

---

---

# 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; food establishment workers. (a)

5 As used in this section:

6           "Child" means an individual who is:

7           (1) Younger 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; or

4 (2) An individual who works:

5 (A) On a per diem basis; or

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

11 "Employer" has the same meaning as in section 388-1, but  
12 shall refer to employers of twenty-five or more individuals in  
13 food establishments in the State in any one quarter in the  
14 previous year, which shall be determined on January 1, annually.

15 The term "employer" excludes any nationally chartered  
16 organization exempt from taxation under section 501(c)(3) of the  
17 Internal Revenue Code, as amended, that provides recreation,  
18 child care, or education services.

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

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

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

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



1        (b) An employer shall provide paid sick leave annually to  
2 each of the employer's service workers. The paid sick leave  
3 shall be earned, beginning January 1, 2018, or the date  
4 thereafter upon which the service worker commences employment,  
5 as follows:

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

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

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

15        (c) A service worker shall be entitled to use earned paid  
16 sick leave, as follows:

17        (1) If the service worker was hired before January 1,  
18 2018, upon the completion of six hundred eighty hours  
19 of work from January 1, 2018; or

20        (2) If the service worker was hired on or after January 1,  
21 2018, upon the completion of six hundred eighty hours



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

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

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

9           (1) The employer offers sick leave or other paid leave, or  
10           combination of other paid leave, that may be used for  
11           the purpose of subsection (g); and is earned at the  
12           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) Medical diagnosis, care, or treatment of a mental  
15 illness or physical illness, injury, or health  
16 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) Medical diagnosis, care, or treatment of a mental  
2           or physical illness, injury, or health condition;  
3           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, 2018.

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 2. 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 3. New statutory material is underscored.

16        SECTION 4. This Act shall take effect on January 1, 2018.

17

INTRODUCED BY:

Julia A. Bryant  
[Signature]

[Signature]  
[Signature]  
[Signature]  
[Signature]



# H.B. NO. 1434

**Report Title:**

Employment; Labor; Family Leave; Sick Leave; Food Establishment Workers

**Description:**

Requires employers of twenty-five or more food establishment workers to provide the workers with paid time off for illness and preventive medical care of the worker and the worker's spouse and children and for treatment arising from domestic violence or sexual assault.

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

