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# A BILL FOR AN ACT

RELATING TO HEALTH.

**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 this
- 8           State, an estimated forty-three per cent of private
- 9           sector workers lack paid sick leave;
- 10          (3) Low-income workers are significantly less likely to
- 11          have paid sick leave than other members of the
- 12          workforce. Only one in five low-income workers has
- 13          access to paid sick leave;
- 14          (4) Providing workers time off to attend to their personal
- 15          health care needs and the health care needs of family
- 16          members would ensure a healthier and more productive
- 17          workforce in the State;



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- 1           (5) Nearly two hundred fifty thousand people in the State  
2           serve as unpaid family caregivers for family members,  
3           work that has an aggregate value of \$1,900,000 per  
4           year. Working family caregivers cannot adequately  
5           care for their relatives without access to paid sick  
6           leave;
- 7           (6) Paid sick leave would have a positive effect on the  
8           public health of residents of the State by allowing  
9           workers the option of staying home when ill, thus  
10          lessening recovery time and reducing the likelihood of  
11          spreading illness to other members of the workforce  
12          and to the public;
- 13          (7) Paid sick leave will reduce health care expenditures  
14          by promoting access to primary and preventive care.  
15          Nationally, providing all workers with paid sick leave  
16          would result in \$1,100,000,000 in annual savings in  
17          hospital emergency room costs, including more than  
18          \$500,000,000 in savings to publicly funded health  
19          insurance programs such as Medicare, medicaid, and the  
20          state children's health insurance program. Access to  
21          paid sick leave can also help decrease the likelihood



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1           that a worker will put off needed care and increase  
2           the use of preventive care among workers and their  
3           family members;

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

14          (9) Paid sick leave will reduce contagion. Workers in  
15          jobs with high levels of public contact, such as  
16          restaurant workers and child care workers, are very  
17          unlikely to have paid sick leave. As a result, these  
18          workers may have no choice but to go to work when they  
19          are ill, thereby increasing the risk of passing  
20          illnesses on to co-workers and customers while  
21          jeopardizing their own health. Overall, people



1 without paid sick leave are 1.5 times more likely than  
2 people with paid sick leave to go to work with a  
3 contagious illness like the flu;

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

11 (11) When an outbreak that presents a threat to public  
12 health occurs, for example the H1N1 outbreak of 2009,  
13 government officials request that sick workers stay  
14 home and keep sick children home from school or child  
15 care to prevent the spread of the illness and to  
16 safeguard workplace productivity. However, to protect  
17 their paychecks and their jobs, many workers who lack  
18 paid sick leave are unable to comply with these  
19 requests;

20 (12) During the height of the H1N1 pandemic, workers with  
21 lower rates of access to paid sick leave were more



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1           likely than those with higher rates of access to paid  
2           sick leave to go to work sick. As a result, the  
3           pandemic lasted longer in their workplaces as the  
4           virus spread from co-worker to co-worker. One study  
5           estimates that lack of paid sick leave was responsible  
6           for five million cases of influenza-like illness  
7           during the pandemic;

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

15       (14) Paid sick leave will reduce the risk of  
16          "presenteeism", or workers coming to work with  
17          illnesses and health conditions that reduce their  
18          productivity, a problem that costs the national  
19          economy \$160,000,000,000 annually; and



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1           (15) Paid sick leave will reduce the competitive  
2                    disadvantage currently faced by the many employers  
3                    that do choose to provide sick time to their workers.

4           The purpose of this Act is to establish the right for  
5 workers to accrue paid sick leave to:

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

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

14          (3) Protect public health in the State by reducing the  
15                   risk of contagion;

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

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





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1 a public agency. The term "employee" shall not include sole  
2 proprietors and independent contractors.

3 "Employer" has the same meaning as defined in the federal  
4 Fair Labor Standards Act, Title 29 United States Code section  
5 203 (d).

6 "Family member" means:

- 7 (1) A biological, adopted, or foster child; stepchild;  
8 legal ward; a child of a reciprocal beneficiary; or a  
9 child to whom the employee stands in loco parentis;
- 10 (2) A biological, adoptive, or foster parent; stepparent;  
11 legal guardian of an employee or an employee's spouse  
12 or reciprocal beneficiary; or a person who stood in  
13 loco parentis when the employee was a minor child;
- 14 (3) A spouse or reciprocal beneficiary;
- 15 (4) A grandparent or a spouse or reciprocal beneficiary of  
16 a grandparent;
- 17 (5) A grandchild;
- 18 (6) A biological, adopted, or foster sibling; or a spouse  
19 or reciprocal beneficiary of a biological, adopted, or  
20 foster sibling; and





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1           (7) Any other individual related by blood or affinity  
2                   whose close association with the employee is the  
3                   equivalent of a family relationship.

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

6           "Labor organization" has the same meaning as defined in  
7 section 378-1.

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

12           §   -2 **Accrual of paid sick leave.** (a) All employees who  
13 work in the State for more than eighty hours in a year shall  
14 have the right to paid sick leave as provided in this chapter.

15           (b) All employees shall accrue a minimum of one hour of  
16 paid sick leave for every thirty hours worked. Employees shall  
17 not accrue more than fifty-six hours of paid sick leave in a  
18 calendar year, unless the employer provides a higher limit.

19           (c) Employees who are exempt from overtime requirements  
20 under the federal Fair Labor Standards Act, Title 29 United  
21 States Code section 213(a)(1), shall be assumed to work forty



1 hours in each work week for purposes of paid sick leave accrual  
2 unless the employee's normal work week is less than forty hours,  
3 in which case paid sick leave shall accrue based upon the actual  
4 hours in the normal work week.

5 (d) Paid sick leave as provided in this chapter shall  
6 begin to accrue at the later of the commencement of employment  
7 or the effective date of this chapter.

8 (e) Employees shall be entitled to use accrued paid sick  
9 leave beginning on the ninetieth calendar day following  
10 commencement of employment. After the ninetieth calendar day of  
11 employment, employees may use paid sick leave as it is accrued.

12 (f) Paid sick leave shall be carried over to the following  
13 calendar year; provided that an employee's use of paid sick  
14 leave pursuant to this chapter in each calendar year shall not  
15 exceed fifty-six hours, unless the employer provides a higher  
16 limit.

17 (g) An employer shall not be required to provide  
18 additional paid sick leave if the employer has a paid leave  
19 policy that makes available an amount of paid leave sufficient  
20 to meet the accrual requirements of this chapter and that may be



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1 used for the same purposes and under the same conditions as paid  
2 sick leave under this chapter.

3 (h) Nothing in this section shall be construed as  
4 requiring financial or other reimbursement to an employee from  
5 an employer upon the employee's termination, resignation,  
6 retirement, or other separation from employment for unused  
7 accrued paid sick leave.

8 (i) If an employee is transferred to a separate division,  
9 entity, or location, but remains employed by the same employer,  
10 the employee shall be entitled to all paid sick leave accrued at  
11 the prior division, entity, or location and shall be entitled to  
12 use all paid sick leave as provided in this chapter. If an  
13 employee is separated from employment and subsequently rehired  
14 within six months of separation by the same employer, the  
15 employee's previously accrued and unused paid sick leave shall  
16 be reinstated. In addition, the employee shall be entitled to  
17 use accrued paid sick leave and to accrue additional paid sick  
18 leave as of the date of re-commencement of employment.

19 (j) An employer may advance paid sick leave to an employee  
20 prior to its accrual by the employee.



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1           §   -3   **Use of paid sick leave.**   (a)   An employee may use  
2   paid sick leave during absences from work due to:

3           (1)   An employee's mental or physical illness, injury, or  
4                health condition; an employee's need for medical  
5                diagnosis, care, or treatment of a mental or physical  
6                illness, injury, or health condition; or an employee's  
7                need for preventive medical care;

8           (2)   Care of a family member with a mental or physical  
9                illness, injury, or health condition; care of a family  
10              member who needs medical diagnosis, care, or treatment  
11              of a mental or physical illness, injury, or health  
12              condition; or care of a family member who needs  
13              preventive medical care; and

14          (3)   Closure of the employee's place of business by order  
15              of a public official due to a public health emergency,  
16              an employee's need to care for a child whose school or  
17              place of care has been closed by order of a public  
18              official due to a public health emergency, or care for  
19              a family member when it has been determined by the  
20              health authorities having jurisdiction or by a health  
21              care professional that the family member's presence in



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1           the community would jeopardize the health of others  
2           because of the family member's exposure to a  
3           communicable disease, regardless of whether the family  
4           member has actually contracted the communicable  
5           disease.

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

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

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

19           §    -4 **Notice and posting.** (a) An employer shall give  
20 its employees notice of the following:

21           (1) That employees are entitled to paid sick leave;



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1           (2) The amount of paid sick leave granted pursuant to this  
2           chapter;

3           (3) The terms of paid sick leave use as guaranteed under  
4           this chapter; and

5           (4) That each employee has the right to file a complaint  
6           or bring a civil action if paid sick leave, as  
7           required by this chapter, is denied by the employer.

8           (b) An employer shall comply with this section by  
9 providing the information required in subsection (a) by:

10           (1) Individualized notice; or

11           (2) Displaying a poster in a conspicuous and accessible  
12           place in each establishment where its employees are  
13           employed.

14           The notice or poster shall be in English and in any  
15 language that is the first language spoken by at least five per  
16 cent of the employer's workforce.

17           (c) The director shall create and make posters available  
18 to employers, in all languages currently being used by the  
19 department for other employment posters, that contain the  
20 information required under subsection (a) for the employer's use  
21 in complying with this section.



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

4           § -5 **Employer records.** An employer shall retain records  
5 documenting hours worked by employees and paid sick leave taken  
6 by employees for a period of five years and shall allow the  
7 director access to the records, with appropriate notice and at a  
8 mutually agreeable time, to monitor compliance with the  
9 requirements of this chapter. If an issue arises as to an  
10 employee's entitlement to paid sick leave under this chapter, it  
11 shall be presumed that the employer has violated this chapter,  
12 absent clear and convincing evidence otherwise, if the employer  
13 does not maintain or retain adequate records documenting hours  
14 worked by the employee and paid sick leave taken by the employee  
15 or does not allow the director reasonable access to the records.

16           § -6 **Enforcement.** (a) An employee or other person may  
17 report to the director any suspected violation of this chapter.  
18 The director shall encourage reporting pursuant to this  
19 subsection by keeping confidential, to the maximum extent  
20 permitted by applicable laws, the name and other identifying  
21 information of the employee or person reporting the suspected



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1 violation; provided that with the authorization of the person,  
2 the director may disclose the person's name and identifying  
3 information as necessary to enforce this chapter or for other  
4 appropriate purposes.

5 (b) The director, the attorney general, any person  
6 aggrieved by a violation of this chapter, or any labor  
7 organization a member of which is aggrieved by a violation of  
8 this chapter, may bring a civil action in a court of competent  
9 jurisdiction against an employer who violates this chapter. The  
10 action may be brought without first filing an administrative  
11 complaint.

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

14 (1) The full amount of any paid sick leave to which the  
15 person is entitled;

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

18 (3) Reasonable attorney's fees.

19 Aggrieved persons shall also be entitled to equitable relief as  
20 may be appropriate to remedy the violation including  
21 reinstatement, back pay, and injunctive relief.





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1 (d) The statute of limitations for a civil action brought  
2 pursuant to this chapter shall be for a period of three years  
3 from the date the alleged violation occurred.

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

6 § -7 **Confidentiality and nondisclosure.** An employer  
7 shall not require disclosure of details of an employee's medical  
8 condition as a condition of providing paid sick leave under this  
9 chapter. If an employer possesses health information or  
10 information pertaining to the details of a medical condition  
11 about an employee or employee's family member, the information  
12 shall be treated as confidential and shall not be disclosed  
13 except to the affected employee or with the permission of the  
14 affected employee.

15 § -8 **Employer adoption of more generous sick leave**  
16 **policies; no effect on contracts, agreements, and plans**  
17 **providing more generous sick leave.** (a) Nothing in this  
18 chapter shall be construed to discourage or prohibit an employer  
19 from the adoption or retention of a paid sick leave policy more  
20 generous to the employee than the one required by this chapter.



1           (b) Nothing in this chapter shall be construed as  
2 diminishing the obligation of an employer to comply with any  
3 contract, collective bargaining agreement, employment benefit  
4 plan, or other agreement providing more generous paid sick leave  
5 to an employee than required herein.

6           (c) Nothing in this chapter shall be construed as  
7 diminishing the rights of public employees regarding paid sick  
8 leave or use of sick leave as provided by law.

9           (d) This chapter shall provide the minimum requirements of  
10 paid sick leave and shall not be construed to preempt, limit, or  
11 otherwise affect the applicability of any other law, rule,  
12 requirement, policy, or standard that provides for greater  
13 accrual or use by employees of sick leave, whether paid or  
14 unpaid, or that extends other protections to employees."

15           SECTION 3. If any provision of this Act, or the  
16 application thereof to any person or circumstance, is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act that can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 of this Act are severable.



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1 SECTION 4. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 5. This Act shall take effect on July 1, 2017;  
5 provided that in the case of employees covered by a collective  
6 bargaining agreement in effect on July 1, 2017, this Act shall  
7 take effect on the date of termination, renewal, or amendment of  
8 the collective bargaining agreement then in effect.

9

INTRODUCED BY: *B. Steiner*

JAN 18 2017



# H.B. NO. 4

**Report Title:**

Employment; Paid Sick Leave

**Description:**

Requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

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

