

JAN 23 2015

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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 (FMLA) allows twelve weeks of unpaid leave to employees who
5 have worked at a business that employs fifty or more employees,
6 the 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 11 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. 247,000 people in Hawaii serve as
17 family caregivers. Hawaii has the fastest growing population



1 over the age of sixty-five in the nation, and that number is
2 expected to grow by 81 per cent by the year 2030. Of those who
3 need leave but do not have that benefit, nearly one in three
4 need leave to care for an ill spouse or elderly parent.

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

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

11 "§398-A Designation of a designated person. An employer
12 may establish a process for a covered individual to designate a
13 designated person within thirty days of the covered individual
14 becoming eligible for benefits under this chapter. Thereafter,
15 the employer shall permit the covered individual to make or
16 change a designation, as applicable, on an annual basis. If a
17 covered individual's employer establishes such a process, the
18 covered individual shall comply with the process. If a covered
19 individual's employer does not establish such a process, the
20 covered individual may make or change a designation when filing
21 a claim for family leave insurance benefits under this chapter.



1 §398-B Family leave trust fund; family leave insurance

2 benefits. (a) There is established a trust fund to be known as
3 the family leave trust fund.

4 (b) The trust fund shall consist of employee contributions
5 based on the employee's average weekly wage as well as interest
6 earned and income, dividends, refunds, rate credits, and other
7 returns received by the fund. The taxable rate of the
8 contribution shall be in accordance with the employee
9 contribution rate to the temporary disability insurance fund.

10 Any and all sums contributed or paid from any source to the fund
11 created by this section, and all assets of the fund including
12 any and all interest and earnings of the same, are and shall be
13 held in trust by the department for the exclusive use and
14 benefit of the employee-beneficiaries, including to finance
15 benefits, administration, outreach, education or study of or
16 related to family leave insurance, and shall not be subject to
17 appropriation for any other purpose.

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



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

3 §398-C Eligibility for payment of benefits. Family leave
4 insurance benefits are payable to a person who:

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

7 (2) Meets one of the following requirements:

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

12 (B) Is caring for a family member with a serious
13 health condition;

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

16 (D) Has a qualifying exigency, as defined in section
17 398-1, arising out of the deployment of a family
18 member or the employee; or

19 (3) An individual who is not currently employed, but who
20 is a covered individual, as defined in section 398-1,



1 and meets one of the requirements listed in paragraph

2 (2).

3 §398-D Family leave insurance program. (a) The

4 department shall establish and administer a family leave

5 insurance program and pay family leave insurance benefits as

6 specified in this chapter.

7 (b) The department shall establish procedures and forms

8 for filing claims for benefits under this chapter. The

9 department shall notify the employer of a covered individual who

10 files a claim for benefits under this chapter that the claim has

11 been filed.

12 (c) The department shall use information sharing and

13 integration technology to facilitate the disclosure of relevant

14 information or records including use of information and

15 technology already existing in the temporary disability

16 insurance program to the extent feasible following any

17 requirements for consent to disclosure under state law.

18 (d) Information contained in the files and records

19 pertaining to an individual under this chapter are confidential

20 and not open to public inspection, other than to public

21 employees in the performance of their official duties. However,



1 the individual or an authorized representative of an individual
2 may review the records or receive specific information from the
3 records on the presentation of the signed authorization of the
4 individual.

5 §398-E Report to the legislature. Beginning July 1, 2017,
6 the department shall report to the legislature no later than
7 twenty days prior to the convening of each regular session on
8 outreach efforts, projected and actual program participation,
9 including percentage of those eligible for family leave
10 insurance benefits under this chapter who receive them, premium
11 rates, and fund balances.

12 §398-F Outreach and education. The department shall
13 conduct a public outreach and education campaign to inform
14 employees and employers regarding the availability of family
15 leave insurance benefits. The department may use a proportion
16 of the funds collected for the family leave insurance program in
17 a given year to pay for the public education program. Outreach
18 information shall be available in English and other languages
19 spoken within the State.

20 §398-G Coverage of self-employed. (a) A self-employed
21 person, including a sole proprietor, partner, or joint venturer,



1 may elect coverage under this chapter for an initial period of
2 not less than three years or a subsequent period of not less
3 than one year immediately following another period of coverage.

4 The self-employed person shall file a notice of election in
5 writing with the director, as required by the department. The
6 election becomes effective on the date of filing the notice.

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

13 §398-H Wage withholding. (a) Each employee shall make a
14 contribution to the family leave trust fund per pay period, via
15 wage withholding per pay period, transmitted by the employer to
16 the trust fund.

17 (b) If there is a dispute between the employee and the
18 employer relating to the withholding of wages as contributions
19 for paid family leave benefits, either party may file with the
20 director a petition for determination of the amount to be
21 withheld. The matter shall be determined by an officer of the



1 department. If either party is dissatisfied with the
2 determination, the party may petition for redetermination and
3 thereupon the petition shall be transferred to the referee.

4 §398-I Weekly benefit amount. (a) Benefits shall be
5 computed as weekly amounts in the manner provided by section
6 392-22.

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

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

11 1. By adding six new definitions to be appropriately
12 inserted and to read:

13 "Application year" means the twelve-month period beginning
14 on the first day of the calendar week in which an individual
15 files an application for family leave insurance benefits.

16 "Covered individual" means any person who:

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

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



1 (3) Submits an application for family leave insurance
2 benefits to the department.

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

7 "Family leave insurance benefits" means the benefits
8 provided pursuant to this chapter.

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

14 "Qualifying exigency" means:

15 (1) Notice of deployment of a service member received
16 within seven days of deployment;

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

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



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

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

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

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

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

"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,



1 insurance company, or corporation, whether domestic or foreign,
2 or receiver or trustee in bankruptcy, or the legal
3 representative of a deceased person, who employs one [hundred]
4 or more employees for each working day during each of twenty or
5 more calendar weeks in the current or preceding calendar year.

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

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

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

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

20 (1) To care for the covered individual's child within
21 twelve months of the child's birth, or foster



1 placement, or placement for adoption with the covered
2 individual; or

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

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

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

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

11 "~~§398-4 [Unpaid leave]~~ Leave permitted; relationship to
12 paid leave; sick leave. (a) Pursuant to section 398-3, an
13 employee shall be entitled to [~~four~~] twelve weeks of family
14 leave. [~~The family leave shall consist of unpaid leave, paid~~
15 ~~leave, or a combination of paid and unpaid leave. If an~~
16 ~~employer provides paid family leave for fewer than four weeks,~~
17 ~~the additional period of leave added to attain the four week~~
18 ~~total may be unpaid.] An employer who provides paid family leave
19 beyond what is required by this chapter may require that such
20 leave run concurrently with the twelve weeks required under this~~



1 chapter, but shall not require the leave to be applied against
2 accrued sick or vacation hours.

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

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



1 (c) No assignment, pledge, or encumbrance of any right to
2 benefits that are or may become due or payable under this
3 chapter shall be valid; and such rights to benefits shall be
4 exempt from levy, execution, attachment, garnishment, or any
5 other remedy whatsoever provided for the collection of debt. No
6 waiver of any exemption provided for in this section shall be
7 valid.

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

15 (e) Benefits under the Family and Medical Leave Act of
16 1993 shall run concurrently with benefits under this chapter."

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

19 "(a) Any individual claiming to be aggrieved by an alleged
20 unlawful act under this chapter, including the denial of family



1 leave insurance benefits, may file with the department a
2 verified complaint in writing."

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

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

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

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

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

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



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

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

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2015-2016 and the same sum or so much thereof as may be necessary for fiscal year 2016-2017 for the purpose of hiring and employing an administrator, administrative assistant, and an accountant to perform functions relating to the administration of the family leave trust fund, including the oversight of payroll deductions, administrative processes, and payment to eligible employees.



1 The sums appropriated shall be expended by the department
2 of labor and industrial relations for the purposes of this Act.

3 SECTION 11. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.


7 SECTION 12. This Act does not affect rights and duties
8 that matured, penalties that were incurred, and proceedings that
9 were begun before its effective date.

10 SECTION 13. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 14. This Act shall take effect on July 1, 2015.

13

INTRODUCED BY: Erzanne Chun Oakland
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S.B. NO. 965

Report Title:

Family Leave Trust Fund; Family Leave Insurance Benefits;
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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