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# A BILL FOR AN ACT

RELATING TO LABOR.

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

1 PART I

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

5 "§388- Paid sick leave; service workers. (a) As used  
6 in this section:

7 "Child" means an individual who is:

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

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

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

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

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

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



1           (B) An individual for whom a service worker stands in  
2                           loco parentis.

3           "Day or temporary worker" means:

4           (1) An individual who works for another person for less  
5                           than twenty hours per week, except for an individual  
6                           who works for a food establishment; or

7           (2) An individual who works:

8                           (A) On a per diem basis; or

9                           (B) On an occasional or irregular basis for only the  
10                           time required to complete such work, whether the  
11                           individual is paid by the person for whom work is  
12                           performed or by an employment agency, as defined  
13                           in section 373-1.

14           "Employer" has the same meaning as in section 388-1, but  
15                           shall refer to employers who employ fifty or more individuals in  
16                           the State in any one quarter of the previous year, which shall  
17                           be determined on January 1, annually. The term "employer"  
18                           excludes any nationally chartered organization exempt from  
19                           taxation under section 501(c)(3) of the Internal Revenue Code,  
20                           as amended, that provides recreation, child care, or education  
21                           services.



1 "Family violence" has the same meaning as in section 571-2.

2 "Food establishment" means:

3 (1) Any place or portion thereof maintained, used, or  
4 operated for the purpose of storing, preparing,  
5 serving, manufacturing, packaging, transporting, or  
6 otherwise handling food at the retail or wholesale  
7 level;

8 (2) Any place used for cleaning food equipment or utensils  
9 in support of another food establishment; or

10 (3) Any operation that is conducted in, or in conjunction  
11 with, a mobile, stationary, temporary, or permanent  
12 facility or location where food is served or provided  
13 to the public, with or without charge, regardless of  
14 whether the food is consumed on or off the premises.

15 "Service worker" means an employee, including an employee  
16 of a food establishment, excluding a day or temporary worker,  
17 who is paid on an hourly basis, or is not exempt from the  
18 minimum wage and overtime compensation requirements of the Fair  
19 Labor Standards Act of 1938 and the regulations promulgated  
20 thereunder, as amended.



1       "Sexual assault" means any sexual offense under part V of  
2 chapter 707.

3       "Spouse" means a person who is lawfully married to another  
4 person under the laws of the State or is in a civil union.

5       (b) An employer shall provide paid sick leave annually to  
6 each of the employer's service workers. The paid sick leave  
7 shall be earned beginning January 1, 2018, or the date  
8 thereafter upon which the service worker commences employment,  
9 as follows:

10       (1) At a rate of at least one hour of paid sick leave for  
11 every forty hours actually worked; and

12       (2) In one-hour increments up to a maximum of forty hours  
13 per calendar year.

14 A service worker shall be entitled to carry over a maximum of  
15 forty unused earned hours of paid sick leave from the current  
16 calendar year to the following calendar year; provided that no  
17 service worker shall be entitled to carry over more than an  
18 aggregate of eighty hours of earned paid sick leave.

19       (c) A service worker shall be entitled to the use of  
20 earned paid sick leave as follows:



- 1        (1) If the service worker was hired before January 1,  
2                    2018, upon the completion of the six-hundred-eightieth  
3                    hour of employment from January 1, 2018; or
- 4        (2) If the service worker was hired on or after January 1,  
5                    2018, upon the completion of the service worker's  
6                    six-hundred-eightieth hour of employment from the date  
7                    of hire;
- 8        provided that the employer may agree to an earlier date of  
9        entitlement if desired. A service worker shall not be entitled  
10       to the use of earned paid sick leave if the service worker did  
11       not work an average of ten or more hours per week for the  
12       employer in the most recent complete calendar quarter.
- 13       (d) An employer shall be deemed to be in compliance with  
14       this section if:
- 15       (1) The employer offers any sick leave or other paid  
16                    leave, or combination of other paid leave, that may be  
17                    used for the purpose of subsection (g); and is earned  
18                    at a rate greater than the rate in (b) (1) and (2); or
- 19       (2) The employer has a sick leave policy approved by the  
20                    director.



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

3 (e) An employer shall pay each service worker for paid  
4 sick leave at a pay rate equal to the greater of either the  
5 normal hourly wage for that service worker, or the minimum wage  
6 under section 387-2 for the pay period during which the employee  
7 used paid sick leave. For any service worker whose hourly wage  
8 varies depending on the work performed by the service worker,  
9 the "normal hourly wage" shall mean the average hourly wage of  
10 the service worker in the pay period prior to the one in which  
11 the service worker used paid sick leave.

12 (f) Upon the mutual consent of the service worker and  
13 employer, a service worker who chooses to work additional hours  
14 or shifts during the same or following pay period, in lieu of  
15 hours or shifts missed, shall not be deemed to have used earned  
16 paid sick leave for the hours or shifts missed.

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

20 (1) For a service worker's:

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



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

4           (C) Preventative medical care; or

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

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

7           (B) Medical diagnosis, care, or treatment of a mental  
8           or physical illness, injury, or health condition;  
9           or

10          (C) Preventative medical care.

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

15        (1) For medical care or psychological or other counseling  
16        for physical or psychological injury or disability;

17        (2) To obtain services from a victim services  
18        organization;

19        (3) To relocate due to the family violence or sexual  
20        assault; or



1        (4) To participate in any civil or criminal proceedings  
2                    related to or resulting from the family violence or  
3                    sexual assault.

4        (i) Unless an employee policy or collective bargaining  
5                    agreement provides for the payment of earned fringe benefits  
6                    upon termination, no service worker shall be entitled to payment  
7                    of unused earned paid sick leave under this section upon  
8                    termination of employment.

9        (j) Nothing in this section shall be construed to:

10        (1) Prevent employers from providing more paid sick leave  
11                    than is required under this section;

12        (2) Diminish any rights provided to any employee or  
13                    service worker under a collective bargaining  
14                    agreement;

15        (3) Preempt or override the terms of any collective  
16                    bargaining agreement effective before January 1, 2018;  
17                    or

18        (4) Prevent the parties to a valid collective bargaining  
19                    contract from waiving the provisions herein, so long  
20                    as the waiver of paid sick leave is clearly and



1           unambiguously stated in any collective bargaining  
2           contract effective on or after January 1, 2018.

3           (k) A termination of a service worker's employment by an  
4           employer shall constitute a break in employment. If that  
5           service worker is subsequently rehired by the employer following  
6           a break in employment, the service worker shall:

7           (1) Begin to earn paid sick leave in accordance with this  
8           section; and

9           (2) Not be entitled to any unused hours of paid sick leave  
10           that had been earned prior to the service worker's  
11           break in service unless agreed to by the employer.

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

14           (1) The entitlement to paid sick leave for service  
15           workers, the amount of paid sick leave provided to  
16           service workers, and the terms under which paid sick  
17           leave may be used; and

18           (2) That the service worker has a right to file a  
19           complaint with the department of labor and industrial  
20           relations for suspected violations of this section by  
21           the employer.



1 Employers may comply with this section by displaying a poster  
2 that contains the information required by this subsection and  
3 that is posted in a conspicuous place, accessible to service  
4 workers, at the employer's place of business."

5 **PART II**

6 SECTION 2. The legislature finds that victims of domestic  
7 violence often need to take leave from their employment to  
8 attend to various health or legal matters and that addressing  
9 such matters should not pose a risk to their personal health and  
10 well-being, financial security, or safety due to a fear of  
11 adverse consequences from their employers. Although state law  
12 currently requires that employers allow victim leave for victims  
13 of domestic or sexual violence, victim employees are required to  
14 exhaust all other paid and unpaid leave accrued for the calendar  
15 year before victim leave may be applied. Thus an employee may  
16 exhaust all sick leave in order to seek safety or medical  
17 attention for themselves or their minor child or to take legal  
18 action against an abuser, leaving little to no sick leave  
19 available for the rest of the calendar year.

20 The purpose of this part is to amend victim protections  
21 under Hawaii employment practices law to allow an employee to



1 take victim leave, separate from family leave, related to  
2 domestic or sexual violence against the employee or the  
3 employee's minor child.

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

6 "[~~§~~§378-73~~§~~] Relationship to other leaves. If an  
7 employee is entitled to take paid or unpaid leave pursuant to  
8 other federal, state, or county law, or pursuant to an  
9 employment agreement, a collective bargaining agreement, or an  
10 employment benefits program or plan, which may be used for the  
11 purposes listed under section 378-72(a), the employee shall  
12 exhaust such other paid and unpaid leave benefits before victim  
13 leave benefits under this chapter may be applied[~~—The~~];  
14 provided that in the case of family leave taken by an employee  
15 pursuant to chapter 398, the employee need not exhaust family  
16 leave benefits before victim leave benefits may be taken.  
17 Except in the case of victim leave benefits under this section,  
18 the combination of such other paid or unpaid leave benefits that  
19 may be applied and victim leave benefits shall not exceed the  
20 maximum number of days specified under section 378-72(a)."





**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. Allows parties to a valid collective bargaining contract executed on or after 1/1/2018 to waive the paid sick leave requirement if certain notification requirements are met. Takes effect 1/7/2059. (SD2)

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

