

JAN 19 2018

A BILL FOR AN ACT

RELATING TO LABOR.

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 Hawaii,
8 an estimated forty-three per cent of private sector
9 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) Individuals earning minimum wage often cannot afford
2 financially to take time off from work to attend to
3 their and their families' health-related needs,
4 whether it be an illness, a health condition, or a
5 medical emergency;

6 (6) Nearly two hundred fifty thousand people in the State
7 serve as unpaid family caregivers for family members,
8 work that has an aggregate value of \$1,900,000 per
9 year. Working family caregivers cannot adequately
10 care for their relatives without access to paid sick
11 leave;

12 (7) Paid sick leave would have a positive effect on the
13 public health of residents of the State by allowing
14 workers the option of staying home when ill, thus
15 lessening recovery time and reducing the likelihood of
16 spreading illness to other members of the workforce
17 and to the public;

18 (8) Paid sick leave will reduce health care expenditures
19 by promoting access to primary and preventive care.
20 Nationally, providing all workers with paid sick leave
21 would result in \$1,100,000,000 in annual savings in



1 hospital emergency room costs, including more than
2 \$500,000,000 in savings to publicly funded health
3 insurance programs such as medicare, medicaid, and the
4 state children's health insurance program. Access to
5 paid sick leave can also help decrease the likelihood
6 that a worker will put off needed care and increase
7 the use of preventive care among workers and their
8 family members;

9 (9) Paid sick leave will allow parents to provide personal
10 care for their sick children. Parental care makes
11 children's recovery faster and can prevent future
12 health problems. Parents who do not have paid sick
13 leave are more than twice as likely as parents with
14 paid sick days to send a sick child to school or
15 daycare and are five times as likely to report taking
16 their child or other family member to a hospital
17 emergency room because they were unable to take time
18 off from work during regular work hours;

19 (10) Paid sick leave will reduce contagion. Workers in
20 jobs with high levels of public contact, such as
21 restaurant workers and child care workers, are



1 unlikely to have paid sick leave. As a result, these
2 workers may have no choice but to go to work when they
3 are ill, thereby increasing the risk of passing
4 illnesses on to co-workers and customers while
5 jeopardizing their own health. Overall, people
6 without paid sick leave are 1.5 times more likely than
7 people with paid sick leave to go to work with a
8 contagious illness like the flu;

9 (11) Employees frequently lose their jobs or are
10 disciplined for taking sick leave to care for sick
11 family members or even to recover from their own
12 illness. One in six workers report that they or a
13 family member has been fired, suspended, punished, or
14 threatened by an employer because they needed to take
15 sick leave for themselves or a family member;

16 (12) When an outbreak that presents a threat to public
17 health occurs, for example the H1N1 outbreak of 2009,
18 government officials request that sick workers stay
19 home and keep sick children home from school or child
20 care to prevent the spread of the illness and to
21 safeguard workplace productivity. However, to protect



1 their paychecks and their jobs, many workers who
2 lacked paid sick leave were unable to comply with
3 these requests;

4 (13) During the height of the H1N1 pandemic, workers with
5 lower rates of access to paid sick leave were more
6 likely than those with higher rates of access to paid
7 sick leave to go to work sick. As a result, the
8 pandemic lasted longer in their workplaces as the
9 virus spread from co-worker to co-worker. One study
10 estimates that lack of paid sick leave was responsible
11 for five million cases of influenza-like illness
12 during the pandemic;

13 (14) Providing a minimal amount of paid sick leave is
14 affordable for employers. Paid sick leave results in
15 reduced worker turnover, which leads to reduced costs
16 incurred from recruiting, interviewing, and training
17 new hires. Firing and replacing workers can cost
18 anywhere from twenty-five to two hundred per cent of
19 an employee's annual compensation;

20 (15) Paid sick leave will reduce the risk of
21 "presenteeism", or workers coming to work with



1 illnesses and health conditions that reduce their
2 productivity, a problem that costs the national
3 economy \$160,000,000,000 annually; and

4 (16) Paid sick leave will reduce the competitive
5 disadvantage currently faced by the many employers
6 that do choose to provide sick leave to their workers.

7 The purpose of this Act is to establish the right for
8 minimum wage workers to accrue paid sick leave to:

9 (1) Ensure that these workers in the State can address
10 their own health needs and the health needs of their
11 families by requiring employers to provide a minimum
12 level of paid sick leave, including time for family
13 care;

14 (2) Diminish public and private health care costs in the
15 State by enabling workers to seek early and routine
16 medical care for themselves and their family members;

17 (3) Protect public health in the State by reducing the
18 risk of contagion;

19 (4) Promote economic security and stability of workers and
20 their families in the State;



(5) Protect these employees in the State from losing their jobs when they use sick leave to care for themselves or their families;

(6) Safeguard the public welfare, health, safety, and prosperity of the people of the State; and

(7) Accomplish the purpose of this Act in a manner that is feasible for employers, including giving employers substantial flexibility to offer paid sick leave as required under this Act to minimum wage and other employees or to pay minimum wage employees a salary that is more than the current minimum wage.

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

"CHAPTER

PAID SICK LEAVE

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

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



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. The term "employee" shall not include sole
10 proprietors 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 "Family member" means:

- 15 (1) A biological, adopted, or foster child; stepchild;
16 legal ward; a child of a reciprocal beneficiary; or a
17 child to whom the employee stands in loco parentis;
18 (2) A biological, adoptive, or foster parent; stepparent;
19 legal guardian of an employee or an employee's spouse
20 or reciprocal beneficiary; or a person who stood in
21 loco parentis when the employee was a minor child;



(3) A spouse or reciprocal beneficiary; and

(4) A biological, adopted, or foster sibling; or a spouse or reciprocal beneficiary of a biological, adopted, or foster sibling.

"Health care professional" has the same meaning as defined in section 432E-1.

"Labor organization" has the same meaning as defined in section 378-1.

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

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

(b) All employees shall accrue a minimum of one hour of paid sick leave for every forty hours worked. Employees shall not accrue more than forty hours of paid sick leave in a calendar year, unless the employer provides a higher limit.



1 (c) Employees who are exempt from overtime requirements
2 under the Federal Fair Labor Standards Act, title 29 United
3 States Code section 213(a)(1), shall be assumed to work forty
4 hours in each work week for purposes of paid sick leave accrual
5 unless the employee's normal work week is less than forty hours,
6 in which case paid sick leave shall accrue based upon the actual
7 hours in the employee's normal work week.

8 (d) Employees shall be entitled to use accrued paid sick
9 leave beginning on the seven hundred fiftieth hour following
10 commencement of employment. After the seven hundred fiftieth
11 hour of employment, employees may use paid sick leave as it is
12 accrued.

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

19 (f) Nothing in this section shall be construed as
20 requiring financial or other reimbursement to an employee from
21 an employer upon the employee's termination, resignation,



1 retirement, or other separation from employment for unused
2 accrued paid sick leave.

3 (g) An employer may advance paid sick leave to an employee
4 prior to its accrual by the employee.

5 (h) Sick leave required by this chapter shall not be
6 payable for the period in which the employee is entitled to
7 temporary total disability or temporary partial disability
8 benefits under chapter 386 or temporary disability insurance
9 benefits under chapter 392.

10 § -3 Use of paid sick leave. (a) An employee may use
11 paid sick leave during absences from work due to:

12 (1) An employee's mental or physical illness, injury, or
13 health condition; an employee's need for medical
14 diagnosis, care, or treatment of a mental or physical
15 illness, injury, or health condition; or an employee's
16 need for preventive medical care;

17 (2) Care of a family member with a mental or physical
18 illness, injury, or health condition; care of a family
19 member who needs medical diagnosis, care, or treatment
20 of a mental or physical illness, injury, or health



1 condition; or care of a family member who needs
2 preventive medical care; and

3 (3) Closure of the employee's place of business by order
4 of a public official due to a public health emergency,
5 an employee's need to care for a child whose school or
6 place of care has been closed by order of a public
7 official due to a public health emergency, or care for
8 a family member when it has been determined by the
9 health authorities having jurisdiction or by a health
10 care professional that the family member's presence in
11 the community would jeopardize the health of others
12 because of the family member's exposure to a
13 communicable disease, regardless of whether the family
14 member has actually contracted the communicable
15 disease.

16 (b) Paid sick leave shall be provided based on a manner
17 deemed suitable by the employer.

18 (c) When the use of paid sick leave is foreseeable, the
19 employee shall make a good faith effort to provide prior notice
20 of the need for the leave to the employer and shall make a
21 reasonable effort to schedule the use of paid sick leave in a



1 manner that does not unduly disrupt the operations of the
2 employer.

3 § -4 Notice and posting. (a) An employer shall give
4 its employees notice of the following:

- 5 (1) That employees are entitled to paid sick leave;
6 (2) The amount of paid sick leave granted pursuant to this
7 chapter; and
8 (3) The terms of paid sick leave use as guaranteed under
9 this chapter.

10 (b) An employer shall comply with this section by
11 providing the information required in subsection (a) by:

- 12 (1) Individualized notice; or
13 (2) Displaying a poster in a conspicuous and accessible
14 place in each establishment where its employees are
15 employed.

16 (c) The director shall create and make posters available
17 to employers, in all languages currently being used by the
18 department for other employment posters, that contain the
19 information required under subsection (a) for the employer's use
20 in complying with this section.



1 § -5 **Confidentiality and nondisclosure.** An employer
2 shall not require disclosure of details of an employee's medical
3 condition as a condition of providing paid sick leave under this
4 chapter. If an employer possesses health information or
5 information pertaining to the details of a medical condition
6 about an employee or employee's family member, the information
7 shall be treated as confidential and shall not be disclosed
8 except to the affected employee or with the permission of the
9 affected employee.

10 § -6 **Applicability.** (a) Nothing in this chapter shall
11 be construed to discourage or prohibit an employer from the
12 adoption or retention of a paid sick leave policy more generous
13 to the employee than the one required by this chapter. This
14 chapter shall not apply to any employer who:

- 15 (1) Adopts or retains a paid sick leave policy that
16 provides more paid sick leave than required by this
17 chapter;
18 (2) Pays employees more than the minimum wage; or
19 (3) Employs less than employees.
20 (b) Nothing in this chapter shall be construed as
21 diminishing the obligation of an employer to comply with any



1 contract, collective bargaining agreement, employment benefit
2 plan, or other agreement providing more generous paid sick leave
3 to an employee than required herein.

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

7 (d) This chapter shall provide the minimum requirements of
8 paid sick leave and shall not be construed to preempt, limit, or
9 otherwise affect the applicability of any other law, rule,
10 requirement, policy, or standard that provides for greater
11 accrual or use by employees of sick leave, whether paid or
12 unpaid, or that extends other protections to employees.

13 (e) Where employers and employees are subject to a
14 collective bargaining agreement, this chapter may be waived by
15 the parties under the terms and conditions of the collective
16 bargaining agreement."

17 SECTION 3. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

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

6 SECTION 5. This Act shall take effect on July 1, 2018;
7 provided that in the case of employees covered by a collective
8 bargaining agreement in effect on July 1, 2018, this Act shall
9 take effect on the date of termination, renewal, or amendment of
10 the collective bargaining agreement then in effect.

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INTRODUCED BY:

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S.B. NO. 2359

Report Title:

Employment; Paid Sick Leave; Minimum Wage Workers

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.

