

JAN 19 2018

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

1 SECTION 1. The legislature finds that Hawaii's working
2 families are not adequately supported during times of caregiving
3 and illness. While the Federal Family and Medical Leave Act of
4 1993 allows twelve weeks of unpaid leave to employees who have
5 worked at a business that employs fifty or more employees, the
6 majority of Hawaii's workforce cannot afford to take unpaid
7 leave to care for a new child or attend to the needs of a family
8 member with a serious health condition. Hawaii law, which
9 offers a modest four-week extension of unpaid leave, is
10 available only to employees of large employers having more than
11 one hundred employees.

12 Only eleven per cent of workers in the United States have
13 access to paid family leave through their employers. Women, as
14 primary caregivers of infants, children, and elderly parents,
15 are affected disproportionately by the unavailability of paid
16 family and medical leave. In Hawaii, 247,000 people serve as
17 family caregivers. Hawaii has the fastest growing population



1 over the age of sixty five in the nation, and that number is
2 expected to grow by eighty one per cent by the year 2030.
3 Nearly a third of those who need but do not have access to
4 family leave will need the time off to care for an ill spouse or
5 elderly parent.

6 In short, most workers will need family leave at some point
7 to care for family members, but very few can afford it.

8 The purpose of this Act is to ensure that employees in
9 Hawaii are provided family leave insurance benefits during times
10 when they need to provide care for their families.

11 SECTION 2. Chapter 398, Hawaii Revised Statutes, is
12 amended by adding nine new sections to be appropriately
13 designated and to read as follows:

14 "§398- Family leave insurance program. (a) The
15 department shall establish and administer a family leave
16 insurance program and pay family leave insurance benefits as
17 specified in this chapter.

18 (b) The department shall establish procedures and forms
19 for filing claims for family leave insurance benefits.

20 (c) The information collected and the files and records
21 retained about a covered individual pursuant to this chapter,



1 including the existence of a claim, shall be confidential and
2 shall not be open to inspection; provided that:

3 (1) An employee that applied for family leave insurance
4 benefits or that employee's representative, upon
5 presentation of an authorization signed by the
6 employee to the department, shall be allowed to review
7 any information, files, and records obtained by the
8 department;

9 (2) A public employee acting within the scope of the
10 public employee's official duties shall be permitted
11 to review the minimum necessary information, files,
12 and records to accomplish the public employee's
13 purpose for reviewing the information, files, and
14 records; and

15 (3) The department shall notify an employee's employer
16 that an employee filed a claim pursuant to this
17 chapter within days after the claim has been
18 filed.

19 §398- Designation of a family member. (a) Where an
20 employer has not established a process for a covered individual
21 to designate the family member for whom the covered individual



1 will be caring, the covered individual shall designate the
2 family member when submitting a claim for benefits under this
3 chapter.

4 (b) An employer may establish a process by which a covered
5 individual designates a family member for whom the covered
6 individual will be caring. The employer may require the covered
7 individual to comply with this process to be eligible for family
8 leave insurance benefits; provided that a covered individual
9 shall be permitted to designate a family member within thirty
10 days of the covered individual becoming eligible under this
11 chapter, and shall be permitted to make or change a designation
12 at least once annually thereafter.

13 §398- Family leave insurance fund; family leave
14 insurance benefits. (a) There is established an insurance fund
15 to be known as the family leave insurance fund. The family
16 leave insurance fund shall be used to provide a covered
17 individual with up to sixteen weeks per calendar year of paid
18 family leave.

19 (b) The family leave insurance fund shall consist of
20 employer and employee contributions based on the employee's
21 average weekly wage, interest earned, income, dividends,



1 refunds, rate credits, and other returns received by the fund.

2 The taxable rate of the contribution shall be in accordance with
3 the contribution rate to the temporary disability insurance
4 fund.

5 (c) The family leave insurance fund shall be under the
6 control of and administered by the department. Any and all sums
7 contributed or paid from any source to the family leave fund,
8 and all assets of the fund including any and all interest and
9 earnings of the same, shall be held by the department for the
10 exclusive use and benefit of the employee-beneficiaries. The
11 fund shall be used to finance benefits, administration,
12 outreach, and education or study of family leave insurance. The
13 fund shall not be subject to appropriation for any other
14 purpose.

15 §398- Eligibility for payment of benefits. Family leave
16 insurance benefits are payable to:

17 (a) An employed covered individual; or

18 (b) An unemployed covered individual who meets one of the
19 following requirements:

20 (1) Because of birth, adoption, or placement through
21 foster care, is caring for a new child during the



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- 1 first year after the birth, adoption, or
- 2 placement;
- 3 (2) Is caring for a family member with a serious
- 4 health condition;
- 5 (3) Is caring for a qualifying service member who is
- 6 the employee's next of kin; or
- 7 (4) Has a qualifying exigency.

8 §398- Report to the legislature. Beginning July 1,
9 2020, the department shall report to the legislature no later
10 than twenty days prior to the convening of each regular session
11 on outreach efforts, projected and actual program participation,
12 including the percentage of covered employees who received
13 family leave insurance benefits, the premium rates, and fund
14 balances.

15 §398- Outreach and education. The department shall
16 conduct a public outreach and education campaign to inform
17 employees and employers regarding the availability of family
18 leave insurance benefits. The department may use a portion of
19 the funds collected for the family leave insurance program in a
20 given year to pay for the public education program, but no more
21 than per cent per year or \$ per year, whichever is



1 greater. Outreach information shall be available in English and
2 other languages spoken within the State.

3 §398- Coverage of self-employed. (a) A self-employed
4 person, including a sole proprietor, partner, or joint venture
5 partner, shall be permitted to elect coverage under this chapter
6 by filing a notice of election in writing with the director, as
7 required by the department, as follows:

8 (1) A self-employed person shall be permitted to elect
9 coverage under this chapter for an initial period of
10 not less than three years; and

11 (2) A self-employed person shall be permitted to elect no
12 less than an additional year of coverage following the
13 initial three-year period.

14 The election shall take effect on the date of filing the notice.

15 (b) A self-employed person who has elected coverage may
16 withdraw from coverage within thirty days after the end of the
17 three-year period of coverage, or at other times as the director
18 may prescribe by rule, by filing a notice in writing with the
19 director, as required by the department. The withdrawal shall
20 take effect no sooner than thirty days after filing the notice.



1 §398- Wage withholding. (a) An employer may deduct and
2 withhold contributions from each employee of up to one-half the
3 cost of providing family leave insurance benefits, and the
4 employer shall provide for the remaining cost over the amount of
5 contributions of the employer's employees.

6 (b) If there is a dispute between the employee and the
7 employer relating to the withholding of wages as contributions
8 for family leave insurance benefits, either party may file a
9 petition for determination of the amount to be withheld with the
10 director. The matter shall be determined by the department.

11 If either an employer or employee is dissatisfied with the
12 department's determination, the aggrieved party shall be able to
13 the petition for redetermination and thereupon the petition
14 shall be transferred to the referee.

15 §398- Weekly benefit amount. (a) The weekly benefit
16 amount shall be calculated as follows:

17 (1) If the individual's average weekly wage is fifty per
18 cent or less of the state average weekly wage, the
19 individual's weekly benefit is ninety per cent of the
20 individual's average weekly wage;



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1 (2) If the individual's average weekly wage is more than
2 fifty per cent and less than one hundred per cent of
3 the state average weekly wage, the individual's weekly
4 benefit is seventy-five per cent of the individual's
5 average weekly wage; or

6 (3) If the individual's average weekly wage is one hundred
7 per cent or more of the state average weekly wage, the
8 individual's weekly benefit is fifty per cent of the
9 individual's average weekly wage.

10 (b) In no case shall the weekly benefit amount exceed the
11 maximum weekly benefit amount of \$1,000.00."

12 SECTION 3. Section 398-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By adding five new definitions to be appropriately
15 inserted and to read:

16 "Covered individual" means any person who:

17 (1) Is an employee, or is currently unemployed but has
18 been an employee within the last twenty-six weeks;

19 (2) Meets the requirements of this chapter and the
20 requirements in the rules implemented pursuant to this
21 chapter; and



1 (3) Submits an application for family leave insurance
2 benefits to the department.

3 "Designated person" means a family member designated by a
4 covered individual for whom the covered individual will provide
5 care under this chapter if the family member has a serious
6 health condition.

7 "Family leave insurance benefits" means the benefits
8 provided pursuant to this chapter.

9 "Family member" means a child, parent, person to whom the
10 covered individual is legally married under the laws of any
11 state, a biological, foster, or adopted sibling, or the spouse
12 or reciprocal beneficiary of a sibling, or a reciprocal
13 beneficiary.

14 "Qualifying exigency" means a circumstance arising from a
15 notice of deployment of a service member, received within seven
16 days of deployment, or mandatory attendance of military events
17 or related activities by the covered individual or the covered
18 individuals' family member that requires the covered individual
19 to:



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- 1 (1) Provide child care or attendance of school activities,
2 if due directly or indirectly to the active duty call
3 or active duty status of a service member;
- 4 (2) Make financial or legal arrangements for a service
5 member's absence or as a result of the service
6 member's absence;
- 7 (3) Attend counseling provided by someone other than a
8 health care provider if the need for counseling arises
9 from the active duty call or active duty of a service
10 member; or
- 11 (4) Spend up to five days with a service member for each
12 instance of short-term, temporary rest and
13 recuperation leave during a period of deployment."

14 2. By amending the definitions of "child", "employer", and
15 "parent" to read:

16 "'Child" means an individual who is a biological, adopted,
17 or foster son or daughter; a stepchild; [~~or~~] a legal ward of [~~an~~
18 ~~employee.~~] a covered individual; a child of a reciprocal
19 beneficiary; a grandchild; or a child of a covered individual
20 who stands in loco parentis.



1 "Employer" means any individual or organization, including
2 the State, any of its political subdivisions, any
3 instrumentality of the State or its political subdivisions, any
4 partnership, association, trust, estate, joint stock company,
5 insurance company, or corporation, whether domestic or foreign,
6 or receiver or trustee in bankruptcy, or the legal
7 representative of a deceased person, who employs one [hundred]
8 or more employees for each working day during each of twenty or
9 more calendar weeks in the current or preceding calendar year.

10 "Parent" means a biological, foster, or adoptive parent, a
11 parent-in-law, a stepparent, a legal guardian, a grandparent,
12 [~~e~~] a grandparent-in-law[~~r~~], a parent or grandparent of a
13 reciprocal beneficiary, or a person who stands in loco parentis
14 for a minor child."

15 SECTION 4. Section 398-3, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (a) to read:

18 "(a) [~~An employee~~] A covered individual shall be entitled
19 to a total of [~~four~~] sixteen weeks of family leave during any
20 calendar year:



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1 ~~[(1) Upon the birth of a child of the employee or the~~
 2 ~~adoption of a child; or~~
 3 ~~(2) To care for the employee's child, spouse, reciprocal~~
 4 ~~beneficiary, sibling, or parent with a serious health~~
 5 ~~condition.]~~

6 (1) To care for the covered individual's child within
 7 twelve months of the child's birth, foster placement
 8 with the covered individual, or placement for adoption
 9 with the covered individual; or

10 (2) To care for a covered individual's family member with
 11 a serious health condition."

12 2. By amending subsection (e) to read:

13 "(e) Nothing in this chapter shall entitle an employee to
 14 more than a total of [~~four~~] sixteen weeks of leave in any
 15 twelve-month period."

16 SECTION 5. Section 398-4, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "**§398-4** [~~Unpaid leave~~] Leave permitted; relationship to
 19 paid leave; sick leave. (a) Pursuant to section 398-3, an
 20 employee shall be entitled to [~~four~~] sixteen weeks of family
 21 leave. [~~The family leave shall consist of unpaid leave, paid~~



1 ~~leave, or a combination of paid and unpaid leave. If an~~
2 ~~employer provides paid family leave for fewer than four weeks,~~
3 ~~the additional period of leave added to attain the four-week~~
4 ~~total may be unpaid.] An employer who provides paid family
5 leave beyond what is required by this chapter may require that
6 the leave run concurrently with the sixteen weeks required under
7 this chapter, but shall not require the leave to be applied
8 against accrued sick or vacation hours.~~

9 (b) Except as otherwise provided in subsection (c), an
10 employee may elect to substitute any of the employee's accrued
11 paid leaves, including but not limited to vacation, personal, or
12 family leave for any part of the [~~four-week~~] sixteen-week period
13 in subsection (a).

14 [~~(c) An employer who provides sick leave for employees~~
15 ~~shall permit an employee to use the employee's accrued and~~
16 ~~available sick leave for purposes of this chapter; provided that~~
17 ~~an employee shall not use more than ten days per year for this~~
18 ~~purpose, unless an express provision of a valid collective~~
19 ~~bargaining agreement authorizes the use of more than ten days of~~
20 ~~sick leave for family leave purposes. Nothing in this section~~
21 ~~shall require an employer to diminish an employee's accrued and~~



1 ~~available sick leave below the amount required pursuant to~~
2 ~~section 392-41; provided that any sick leave in excess of the~~
3 ~~minimum statutory equivalent for temporary disability benefits~~
4 ~~as determined by the department may be used for purposes of this~~
5 ~~chapter.]~~

6 (c) No assignment, pledge, or encumbrance of any right to
7 benefits that are or may become due or payable under this
8 chapter shall be valid; and the rights to benefits shall be
9 exempt from levy, execution, attachment, garnishment, or any
10 other remedy whatsoever provided for the collection of debt. No
11 waiver of any exemption in this section shall be valid.

12 (d) Nothing in this chapter shall prevent a biological
13 mother who is receiving temporary disability benefits for
14 recovery from childbirth from applying for and receiving paid
15 family leave for the purpose of caregiving and bonding with her
16 child after the temporary disability time period has lapsed.
17 For family leave purposes, there shall be no waiting period for
18 benefits to begin.

19 (e) Benefits under the Family and Medical Leave Act of
20 1993 shall run concurrently with benefits under this chapter."



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1 SECTION 6. Section 398-21, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Any individual claiming to be aggrieved by an alleged
4 unlawful act under this chapter, including the denial of family
5 leave insurance benefits, may file with the department a
6 verified complaint in writing."

7 SECTION 7. Section 398-23, Hawaii Revised Statutes, is
8 amended by amending subsection (d) to read as follows:

9 "(d) If the department determines after investigation that
10 this chapter has been violated[7] by an employer, the department
11 shall inform the employer and endeavor to remedy the violation
12 by informal methods, such as conference or conciliation. If the
13 department determines that family medical leave insurance
14 benefits have been wrongfully withheld, the department shall
15 order immediate payment to the employee found to be entitled to
16 those benefits."

17 SECTION 8. Section 398-24, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Upon appeal by a complainant or by the employer, the
20 order issued by the department shall be subject to a de novo
21 review by a hearings officer appointed by the director."



1 SECTION 9. Section 398-26, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Relief under this section may include:

4 (1) The amount of any family leave insurance benefits,
5 wages, salary, employment benefits, or other
6 compensation denied or lost to the employee by reason
7 of the violation; or

8 (2) In a case in which family leave insurance benefits,
9 wages, salary, employment benefits, or other
10 compensation have not been denied or lost to the
11 employee, any actual monetary losses sustained by the
12 employee as a direct result of the violation, such as
13 the cost of providing care, up to a sum equal to four
14 weeks of wages or salary for the employee."

15 SECTION 10. Section 398-2, Hawaii Revised Statutes, is
16 repealed.

17 [~~"§398-2 Inapplicability. The rights provided under
18 this chapter shall not apply to employees of an employer with
19 fewer than one hundred employees."~~]

20 SECTION 11. The department shall establish rules pursuant
21 to chapter 91 to implement the purposes of this Act.



1 SECTION 12. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$300,000 or so much
 3 thereof as may be necessary for fiscal year 2018-2019 for the
 4 purpose of hiring and employing an administrator, administrative
 5 assistant, and an accountant to perform functions relating to
 6 the administration of the family leave trust fund, including the
 7 oversight of payroll deductions, administrative processes, and
 8 payment to eligible employees.

9 The sum appropriated shall be expended by the department of
 10 labor and industrial relations for the purposes of this Act.

11 SECTION 13. This Act does not affect rights and duties
 12 that matured, penalties that were incurred, and proceedings that
 13 were begun before its effective date.

14 SECTION 14. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 15. This Act shall take effect on July 1, 2018.
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Report Title:

Family Leave; Insurance; Private; Appropriation

Description:

Establishes a family leave insurance program, which requires employees and employers to make contributions into an insurance fund to be used to provide employees with family leave insurance benefits in order to care for a designated person. Appropriates funds to implement the program.

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

