
A BILL FOR AN ACT

RELATING TO LABOR.

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

SECTION 1. Chapter 388, 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 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) A person who is born alive and less than 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 388-1,
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.

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 as follows:

6 (1) Beginning January 1, 2016, or the date thereafter on
7 which the service worker commences employment;

8 (2) At a rate of at least one hour of paid sick leave for
9 each 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 earned hours of paid sick leave from the current calendar
14 year to the following calendar year, but no service worker shall
15 be entitled to use more than hours of earned sick leave in
16 any calendar year.

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 prior to January 1,
20 2016, upon the completion of the six-hundred-eightieth
21 hour of employment from January 1, 2016; or



1 (2) If the service worker was hired on or after January 1,
2 2016, 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 earned paid
7 sick leave if the service worker did not work an average of ten
8 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:

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 the greater rate described in subsection (b); 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 fair
2 wage under section 387-2 for the pay period during which the
3 employee used paid sick leave. For any service worker whose
4 hourly wage varies depending on the work performed by the
5 service worker, the "normal hourly wage" shall mean the average
6 hourly wage of the service worker in the pay period prior to the
7 one in which 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) The medical diagnosis, care, or treatment of a
18 mental illness or physical illness, injury, or
19 health 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) The medical diagnosis, care, or treatment of a
3 mental illness or physical illness, injury, or
4 health condition; 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 a service worker to use
8 the paid sick leave earned under this section for the following
9 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 prior to January 1,
11 2016.

12 (k) 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 earn 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 earned prior to the service worker's
20 break in service unless agreed to by the employer.



1 (1) An employer shall provide notice to each service
2 worker of the following information:

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

6 (2) That the service worker has a right to file a
7 complaint with the department of labor and industrial
8 relations for suspected violations of this section by
9 the employer.

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

14 SECTION 2. New statutory material is underscored.

15 SECTION 3. This Act shall take effect on January 7, 2059.



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 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.

