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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 most workers in the  
2 State, at some time during the year, need temporary time off  
3 from work to take care of their personal health needs or the  
4 health needs of members of their families. However, according  
5 to the United States Bureau of Labor Statistics, paid sick leave  
6 was not available to twenty-three per cent of private industry  
7 workers in March 2021. These benefits were available to twelve  
8 per cent of workers in the lowest twenty-fifth per cent wage  
9 category and available to thirty-seven per cent of workers in  
10 the highest twenty-fifth per cent wage category, which leaves a  
11 significant segment of the nation's workers without paid sick  
12 leave. In Hawaii, an estimated forty-two per cent of private  
13 sector workers lack paid sick leave, according to Hawai'i  
14 Children's Action Network Speaks!, citing a 2015 analysis by the  
15 Institute for Women's Policy Research. Additionally, low-income  
16 workers are significantly less likely to have paid sick leave



1 benefits in comparison to other members of the workforce. Only  
2 one in five low-income workers has access to paid sick leave.

3 The legislature further finds that the COVID-19 pandemic  
4 has made it glaringly evident that paid sick leave is essential  
5 for workers and their families to be able to quarantine,  
6 recover, and care for others without having to choose between  
7 lack of a paycheck, their health, and the well-being of the  
8 community. It has become apparent that more than ever, paid  
9 sick leave is a critical public health tool in combatting the  
10 spread of COVID-19 and other diseases and has a positive effect  
11 on public health.

12 Providing workers time off to attend to their personal  
13 health care needs and the health care needs of family members  
14 would ensure a healthier and more productive workforce in the  
15 State. Every day, an estimated 157,000 unpaid family caregivers  
16 provide one hundred thirty-one million hours of care a year in  
17 Hawaii at a value of \$2,100,000,000, according to AARP Hawai'i.  
18 Without access to paid sick leave, working family caregivers  
19 cannot adequately care for relatives. Paid sick leave will  
20 reduce health care expenditures by promoting access to primary  
21 and preventive care. Nationally, providing all workers with



1 paid sick leave would result in \$1,100,000,000 in annual savings  
2 in hospital emergency room costs, with nearly half of the  
3 savings coming from publicly funded health insurance programs  
4 such as medicare, medicaid, and the state children's health  
5 insurance program. Access to paid sick leave can also help  
6 decrease the likelihood that a worker will put off needed care  
7 and help increase the use of preventive care among workers and  
8 their family members.

9 Paid sick leave will also allow parents to provide care for  
10 their sick children. Parental care makes children's recovery  
11 faster and can prevent future health problems. Parents who do  
12 not have paid sick leave are more than twice as likely as  
13 parents with paid sick leave to send a sick child to school or  
14 day care and are 2.5 times as likely to report taking their  
15 child or other family member to a hospital emergency room  
16 because they were unable to take time off from work during  
17 regular work hours.

18 Paid sick leave will reduce contagion. Workers in jobs  
19 with high levels of public contact, such as restaurant workers  
20 and child care workers, are very unlikely to have paid sick  
21 leave. As a result, these workers may have no choice but to go



1 to work when they are ill, thereby increasing the risk of  
2 passing illnesses on to co-workers and customers while  
3 jeopardizing their own health. Overall, people without paid  
4 sick leave are 1.5 times more likely than people with paid sick  
5 leave to go to work with a contagious illness. Employees also  
6 frequently lose their jobs or are disciplined for taking sick  
7 leave to care for sick family members or even to recover from  
8 their own illness. One in six workers reports that the worker  
9 or a family member has been fired, suspended, punished, or  
10 threatened by an employer because the worker or family member  
11 needed to take sick leave for themselves or a family member.  
12 When an outbreak that presents a threat to public health occurs,  
13 such as the COVID-19 pandemic, government officials request that  
14 sick workers stay home and keep sick children home from school  
15 or child care to prevent the spread of the illness and to  
16 safeguard workplace productivity. However, to protect their  
17 paychecks and their jobs, many workers who lack paid sick leave  
18 are unable to comply.

19 The legislature finds that providing a minimal amount of  
20 paid sick leave is affordable for employers. Paid sick leave  
21 results in reduced worker turnover, which leads to reduced costs



1 incurred for advertising, interviewing, and training new hires.  
2 Replacing workers can cost anywhere from sixteen to two hundred  
3 per cent of annual compensation. Paid sick leave will reduce  
4 the risk of "presenteeism", or workers coming to work with  
5 illnesses and health conditions that reduce their productivity,  
6 a problem that costs the national economy \$160,000,000,000  
7 annually. Paid sick leave will also reduce the competitive  
8 disadvantage currently faced by many employers that do choose to  
9 provide sick time to their workers.

10 The purpose of this Act is to establish the right for  
11 workers to accrue paid sick leave by requiring employers to  
12 provide a minimum amount of paid sick leave to employees to care  
13 for themselves or a family member who is ill or needs medical  
14 care and supplemental paid sick leave to employees under certain  
15 public health emergency conditions.

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

19 **"CHAPTER**

20 **PAID SICK LEAVE**



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

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

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

7           "Employee" has the same meaning as defined in the federal  
8 Fair Labor Standards Act, title 29 United States Code section  
9 203(e), and additionally includes recipients of public benefits  
10 who are engaged in work activity as a condition of receiving  
11 public assistance and public employees who are not subject to  
12 the civil service laws of the State, a political subdivision, or  
13 a public agency. The term "employee" does not include sole  
14 proprietors and independent contractors.

15           "Employer" has the same meaning as defined in the federal  
16 Fair Labor Standards Act, title 29 United States Code section  
17 203(d).

18           "Family member" means:

- 19           (1) A biological, adopted, or foster child; stepchild;  
20                     legal ward; a child of a reciprocal beneficiary; or a  
21                     child to whom the employee stands in loco parentis;



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

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

17           "Labor organization" has the same meaning as in section  
18 378-1.

19           "Paid sick leave" means time away from work provided by an  
20 employer to an employee that is compensated at the same hourly



1 rate and with the same benefits, including health care benefits,  
2 as the employee normally earns during hours worked.

3       **§ -2 Accrual of paid sick leave.** (a) All employees who  
4 work in the State for more than eighty hours in a year shall  
5 have the right to paid sick leave as provided in this chapter.

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

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

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

20       (e) Employees shall be entitled to use accrued paid sick  
21 leave beginning on the ninetieth calendar day following



1 commencement of employment. After the ninetieth calendar day of  
2 employment, employees may use paid sick leave as it is accrued.

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

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

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

19 (i) If an employee is transferred to a separate division,  
20 entity, or location but remains employed by the same employer,  
21 the employee shall be entitled to all paid sick leave accrued at



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

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

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

- 13 (1) An employee's mental or physical illness, injury, or  
14 health condition;
- 15 (2) An employee's need for medical diagnosis, care, or  
16 treatment of a mental or physical illness, injury, or  
17 health condition;
- 18 (3) An employee's need for preventive medical care;
- 19 (4) An employee's need to seek medical attention, legal  
20 services, or victim services for a mental or physical  
21 illness, injury, or health condition caused by



1 domestic abuse, sexual assault, or harassment to the  
2 employee or a family member, or related to preparation  
3 for or participation in a civil or criminal  
4 proceeding;

5 (5) Care of a family member with a mental or physical  
6 illness, injury, or health condition; care of a family  
7 member who needs medical diagnosis, care, or treatment  
8 of a mental or physical illness, injury, or health  
9 condition; or care of a family member who needs  
10 preventive medical care; and

11 (6) Closure of the employee's place of business by order  
12 of a public official due to a public health emergency,  
13 an employee's need to care for a child whose school or  
14 place of care has been closed by order of a public  
15 official due to a public health emergency, or care for  
16 a family member when it has been determined by the  
17 health authorities having jurisdiction or by a health  
18 care professional that the family member's presence in  
19 the community would jeopardize the health of others  
20 because of the family member's exposure to a  
21 communicable disease, regardless of whether the family



1 member has actually contracted the communicable  
2 disease.

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

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

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

16 **§ -4 Supplemental paid sick leave; public health**

17 **emergencies.** (a) Notwithstanding section -2, on the date a  
18 public health emergency is declared, each employer shall  
19 supplement each employee's accrued paid sick leave under this  
20 section as necessary to ensure that an employee can take the  
21 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 five per  
12 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 employers' 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.



# H.B. NO. 235

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

INTRODUCED BY:

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "Franklin".

JAN 19 2023



# H.B. NO. 235

**Report Title:**

Employment; Paid Sick Leave

**Description:**

Requires certain 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.*

