
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 preparing, serving,
3 manufacturing, packaging, transporting, or otherwise
4 handling food at the retail or wholesale level;
- 5 (2) Any place used for cleaning food equipment or utensils
6 in support of another food establishment; or
- 7 (3) Any operation that is conducted in, or in conjunction
8 with, a mobile, stationary, temporary, or permanent
9 facility or location where food is served or provided
10 to the public, with or without charge, regardless of
11 whether the food is consumed on or off the premises.
- 12 "Service worker" means an employee of a food establishment,
13 excluding a day or temporary worker, who is paid on an hourly
14 basis, or is not exempt from the minimum wage and overtime
15 compensation requirements of the Fair Labor Standards Act of
16 1938 and the regulations promulgated thereunder, as amended.
- 17 "Sexual assault" means any sexual offense under part V of
18 chapter 707.
- 19 "Spouse" means a person who is lawfully married to another
20 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, spouse's, parent's or
19 grandparent's:

20 (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 (m) No employer shall discharge, threaten, or in any
13 manner retaliate against a service worker for exercising any
14 rights afforded by this section."

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

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2050.



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, treatment, and preventive medical care of the worker and the worker's spouse, children, parents, and grandparents and for treatment arising from domestic violence or sexual assault.
(HB1434 HD1)

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

