

JAN 22 2016

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# A BILL FOR AN ACT

RELATING TO LABOR.

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

1           SECTION 1. Chapter 388, part I, Hawaii Revised Statutes,  
2 is amended by adding a new section to be appropriately  
3 designated and to read as follows:

4           "§388-     Paid sick leave; service workers. (a) As used  
5 in this section:

6           "Child" means an individual who is:

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

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

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

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

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

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

16           (B) An individual for whom a service worker stands in  
17           loco parentis.



1       "Day or temporary worker" means:

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

5       (2) An individual who works:

6       (A) On a per diem basis; or

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

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

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

21       "Food establishment" means:



1       (1) Any place or portion thereof maintained, used, or  
2       operated for the purpose of storing, preparing,  
3       serving, manufacturing, packaging, transporting, or  
4       otherwise handling food at the retail or wholesale  
5       level;

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

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

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

19       "Sexual assault" means any sexual offense under part V of  
20       chapter 707.



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

3       (b) An employer shall provide paid sick leave annually to  
4 each of the employer's service workers. The paid sick leave  
5 shall be earned, beginning January 1, 2017, or the date  
6 thereafter upon which the service worker commences employment,  
7 as follows:

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

10       (2) In one-hour increments up to a maximum of forty hours  
11 per calendar year.

12 A service worker shall be entitled to carry over up to forty  
13 unused earned hours of paid sick leave from the current calendar  
14 year to the following calendar year; provided that no service  
15 worker shall be entitled to carry over more than an aggregate of  
16 eighty hours of earned sick leave.

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

19       (1) If the service worker was hired before  
20 January 1, 2017, upon the completion of the six-



1           hundred-eightieth hour of employment from  
2           January 1, 2017; or

3           (2) If the service worker was hired on or after January 1,  
4           2017, upon the completion of the service worker's  
5           six-hundred-eightieth hour of employment from the date  
6           of hire, unless the employer agrees to an earlier  
7           date.

8 A service worker shall not be entitled to the use of earned paid  
9 sick leave if the service worker did not work an average of ten  
10 or more hours per week for the employer in the most recent  
11 complete calendar quarter.

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

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

18           (2) The employer has a sick leave policy approved by the  
19 director.

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



1       (e) An employer shall pay each service worker for paid  
2 sick leave at a pay rate equal to the greater of either the  
3 normal hourly wage for that service worker, or the minimum wage  
4 under section 387-2 for the pay period during which the employee  
5 used paid sick leave. For any service worker whose hourly wage  
6 varies depending on the work performed by the service worker,  
7 the "normal hourly wage" shall mean the average hourly wage of  
8 the service worker in the pay period prior to the one in which  
9 the service worker used paid sick leave.

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

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

17       (1) For a service worker's:

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

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



- 1            (C) Preventative medical care; or
- 2        (2) For a service worker's child's or spouse's:
- 3            (A) Illness, injury, or health condition;
- 4            (B) The medical diagnosis, care, or treatment of a
- 5                    mental or physical illness, injury, or health
- 6                    condition; or
- 7            (C) Preventative medical care.
- 8        (h) If a service worker is a victim of family violence or
- 9        sexual assault, an employer shall permit that service worker to
- 10        use the paid sick leave earned under this section for the
- 11        following purposes:
- 12            (1) For medical care or psychological or other counseling
- 13                    for physical or psychological injury or disability;
- 14            (2) To obtain services from a victim services
- 15                    organization;
- 16            (3) To relocate due to the family violence or sexual
- 17                    assault; or
- 18            (4) To participate in any civil or criminal proceedings
- 19                    related to or resulting from the family violence or
- 20                    sexual assault.



1        (i) Unless an employee policy or collective bargaining  
2 agreement provides for the payment of earned fringe benefits  
3 upon termination, no service worker shall be entitled to payment  
4 of unused earned sick leave under this section upon termination  
5 of employment.

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

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

9        (2) Diminish any rights provided to any employee or  
10 service worker under a collective bargaining  
11 agreement; or

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

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

18        (1) Begin to earn sick leave in accordance with this  
19 section; and





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

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

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

9       (2) That the service worker has a right to file a  
10           complaint with the department of labor and industrial  
11           relations for suspected violations of this section by  
12           the employer.

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

17       SECTION 2. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20       SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on January 1, 2017.

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INTRODUCED BY: ~~Sen. Fitch-Dugg~~  
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B



# S.B. NO. 2456

**Report Title:**

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

**Description:**

Requires certain employers with fifty or more 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.*

