

JAN 22 2015

A BILL FOR AN ACT

RELATING TO LABOR.

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

SECTION 1. Chapter 387, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

"Child" means a:

(1) Biological, adopted, foster, or step-child of a service worker;

(2) Legal ward of a service worker; or

(3) A child of a service worker who stands in loco parentis to the child who is:

(A) Under eighteen years of age; or

(B) Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

"Day or temporary worker" means an individual who performs work for another, whether the individual is paid by the person



1 for whom work is performed or by an employment agency, as
2 defined in section 373-1, who works:

3 (1) On a per diem basis; or

4 (2) As an occasional or irregular basis for only the time
5 required to complete such work.

6 "Employer" shall have the same meaning as in section 387-1,
7 but shall refer to employers who employ fifty or more
8 individuals in the State in any one quarter in the previous
9 year, which shall be determined on January 1, annually. The
10 term "employer" excludes:

11 (1) Any business establishment classified in sector 31, 32
12 or 33 in the North American Industrial Classification
13 System; or

14 (2) Any nationally chartered organization exempt from
15 taxation under Section 501(c)(3) of the Internal
16 Revenue Code as amended, that provides all of the
17 following services: recreation, child care, and
18 education.

19 "Family violence" shall have the same meaning as in section
20 571-2.



1 "Retaliatory personnel action" means any termination,
2 suspension, constructive discharge, demotion, unfavorable
3 reassignment, refusal to promote, disciplinary action, or other
4 adverse employment action taken by an employer against an
5 employee or a service worker.

6 "Service worker" means an employee, excluding day or
7 temporary workers, who is paid on an hourly basis, or is not
8 exempt from the minimum wage and overtime compensation
9 requirements of the Fair Labor Standards Act of 1938 and the
10 regulations promulgated thereunder, as amended from time to
11 time, and who is primarily engaged in an occupation with one of
12 the following broad or detailed occupation code numbers and
13 titles, as defined by the federal Bureau of Labor Statistics
14 Standard Occupational Classification system, as amended, or any
15 successor system: 11-9050 food service managers; 11-9110
16 medical and health services managers; 21-1020 social workers;
17 21-1093 social and human service assistants; 21-1094 community
18 health workers; 21-1099 community and social service
19 specialists, and all others within the same occupational code;
20 25-4020 librarians; 29-1050 pharmacists; 29-1070 physician
21 assistants; 29-1120 therapists; 29-1140 registered nurses;



1 29-1150 nurse anesthetists; 29-1160 nurse midwives; 29-1170
2 nurse practitioners; 29-2020 dental hygienists; 29-2040
3 emergency medical technicians and paramedics; 29-2050 health
4 practitioner support technologists and technicians; 29-2060
5 licensed practical and licensed vocational nurses; 31-1011 home
6 health aides; 31-1012 nursing aides, orderlies, and attendants;
7 31-1013 psychiatric aides; 31-9091 dental assistants; 31-9092
8 medical assistants; 33-9032 security guards; 33-9091 crossing
9 guards; 35-1010 supervisors of food preparation and serving
10 workers; 35-2010 cooks; 35-2020 food preparation workers;
11 35-3010 bartenders; 35-3020 fast food and counter workers;
12 35-3030 waiters and waitresses; 35-3040 food servers, non-
13 restaurant; 35-9010 dining room and cafeteria attendants and
14 bartender helpers; 35-9020 dishwashers; 35-9030 hosts and
15 hostesses, restaurant, lounge and coffee shop; 35-9090
16 miscellaneous food preparation and serving related workers;
17 37-2011 janitors and cleaners, including maids and housekeeping
18 cleaners; 37-2019 building cleaning workers and all others
19 within that occupational code; 39-3030 ushers, lobby attendants,
20 and ticket takers; 39-5010 barbers, hairdressers, hairstylists,
21 and cosmetologists; 39-6010 baggage porters, bellhops, and



1 concierges; 39-9010 child care workers; 39-9021 personal care
2 aides; 41-1010 first-line supervisors of sales workers; 41-2011
3 cashiers; 41-2021 counter and rental clerks; 41-2030 retail
4 salespersons; 43-3070 tellers; 43-4080 hotel, motel, and resort
5 desk clerks; 43-4170 receptionists and information clerks;
6 43-5020 couriers and messengers; 43-6010 secretaries and
7 administrative assistants; 43-9010 computer operators; 43-9020
8 data entry and information processing workers; 43-9030 desktop
9 publishers; 43-9040 insurance claims and policy processing
10 clerks; 43-9050 mail clerks and mail machine operators, except
11 United States Postal Service; 43-9060 office clerks, general;
12 43-9070 office machine operators, except computer; 43-9080
13 proofreaders and copy markers; 43-9110 statistical assistants;
14 43-9190 miscellaneous office and administrative support workers;
15 51-3010 bakers; 51-3020 butchers and other meat, poultry, and
16 fish processing workers; 51-3090 miscellaneous food processing
17 workers; 53-3010 ambulance drivers and attendants, except
18 emergency medical technicians; 53-3020 bus drivers; and 53-3040
19 taxi drivers and chauffeurs.

20 "Sexual assault" means any sexual offense under part V of
21 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 accrue as follows:

6 (1) Beginning January 1, 2015, or the date thereafter on
7 which the service worker commences employment;

8 (2) At a rate of one hour of paid sick leave for each
9 forty hours worked; and

10 (3) 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 up to forty
13 unused accrued hours of paid sick leave from the current
14 calendar year to the following calendar year, but no service
15 worker shall be entitled to use more than hours of accrued
16 sick leave in any calendar year.

17 (c) A service worker shall be entitled to the use of
18 accrued paid sick leave, as follows:

19 (1) If the service worker was hired prior to January 1,
20 2015, upon the completion of the six-hundred-eightieth
21 hour of employment from January 1, 2015; or



1 (2) If the service worker was hired after January 1, 2015,
2 upon the completion of the service worker's
3 six-hundred-eightieth hour of employment from the date
4 of hire, unless the employer agrees to an earlier
5 date.

6 A service worker shall not be entitled to the use of accrued
7 paid sick leave if the service worker did not work an average of
8 ten or more hours a week for the employer in the most recent
9 complete calendar quarter.

10 (d) An employer shall be deemed to be in compliance with
11 this section if the employer offers any other paid leave, or
12 combination of other paid leave, that:

13 (1) May be used for the purposes of subsection (g); and

14 (2) Is accrued in total at a rate equal to or greater than
15 the rate described in subsections (b) and (c).

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

18 (e) An employer shall pay each service worker for paid
19 sick leave at a pay rate equal to the greater of either the
20 normal hourly wage for that service worker, or the minimum fair
21 wage under section 387-2 for the pay period during which the



1 employee used paid sick leave. For any service worker whose
2 hourly wage varies depending on the work performed by the
3 service worker, the "normal hourly wage" shall mean the average
4 hourly wage of the service worker in the pay period prior to the
5 one in which the service worker used paid sick leave.

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

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

13 (1) For a service worker's:

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

15 (B) The medical diagnosis, care, or treatment of a
16 mental illness or physical illness, injury, or
17 health condition; or

18 (C) Preventative medical care; or

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

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



1 (B) The medical diagnosis, care, or treatment of a
2 mental illness or physical illness, injury, or
3 health condition; 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 a service worker to use
7 the paid sick leave accrued under this section for the following
8 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) If a service worker's need to use paid sick leave is
19 foreseeable, an employer may require advance notice, not to
20 exceed seven days prior to the date the leave is to begin, of
21 the intention to use the leave.



1 If a service worker's need for paid sick leave is not
2 foreseeable, an employer may require a service worker to give
3 notice of the intention as soon as practicable.

4 For paid sick leave of three or more consecutive days, an
5 employer may require reasonable documentation that the leave is
6 being taken for a purpose permitted under this section. The
7 documentation shall be considered reasonable if:

8 (1) The documentation for purposes of subsection (g) is
9 signed by a health care provider, as defined in
10 section 386-1, who is treating the service worker or
11 the service worker's child or spouse indicating the
12 need for the number of days of the leave; or

13 (2) The documentation for purposes of subsection (h)
14 consists of a court record or documentation signed by
15 a service worker or volunteer working for a victim
16 services organization, an attorney, a police officer,
17 or counselor involved with the service worker.

18 (j) Unless an employee policy or collective bargaining
19 agreement provides for the payment of accrued fringe benefits
20 upon termination, no service worker shall be entitled to payment



1 of unused accrued sick leave under this section upon termination
2 of employment.

3 (k) 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 prior to January 1,
11 2015.

12 (1) A termination of a service worker's employment by an
13 employer shall constitute a break in employment. If that
14 service worker is subsequently rehired by the employer following
15 a break in employment, the service worker shall:

16 (1) Begin to accrue sick leave in accordance with this
17 section; and

18 (2) Not be entitled to any unused hours of paid sick leave
19 that had been accrued prior to the service worker's
20 break in service unless agreed to by the employer.



1 (m) No employer shall take retaliatory personnel action
2 against a service worker for exercise by a service worker of
3 sick leave to which the service worker is entitled under this
4 section.

5 (n) An employer shall provide notice to each service
6 worker of the following information:

7 (1) The entitlement to sick leave for service workers, the
8 amount of sick leave provided to service workers, and
9 the terms under which sick leave may be used;

10 (2) That retaliation by the employer against the service
11 worker for requesting or using sick leave for which
12 the service worker is eligible is prohibited; and

13 (3) That the service worker has a right to file a
14 complaint with the department of labor and industrial
15 relations for suspected violations of this section by
16 the employer.

17 Employers may comply with this section by displaying a poster in
18 a conspicuous place, accessible to service workers, at the
19 employer's place of business that contains the information
20 required by this subsection."

21 SECTION 2. New statutory material is underscored.



S.B. NO. 129

1 SECTION 3. This Act shall take effect on January 1, 2015.

2

INTRODUCED BY: ~~SEN. SC. Keith Ay~~

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S.B. NO. 129

Report Title:

Labor; Sick Leave; Service Workers

Description:

Requires certain employers to provide sick leave to service workers for specified purposes under certain conditions. Defines service workers and employers. Effective January 1, 2015.

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

