

JAN 19 2023

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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-three per cent of private industry workers in  
9 March 2021. These benefits were available to  
10 twelve per cent of workers in the lowest twenty-fifth  
11 per cent wage category and available to thirty-seven  
12 per cent of workers in the highest twenty-fifth  
13 per cent wage category, which leaves a significant  
14 segment of the nation's workers without paid sick  
15 leave. In Hawaii, an estimated forty-two per cent of  
16 private sector workers lack paid sick leave, according  
17 to Hawaii Children's Action Network Speaks!, citing a



- 1           2015 analysis by the Institute for Women's Policy  
2           Research;
- 3           (3) Low-income workers are significantly less likely to  
4           have paid sick leave benefits in comparison to other  
5           members of the workforce. Only one in five low-income  
6           workers has access to paid sick leave;
- 7           (4) The coronavirus disease 2019 (COVID-19) pandemic has  
8           made it glaringly evident that paid sick leave is  
9           essential for workers and their families to be able to  
10          quarantine, recover, and care for others without  
11          having to choose between lack of a paycheck and their  
12          health and the well-being of the community. It has  
13          become apparent that more than ever, paid sick leave  
14          is a critical public health tool in combatting the  
15          spread of COVID-19, illness, and other diseases and  
16          has a positive effect on public health;
- 17          (5) Providing workers time off to attend to their personal  
18          health care needs and the health care needs of family  
19          members would ensure a healthier and more productive  
20          workforce in the State;



1 (6) Every day, an estimated one hundred and fifty-seven  
2 thousand unpaid family caregivers provide one hundred  
3 thirty-one million hours of care a year in Hawaii at a  
4 value of \$2,100,000,000, according to AARP Hawaii.

5 Without access to paid sick leave, working family  
6 caregivers cannot adequately care for relatives;

7 (7) Paid sick leave will reduce health care expenditures  
8 by promoting access to primary and preventive care.

9 Nationally, providing all workers with paid sick leave  
10 would result in \$1,100,000,000 in annual savings in  
11 hospital emergency room costs, with nearly half of the  
12 savings coming from publicly funded health insurance  
13 programs such as medicare, medicaid, and the state  
14 children's health insurance program. Access to paid  
15 sick leave can also help decrease the likelihood that  
16 a worker will put off needed care and increase the use  
17 of preventive care among workers and their family  
18 members;

19 (8) Paid sick leave will allow parents to provide personal  
20 care for their sick children. Parental care makes  
21 children's recovery faster and can prevent future



1 health problems. Parents who do not have paid sick  
2 leave are more than twice as likely as parents with  
3 paid sick days to send a sick child to school or day  
4 care and are 2.5 times as likely to report taking  
5 their child or other family member to a hospital  
6 emergency room because they were unable to take time  
7 off from work during regular work hours;

8 (9) Paid sick leave will reduce contagion. Workers in  
9 jobs with high levels of public contact, such as  
10 restaurant workers and child care workers, are very  
11 unlikely to have paid sick leave. As a result, these  
12 workers may have no choice but to go to work when they  
13 are ill, thereby increasing the risk of passing  
14 illnesses on to co-workers and customers while  
15 jeopardizing their own health. Overall, people  
16 without paid sick leave are 1.5 times more likely than  
17 people with paid sick leave to go to work with a  
18 contagious illness;

19 (10) Employees frequently lose their jobs or are  
20 disciplined for taking sick leave to care for sick  
21 family members or even to recover from their own



1 illness. One in six workers reports that the worker  
2 or a family member has been fired, suspended,  
3 punished, or threatened by an employer because the  
4 worker or family member needed to take sick leave for  
5 themselves or a family member;

6 (11) When an outbreak that presents a threat to public  
7 health occurs, such as the COVID-19 pandemic,  
8 government officials request that sick workers stay  
9 home and keep sick children home from school or  
10 child care to prevent the spread of the illness and to  
11 safeguard workplace productivity. However, to protect  
12 their paychecks and their jobs, many workers who lack  
13 paid sick leave are unable to comply;

14 (12) Providing a minimal amount of paid sick leave is  
15 affordable for employers. Paid sick leave results in  
16 reduced worker turnover, which leads to reduced costs  
17 incurred for advertising, interviewing, and training  
18 new hires. Replacing workers can cost anywhere from  
19 sixteen to two hundred per cent of annual  
20 compensation;



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

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

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

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

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

19 (3) Protect public health in the State by reducing the  
20 risk of contagion;



- 1 (4) Promote economic security and stability of workers and
- 2 their families in the State;
- 3 (5) Protect employees in the State from losing their jobs
- 4 when they use sick leave to care for themselves or
- 5 their families;
- 6 (6) Safeguard public welfare, health, safety, and
- 7 prosperity of the people of the State; and
- 8 (7) Accomplish all of the above in a manner that is
- 9 feasible for employers.

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

13 "CHAPTER

14 PAID SICK LEAVE

15 § -1 Definitions. As used in this chapter, unless the  
 16 context clearly requires otherwise:

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

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



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

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

12 "Family member" means:

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



- 1 (4) A grandparent or a spouse or reciprocal beneficiary of
- 2 a grandparent;
- 3 (5) A grandchild;
- 4 (6) A biological, adopted, or foster sibling; or a spouse
- 5 or reciprocal beneficiary of a biological, adopted, or
- 6 foster sibling; and
- 7 (7) Any other individual related by blood or affinity
- 8 whose close association with the employee is the
- 9 equivalent of a family relationship.

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

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

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

18 § -2 **Accrual of paid sick leave.** (a) All employees who  
19 work in the State for more than eighty hours in a year shall  
20 have the right to paid sick leave as provided in this chapter.



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

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

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

15 (e) Employees shall be entitled to use accrued paid sick  
16 leave beginning on the ninetieth calendar day following  
17 commencement of employment. After the ninetieth calendar day of  
18 employment, employees may use paid sick leave as it is accrued.

19 (f) Paid sick leave shall be carried over to the following  
20 calendar year; provided that an employee's use of paid sick  
21 leave pursuant to this chapter in each calendar year shall not



1 exceed fifty-six hours, unless the employer provides a higher  
2 limit.

3 (g) An employer shall not be required to provide  
4 additional paid sick leave if the employer has a paid leave  
5 policy that makes available an amount of paid leave sufficient  
6 to meet the accrual requirements of this chapter and that may be  
7 used for the same purposes and under the same conditions as paid  
8 sick leave under this chapter.

9 (h) Nothing in this section shall be construed as  
10 requiring financial or other reimbursement to an employee from  
11 an employer upon the employee's termination, resignation,  
12 retirement, or other separation from employment for unused  
13 accrued paid sick leave.

14 (i) If an employee is transferred to a separate division,  
15 entity, or location but remains employed by the same employer,  
16 the employee shall be entitled to all paid sick leave accrued at  
17 the prior division, entity, or location and shall be entitled to  
18 use all paid sick leave as provided in this chapter. If an  
19 employee is separated from employment and subsequently rehired  
20 within six months of separation by the same employer, the  
21 employee's previously accrued and unused paid sick leave shall



1 be reinstated. In addition, the employee shall be entitled to  
2 use accrued paid sick leave and to accrue additional paid sick  
3 leave as of the date of re-commencement of employment.

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

6 § -3 Use of paid sick leave. (a) An employee may use  
7 paid sick leave during absences from work due to:

- 8 (1) An employee's mental or physical illness, injury, or  
9 health condition;
- 10 (2) An employee's need for medical diagnosis, care, or  
11 treatment of a mental or physical illness, injury, or  
12 health condition;
- 13 (3) An employee's need for preventive medical care;
- 14 (4) An employee's need to seek medical attention, legal  
15 services, or victim services for a mental or physical  
16 illness, injury, or health condition caused by  
17 domestic abuse, sexual assault, or harassment to the  
18 employee or a family member, or related to preparation  
19 for or participation in a civil or criminal  
20 proceeding;
- 21 (5) An employee's need for preventive medical care;



- 1           (6) Care of a family member with a mental or physical  
2           illness, injury, or health condition; care of a family  
3           member who needs medical diagnosis, care, or treatment  
4           of a mental or physical illness, injury, or health  
5           condition; or care of a family member who needs  
6           preventive medical care; and
- 7           (7) Closure of the employee's place of business by order  
8           of a public official due to a public health emergency,  
9           an employee's need to care for a child whose school or  
10          place of care has been closed by order of a public  
11          official due to a public health emergency, or care for  
12          a family member when it has been determined by the  
13          health authorities having jurisdiction or by a health  
14          care professional that the family member's presence in  
15          the community would jeopardize the health of others  
16          because of the family member's exposure to a  
17          communicable disease, regardless of whether the family  
18          member has actually contracted the communicable  
19          disease.



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

4 (c) When the use of paid sick leave is foreseeable, the  
5 employee shall make a good faith effort to provide notice of the  
6 need for the leave to the employer in advance of the use of the  
7 paid sick leave and shall make a reasonable effort to schedule  
8 the use of paid sick leave in a manner that does not unduly  
9 disrupt the operations of the employer.

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

14 **§ -4 Supplemental paid sick leave; public health**  
15 **emergencies.** (a) Notwithstanding section -2, on the date a  
16 public health emergency is declared, each employer shall  
17 supplement each employee's accrued paid sick leave under this  
18 section as necessary to ensure that an employee can take the  
19 following amounts of paid sick leave:



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

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

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

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

16 (1) An employee's need to self-isolate because the  
17 employee has been diagnosed with a communicable  
18 illness that is the cause of the public health  
19 emergency;



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

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

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

15          § -5 Notice and posting. (a) An employer shall give  
16 its employees notice of the following:

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

18          (2) The amount of paid sick leave granted pursuant to this  
19          chapter;

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



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

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

6 (1) Individualized notice; or

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

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

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

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



1 Each failure to issue notice or display a poster pursuant to  
2 this section shall constitute a separate offense.

3       **§ -6 Employer records.** An employer shall retain records  
4 documenting hours worked by employees and paid sick leave taken  
5 by employees for a period of five years and shall allow the  
6 director access to the records, with appropriate notice and at a  
7 mutually agreeable time, to monitor compliance with the  
8 requirements of this chapter. If an issue arises as to an  
9 employee's entitlement to paid sick leave under this chapter, it  
10 shall be presumed that the employer has violated this chapter,  
11 absent clear and convincing evidence otherwise, if the employer  
12 does not maintain or retain adequate records documenting hours  
13 worked by the employee and paid sick leave taken by the employee  
14 or does not allow the director reasonable access to the records.

15       **§ -7 Enforcement.** (a) An employee or other person may  
16 report to the director any suspected violation of this chapter.  
17 The director shall encourage reporting pursuant to this  
18 subsection by keeping confidential, to the maximum extent  
19 permitted by applicable laws, the name and other identifying  
20 information of the employee or person reporting the suspected  
21 violation; provided that with the authorization of the person,



1 the director may disclose the person's name and identifying  
2 information as necessary to enforce this chapter or for other  
3 appropriate purposes.

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

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

13 (1) The full amount of any paid sick leave to which the  
14 person is entitled;

15 (2) Actual damages suffered as the result of the  
16 employer's violation of this chapter; and

17 (3) Reasonable attorney's fees.

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



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.



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 by this chapter.

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.



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, 2023;  
5 provided that in the case of employees covered by a collective  
6 bargaining agreement in effect on July 1, 2023, 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:

A handwritten signature in black ink, consisting of stylized, overlapping letters, is written over a horizontal line.

# S.B. NO. 342

**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.*

