
A BILL FOR AN ACT

RELATING TO PAID SICK LEAVE.

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

1 SECTION 1. The legislature finds that the spread of
2 disease at the workplace can cripple a business. However, some
3 employees cannot afford to take unpaid leave while sick and thus
4 come to work anyway.

5 The purpose of this Act is to encourage employees to take
6 care of their health and not spread diseases at work by
7 requiring employers to provide a minimum amount of paid sick
8 leave to employees and supplemental paid sick leave to employees
9 under certain public health emergency conditions.

10 SECTION 2. The Hawaii Revised Statutes is amended by
11 adding a new chapter to be appropriately designated and to read
12 as follows:

13 **"CHAPTER**

14 **PAID SICK LEAVE**

15 § -1 **Definitions.** As used in this chapter, unless the
16 context clearly requires otherwise:



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1 "Director" means the director of labor and industrial
2 relations.

3 "Employee" has the same meaning as defined in the federal
4 Fair Labor Standards Act, title 29 United States Code section
5 203(e), and additionally includes recipients of public benefits
6 who are engaged in work activity as a condition of receiving
7 public assistance and public employees who are not subject to
8 the civil service laws of the State, a political subdivision, or
9 a public agency. "Employee" does not include sole proprietors
10 and independent contractors.

11 "Employer" has the same meaning as defined in the federal
12 Fair Labor Standards Act, title 29 United States Code section
13 203(d).

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

18 "Preventive medical care" means routine health care that
19 includes screenings, check-ups, and patient counseling to
20 prevent illnesses, disease, or other health problems.



1 "Small business" means an independently owned business with
2 less than fifty employees.

3 § -2 **Accrual of paid sick leave.** (a) All employees who
4 work in the State for more than two hundred hours in a year
5 shall have the right to paid sick leave as provided in this
6 chapter.

7 (b) All employees shall accrue a minimum of one hour of
8 paid sick leave for every forty hours worked. Employees shall
9 not accrue more than:

10 (1) Forty hours of paid sick leave in a calendar year; or

11 (2) If employed by a small business, twenty-four hours of
12 paid sick leave in a calendar year,

13 unless the employer provides a higher limit.

14 (c) An employee who is exempt from overtime requirements
15 under the federal Fair Labor Standards Act, title 29 United
16 States Code section 213(a)(1), shall be assumed to work forty
17 hours in each work week for purposes of paid sick leave accrual
18 unless the employee's normal work week is less than forty hours,
19 in which case paid sick leave shall accrue based upon the actual
20 hours in the normal work week.



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1 (d) Paid sick leave as provided in this chapter shall
2 begin to accrue at the commencement of employment or the
3 effective date of this chapter, whichever is later.

4 (e) Employees shall be entitled to use accrued paid sick
5 leave beginning on the ninetieth calendar day following
6 commencement of employment. After the ninetieth calendar day of
7 employment, employees may use paid sick leave as it is accrued.

8 (f) Paid sick leave shall be carried over to the following
9 calendar year; provided that an employee's use of paid sick
10 leave pursuant to this chapter in each calendar year shall not
11 exceed:

12 (1) Forty hours of paid sick leave in a calendar year; or

13 (2) If employed by a small business, twenty-four hours of
14 paid sick leave in a calendar year,

15 unless the employer provides a higher limit.

16 (g) An employer shall not be required to provide
17 additional paid sick leave if the employer has a paid leave
18 policy that makes available an amount of paid leave sufficient
19 to meet the accrual requirements of this chapter and that may be
20 used for the same purposes and under the same conditions as paid
21 sick leave under this chapter.



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

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

17 (j) An employer may advance paid sick leave to an employee
18 before its accrual by the employee.

19 § -3 **Use of paid sick leave.** (a) An employee may use
20 paid sick leave during absences from work due to:



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- 1 (1) An employee's mental or physical illness, injury, or
2 health condition;
- 3 (2) An employee's need for medical diagnosis, care, or
4 treatment of a mental or physical illness, injury, or
5 health condition;
- 6 (3) An employee's need for preventive medical care;
- 7 (4) An employee's need to seek medical attention, legal
8 services, or victim services for a mental or physical
9 illness, injury, or health condition caused by
10 domestic abuse, sexual assault, or harassment to the
11 employee, or related to preparation for or
12 participation in a civil or criminal proceeding; and
- 13 (5) Closure of the employee's place of business by order
14 of a public official due to a public health emergency.
- 15 (b) Paid sick leave shall be provided upon the oral
16 request of an employee. When possible, the request shall
17 include the expected duration of the absence.
- 18 (c) When the use of paid sick leave is foreseeable, the
19 employee shall make a good faith effort to provide notice of the
20 need for the leave to the employer in advance of the use of the
21 paid sick leave and shall make a reasonable effort to schedule



1 the use of paid sick leave in a manner that does not unduly
2 disrupt the operations of the employer.

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

7 **§ -4 Supplemental paid sick leave; public health**

8 **emergencies.** (a) Notwithstanding section -2, on the date a
9 public health emergency is declared, each employer shall
10 supplement each employee's accrued paid sick leave under this
11 section as necessary to ensure that an employee can take the
12 following amounts of paid sick leave:

- 13 (1) Forty hours of paid sick leave in a calendar year; or
14 (2) If employed by a small business, twenty-four hours of
15 paid sick leave in a calendar year,
16 unless the employer provides a higher limit.

17 (b) An employer may count an employee's unused accrued
18 paid sick leave under section -2 toward the supplemental paid
19 sick leave required by this section.

20 (c) An employee may use paid sick leave under this section
21 until four weeks after the official termination or suspension of



1 the public health emergency for any absence related to the
2 public health emergency, including:

- 3 (1) The employee's need to self-isolate because the
4 employee has been diagnosed with a communicable
5 illness that is the cause of the public health
6 emergency;
- 7 (2) The employee is experiencing symptoms of a
8 communicable illness that is the cause of the public
9 health emergency; or
- 10 (3) The employee's need to seek or obtain a medical
11 diagnosis, medical care, medical treatment, or
12 preventive care for symptoms of a communicable illness
13 that is the cause of the public health emergency.

14 § -5 **Notice.** (a) An employer shall give its employees
15 notice of the following:

- 16 (1) That employees are entitled to paid sick leave;
- 17 (2) The amount of paid sick leave granted pursuant to this
18 chapter;
- 19 (3) The terms of paid sick leave use as guaranteed under
20 this chapter; and



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

4 (b) An employer shall comply with this section by
5 providing the information required in subsection (a) by
6 individualized notice. The notice shall be in English and in
7 any language that is the first language spoken by at least five
8 per cent of the employer's workforce.

9 (c) An employer who wilfully violates the notice
10 requirements of this section shall be subject to a civil fine in
11 an amount not to exceed \$100 for each separate offense. Each
12 failure to issue notice pursuant to this section shall
13 constitute a separate offense.

14 § -6 **Employer records.** An employer shall retain records
15 documenting hours worked by employees and paid sick leave taken
16 by employees for a period of five years and shall allow the
17 director access to the records, with appropriate notice and at a
18 mutually agreeable time, to monitor compliance with the
19 requirements of this chapter. If an issue arises as to an
20 employee's entitlement to paid sick leave under this chapter, it
21 shall be presumed that the employer has violated this chapter,



1 absent clear and convincing evidence otherwise, if the employer
2 does not maintain or retain adequate records documenting hours
3 worked by the employee and paid sick leave taken by the employee
4 or does not allow the director reasonable access to the records.

5 **§ -7 Enforcement.** (a) An employee or other person may
6 report to the director any suspected violation of this chapter.
7 The director shall encourage reporting pursuant to this
8 subsection by keeping confidential, to the maximum extent
9 permitted by applicable laws, the name and other identifying
10 information of the employee or other person reporting the
11 suspected violation; provided that with the authorization of the
12 employee or other person, the director may disclose the
13 employee's or other person's name and identifying information as
14 necessary to enforce this chapter or for other appropriate
15 purposes.

16 (b) The director, the attorney general, any person
17 aggrieved by a violation of this chapter, or any labor
18 organization, a member of which is aggrieved by a violation of
19 this chapter, may bring a civil action in a court of competent
20 jurisdiction against an employer who violates this chapter. The



1 action may be brought without first filing an administrative
2 complaint.

3 (c) Upon prevailing in an action brought pursuant to this
4 section, an aggrieved person shall recover:

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

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

9 (3) Reasonable attorney's fees.

10 An aggrieved person shall also be entitled to equitable
11 relief as may be appropriate to remedy the violation including
12 reinstatement, back pay, and injunctive relief.

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

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

18 (f) For purposes of this section, "labor organization" has
19 the same meaning as in section 378-1.

20 § -8 **Confidentiality and nondisclosure.** An employer
21 shall not require disclosure of details of an employee's medical



1 condition as a condition of providing paid sick leave under this
2 chapter. If an employer possesses health information or
3 information pertaining to the details of a medical condition
4 about an employee, the information shall be treated as
5 confidential and shall not be disclosed except to the affected
6 employee or with the permission of the affected employee.

7 **§ -9 Employer adoption of more generous sick leave**
8 **policies; no effect on contracts, agreements, and plans**
9 **providing more generous sick leave.** (a) Nothing in this
10 chapter shall be construed to discourage or prohibit an employer
11 from the adoption or retention of a paid sick leave policy more
12 generous to the employee than as is required by this chapter.

13 (b) Nothing in this chapter shall be construed as
14 diminishing the obligation of an employer to comply with any
15 contract, collective bargaining agreement, employment benefit
16 plan, or other agreement providing more generous paid sick leave
17 to an employee than as is required by this chapter.

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



1 (d) This chapter shall provide the minimum requirements of
2 paid sick leave and shall not be construed to preempt, limit, or
3 otherwise affect the applicability of any other law, rule,
4 requirement, policy, or standard that provides for greater
5 accrual or use by employees of sick leave, whether paid or
6 unpaid, or that extends other protections to employees."

7 SECTION 3. If any provision of this Act, or the
8 application thereof to any person or circumstance, is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act that can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 4. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

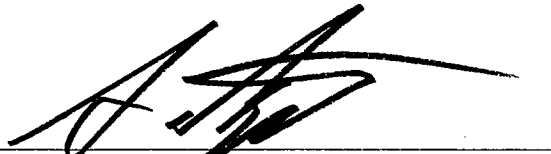
16 SECTION 5. This Act shall take effect on July 1, 2023;
17 provided that in the case of employees covered by a collective
18 bargaining agreement in effect on July 1, 2023, this Act shall
19 take effect on the date of termination, renewal, or amendment of
20 the collective bargaining agreement then in effect.

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INTRODUCED BY:



JAN 24 2023



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Report Title:

Employment; Paid Sick Leave

Description:

Requires employers to provide a minimum amount of paid sick leave to employees and supplemental paid sick leave to employees under certain public health emergency conditions.

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