

JAN 20 2017

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;



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



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



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



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;



- 1 (6) Safeguard public welfare, health, safety, and
- 2 prosperity of the people of the State; and
- 3 (7) Accomplish the purpose of this Act in a manner that is
- 4 feasible for employers.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 **"CHAPTER**

9 **PAID SICK LEAVE**

10 § -1 **Definitions.** As used in this chapter, unless the
11 context clearly requires otherwise:

12 "Department" means the department of labor and industrial
13 relations.

14 "Director" means the director of labor and industrial
15 relations.

16 "Employee" has the same meaning as defined in the federal
17 Fair Labor Standards Act, Title 29 United States Code section
18 203(e), and additionally includes recipients of public benefits
19 who are engaged in work activity as a condition of receiving
20 public assistance and public employees who are not subject to
21 the civil service laws of the State, a political subdivision, or



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



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



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.



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



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;



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.



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



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.



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.



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: Kal Rhanh

~~See Section 4~~

Matt

~~Stacy~~



S.B. NO. 676

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.

