



STATE OF HAWAII  
KA MOKU'ĀINA O HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
KA 'OIHANA PONO LIMAHANA

February 15, 2023

To: The Honorable Mark M. Nakashima, Chair,  
The Honorable Jackson D. Sayama, Vice Chair, and  
Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 15, 2023

Time: 2:00 p.m.

Place: Conference Room 329, State Capitol and Via Video Conference

From: Jade T. Butay, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. 1409 H.D.1 RELATING TO EMPLOYEE BENEFITS**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The **DLIR supports** this proposal and suggests a clarifying amendment. HB1409HD1 proposes to amend the Hawaii Family Leave Law (HFLL), Chapter 398, Hawaii Revised Statutes (HRS), by providing up to eight weeks of additional family leave for the birth of a child who is required to stay in a neonatal intensive care unit (NICU). The additional family leave shall be equivalent to the duration the child is in a NICU, provided that during the additional period of family leave, the employee provides kangaroo care or expresses breast milk for the child. The measure defines "Kangaroo care".

**II. CURRENT LAW**

Chapter 398, HRS, requires employers with one hundred or more employees to provide eligible employees with four weeks of unpaid, job-protected leave for the birth or adoption of a child or to care for a child, spouse, reciprocal beneficiary, sibling, grandchild, or parent with a serious health condition. The employee may elect to substitute any of the employee's accrued paid leaves for any part of the four-week period.

**III. COMMENTS ON THE HOUSE BILL**

This measure provides for additional family leave for the birth of a child who is required to stay in a NICU for up to eight weeks. It is not clear whether the additional family leave would be available to an employee whose child is required to stay in a NICU for longer than 8 weeks. For clarity, the DLIR suggests moving

the eight week provision by the inserting "for up to eight weeks," on page 4, line 16 after "...neonatal intensive care unit," as follows:

provided that any employee who suffers from a total inability to perform the duties of the employee's employment resulting from the birth of a child who is required to stay in a neonatal intensive care unit, shall be entitled to additional family leave equivalent to the duration the child is in a neonatal intensive care unit, for up to eight weeks, starting from the date the child is discharged from the neonatal intensive care unit; provided further that during the additional period of family leave, the employee:

The additional family leave provided by the current draft of this measure starts from the date the child is discharged from the NICU. In the current draft, the employee would be protected for the 4 weeks upon giving birth, but there would be no HFLL protection after the 4 weeks, until the child is discharged from the NICU.



Date: February 3, 2023

To: House Committee on Consumer Protection and Commerce  
Representative Mark M. Nakashima, Chair  
Representative Jackson D. Sayama, Vice Chair  
And members of the Committee

From: Early Childhood Action Strategy

Re: Support for HB1409, Expanding temporary disability insurance coverage to include parents with newborns in the Neonatal Intensive Care Unit, in order to provide “kangaroo care” and other key supports to those newborns

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Early Childhood Action Strategy (ECAS) is a statewide cross-sector collaborative designed to improve the system of care for Hawai‘i’s youngest children and their families. ECAS partners work to align priorities for children prenatal to age eight, streamline services, maximize resources, and improve programs to support our youngest keiki.

**ECAS strongly supports passage of HB1409**, which would expand temporary disability insurance coverage to include employees needing time away from work due to childbirth, in order to provide kangaroo care, time to express breast milk, and otherwise to provide support to a child required to stay in a neonatal intensive care unit.

in 2020, ten per cent of live births in Hawai‘i were preterm, meaning that those births occurred before thirty-seven completed weeks of gestation.

‘Oahu has the only high-risk NICU in the State, resulting in parents from other islands being forced to relocate at significant disruption and expense for an extended period of time. Even for parents on ‘Oahu, it is nearly impossible to maintain full time employment when they are constantly caring for their babies in the NICU.

Best practice for these children in the NICU involves parental “kangaroo care”, meaning continual skin-to-skin contact, which has been found to reduce infant mortality by thirty-six per cent, lower the risk of sepsis or major infection by forty-seven per cent, and reduce the length of stay in the NICU by up to one week.

Given that the cost of an average NICU stay is between \$7,700 to \$8,500 per day in Hawai‘i, the cost of a twelve-week NICU stay could easily exceed \$650,000. Reducing a NICU stay by one week would save an average of \$57,000 per baby. By comparison, the cost of temporary disability insurance for twelve weeks for two parents is less than \$40,000.

For all of these reasons, ECAS strongly supports passage of HB1409.

Thank you for this opportunity to provide testimony **in support of HB1409**.

**HB-1409-HD-1**

Submitted on: 2/13/2023 11:10:50 AM

Testimony for CPC on 2/15/2023 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Patrick Karjala     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

I am writing in SUPPORT of HB1409 HD1.

Please pass this bill through to the Governor's desk for better leave for parents who are caring for a pre-term infant!

**HB-1409-HD-1**

Submitted on: 2/14/2023 1:56:27 PM

Testimony for CPC on 2/15/2023 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Patricia Bilyk      | Individual          | Support                   | Written Testimony Only |

Comments:

TO: Representative Mark Nakashima, Chair, Representative Jackson Sayama, Vice Chair and Members of the Committee on Consumer Protection and Commerce

FROM: Patricia Bilyk, RN, MPH, MSN, International Board Certified Lactatio Constultant (Retired)

RE: HB 1409 HD 1 Employee Benefits

DATE: Wednesdy, February 15, 2023 2pm

Good Afternoon. I am Patricia Bilyk and I stand in STRONG SUPPORT of HB 1409 HD1 to expand the temporary disability insiurance coverage to employeesw who are unable to perform their employment duties because the employee has given birth to an infant prematurely and is expressing breastmilk in the Neonatal Instensive Care Unit for the infant.

I've been an Advanced Practice Register Nurse in Hawaii for over 47 years, 30 of those years I was an International Board Certified Lactation Consultant practicing 6 years at Kapiolan Women and Childrens Medical Center. In my capacity as Lactation Consultant, I cared for women and their infants in the Neonatal Intensive Care Unit. I saw mothers who now post delivery were continuing to have physical difficulties and conditions (such high blood pressure, diabetes) post Cesarean Section and infants who were very premature and unable to breastfeed directly. I assisted mothers to successfully pump their breastmilk at the infant's cribside and in the units pumping room. I saw the struggle for them to do both and then be pressured to return to work at 8 weeks or sometimes less. When they did return to work, they often became ill because perhpaps they were not fully well post delivery and that affected their work, and wages (no more sick time) .The pressure at work,lost wages,or becoming sick also effected their breastmilk supply for their infant.

I feel we need to support our mothers who have delivered prematurely by making sure they are given enough paid time to recover prior to returning to work and provide as much breastmilk as possible for their premature infant. This precious milk is something that cannot be manufactured in a laboratory and have the correct ingredients for THIS INFANT. Only the mother can create the correct breastmilk for her infant at each month of his/her life!

Also I feel it is very important for the mother and father to be caring for the infant not only providing the breastmilk but holding the infant in the kangaroo position, skin to skin. This technique has been proven by peer review research to decrease hospitalization time, promote growth of infant, promote a positive bond between the mother, father and infant AND PROVIDE MORE BREASTMILK FOR THE INFANT!

I ask that you continue to pass this Bill out of Committee and provide this financial support for these mothers and by doing that, their infants benefit too.

I thank you for the opportunity to provide testimony in STRONG SUPPORT of HB 1409 HD1.



*Hawai'i Children's Action Network Speaks! is a nonpartisan 501c4 nonprofit committed to advocating for children and their families. Our core issues are safety, health, and education.*

To: House Committee on Consumer Protection & Commerce

Re: **HB 1409, HD1 - Relating to Employee Benefits**

Hawai'i State Capitol and via videoconference

February 15, 2023, 2:00 PM

Dear Chair Nakashima, Vice Chair Sayama, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT with suggested amendments to HB 1409, relating to employee benefits**. This bill extends the family leave period 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 (NICU) for up to eight weeks and requires the Department of Health to amend its rules to include neonatal care as a related medical condition wherever the phrase "pregnancy, childbirth, or other related condition" is used.

**HCAN Speaks! Board  
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Neonatal intensive care is for infants who are born prematurely or have such serious health issues that they require intensive medical attention. In Hawai'i, the only high-risk NICU is on O'ahu, which means that parents from other islands often must relocate to O'ahu, away from their employment, for the period of time that their babies need NICU care. Even parents on O'ahu often are unable to fulfill their work duties because they need to care for their babies while they are in the NICU.

This version of the bill would allow parents to receive additional **unpaid** leave when their infants are in the NICU. Currently, only one in four private sector workers has access to paid family care leave.<sup>1</sup> Lower-income workers in Hawai'i – who are more likely to be Native Hawaiian or Pacific Islander – are the least likely to have paid family leave, while they need that financial support the most.

While most working mothers who give birth can get partial pay through Temporary Disability Insurance (TDI) to recover from childbirth, TDI doesn't extend beyond her own recovery time, and TDI can't be used by parents who didn't give birth. This coverage simply isn't adequate for parents of seriously ill or preterm babies.

**We respectfully suggest restoring the paid leave provided in the original version of this bill** to ensure that parents in Hawai'i are no longer put in the impossible position of having to choose between caring for their infants in the NICU and making ends meet.

Mahalo for the opportunity to provide this testimony. Please pass this bill with our suggested amendment.

Thank you,

Nicole Woo

Director of Research and Economic Policy

<sup>1</sup> <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-Hawai%E2%80%98i.pdf>

**HB-1409-HD-1**

Submitted on: 2/14/2023 4:56:48 PM

Testimony for CPC on 2/15/2023 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>    |
|---------------------|---------------------|---------------------------|-------------------|
| Todd Taniguchi      | Individual          | Support                   | Remotely Via Zoom |

Comments:

Dear Chair Nakashima, Vice Chair Sayama and Committee members of the CPC,

My wife and I are writing in strong support of this bill as parents of two children who were born prematurely and had extended hospital stays of weeks and months in the neonatal intensive care unit (NICU).

We agree with the entirety of Section 1 of the legislation. This bill would provide more robust job protection and financial relief to families during a time of need. If we can make this work, families would feel less pressure to choose between their livelihood and supporting the development of their infant hospitalized in the NICU.

Please note, as amended, this bill pushes through the job protection elements of this proposal but appears to be in search of a funding mechanism for paid leave. Specifically, if TDI can't be implemented, please consider creating a bridge between the bill as proposed and a long-term solution of providing paid leave through an appropriate funding mechanism (direct funding of Paid Family Leave by the State or leave an option of modifying the TDI program to fund this marginal cost change for a relatively small group of beneficiaries likely to be in the range of hundreds or perhaps about 1500 families in a year). 10% of live births are premature in Hawaii.

Why we think this bill is important:

It helps parents support the long-term health of their children



It may help more women remain in the workforce with job continuity instead of dropping out or burning out during this period

This bill effectively recognizes the added work that ONLY a mother is being asked to perform in support of their child: 6-8 hours per day, every 2-3 hours, expressing breast milk through a pump along with cleaning/sanitization/storage of the equipment and milk, for weeks on end without more than 3 hours of sleep per night.

Neighbor island families especially need the added financial support and job security. Oahu is the only island in the state with NICUs and breastmilk and kangaroo care require them to be on island daily and in person.

This has a financial return: Higher rates and consistency of kangaroo care and breast milk expression will lead to better health outcomes and shorter hospital stays.

Mahalo sincerely for your consideration of this bill.

Todd Taniguchi and Vivien Ong

**HB-1409-HD-1**

Submitted on: 2/15/2023 9:25:35 AM

Testimony for CPC on 2/15/2023 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Lisa Kahikina       | Individual          | Support                   | Written Testimony Only |

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and Committee members of the CPC,

I am writing in strong support of this bill, HB1409, and its companion bill. I'm writing as a healthcare provider who interacts with many families regularly that would benefit from this bill. When their child is admitted to the neonatal intensive care unit (NICU). I agree with the entirety of Section 1 of the legislation. This bill would provide more robust job protection and financial relief to families during a time of need. Babies that are in the Neonatal Intensive Care Unit (NICU) are unable to breastfeed until their intensive medical problems have been stabilized, which can sometimes be weeks to months. When NICU babies are given breast milk, it significantly lowers their risks for infection, especially such infections as necrotizing enterocolitis, which is life-threatening. If a mother is unable to produce breast milk to feed to her NICU infant, and breast milk is needed, the breast milk is provided by donor breast milk. Hawaii does not have a breast milk bank, and this breast milk must be transported from the mainland. This process is expensive and in limited supply, and therefore NICU babies are not always provided the amount of breast milk that is needed for optimal medical support. In order for a woman to provide enough breast milk, her body needs to respond to breast pumping, and she needs to pump at least 8-10 times a day, since this is the number of times that a baby would have otherwise been nursing. Pumping 8-10 times a day, or every 2-3 hours, can be extremely exhausting. In addition, without a baby directly at the breast, some moms do not respond well to the home pumps provided by the insurance companies and need to use the hospital-grade pumps that are in the hospital, which means that the mother needs to be at the hospital as often as possible to use their pumps to provide breast milk for her baby. If a mother has other children at home to care for, being torn between being in the hospital to pump and provide enough breast milk for her NICU infant, and being home to manage her other children, can be extremely stressful and exhausting. Breast milk production problems, as well as managing her home life, increases a mother's risk for postpartum depression and stress. If breast milk production is easier and the mother is supported in her efforts, then postpartum depression risk, secondary to poor breast milk supply, can be significantly reduced. If a baby has not yet been discharged from the hospital, but a mother's leave from work is not extended, she then has to find time to pump at work, and likely without the use of the hospital-grade pump, which increases the chance that her milk supply drops. If her milk supply is not maintained through pumping and is dropping, and her baby in the NICU is starting to be medically stable enough to breastfeed, the baby may have a higher chance of rejecting the breast if the milk supply is low, continuing the cycle of poor milk supply for this mother. Maintaining an adequate milk supply without a baby that is directly breastfeeding at the chest is an extremely tiring process. Maintaining an adequate milk supply, in

addition to being worried and anxious about your infant in the NICU, but knowing that your breast milk is actually one of the best medicines that you can give your infant child to protect against infections and illnesses, can be downright overwhelming. The more we are able to support mothers in their efforts to provide adequate breast milk for their NICU babies, by giving them access to the right equipment (hospital grade pumps) and the time needed (leave from work), the better we can support a mother's emotional well-being, reduce her particular risk of postpartum depression, and reduce the infant's particular risks for serious infections.

Sincerely, Lisa Kahikina, MD IBCLC

**HB-1409-HD-1**

Submitted on: 2/15/2023 1:29:33 AM

Testimony for CPC on 2/15/2023 2:00:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Ruth Love           | Individual          | Support                   | Written Testimony Only |

Comments:

Should extend fmla to a longer, say 12 week period, for families with an infant in NICU, child in PICU, family member in a trauma center with multiisystem trauma or traumatic brain injury. Also for the patients themselves for the above, cancer treatment and recovery,stroke treatment and recovery or heart surgery and recovery.

Thank you,

Mrs Ruth Love