
A BILL FOR AN ACT

RELATING TO EMPLOYEE BENEFITS.

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

1 SECTION 1. The legislature finds that in 2020, one in ten
2 babies in Hawaii, or ten per cent of live births, were preterm,
3 meaning that the baby was born prior to thirty-seven completed
4 weeks of gestation. The legislature also finds that
5 approximately 1.6 per cent of these live births in the State
6 were "very preterm", which means that a baby was born before
7 thirty-two completed weeks of gestation.

8 The legislature further finds that these preterm and very
9 preterm babies spent weeks or months in neonatal intensive care
10 units (NICU), which in turn required their parents to also spend
11 weeks or months at the NICU in support of their babies' care. A
12 2015 research published in the medical journal *Pediatrics* found
13 that parental skin-to-skin contact, also known as "kangaroo
14 care", reduces infant mortality by thirty-six per cent, lowers
15 the risk of sepsis or major infection by forty-seven per cent,
16 and reduces the length of a baby's stay in the NICU by up to one
17 week. Additional benefits of kangaroo care include enhanced



1 neurological development for the baby, reduced depression for
2 the mother, and a fifty per cent increase in the likelihood of
3 exclusive breastfeeding after discharge, which itself has well-
4 known and unique benefits for child health and development. For
5 babies in the NICU, it is also vitally important that mothers
6 continually express breast milk for them, which requires up to
7 an hour of pumping every few hours throughout the day and night.

8 The legislature additionally finds that Oahu has the only
9 high risk NICU in the State, which forces parents from other
10 islands with babies in the NICU to relocate at a significant
11 disruption and expense for an extended period. For parents on
12 Oahu, it is nearly impossible to maintain full-time employment
13 when they are constantly caring for their babies in the NICU.
14 Added to this time, expense, and stress, parents caring for
15 their NICU child may not necessarily qualify for financial
16 assistance through temporary disability insurance or protection
17 from job loss under the federal Family and Medical Leave Act.
18 When parents do qualify, they often use a large proportion of
19 their family leave while their baby is in the NICU, and often
20 feel financial pressure to return to work when their babies are
21 still very young, which deprives the babies and parents of early



1 bonding that is an important factor in child development and
2 long-term outcomes. Some parents return to work while their
3 babies are still in the NICU to preserve and use their family
4 leave upon their babies' discharge. Furthermore, many parents
5 are advised not to enroll their babies in childcare upon
6 discharge from the NICU due to concerns of infection, which
7 often further interferes with their plans to return to work.

8 The legislature additionally finds that according to the
9 state health planning and development agency's 2020 Health Care
10 Utilization Report, the cost of an average NICU stay is between
11 \$7,700 to \$8,500 per day in Hawaii. Thus, the cost of a
12 twelve-week NICU stay could easily exceed \$650,000. Reducing a
13 NICU stay by one week could save an average of \$57,000 per baby.
14 Furthermore, the cost of temporary disability insurance for
15 twelve weeks for two parents is less than \$40,000.

16 Accordingly, the purpose of this Act is to extend, under
17 certain conditions, the family leave period that employees are
18 entitled to under state law, for up to eight additional weeks
19 for employees who are unable to perform their employment duties
20 due to the birth of a child who is required to stay in a
21 neonatal intensive care unit.



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

3 "§398-3 Family leave requirement. (a) An employee shall
4 be entitled to a total of four weeks of family leave during any
5 calendar year:

6 (1) Upon the birth of a child of the employee or the
7 adoption of a child; or

8 (2) To care for the employee's child, spouse, reciprocal
9 beneficiary, sibling, grandchild, or parent with a
10 serious health condition[-];

11 provided that any employee who experiences a total inability to
12 perform the duties of the employee's employment that results
13 from the birth of a child who is required to stay in a neonatal
14 intensive care unit, shall be entitled to additional family
15 leave equivalent to the duration the child is in a neonatal
16 intensive care unit, for up to eight weeks, starting from the
17 date the child is discharged from the neonatal intensive care
18 unit; provided further that during the additional period of
19 family leave, the employee provides kangaroo care to the child
20 or expresses breast milk for the child.



1 (b) ~~[During each calendar year, the leave]~~ Leave pursuant
2 to this section may be taken intermittently[-] during each
3 calendar year.

4 (c) Leave pursuant to this section shall not be
5 cumulative[-] from one calendar year to another.

6 (d) If unpaid leave under this chapter conflicts with the
7 unreduced compensation requirement for exempt employees under
8 the federal Fair Labor Standards Act, an employer may require
9 the employee to make up for the leave taken within the same pay
10 period.

11 (e) Nothing in this chapter shall entitle an employee to
12 more than a total of four weeks of leave in any twelve-month
13 period[-]; except as provided in subsection (a) for any employee
14 who experiences a total inability to perform the duties of the
15 employee's employment that results from the birth of a child who
16 is required to stay in a neonatal intensive care unit for up to
17 eight weeks.

18 (f) For purposes of this section, "kangaroo care" means a
19 technique of newborn care where the baby is kept chest-to-chest
20 and skin-to-skin with a parent."



1 SECTION 3. Section 398-4, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) ~~[Pursuant to section 398-3, an employee shall be~~
4 ~~entitled to four weeks of family leave. The family leave shall]~~
5 Nothing in this chapter shall be construed to require an
6 employer to provide its employees with paid family leave. If an
7 employer provides its employees with paid family leave, family
8 leave taken by an employee pursuant to section 398-3 may consist
9 of unpaid leave, paid leave, or a combination of paid and unpaid
10 leave. If an employer provides paid family leave for fewer than
11 ~~[four weeks, the additional period of leave added to attain the~~
12 ~~four week total]~~ the family leave period to which an employee is
13 entitled pursuant to section 398-3, leave taken by the employee
14 beyond the period of paid family leave provided by the employer
15 may be unpaid.

16 (b) Except as otherwise provided in subsection (c), an
17 employee may elect to substitute any part of family leave to
18 which the employee is entitled pursuant to section 398-3, with
19 any of the employee's accrued paid leaves, including [but not
20 ~~limited to]~~ vacation[7] or personal [7, or family leave for any
21 ~~part of the four week period in subsection (a).] leave."~~



1 SECTION 4. The civil rights commission shall amend its
2 administrative rules to ensure that neonatal care is included as
3 a "related medical condition" wherever the phrase "pregnancy,
4 childbirth, or related medical condition" or any similar phrase
5 is used.

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2024.



Report Title:

Hawaii Civil Rights Commission; Employee Benefits; Family Leave;
Childbirth; Neonatal Intensive Care Unit; Kangaroo Care

Description:

Extends, under certain conditions, the family leave period that employees are entitled to under state law for up to eight additional weeks for employees who are unable to perform their employment duties due to the birth of a child who is required to stay in a neonatal intensive care unit. Requires the Civil Rights Commission to amend its rules to include neonatal care as a related medical condition whenever certain phrases are used.
(SD1)

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