

Family Leave Working Group
Tuesday, December 2, 2008, 2:00 PM
Room 224, State Capitol

MINUTES

- I. Welcome and Introductions by Chair Wes Lum.
- II. The minutes of the November 6, 2008 minute were unavailable for approval.
- III. Attendance

Members Present:

Wes Lum	Hawaii Family Caregiver Coalition and UH Center on Aging
Joy Kuwabara	HGEA
Benjamin Ventura	Wal-Mart/Chamber of Commerce
Eudice Schick	PABEA
Glenn Ida	Hawaii Teamsters Local 996
Jacob Herlitz	DOTAX
Jim Shon	Kokua Council
Adele Ching	Executive Office on Aging
Joanne Kealoha	ILWU
Sherry Menor-McNamara	Chamber of Commerce
Aileen Befitel	DHS

Members Absent:

Harold Dias	IBEW
James Hardway	DLIR
Gerard Russo	UHM Department of Economics
Shawn Carbrey	SHRM
Melissa Pavlicek	NFIB

Guests:

Representative Marilyn Lee
Ann Thornock, Representative Marilyn Lee Staff

- IV. Sherry Menor-McNamara made contact with a company that provides TDI insurance to speak on adequacy; however, because they don't know what kind of impact it would have, they declined the request. They felt they could not give an assessment at this time because they didn't have enough information.

Chair Lum asked if there were any other groups that could address the issue and be willing to answer specific questions.

Menor-McNamara indicated that she had sent an e-mail to the California Chamber of Commerce asking if they are aware of a company that could provide an assessment.

- V. Chair Lum said that he felt it would be beneficial to poll committee members to see if their organizations are committed to wage replacement benefits before moving forward.
- A. EOA – Their mission is to support elders that live in the community. They support compensating caregivers. Because they are attached to the Department of Health, they must support the Governor's budget priorities. They don't know the Governor or DOH's stand at this time. Staff is supportive of caregivers.
 - B. ILWU strongly supports as an indication to caregivers that their contribution is valued.
 - C. PABEA is in support.
 - D. DHS has reservations. They would need more information as to how it would come to fruition before they could take a position. Medicaid does have the ability to pay family members who are caregivers.
 - E. Teamsters support. There are some companies now that are trying creative ways to help caregivers.
 - F. DOTAX is waiting for more information before taking a position.
 - G. Kokua Council supports. More answers are needed. It hasn't really been looked at because there is no proposal as yet.
 - F. Chamber of Commerce – Can't support. They are open to a state administered/employee funded program.
 - G. Hawaii Caregiver Coalition supports.
- VII. Discussion of Kokua Council/ILWU Legislative Proposal (see attached)
Proposal included the following points:
- In discussion it became apparent that we don't have enough data to determine the need for paid family leave and there is no system to collect data.
 - An integrated collection of data is needed throughout the system that could let policymakers have solid data to make decisions.
 - Data could be collected at the point employees apply for family leave.
 - Data could be collected on an encrypted website.
 - There is a "guesstimate" of 80,000 to 100,000 employees that may use family leave.
 - Discrepancy between the state and federal family leave programs include length of employment.
 - Probably most employees who are comfortable asking for family leave benefits are long time employees.
 - Because the Office of the State Auditor is neutral, it might be a good place to have access and the data if the Department of Labor doesn't do it.
 - The cost should be relatively inexpensive. It would require a small server to handle 100-150 applications per year and could easily be placed in many departments.
 - It probably would need some kind of paper backup. Employees should have computer access at work if they don't have a computer at home.
 - The proposal uses existing mechanisms.
 - Feedback thus far indicates that it would be relatively affordable—would have no real impact on private business.

- Mandatory entry into the data base for employees but the only verification generated by the survey would be that the survey was taken.
- A paper form could be available for those who are not comfortable with going on line or don't have a computer at home.
- After a year of collection, there would be good data.
- Because there is not complete agreement on the need for wage replacement, the data collection system would provide a way to better know what needs to be done before imposing a tax. We need to know more.
- Immediate benefit of the data collection system may be a better understanding for employees of their rights. It may also help with the idea that employers need to inform employees of family leave benefits available to them.

Comments:

- The proposal amends Hawaii Family Leave, which is a cause for concern.
- There may need to be a bill purely for collecting data—it should stand alone.
- There could be problems for employers with their accounting system between Hawaii Family leave and FMLA. There are inconsistencies between the two leave programs and that needs to be addressed. From a human resource perspective, the inconsistency is a major problem. If Hawaii family leave was consistent with FMLA, that would eliminate that concern.
- There are concerns for additional administrative costs required to implement a data collection system— direct or indirect.
- Employers may not have computers available for employees to use to access the data collection system and many employees do not have a computer at home.
- There needs to be discussion on what is asked on the survey.
- The Center on Aging is not the place to house data collection system.
- Do we need some follow-up requirements?
- An annual report would be required.

VIII. SHRM indicated at the last meeting that they would submit a proposal. Chair Lum will contact them.

IX. The working group must submit a report to the State Legislature 20 days prior to the beginning of the 2009 Legislative Session. The draft report will be available at the next meeting.

Members should submit any comments on the Kokua Council/ILWU proposal by the next meeting.

X. Next meeting: December 17, 2008, 2 PM in Room 224 at the State Capitol.

Proposal for legislation from Kokua Council/ILWU

Report Title:

Family Leave

Description:

Establishes a new data collection system for family leave; extends the federal family applicability cut off of fifty or more employees to employees covered by Hawaii state law, includes emergency or casual hires in the data system.

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO.

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

SECTION 1. FINDINGS AND PURPOSE. The legislature finds Hawaii's aging population will require a range of strategies to provide home-based care for those who out of desire or necessity will be "aging in place." A January 2007 study on selected issues relating to work and family conducted by Hawaii's Legislative Reference Bureau noted that "Hawaii faces limited funding sources and workforce shortages of trained long-term care providers such as social workers, nurses, and personal care workers." With no statewide system of long-term care insurance, and few developed networks to support aging in the home, Hawaii relies in part on family caregivers, many of whom are employed.

A December 2007 University of Hawaii school of social work study found that over twenty five percent of Hawaii's households contain at least one individual providing informal, unpaid care for an adult aged sixty or older with physical

or cognitive disabilities. This percentage is expected only to increase.

Projections indicate that by 2020, more than one in four individuals will be aged sixty or older, and an individual's need for personal care assistance due to physical, sensor, cognitive, and self-care disabilities increases with age.

The study also found that the average age of family caregivers is fifty four years old, well below the age of retirement. Over fifty five percent of the family caregivers are employed, and of these, over twenty six percent indicate that their employment is affected by their care giving responsibilities. Reduction in work hours was an often-cited effect, followed by turning down and not being considered for promotions and taking leaves of absence. Nearly all of the family caregivers surveyed stated that they frequently arrange their work schedules, and over seventy seven percent take time off from work to deal with care giving responsibilities.

The legislature finds that approximately ten percent of the Hawaii workforce, or eighty thousand employees, may currently seek or need to take some form of leave to address family caregiver issues.

With the current constraints on state and federal budgets, expansion of cost effective strategies such as family leave can help prevent institutionalization and higher Medicaid costs.

The legislature further finds that while federal law extends its benefits to firms with fifty or more employees, these individuals must be employed for a minimum of one year. This requirement blocks access to family leave for a large number of individuals who may be working in industries that expand or contract with short term economic circumstances, or for workers who may hold a number of part time or casual hire positions.

The legislature further finds that the Hawaii state family leave law, Chapter 398, only requires employment for six consecutive months but does not extend to employers of firms with fewer than one hundred employees. State data indicate that of the 511,508 private sector employers in 2006, 209,731, or forty one percent, would be covered by state law for family leave, and 301,777, or fifty nine percent, are not covered. The "gap" between firms with fifty or more employees and firms with one hundred or more employees may represent approximately one hundred thousand employees in Hawaii. For state government employees, those categorized as "emergency hire" or "casual hire" or those working less than twenty hours per week are also unable to access family leave benefits.

The legislature further finds that in seeking to analyze and develop improvements to the family leave system there is inadequate utilization and needs data. There is currently no requirement of private employers to report family leave data to the state.

The purpose of this Act is to:

- (1) Reconcile differences in federal and state family leave benefits by extending the federal standard of applicability for family leave to employees of firms with fifty or more employees to all employees in the state of Hawaii employed by firms with fifty or more employees, rather than the current standard of one hundred employees;
- (2) create a data collection system that is capable of analyzing and reporting family care giving data for both public and private employees;
- (3) ensure that uncovered employees are captured by the data system;

- (4) create the basis for development of a data-driven paid family leave system that can complement other care giver services, especially for elder family members.

SECTION 2. Section 398-1, Hawaii Revised Statutes, is amended to read as follows:

§398-1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Child" means an individual who is a biological, adopted, or foster son or daughter; a stepchild; or a legal ward of an employee.

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

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

"Employee" means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter, **or any state employee who performs services for hire for not fewer than one thousand hours during the six months prior to requesting family leave under this chapter.**

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

"Employment" or "employed" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer.

"Employment benefits" means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, accident and health or sickness insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

"Health care provider" means a physician as defined under section 386-1.

"Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, or a grandparent-in-law.

"Serious health condition" means a physical or mental condition that warrants the participation of the employee to provide care during the period of treatment or supervision by a health care provider, and:

- (1) Involves inpatient care in a hospital, hospice, or residential health care facility; or
- (2) Requires continuing treatment or continuing supervision by a health care provider.

"Sick leave":

- (1) Means accrued increments of compensated leave provided by an employer to an employee for use by the employee for any of the following reasons:
 - (A) The employee is physically or mentally unable to perform the employee's duties due to illness, injury, or a medical condition of the employee;
 - (B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee; or

(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination; and

(2) Shall not include any insurance benefit, workers' compensation benefit, unemployment compensation due to illness or disability, or temporary disability insurance benefit.

SECTION 3. Section 398-2, Hawaii Revised Statutes, is amended to read as follows:

[\$398-2] Inapplicability. The rights provided under this chapter shall not apply to employees of an employer with fewer than [~~one hundred~~] fifty employees.

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

[\$398-5] Notice. In any case in which the necessity for family leave is foreseeable, the employee shall provide the employer with prior notice of the expected birth or adoption or serious health condition in a manner that is reasonable and practicable. Requests for family leave shall include evidence that the employee has submitted the request and provided required data in accordance with Section of this chapter.

SECTION 5. Section 398, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

[\$398-] Family leave data collection system; establishment.

(a) There is established a family leave data collection system for the following purposes:

(1) To ensure that all employees covered by benefits in this chapter are informed of their rights under this chapter and entered into the data base upon application for benefits;

(2) To collect pertinent data on the use and potential demand for family leave benefits for both governmental and private sector employees, including but not limited to information on who and under what circumstances employees are using family leave benefits, the nature and duration of family member needs, and the adequacy of current family leave benefits;

(3) To provide analysis of the data to assist in the development and implementation of an efficient system of family leave, including potential paid family leave, for employees in the State of Hawaii;

(4) To provide analysis of data to assist in the future development of care giver services for senior citizens in Hawaii.

(a) The department of labor shall work with the university of Hawaii's Center on Aging, to create a web-based data entry system with the following capabilities:

(1) the capacity for all employees seeking family leave benefits under this chapter to log into and enter pertinent data on the circumstances and need for family leave benefits;

(2) the ability to secure confidential information available only in aggregate form for managers and analysts of the data system;

(3) the ability to print out a simple form to be submitted to the employer certifying that required data has been entered;

- (4) the ability of the data manager and analysts to manipulate and query the data base to achieve the purpose of this chapter;
 - (5) a back up paper system that can be used when computer access or printing is unavailable;
 - (6) a user-friendly format that can be translated into multiple languages for employees.
- (b) The data base shall be housed at the University of Hawaii's Center on Aging.
- (c) The State Auditor shall be provided access to the data base and shall prepare annual reports to the legislature, the department of labor, and the center on aging.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ _____, or so much thereof as may be necessary for fiscal year 2009-2010, and the same sum, or so much thereof as may be necessary for fiscal year 2010-2011, to the university of Hawaii center on aging to cover the estimated costs of:

- (1) development of a web-based data system as provided by this Act;
- (2) purchase of hard ware, software, servers, and other necessary elements of the system; and
- (3) the costs of personnel required to maintain the system.

The sums appropriated shall be expended by the university of Hawaii for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.