

JAN 27 2016

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 when needing to provide care to a newborn, bond with a new
8 child, or care for a family member with a serious health
9 condition. The legislature further finds that the Hawaii law
10 only extends four weeks of unpaid leave to employees working for
11 a business with over 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. Two-hundred forty-seven thousand⁶
17 people in Hawaii serve as family caregivers. Hawaii has the



1 fastest growing population over the age of sixty-five in the
2 nation, and that number is expected to grow by eighty-one per
3 cent by the year 2030. Of those who need leave but do not have
4 that benefit, nearly one in three need leave to care for an ill
5 spouse or elderly parent.

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

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

12 "§398-A Designation of a designated person. An employer
13 may establish a process for a covered individual to designate a
14 designated person within thirty days of the covered individual
15 becoming eligible for benefits under this chapter. Thereafter,
16 the employer shall permit the covered individual to make or
17 change a designation, as applicable, on an annual basis. If a
18 covered individual's employer establishes a process, the covered
19 individual shall comply with the process. If a covered
20 individual's employer does not establish a process, the covered



1 individual may make or change a designation when filing a claim
2 for family leave insurance benefits under this chapter.

3 §398-B Family leave trust fund; family leave insurance
4 benefits. (a) There is established a trust fund to be known as
5 the family leave trust fund.

6 (b) The trust fund shall consist of employee contributions
7 based on the employee's average weekly wage as well as interest
8 earned and income, dividends, refunds, rate credits, and other
9 returns received by the fund. The taxable rate of the
10 contribution shall be in accordance with the employee
11 contribution rate to the temporary disability insurance fund.
12 Any and all sums contributed or paid from any source to the fund
13 created by this section, and all assets of the fund including
14 any and all interest and earnings of the same, are and shall be
15 held in trust by the department for the exclusive use and
16 benefit of the employee-beneficiaries, including to finance
17 benefits, administration, outreach, education or study of or
18 related to family leave insurance, and shall not be subject to
19 appropriation for any other purpose.



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1 (c) The trust fund shall be used to provide a covered
2 individual with up to twelve weeks per calendar year of paid
3 family leave.

4 (d) The trust fund shall be under the control of and
5 administered by the department.

6 §398-C Eligibility for payment of benefits. Family leave
7 insurance benefits are payable to a person who:

8 (1) Is a covered individual, as defined in section 398-1;
9 or

10 (2) Meets one of the following requirements:

11 (A) Because of birth, adoption, or placement through
12 foster care, is caring for a new child during the
13 first year after the birth, adoption, or
14 placement;

15 (B) Is caring for a family member with a serious
16 health condition;

17 (C) Is caring for a qualifying service member who is
18 the employee's next of kin; or

19 (D) Has a qualifying exigency, as defined in section
20 398-1, arising out of the deployment of a family
21 member or the employee; or



1 (3) An individual who is not currently employed, but who
2 is a covered individual, as defined in section 398-1,
3 and meets one of the requirements listed in paragraph
4 (2).

5 §398-D Family leave insurance program. (a) The
6 department shall establish and administer a family leave
7 insurance program and pay family leave insurance benefits as
8 specified in this chapter.

9 (b) The department shall establish procedures and forms
10 for filing claims for benefits under this chapter. The
11 department shall notify the employer of a covered individual who
12 files a claim for benefits under this chapter that the claim has
13 been filed.

14 (c) The department shall use information sharing and
15 integration technology to facilitate the disclosure of relevant
16 information or records including use of information and
17 technology already existing in the temporary disability
18 insurance program to the extent feasible following any
19 requirements for consent to disclosure under state law.

20 (d) Information contained in the files and records
21 pertaining to an individual under this chapter are confidential



1 and not open to public inspection, other than to public
2 employees in the performance of their official duties. However,
3 the individual or an authorized representative of an individual
4 may review the records or receive specific information from the
5 records on the presentation of the signed authorization of the
6 individual.

7 §398-E Report to the legislature. Beginning July 1, 2017,
8 the department shall report to the legislature no later than
9 twenty days prior to the convening of each regular session on
10 outreach efforts, projected and actual program participation,
11 including percentage of those eligible for family leave
12 insurance benefits under this chapter who receive them, premium
13 rates, and fund balances.

14 §398-F Outreach and education. The department shall
15 conduct a public outreach and education campaign to inform
16 employees and employers regarding the availability of family
17 leave insurance benefits. The department may use a proportion
18 of the funds collected for the family leave insurance program in
19 a given year to pay for the public education program. Outreach
20 information shall be available in English and other languages
21 spoken within the State.



1 §398-G Coverage of self-employed. (a) A self-employed
2 person, including a sole proprietor, partner, or joint venturer,
3 may elect coverage under this chapter for an initial period of
4 not less than three years or a subsequent period of not less
5 than one year immediately following another period of coverage.
6 The self-employed person shall file a notice of election in
7 writing with the director, as required by the department. The
8 election becomes effective on the date of filing the notice.

9 (b) A self-employed person who has elected coverage may
10 withdraw from coverage within thirty days after the end of the
11 three-year period of coverage, or at other times as the director
12 may prescribe by rule, by filing written notice with the
13 director, the withdrawal shall take effect no sooner than thirty
14 days after filing the notice.

15 §398-H Wage withholding. (a) Each employee shall make a
16 contribution to the family leave trust fund per pay period, via
17 wage withholding per pay period, transmitted by the employer to
18 the trust fund.

19 (b) If there is a dispute between the employee and the
20 employer relating to the withholding of wages as contributions
21 for paid family leave benefits, either party may file with the



1 director a petition for determination of the amount to be
2 withheld. The matter shall be determined by an officer of the
3 department. If either party is dissatisfied with the
4 determination, the party may petition for redetermination and
5 thereupon the petition shall be transferred to the referee.

6 §398-I Weekly benefit amount. (a) Benefits shall be
7 computed as weekly amounts in the manner provided by section
8 392-22.

9 (b) In no case shall the weekly benefit amount exceed the
10 maximum weekly benefit amount specified in section 386-31."

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

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

15 "Covered individual" means any person who:

16 (1) Is an employee or has been an employee within the last
17 twenty-six weeks if currently unemployed;

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

20 (3) Submits an application for family leave insurance
21 benefits to the department.



1 "Designated person" means one person designated by a
2 covered individual for whom the covered individual will provide
3 care under this chapter if the designated person has a serious
4 health condition.

5 "Family leave insurance benefits" means the benefits
6 provided pursuant to this chapter.

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

12 "Qualifying exigency" means:

13 (1) Notice of deployment of a service member received
14 within seven days of deployment;

15 (2) Attendance of military events or related activities;

16 (3) Child care or attendance of school activities, if due
17 directly or indirectly to the active duty call or
18 active duty status of a service member;

19 (4) To make financial or legal arrangements for a service
20 member's absence or as a result of the service
21 member's absence;



1 (5) Attending counseling provided by someone other than a
2 health care provider if the need for counseling arises
3 from the active duty call or active duty of a service
4 member; or

5 (6) To spend up to five days with a service member for
6 each instance of short-term, temporary rest and
7 recuperation leave during a period of deployment."

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

10 "Child" means an individual who is a biological, adopted,
11 or foster son or daughter; a stepchild; [~~or~~] a legal ward of [~~an~~
12 ~~employee.~~] a covered individual; a child of a reciprocal
13 beneficiary; a grandchild; or a child of a covered individual
14 who stands in loco parentis.

15 "Employer" means any individual or organization, including
16 the State, any of its political subdivisions, any
17 instrumentality of the State or its political subdivisions, any
18 partnership, association, trust, estate, joint stock company,
19 insurance company, or corporation, whether domestic or foreign,
20 or receiver or trustee in bankruptcy, or the legal
21 representative of a deceased person, who employs one [~~hundred~~]



1 or more employees for each working day during each of twenty or
2 more calendar weeks in the current or preceding calendar year.

3 "Parent" means a biological, foster, or adoptive parent, a
4 parent-in-law, a stepparent, a legal guardian, a grandparent,
5 ~~[or]~~ a grandparent-in-law[-], a parent or grandparent of a
6 reciprocal beneficiary, or a person who stood in loco parentis
7 when the covered individual was a minor child."

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

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

11 "(a) ~~[An employee]~~ A covered individual shall be entitled
12 to a total of ~~[four]~~ twelve weeks of family leave during any
13 calendar year ~~[upon the birth of a child of the employee or the~~
14 ~~adoption of a child, or to care for the employee's child, spouse~~
15 ~~or reciprocal beneficiary, or parent with a serious health~~
16 ~~condition.]~~ :

17 (1) To care for the covered individual's child within
18 twelve months of the child's birth, or foster
19 placement, or placement for adoption with the covered
20 individual; or



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

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

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

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

9 "~~§398-4 [Unpaid leave]~~ Leave permitted; relationship to
10 paid leave; sick leave. (a) Pursuant to section 398-3, an
11 employee shall be entitled to [~~four~~] twelve weeks of family
12 leave. [~~The family leave shall consist of unpaid leave, paid~~
13 ~~leave, or a combination of paid and unpaid leave. If an~~
14 ~~employer provides paid family leave for fewer than four weeks,~~
15 ~~the additional period of leave added to attain the four week~~
16 ~~total may be unpaid.] An employer who provides paid family leave
17 beyond what is required by this chapter may require that the
18 leave run concurrently with the twelve weeks required under this
19 chapter, but shall not require the leave to be applied against
20 accrued sick or vacation hours.~~



1 (b) Except as otherwise provided in subsection (c), an
2 employee may elect to substitute any of the employee's accrued
3 paid leaves, including but not limited to vacation, personal, or
4 family leave for any part of the [~~four-week~~] twelve-week period
5 in subsection (a).

6 ~~[(c) An employer who provides sick leave for employees
7 shall permit an employee to use the employee's accrued and
8 available sick leave for purposes of this chapter; provided that
9 an employee shall not use more than ten days per year for this
10 purpose, unless an express provision of a valid collective
11 bargaining agreement authorizes the use of more than ten days of
12 sick leave for family leave purposes. Nothing in this section
13 shall require an employer to diminish an employee's accrued and
14 available sick leave below the amount required pursuant to
15 section 392-41; provided that any sick leave in excess of the
16 minimum statutory equivalent for temporary disability benefits
17 as determined by the department may be used for purposes of this
18 chapter.]~~

19 (c) No assignment, pledge, or encumbrance of any right to
20 benefits that are or may become due or payable under this
21 chapter shall be valid; and the rights to benefits shall be



1 exempt from levy, execution, attachment, garnishment, or any
2 other remedy whatsoever provided for the collection of debt. No
3 waiver of any exemption provided for in this section shall be
4 valid.

5 (d) Nothing in this chapter shall prevent a biological
6 mother receiving temporary disability benefits for recovery from
7 childbirth from applying for and receiving paid family leave for
8 the purpose of caregiving and bonding with her child after the
9 temporary disability time period has lapsed. For family leave
10 purposes, there shall be no waiting period for benefits to
11 begin.

12 (e) Benefits under the Family and Medical Leave Act of
13 1993 shall run concurrently with benefits under this chapter."

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

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

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



1 "(d) If the department determines after investigation that
2 this chapter has been violated[7] by an employer, the department
3 shall inform the employer and endeavor to remedy the violation
4 by informal methods, such as conference or conciliation. If the
5 department determines that family medical leave insurance
6 benefits have been wrongfully withheld, the department shall
7 order immediate payment to the employee found entitled to those
8 benefits."

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

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

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

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

17 (1) The amount of any benefits under this chapter, wages,
18 salary, employment benefits, or other compensation
19 denied or lost to the employee by reason of the
20 violation; or



1 (2) In a case in which benefits under this chapter, wages,
2 salary, employment benefits, or other compensation
3 have not been denied or lost to the employee, any
4 actual monetary losses sustained by the employee as a
5 direct result of the violation, such as the cost of
6 providing care, up to a sum equal to [~~four~~] twelve
7 weeks of wages or salary for the employee."

8 SECTION 10. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$300,000 or so much
10 thereof as may be necessary for fiscal year 2016-2017 for the
11 purpose of hiring and employing an administrator, administrative
12 assistant, and an accountant to perform functions relating to
13 the administration of the family leave trust fund, including the
14 oversight of payroll deductions, administrative processes, and
15 payment to eligible employees.

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

18 SECTION 11. In codifying the new sections added by section
19 2 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



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

4 SECTION 13. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 14. This Act shall take effect on July 1, 2016.

7

INTRODUCED BY:

~~SEN. SC. [Signature]~~

Michelle Tidani

[Signature]

Randy H. Baker



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Report Title:

Family Leave; Insurance; Private; Appropriation.

Description:

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

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