5) That each employee has the right to file a complaint
- 15 or bring a civil action if sick leave, as required by
- 16 this chapter, is denied by the employer, or if the
- 17 employee is retaliated against for requesting or
- 18 taking paid sick leave.

19 (b) An employer shall comply with this section by

20 providing the information required in subsection (a) by:

- 21 (1) Individualized notice; or



1 (2) Displaying a poster in a conspicuous and accessible
2 place in each establishment where the employees are
3 employed.

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

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

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

15 § -6 **Employer records.** An employer shall retain records
16 documenting hours worked by employees and paid sick leave taken
17 by employees for a period of five years and shall allow the
18 director access to the records, with appropriate notice and at a
19 mutually agreeable time, to monitor compliance with the
20 requirements of this chapter. When an issue arises as to an
21 employee's entitlement to paid sick leave under this chapter, it



1 shall be presumed that the employer has violated this chapter,
2 absent clear and convincing evidence otherwise, if the employer
3 does not maintain or retain adequate records documenting hours
4 worked by the employee and paid sick leave taken by the employee
5 or does not allow the director reasonable access to the records.

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

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



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

3 (1) The full amount of any unpaid sick leave;

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

6 (3) Reasonable attorney's fees.

7 Aggrieved persons shall also be entitled to equitable relief, as
8 may be appropriate, to remedy the violation, including
9 reinstatement, back pay, and injunctive relief.

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

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

15 **§ -8 Confidentiality and nondisclosure.** An employer
16 shall not require disclosure of details relating to domestic
17 violence, sexual assault, stalking, or the details of an
18 employee's medical condition as a condition of providing paid
19 sick leave under this chapter. If an employer possesses health
20 information or information pertaining to domestic violence,
21 sexual assault, or stalking about an employee or employee's



1 family member, the information shall be treated as confidential
2 and shall not be disclosed except to the affected employee or
3 with the permission of the affected employee.

4 **§ -9 Employer adoption of more generous sick leave**
5 **policies; no effect on contracts, agreements, and plans**
6 **providing more generous sick leave.** (a) Nothing in this
7 chapter shall be construed to:

8 (1) Discourage or prohibit an employer from the adoption
9 or retention of a paid sick leave policy more generous
10 than the one required by this chapter;

11 (2) Diminish the obligation of an employer to comply with
12 any contract, collective bargaining agreement,
13 employment benefit plan, or other agreement providing
14 more generous sick leave to an employee than required
15 in this chapter; or

16 (3) Diminish the rights of public employees regarding paid
17 sick leave under a collective bargaining agreement or
18 use of sick leave as provided by law.

19 (b) This chapter shall provide the minimum requirements of
20 paid sick leave and shall not be construed to preempt, limit, or
21 otherwise affect the applicability of any other law, rule,



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1 requirement, policy, or standard that provides for greater
 2 accrual or use by employees of sick leave, whether paid or
 3 unpaid, or that extends other protections to employees."

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

10 SECTION 4. This Act shall take effect on July 1, 2015;
 11 provided that for employees covered by a collective bargaining
 12 agreement in effect on July 1, 2015, this Act shall take effect
 13 on the date of the termination, renewal, or amendment of the
 14 collective bargaining agreement then in effect.

15

INTRODUCED BY: Theranne Annunzio

~~DC. Rob~~ DC. Rob



S.B. NO. 1025

Report Title:

Paid Sick Leave

Description:

Requires employers to provide a minimum amount of paid sick 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.

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

