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## 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:

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 their personal health needs or the health needs of  
5 members of their families;

6 (2) According to the United States Bureau of Labor  
7 Statistics, paid sick leave was not available to  
8 twenty-five per cent of private sector workers in  
9 March 2020. This leaves a significant segment of the  
10 nation's workers without paid sick leave. In Hawaii,  
11 an estimated forty-three per cent of private sector  
12 workers lack paid sick leave;

13 (3) Low-income workers are significantly less likely to  
14 have paid sick leave benefits in comparison to other  
15 members of the workforce. Only one in five low-income  
16 workers has access to paid sick leave;



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- 1           (4) Providing workers time off to attend to their personal  
2           health care needs and the health care needs of family  
3           members would ensure a healthier and more productive  
4           workforce in the State;
- 5           (5) Nearly two hundred fifty thousand people in the State  
6           serve as unpaid family caregivers for family members,  
7           work that has an aggregate value of \$1,900,000 per  
8           year. Working family caregivers cannot adequately  
9           care for their relatives without access to paid sick  
10          leave;
- 11          (6) Paid sick leave would have a positive effect on the  
12          public health of residents of the State by allowing  
13          workers the option of staying home when ill, thus  
14          lessening recovery time and reducing the likelihood of  
15          spreading illness to other members of the workforce  
16          and to the public;
- 17          (7) Paid sick leave will reduce health care expenditures  
18          by promoting access to primary and preventive care.  
19          Nationally, providing all workers with paid sick leave  
20          would result in \$1,100,000,000 in annual savings in  
21          hospital emergency room costs, including more than



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

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

18          (9) Paid sick leave will reduce contagion. Workers in  
19          jobs with high levels of public contact, such as  
20          restaurant workers and child care workers, are very  
21          unlikely to have paid sick leave. As a result, these



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

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

15 (11) When an outbreak that presents a threat to public  
16 health occurs, including the COVID-19 pandemic of  
17 2020, government officials request that sick workers  
18 stay home and keep sick children home from school or  
19 child care to prevent the spread of the illness and to  
20 safeguard workplace productivity. However, to protect  
21 their paychecks and their jobs, many workers who lack



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1           paid sick leave are unable to comply with these  
2           requests;

3           (12) Providing a minimal amount of paid sick leave is  
4           affordable for employers. Paid sick leave results in  
5           reduced worker turnover, which leads to reduced costs  
6           incurred from advertising, interviewing, and training  
7           new hires. Firing and replacing workers can cost  
8           anywhere from twenty-five to two hundred per cent of  
9           an employee's annual compensation;

10          (13) Paid sick leave will reduce the risk of  
11          "presenteeism", or workers coming to work with  
12          illnesses and health conditions that reduce their  
13          productivity, a problem that costs the national  
14          economy \$160,000,000,000 annually; and

15          (14) Paid sick leave will reduce the competitive  
16          disadvantage currently faced by many employers that do  
17          choose to provide sick time to their workers.

18          The purpose of this Act is to establish the right for  
19 workers to accrue paid sick leave to:

20          (1) Ensure that all workers in the State can address their  
21          own health needs and the health needs of their



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- 1 families by requiring employers to provide a minimum  
2 level of paid sick leave, including time for family  
3 care;
- 4 (2) Diminish public and private health care costs in the  
5 State by enabling workers to seek early and routine  
6 medical care for themselves and their family members;
- 7 (3) Protect public health in the State by reducing the  
8 risk of contagion;
- 9 (4) Promote economic security and stability of workers and  
10 their families in the State;
- 11 (5) Protect employees in the State from losing their jobs  
12 when they use sick leave to care for themselves or  
13 their families;
- 14 (6) Safeguard public welfare, health, safety, and  
15 prosperity of the people of the State; and
- 16 (7) Accomplish the purpose of this Act in a manner that is  
17 feasible for employers.

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

21 "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.

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

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

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

"Family member" means:



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- 1           (1) A biological, adopted, or foster child; stepchild;  
2                    legal ward; a child of a reciprocal beneficiary; or a  
3                    child to whom the employee stands in loco parentis;  
4           (2) A biological, adoptive, or foster parent; stepparent;  
5                    legal guardian of an employee or an employee's spouse  
6                    or reciprocal beneficiary; or a person who stood in  
7                    loco parentis when the employee was a minor child;  
8           (3) A spouse or reciprocal beneficiary;  
9           (4) A grandparent or a spouse or reciprocal beneficiary of  
10                   a grandparent;  
11           (5) A grandchild;  
12           (6) A biological, adopted, or foster sibling; or a spouse  
13                    or reciprocal beneficiary of a biological, adopted, or  
14                    foster sibling; and  
15           (7) Any other individual related by blood or affinity  
16                    whose close association with the employee is the  
17                    equivalent of a family relationship.

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

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



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

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

8 (b) All employees shall accrue a minimum of one hour of  
9 paid sick leave for every thirty hours worked. Employees shall  
10 not accrue more than fifty-six hours of paid sick leave in a  
11 calendar year, unless the employer provides a higher limit.

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

19 (d) Paid sick leave as provided in this chapter shall  
20 begin to accrue at the later of the commencement of employment  
21 or the effective date of this chapter.



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

5           (f) Paid sick leave shall be carried over to the following  
6 calendar year; provided that an employee's use of paid sick  
7 leave pursuant to this chapter in each calendar year shall not  
8 exceed fifty-six hours, unless the employer provides a higher  
9 limit.

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

16          (h) Nothing in this section shall be construed as  
17 requiring financial or other reimbursement to an employee from  
18 an employer upon the employee's termination, resignation,  
19 retirement, or other separation from employment for unused  
20 accrued paid sick leave.



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

12           (j) An employer may advance paid sick leave to an employee  
13 prior to its accrual by the employee.

14           § -3 Use of paid sick leave. (a) An employee may use  
15 paid sick leave during absences from work due to:

16           (1) An employee's mental or physical illness, injury, or  
17 health condition;

18           (2) An employee's need for medical diagnosis, care, or  
19 treatment of a mental or physical illness, injury, or  
20 health condition;

21           (3) An employee's need for preventive medical care;



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- 1           (4) An employee's need to seek medical attention, legal  
2           services, or victim services for a mental or physical  
3           illness, injury, or health condition caused by  
4           domestic abuse, sexual assault, or harassment to the  
5           employee or a family member, or related to preparation  
6           for or participation in a civil or criminal  
7           proceeding;
- 8           (5) An employee's need for preventive medical care;
- 9           (6) Care of a family member with a mental or physical  
10          illness, injury, or health condition; care of a family  
11          member who needs medical diagnosis, care, or treatment  
12          of a mental or physical illness, injury, or health  
13          condition; or care of a family member who needs  
14          preventive medical care; and
- 15          (7) Closure of the employee's place of business by order  
16          of a public official due to a public health emergency,  
17          an employee's need to care for a child whose school or  
18          place of care has been closed by order of a public  
19          official due to a public health emergency, or care for  
20          a family member when it has been determined by the  
21          health authorities having jurisdiction or by a health



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1 care professional that the family member's presence in  
2 the community would jeopardize the health of others  
3 because of the family member's exposure to a  
4 communicable disease, regardless of whether the family  
5 member has actually contracted the communicable  
6 disease.

7 (b) Paid sick leave shall be provided upon the oral  
8 request of an employee. When possible, the request shall  
9 include the expected duration of the absence.

10 (c) When the use of paid sick leave is foreseeable, the  
11 employee shall make a good faith effort to provide notice of the  
12 need for the leave to the employer in advance of the use of the  
13 paid sick leave and shall make a reasonable effort to schedule  
14 the use of paid sick leave in a manner that does not unduly  
15 disrupt the operations of the employer.

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

20 § -4 Supplemental paid sick leave; public health  
21 emergencies. (a) Notwithstanding section -2, on the date a



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1 public health emergency is declared, each employer shall  
2 supplement each employee's accrued paid sick leave under this  
3 section as necessary to ensure that an employee can take the  
4 following amounts of paid sick leave:

5 (1) For employees who normally work forty or more hours in  
6 a week, at least eighty hours of paid sick leave in a  
7 calendar year; and

8 (2) For employees who normally work fewer than forty hours  
9 in a week, at least the greater of the amount of time  
10 the employee is scheduled to work in a fourteen-day  
11 period or the amount of time the employee actually  
12 works on average in a fourteen-day period.

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

16 (c) An employee may use paid sick leave under this section  
17 until four weeks after the official termination or suspension of  
18 the public health emergency for any absence related to the  
19 public health emergency, including:

20 (1) An employee's need to self-isolate because the  
21 employee has been diagnosed with a communicable



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1 illness that is the cause of the public health  
2 emergency;

3 (2) The employee is experiencing symptoms of a  
4 communicable illness that is the cause of the public  
5 health emergency;

6 (3) The employee's need to seek or obtain a medical  
7 diagnosis, medical care, medical treatment, or  
8 preventative care for symptoms of a communicable  
9 illness that is the cause of the public health  
10 emergency; or

11 (4) The employee's need to provide care for a family  
12 member who is self-isolating after being diagnosed  
13 with, is experiencing symptoms of, or is seeking a  
14 medical diagnosis, medical care, or medical treatment  
15 for a communicable illness that is the cause of the  
16 public health emergency.

17 § -5 Notice and posting. (a) An employer shall give  
18 its employees notice of the following:

19 (1) That employees are entitled to paid sick leave;

20 (2) The amount of paid sick leave granted pursuant to this  
21 chapter;



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1           (3) The terms of paid sick leave use as guaranteed under  
2           this chapter; and

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

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

8           (1) Individualized notice; or

9           (2) Displaying a poster in a conspicuous and accessible  
10          place in each establishment where its employees are  
11          employed.

12          The notice or poster shall be in English and in any  
13 language that is the first language spoken by at least five per  
14 cent of the employer's workforce.

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



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1 (d) An employer who wilfully violates the notice and  
2 posting requirements of this section shall be subject to a civil  
3 fine in an amount not to exceed \$100 for each separate offense.

4 § -6 **Employer records.** An employer shall retain records  
5 documenting hours worked by employees and paid sick leave taken  
6 by employees for a period of five years and shall allow the  
7 director access to the records, with appropriate notice and at a  
8 mutually agreeable time, to monitor compliance with the  
9 requirements of this chapter. If an issue arises as to an  
10 employee's entitlement to paid sick leave under this chapter, it  
11 shall be presumed that the employer has violated this chapter,  
12 absent clear and convincing evidence otherwise, if the employer  
13 does not maintain or retain adequate records documenting hours  
14 worked by the employee and paid sick leave taken by the employee  
15 or does not allow the director reasonable access to the records.

16 § -7 **Enforcement.** (a) An employee or other person may  
17 report to the director any suspected violation of this chapter.  
18 The director shall encourage reporting pursuant to this  
19 subsection by keeping confidential, to the maximum extent  
20 permitted by applicable laws, the name and other identifying  
21 information of the employee or person reporting the suspected



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1 violation; provided that with the authorization of the person,  
2 the director may disclose the person's name and identifying  
3 information as necessary to enforce this chapter or for other  
4 appropriate purposes.

5 (b) The director, the attorney general, any person  
6 aggrieved by a violation of this chapter, or any labor  
7 organization a member of which is aggrieved by a violation of  
8 this chapter, may bring a civil action in a court of competent  
9 jurisdiction against an employer who violates this chapter. The  
10 action may be brought without first filing an administrative  
11 complaint.

12 (c) Upon prevailing in an action brought pursuant to this  
13 section, aggrieved persons shall recover:

- 14 (1) The full amount of any paid sick leave to which the  
15 person is entitled;
- 16 (2) Actual damages suffered as the result of the  
17 employer's violation of this chapter; and
- 18 (3) Reasonable attorney's fees.

19 Aggrieved persons shall also be entitled to equitable  
20 relief as may be appropriate to remedy the violation including  
21 reinstatement, back pay, and injunctive relief.



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

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

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

15 § -9 Employer adoption of more generous sick leave  
16 policies; no effect on contracts, agreements, and plans  
17 providing more generous sick leave. (a) Nothing in this  
18 chapter shall be construed to discourage or prohibit an employer  
19 from the adoption or retention of a paid sick leave policy more  
20 generous to the employee than the one required by this chapter.



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1           (b) Nothing in this chapter shall be construed as  
2 diminishing the obligation of an employer to comply with any  
3 contract, collective bargaining agreement, employment benefit  
4 plan, or other agreement providing more generous paid sick leave  
5 to an employee than required herein.

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

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

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



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

4 SECTION 5. This Act shall take effect on July 1, 2021;  
5 provided that in the case of employees covered by a collective  
6 bargaining agreement in effect on July 1, 2021, this Act shall  
7 take effect on the date of termination, renewal, or amendment of  
8 the collective bargaining agreement then in effect.

9

INTRODUCED BY:



JAN 20 2021



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**Report Title:**

Employment; Paid Sick Leave

**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 and supplemental paid sick leave to employees under certain public health emergency conditions.

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

