

JAN 22 2016

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

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 to provide care to a newborn, bond with a new child, or
8 care for a family member with a serious health condition. The
9 legislature finds that the Hawaii family leave law further
10 restricts eligibility by extending four weeks of unpaid leave
11 only to those employees who work at a business with more than
12 one hundred employees.

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



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

7 The legislature further finds that requiring paid sick
8 leave, even in a modest fashion, will provide additional support
9 for caregivers.

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

16 The purpose of this Act is to provide paid sick leave for
17 service workers, which may be used for caregiving purposes.

18 SECTION 2. Chapter 388, part I, Hawaii Revised Statutes,
19 is amended by adding a new section to be appropriately
20 designated and to read as follows:



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

3 "Child" means an individual who is:

4 (1) Less than eighteen years of age and is:

5 (A) A biological, adopted, foster, or step-child of a
6 service worker;

7 (B) A legal ward of a service worker; or

8 (C) An individual for whom a service worker stands in
9 loco parentis; or

10 (2) Eighteen years of age or older and is:

11 (A) Incapable of self-care because of a mental or
12 physical disability; and

13 (B) An individual for whom a service worker stands in
14 loco parentis.

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

14 "Family violence" has the same meaning as in section 571-2.

15 "Food establishment" means:

16 (1) Any place or portion thereof maintained, used, or
17 operated for the purpose of storing, preparing,
18 serving, manufacturing, packaging, transporting, or
19 otherwise handling food at the retail or wholesale
20 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, beginning January 1, 2017, or the date



1 thereafter upon which the service worker commences employment,
2 as follows:

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

5 (2) 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; provided that no service
10 worker shall be entitled to carry over more than an aggregate of
11 eighty hours 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 before
15 January 1, 2017, upon the completion of the six-
16 hundred-eightieth hour of employment from
17 January 1, 2017; or

18 (2) If the service worker was hired on or after January 1,
19 2017, upon the completion of the service worker's
20 six-hundred-eightieth hour of employment from the date



1 of hire, unless the employer agrees to an earlier
2 date.

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

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

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

13 (2) The employer has a sick leave policy approved by the
14 director.

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

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



1 varies depending on the work performed by the service worker,
2 the "normal hourly wage" shall mean the average hourly wage of
3 the service worker in the pay period prior to the one in which
4 the service worker used paid sick leave.

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

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

12 (1) For a service worker's:

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

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

17 (C) Preventative medical care; or

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

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



1 (B) The medical diagnosis, care, or treatment of a
2 mental or physical illness, injury, or health
3 condition; or

4 (C) Preventative medical care.

5 (h) If a service worker is a victim of family violence or
6 sexual assault, an employer shall permit that service worker to
7 use the paid sick leave earned under this section for the
8 following purposes:

9 (1) For medical care or psychological or other counseling
10 for physical or psychological injury or disability;

11 (2) To obtain services from a victim services
12 organization;

13 (3) To relocate due to the family violence or sexual
14 assault; or

15 (4) To participate in any civil or criminal proceedings
16 related to or resulting from the family violence or
17 sexual assault.

18 (i) Unless an employee policy or collective bargaining
19 agreement provides for the payment of earned fringe benefits
20 upon termination, no service worker shall be entitled to payment



1 of unused earned sick leave under this section upon termination
2 of employment.

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

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

6 (2) Diminish any rights provided to any employee or
7 service worker under a collective bargaining
8 agreement; or

9 (3) Preempt or override the terms of any collective
10 bargaining agreement effective before January 1, 2017.

11 (k) A termination of a service worker's employment by an
12 employer shall constitute a break in employment. If that
13 service worker is subsequently rehired by the employer following
14 a break in employment, the service worker shall:

15 (1) Begin to earn sick leave in accordance with this
16 section; and

17 (2) Not be entitled to any unused hours of paid sick leave
18 that had been earned prior to the service worker's
19 break in service unless agreed to by the employer.

20 (1) An employer shall provide notice to each service
21 worker of the following information:



1 (1) The entitlement to sick leave for service workers, the
2 amount of sick leave provided to service workers, and
3 the terms under which sick leave may be used; and

4 (2) That the service worker has a right to file a
5 complaint with the department of labor and industrial
6 relations for suspected violations of this section by
7 the employer.

8 Employers may comply with this section by displaying a poster
9 that contains the information required by this subsection and
10 that is posted in a conspicuous place, accessible to service
11 workers, at the employer's place of business."

12 SECTION 3. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 4. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on January 1, 2017.

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INTRODUCED BY:

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S.B. NO. 2447

Report Title:

Employment; Labor; Family Leave; Sick Leave; Service Workers

Description:

Requires certain employers with an unspecified number of employees to provide sick leave to service workers for specified purposes under certain conditions. Defines the terms "service worker" and "employer". Effective 1/1/17.

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

