
A BILL FOR AN ACT

RELATING TO LABOR.

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

PART I

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

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

"Child" means an individual who is:

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

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

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

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

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

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

(B) An individual for whom a service worker stands in 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) On 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 of 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, 2018, 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 every 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 a maximum of
13 forty unused earned hours of paid sick leave from the current
14 calendar year to the following calendar year; provided that no
15 service worker shall be entitled to carry over more than an
16 aggregate of 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 January 1,
20 2018, upon the completion of the six-hundred-eightieth
21 hour of employment from January 1, 2018; or



1 (2) If the service worker was hired on or after January 1,
2 2018, upon the completion of the service worker's
3 six-hundred-eightieth hour of employment from the date
4 of hire;

5 provided that the employer may agree to an earlier date of
6 entitlement if desired. A service worker shall not be entitled
7 to the use of earned paid sick leave if the service worker did
8 not work an average of ten or more hours per week for the
9 employer in the most recent complete calendar quarter.

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

12 (1) The employer offers any sick leave or other paid
13 leave, or combination of other paid leave, that may be
14 used for the purpose of subsection (g); and is earned
15 at a rate greater than the rate in (b) (1) and (2); or

16 (2) The employer has a sick leave policy approved by the
17 director.

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

20 (e) An employer shall pay each service worker for paid
21 sick leave at a pay rate equal to the greater of either the



1 normal hourly wage for that service worker, or the minimum wage
2 under section 387-2 for the pay period during which the employee
3 used paid sick leave. For any service worker whose hourly wage
4 varies depending on the work performed by the service worker,
5 the "normal hourly wage" shall mean the average hourly wage of
6 the service worker in the pay period prior to the one in which
7 the service worker used paid sick leave.

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

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

15 (1) For a service worker's:

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

17 (B) Medical diagnosis, care, or treatment of a mental
18 illness or physical illness, injury, or health
19 condition; or

20 (C) Preventative medical care; or

21 (2) For a service worker's child's or spouse's:



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

2 (B) Medical diagnosis, care, or treatment of a mental
3 or physical illness, injury, or health condition;
4 or

5 (C) Preventative medical care.

6 (h) If a service worker is a victim of family violence or
7 sexual assault, an employer shall permit that service worker to
8 use the paid sick leave earned under this section for the
9 following purposes:

10 (1) For medical care or psychological or other counseling
11 for physical or psychological injury or disability;

12 (2) To obtain services from a victim services
13 organization;

14 (3) To relocate due to the family violence or sexual
15 assault; or

16 (4) To participate in any civil or criminal proceedings
17 related to or resulting from the family violence or
18 sexual assault.

19 (i) Unless an employee policy or collective bargaining
20 agreement provides for the payment of earned fringe benefits
21 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 **PART II**

13 SECTION 2. The legislature finds that victims of domestic
14 violence often need to take leave from their employment to
15 attend to various health or legal matters and that addressing
16 such matters should not pose a risk to their personal health and
17 well-being, financial security, or safety due to a fear of
18 adverse consequences from their employers. Although state law
19 currently requires that employers allow victim leave for victims
20 of domestic or sexual violence, victim employees are required to
21 exhaust all other paid and unpaid leave accrued for the calendar



1 year before victim leave may be applied. Thus an employee may
2 exhaust all sick leave in order to seek safety or medical
3 attention for themselves or their minor child or to take legal
4 action against an abuser, leaving little to no sick leave
5 available for the rest of the calendar year.

6 The purpose of this part is to amend victim protections
7 under Hawaii employment practices law to allow an employee to
8 take victim leave, separate from family leave, related to
9 domestic or sexual violence against the employee or the
10 employee's minor child.

11 SECTION 3. Section 378-73, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~4~~]§378-73[~~7~~] Relationship to other leaves. If an
14 employee is entitled to take paid or unpaid leave pursuant to
15 other federal, state, or county law, or pursuant to an
16 employment agreement, a collective bargaining agreement, or an
17 employment benefits program or plan, which may be used for the
18 purposes listed under section 378-72(a), the employee shall
19 exhaust such other paid and unpaid leave benefits before victim
20 leave benefits under this chapter may be applied[~~ed~~—~~The~~];
21 provided that in the case of family leave taken by an employee



1 pursuant to chapter 398, the employee need not exhaust family
2 leave benefits before victim leave benefits may be taken.
3 Except in the case of victim leave benefits under this section,
4 the combination of such other paid or unpaid leave benefits that
5 may be applied and victim leave benefits shall not exceed the
6 maximum number of days specified under section 378-72(a)."

7 **PART III**

8 SECTION 4. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on January 7, 2059.
14



Report Title:

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

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". Provides that an employee need not exhaust all family leave benefits prior to using victim leave benefits. Takes effect 1/7/2059. (SD1)

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

