

JAN 24 2013

A BILL FOR AN ACT

RELATING TO LEAVES OF ABSENCE.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 21 to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 LEAVE OF ABSENCE FOR ORGAN, BONE MARROW, OR

6 PERIPHERAL BLOOD STEM CELL DONATION

7 § -1 Definitions. As used in this chapter:

8 "Employee" means a person who may be permitted, required,
9 or directed by an employer for wages or pay to engage in any
10 employment and who has been employed by that employer for at
11 least one year immediately preceding the commencement of leave
12 provided under this chapter.

13 "Employee benefits" means all benefits, other than salary
14 and wages, provided or made available to an employee by an
15 employer and includes group life insurance, health insurance,
16 disability insurance, and pensions, regardless of whether
17 benefits are provided by a policy or practice of an employer.

18 "Employer" means any private:



- 1 (1) Person;
- 2 (2) Partnership;
- 3 (3) Corporation;
- 4 (4) Association; or
- 5 (5) Other business entity,
- 6 that employs fifty or more employees.

7 § -2 **Inapplicability.** This chapter shall not apply to
8 any leave of absence provided to any public employee serving as
9 an organ or bone marrow donor pursuant to section 78-23.6.

10 § -3 **Paid leave requirement.** (a) Subject to subsection
11 (d), an employer shall provide to an employee a paid leave of
12 absence not exceeding:

- 13 (1) Seven days each calendar year to serve as a bone
14 marrow donor or peripheral blood stem cell donor; and
- 15 (2) Thirty days each calendar year to serve as an organ
16 donor;

17 provided that the employee shall submit written verification to
18 the employer that the employee is an organ donor, bone marrow
19 donor, or peripheral blood stem cell donor and that there is a
20 medical necessity for the donation of the organ, bone marrow, or
21 peripheral blood stem cells.



1 (b) Any period of time during which an employee is
2 required to be absent from work to serve as an organ donor, bone
3 marrow donor, or peripheral blood stem cell donor shall not
4 constitute a break in the employee's continuous service for the
5 purpose of the employee's right to salary adjustments, sick
6 leave, vacation, annual leave, or seniority. During any period
7 that an employee takes leave pursuant to subsection (a), the
8 employer shall maintain and pay for coverage under a group
9 health plan, as defined in section 5000(b) of the Internal
10 Revenue Code of 1986, as amended, for the full duration of the
11 leave, in the same manner as the coverage would have been
12 maintained if the employee had been actively at work during the
13 leave period.

14 (c) This chapter shall not affect the obligation of an
15 employer to comply with any collective bargaining agreement or
16 employee benefit plan that provides greater leave rights to
17 employees than the rights provided under this chapter.

18 (d) An employer may require as a condition of an
19 employee's initial receipt of leave provided pursuant to this
20 section that the employee take up to three days of earned but
21 unused sick leave, vacation, or paid time off for bone marrow or
22 peripheral blood stem cell donation and up to two weeks of



1 earned but unused sick leave, vacation, or paid time off for
2 organ donation, unless doing so would violate the provisions of
3 any applicable collective bargaining agreement.

4 (e) Notwithstanding any other provision to the contrary,
5 leave provided pursuant to this section shall not be taken
6 concurrently with any leave taken pursuant to the federal Family
7 and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) or
8 chapter 398.

9 (f) Leave provided pursuant to this section may be taken
10 in one or more periods, but in no event shall exceed the amount
11 of leave prescribed in subsection (a).

12 § -4 **Restoration of employment.** An employer, upon
13 expiration of a leave authorized by this chapter, shall restore
14 an employee to the position held by the employee when the leave
15 began or to a position with equivalent seniority status,
16 employee benefits, pay, and other terms and conditions of
17 employment. An employer may decline to restore an employee as
18 required in this section because of conditions unrelated to the
19 employee's exercise of rights under this chapter.

20 § -5 **Employee rights.** (a) An employer shall not
21 interfere with, restrain, or deny the exercise of, or an attempt
22 to exercise, a right established by this chapter.



1 (b) An employer shall not discharge, fine, suspend, expel,
2 discipline, or in any other manner discriminate against an
3 employee who:

4 (1) Exercises a right provided under this chapter; or

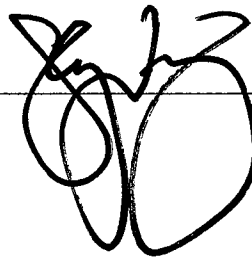
5 (2) Opposes a practice made unlawful by this chapter.

6 § -6 Civil action. An employee may bring a civil action
7 to enforce this chapter. The court may enjoin any act or
8 practice that violates this chapter and may order any equitable
9 relief necessary and appropriate to redress the violation or to
10 enforce this chapter."

11 SECTION 2. This Act shall take effect upon its approval.

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S.B. NO. 1233

Report Title:

Employment; Leave of Absence; Organ, Bone Marrow, or Peripheral Blood Stem Cell Donation

Description:

Requires certain private employers to allow employees to take paid leaves of absence for organ, bone marrow, or peripheral blood stem cell donation. Requires employers to restore an employee returning from leave to the same or equivalent position. Establishes a private right of action for employees seeking enforcement of provisions.

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