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# A BILL FOR AN ACT

RELATING TO FAMILY AND MEDICAL LEAVE.

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

1           SECTION 1. The legislature recognizes the immense benefits  
2 of paid family and medical leave programs to individuals,  
3 families, and communities. Paid family and medical leave  
4 provides continuity and stability in the labor workforce,  
5 strengthens employee retention and participation in the  
6 workplace, and enhances job opportunities in the workplace.  
7 Paid family and medical leave also enables employees to take  
8 time off to attend to certain life events, including medical  
9 emergencies for their own illnesses or family members' illnesses  
10 without undue financial burden.

11           According to the National Conference of State Legislatures,  
12 California, New Jersey, and Rhode Island currently offer paid  
13 family and medical leave. New York's paid family leave benefits  
14 law will take effect in 2018, and Washington's paid family and  
15 medical leave law will take effect in 2020. The legislature  
16 finds that paid family and medical leave laws, as well as paid  
17 sick leave laws and school or parental leave laws in cities and



1 states, show that policymakers, businesses, and communities  
2 recognize the positive effects of these laws.

3 The legislature finds that it is in the public interest to  
4 enact paid family and medical leave legislation that provides  
5 reasonable paid family leave for the birth or placement of a  
6 child with an employee, for the care of a family member who has  
7 a serious health condition, and for a qualifying exigency under  
8 the federal Family and Medical Leave Act, and to provide  
9 reasonable paid medical leave for an employee's own serious  
10 health condition.

11 The purpose of this Act is to establish a system of family  
12 and medical leave insurance in the State that makes it possible  
13 for working individuals to take paid leave for family care and  
14 medical reasons.

15 SECTION 2. The Hawaii Revised Statutes is amended by  
16 adding a new chapter to be appropriately designated and to read  
17 as follows:

18 "CHAPTER

19 HAWAII PAID FAMILY AND MEDICAL LEAVE

20 PART I. SHORT TITLE, PROGRAM, CONSTRUCTION, AND DEFINITIONS



1           §   -1   **Short title.** This chapter shall be known and cited  
2 as the Hawaii Paid Family and Medical Leave Act.

3           §   -2   **Definitions.** As used in this chapter, unless the  
4 context clearly requires otherwise:

5           "Child" includes a biological, adopted, or foster child, a  
6 stepchild, or a child to whom the employee stands in loco  
7 parentis, is a legal guardian of, or is a de facto parent of,  
8 regardless of age or dependency status.

9           "Department" means the department of labor and industrial  
10 relations.

11          "Director" means the director of labor and industrial  
12 relations.

13          "Employee" means any individual in the employment of an  
14 employer. "Employee" does not include employees of the United  
15 States.

16          "Employee's average weekly wage" means the quotient derived  
17 by dividing the employee's total wages during the two quarters  
18 of the employee's qualifying period in which total wages were  
19 highest by twenty-six. If the result is not a multiple of \$1,  
20 the department shall round the result to the next lower multiple  
21 of \$1.



1 "Employer" means any individual or type of organization,  
2 including the State, any of its political subdivisions, any  
3 instrumentality of the State or its political subdivisions, any  
4 partnership, association, trust, estate, joint stock company,  
5 insurance company, limited liability company, or corporation,  
6 whether domestic or foreign, or the receiver, trustee in  
7 bankruptcy, trustee, or the legal representative of a deceased  
8 person that has any person in employment in the State but does  
9 not include the United States.

10 "Employment" has the same meaning as defined in section  
11 383-2.

12 "Employment benefits" means all benefits, other than salary  
13 or wages, provided or made available to employees by an  
14 employer, including group life insurance, health insurance,  
15 disability insurance, sick leave, annual leave, educational  
16 benefits, and pensions except benefits that are provided by a  
17 practice or written policy of an employer or through an employee  
18 benefit plan as defined in 29 United States Code section  
19 1002(3).

20 "Family leave" means leave taken by an employee from work:

- 1           (1) To participate in providing care, including physical  
2           or psychological care, for a family member of the  
3           employee made necessary by a serious health condition  
4           of the family member;
- 5           (2) To bond with the employee's child during the first  
6           twelve months after the child's birth, or the first  
7           twelve months after the placement of a child under the  
8           age of eighteen with the employee; or
- 9           (3) Because of any qualifying exigency as permitted under  
10          the federal Family and Medical Leave Act, 29 United  
11          States Code section 2612(a)(1)(e) and 29 Code of  
12          Federal Regulations section 825.126(a)(1) through (8)  
13          for family members of members of the United States  
14          Armed Forces.
- 15          "Family member" means a child, grandchild, grandparent,  
16          parent, sibling, or spouse of an employee.
- 17          "Grandchild" means a child of the employee's child.
- 18          "Grandparent" means a parent of the employee's parent.
- 19          "Health care provider" means:
- 20          (1) A person licensed as a physician, osteopathic  
21          physician, or surgeon under chapter 453;



1           (2) A person licensed as an advanced practice registered  
2           nurse under chapter 457; or

3           (3) Any other person determined by the director to be  
4           capable of providing health care services.

5           "Medical leave" means leave taken by an employee from work  
6           made necessary by the employee's own serious health condition.

7           "Parent" means the biological, adoptive, de facto, or  
8           foster parent, stepparent, or legal guardian of an employee or  
9           the employee's spouse, or an individual who stood in loco  
10          parentis to an employee when the employee was a child.

11          "Period of incapacity" means the period in which an  
12          individual is unable to work, attend school, or perform other  
13          regular daily activities because of a serious health condition,  
14          treatment of that condition, recovery from the condition or  
15          treatment, or subsequent treatment in connection with inpatient  
16          care.

17          "Premium" or "premiums" means the payments required by  
18          section       -29 and paid to the department for deposit in the  
19          family and medical leave insurance fund under section       -12.

20          "Qualifying exigency" means a qualifying exigency as  
21          determined by the United States Secretary of Labor arising out



1 of the fact that an employee's spouse, son, daughter, or parent  
2 is on covered active duty or has been notified of an impending  
3 call or order to covered active duty in the armed forces of the  
4 United States.

5 "Qualifying period" means the first four of the last five  
6 completed calendar quarters or, if eligibility is not  
7 established, the last four completed calendar quarters  
8 immediately preceding the application for leave.

9 "Serious health condition" means an illness, injury,  
10 impairment, or physical or mental condition that involves  
11 inpatient care in a hospital, hospice, or residential medical  
12 care facility; a period of incapacity; or continuing treatment  
13 by a health care provider.

14 "State average weekly wage" means the amount determined by  
15 the director under section 383-22 as the average weekly wage.

16 "Typical workweek hours" means:

- 17 (1) For an hourly employee, the average number of hours  
18 worked per week by the employee since the beginning of  
19 the qualifying period; and  
20 (2) Forty hours for a salaried employee, regardless of the  
21 number of hours the salaried employee typically works.



1 "Wage" means the remuneration paid or payable by one or  
2 more employers to an individual for employment during the  
3 individual's base year.

4 § -3 Family and medical leave program; establishment;  
5 program administration. (a) The department shall establish and  
6 administer the family and medical leave program and pay family  
7 and medical leave benefits as specified in this chapter.

8 (b) The department shall establish procedures and forms  
9 for filing applications for benefits under this chapter. The  
10 department shall notify the relevant employer within five  
11 business days of the filing of an application.

12 § -4 Family and medical leave data collection system.

13 (a) There is established a family and medical leave data  
14 collection system to:

15 (1) Ensure that all employees covered by the benefits of  
16 this chapter are informed of their rights under this  
17 chapter and their names are entered into the database  
18 upon application for benefits;

19 (2) Collect pertinent data, consistent with state and  
20 federal privacy statutes, on the use and potential  
21 demand for family and medical leave benefits for both



1 public and private-sector employees, including  
2 information on who and under what circumstances  
3 employees are using family and medical leave benefits,  
4 the nature and duration of family members' needs, and  
5 the adequacy of current family and medical leave  
6 benefits;

7 (3) Provide analysis of the data to assist in the  
8 development and implementation of an efficient system  
9 of paid family and medical leave for employees in  
10 Hawaii; and

11 (4) Provide analysis of data to assist in the future  
12 development of caregiver services for senior citizens  
13 in Hawaii.

14 (b) The department shall work with the University of  
15 Hawaii center on aging to create a web-based data system with  
16 the following capabilities:

17 (1) The capacity for all employees seeking family and  
18 medical leave benefits under this chapter to log into  
19 the data system and enter pertinent data on the  
20 circumstances and need for family and medical leave  
21 benefits;



- 1           (2) The ability to secure confidential information,  
2                   consistent with state and federal privacy statutes,  
3                   available only in aggregate form for managers and  
4                   analysts of the data system;
- 5           (3) The ability of the employee to print out a simple form  
6                   to be submitted to the employer certifying that  
7                   required data has been entered;
- 8           (4) The ability of data managers and analysts to  
9                   manipulate and query the database to achieve the  
10                  purpose of this chapter;
- 11          (5) A back-up paper system that can be used when computer  
12                  access or printing is unavailable; and
- 13          (6) A user-friendly format that can be translated into  
14                  multiple languages for employees.
- 15          (c) The state auditor shall be provided access to the  
16                  database and shall prepare annual reports to the legislature,  
17                  the department, and the University of Hawaii center on aging.
- 18          §   -5   **Advisory committee.** (a) The director shall  
19                  appoint an advisory committee to review issues and topics of  
20                  interest related to this chapter.



1 (b) The advisory committee shall comprise ten members, as  
2 follows:

3 (1) Four members representing employees' interests in  
4 family and medical leave, each of whom shall be  
5 appointed from a list of at least four names submitted  
6 by a recognized statewide organization of employees;

7 (2) Four members representing employers, each of whom  
8 shall be appointed from a list of at least four names  
9 submitted by a recognized statewide organization of  
10 employers; and

11 (3) Two ex officio members, without a vote, one of whom  
12 shall represent the department and the other of whom  
13 shall be the ombuds for the family and medical leave  
14 program.

15 The member representing the department shall be the chair.

16 (c) The advisory committee shall provide comment on rule  
17 making, policies, implementation of this chapter, utilization of  
18 benefits, and other initiatives, and study issues the advisory  
19 committee determines to require its consideration.

20 (d) The members of the advisory committee shall serve  
21 without compensation but shall be reimbursed for expenses,



1 including travel expenses, necessary for the performance of  
2 their duties.

3 (e) The advisory committee may utilize personnel and  
4 facilities of the department as it needs, without charge. All  
5 expenses of the committee shall be paid by the family and  
6 medical leave insurance fund.

7 § -6 Ombuds. (a) The director shall establish an  
8 ombuds office for family and medical leave within the  
9 department. An ombuds shall be appointed by the governor and  
10 report directly to the director. The ombuds shall be available  
11 to all employers and employees in the State.

12 (b) The person appointed ombuds shall hold office for a  
13 term of six years and shall continue to hold office until  
14 reappointed or until the ombud's successor is appointed. The  
15 governor may remove the ombuds only for neglect of duty,  
16 misconduct, or inability to perform duties. Any vacancy shall  
17 be filled by similar appointment for the remainder of the  
18 unexpired term.

19 (c) The ombuds shall:

20 (1) Offer and provide information on family and medical  
21 leave to employers and employees;



- 1           (2) Act as an advocate for employers and employees in
- 2                   their dealings with the department;
- 3           (3) Identify, investigate, and facilitate resolution of
- 4                   disputes and complaints under this chapter; and
- 5           (4) Refer complaints to the department when appropriate.
- 6           (d) The ombuds may conduct surveys of employees. Survey
- 7                   questions and results are confidential and shall not be
- 8                   disclosed.
- 9           (e) The ombuds is not liable for the good faith
- 10                   performance of responsibilities under this chapter.

11           **§ -7 Outreach program.** The department shall develop and

12                   implement an outreach program to ensure that employees who may

13                   be qualified to receive family and medical leave benefits under

14                   this chapter are made aware of these benefits. Outreach

15                   information shall explain, in an easy to understand format,

16                   eligibility requirements, the application process, weekly

17                   benefit amounts, maximum benefits payable, notice and

18                   certification requirements, reinstatement and nondiscrimination

19                   rights, confidentiality, voluntary plans, and the relationship

20                   between employment protection, leave from employment, and wage



1 replacement benefits under this chapter and other laws,  
2 collective bargaining agreements, and employer policies.

3       **§ -8 Information sharing; inspection; audit.** (a) The  
4 department shall use information sharing and integration  
5 technology to facilitate the disclosure of relevant information  
6 or records by the department, so long as an employee consents to  
7 the disclosure as required under section -19.

8       (b) Information contained in the files and records  
9 pertaining to an employee under this chapter are confidential  
10 and not open to public inspection, other than to public  
11 employees in the performance of their official duties; provided  
12 that the employee or an authorized representative of an employee  
13 may review the records or receive specific information from the  
14 records on the presentation of the signed authorization of the  
15 employee. An employer or the employer's duly authorized  
16 representative may review the records of an employee employed by  
17 the employer in connection with a pending application. At the  
18 department's discretion, other persons may review records when  
19 such persons are rendering assistance to the department at any  
20 stage of the proceedings on any matter pertaining to the  
21 administration of this chapter.



1 (c) The department is authorized to inspect and audit  
2 employer files and records relating to the family and medical  
3 leave program, including employer voluntary plans.

4 § -9 **Reports to legislature.** Beginning December 1,  
5 , and annually thereafter, the department shall report to  
6 the legislature on the entire program, including:

- 7 (1) Projected and actual program participation;
- 8 (2) Premium rates;
- 9 (3) Fund balances;
- 10 (4) Benefits paid;
- 11 (5) Demographic information on program participants,  
12 including income, gender, race, ethnicity, geographic  
13 distribution by county and legislative district, and  
14 employment sector;
- 15 (6) Costs of providing benefits;
- 16 (7) Elective coverage participation;
- 17 (8) Voluntary plan participation; and
- 18 (9) Outreach efforts.

19 § -10 **Rules.** The director shall adopt rules pursuant to  
20 chapter 91 as necessary to implement this chapter.



1           PART II.   FAMILY AND MEDICAL LEAVE INSURANCE; ELIGIBILITY,  
2                            FUNDING, AND EMPLOYEE AND EMPLOYER RIGHTS

3           §   -11   Eligibility for leave; serious health condition.

4   (a)   An employee who meets the eligibility criteria established  
5   by this section and section       -16 may receive family or medical  
6   leave benefits pursuant to this chapter when the employee is  
7   absent from work:

8           (1)   Following the birth or placement for adoption of a  
9                child;

10          (2)   To provide care for a family member who has a serious  
11                health condition;

12          (3)   Because of the employee's own serious health  
13                condition; or

14          (4)   Because of a qualifying exigency.

15          (b)   For purposes of this chapter, a serious health  
16   condition for which an employee may receive benefits shall be:

17           (1)   A period of incapacity of more than three consecutive,  
18                full calendar days and any subsequent treatment or  
19                period of incapacity relating to the same condition  
20                that also involves:



- 1 (A) In-person treatment two or more times within  
2 thirty days of the first day of incapacity where  
3 the first in-person treatment occurs within the  
4 first seven days following the first day of  
5 incapacity, unless circumstances beyond the  
6 employee's control prevent adherence to this  
7 requirement, by a health care provider, a nurse  
8 or physician's assistant under direct supervision  
9 of a health care provider, or a provider of  
10 health care services under orders of or on  
11 referral by a health care provider, as determined  
12 to be necessary by the health care provider; or  
13 (B) In-person treatment by a health care provider on  
14 at least one occasion within the first seven days  
15 following the first day of incapacity which  
16 results in a regimen of continuing treatment  
17 under the supervision of the health care  
18 provider;
- 19 (2) Any period of incapacity due to pregnancy or for  
20 prenatal care;



- 1           (3) Any period of incapacity or treatment for such
- 2           incapacity due to a chronic serious health condition
- 3           which:
- 4           (A) Requires periodic visits, defined as at least
- 5           twice a year, for in-person treatment by a health
- 6           care provider, or by a nurse under direct
- 7           supervision of a health care provider;
- 8           (B) Continues over an extended period of time,
- 9           including recurring episodes of a single
- 10          underlying condition; and
- 11          (C) May cause episodic periods rather than a
- 12          continuing period of incapacity;
- 13          (4) A period of incapacity which is permanent or long term
- 14          due to a condition for which treatment may not be
- 15          effective and for which the employee or family member
- 16          shall be under the continuing supervision of, but need
- 17          not be receiving active treatment by, a health care
- 18          provider as determined by the health care provider; or
- 19          (5) Any period, including any period of recovery from
- 20          treatments, in which the employee or family member
- 21          receives multiple treatments, by a health care



1 provider or by a provider of health care services  
2 under orders of or on referral by a health care  
3 provider, either for:

4 (A) Restorative surgery after an accident or other  
5 injury; or

6 (B) A condition that would likely result in a period  
7 of incapacity of more than three consecutive,  
8 full calendar days in the absence of medical  
9 treatment.

10 (c) Treatment for purposes of this section includes  
11 examinations to determine whether a serious health condition  
12 exists and evaluations of the condition but treatment does not  
13 include routine physical examinations, eye examinations, or  
14 dental examinations. Continuing treatment for the purposes of  
15 this section includes a course of prescription medication or  
16 therapy requiring special equipment to resolve or alleviate the  
17 health condition. Continuing treatment that includes only  
18 taking over-the-counter medications, bed rest, drinking fluids,  
19 exercise, or other similar activities that can be initiated  
20 without a visit to a health care provider, is not, by itself,



1 sufficient to constitute continuing treatment for purposes of  
2 this section.

3 (d) Conditions for which only cosmetic treatments are  
4 administered are not serious health conditions unless inpatient  
5 hospital care is required or unless complications develop that  
6 independently constitute a serious health condition.  
7 Restorative dental or plastic surgery after an injury or  
8 treatment for another serious health condition are serious  
9 health conditions if all other requirements of this section are  
10 met.

11 (e) Mental illness is a serious health condition if all  
12 other requirements of this section are met.

13 (f) Substance abuse is a serious health condition if all  
14 other requirements of this section are met; provided that leave  
15 may only be taken for treatment for substance abuse by a health  
16 care provider or by a licensed substance abuse treatment  
17 provider. An employee's absence because of the employee's use  
18 of a substance, rather than for treatment, does not qualify for  
19 leave benefits under this chapter. Leave taken by an employee  
20 to pursue treatment for substance abuse shall not preclude an  
21 employer from taking employment action against the employee;



1 provided that the employer has an established policy, applied in  
2 a nondiscriminatory manner and communicated to all employees,  
3 that allows or requires an employee to be terminated for  
4 substance abuse. An employer shall not take employment action  
5 against an employee solely because the employee has exercised  
6 the right to take medical leave to obtain treatment. An  
7 employer shall not take employment action against an employee  
8 who is providing care for a covered family member receiving  
9 treatment for substance abuse.

10 (g) Periods of incapacity under subsection (b)(2) and (3)  
11 are serious health conditions for purposes of this chapter even  
12 if the employee or the family member does not receive treatment  
13 from a health care provider during the period and regardless of  
14 the duration of the period.

15 § -12 **Family and medical leave insurance fund.** (a)  
16 There is created in the state treasury the family and medical  
17 leave insurance fund. All receipts from premiums imposed under  
18 this chapter shall be deposited in the fund. Expenditures from  
19 the fund shall be used only for the purposes of the family and  
20 medical leave program. Only the director or the director's  
21 designee may authorize expenditures from the fund. The fund



1 shall be subject to the allotment procedures under chapter 37.  
2 An appropriation by the legislature shall be required for  
3 administrative expenses, but not for benefit payments or  
4 transfers in accordance with subsection (c).

5 (b) Money deposited in the fund shall remain a part of the  
6 fund until expended pursuant to the requirements of this chapter  
7 or transferred in accordance with subsection (c). The director  
8 shall maintain a separate record of the deposit, obligation,  
9 expenditure, and return of funds so deposited. Any funds  
10 deposited in the fund which will not be obligated or expended  
11 within the period specified by the relevant legislative  
12 appropriation from the fund or which remain unobligated at the  
13 end of each fiscal year shall remain in the family and medical  
14 leave insurance fund.

15 (c) Money shall be transferred from the family and medical  
16 leave insurance fund and deposited in the unemployment  
17 compensation trust fund solely for the repayment of benefits not  
18 charged to employers subject to section 383-62(b), (c), or (d)  
19 for a temporary employee employed for twenty weeks or less for  
20 purposes of replacing a permanent employee who is absent due to  
21 family or medical leave; provided that the temporary employee's



1 employment is terminated due to the return to employment of the  
2 permanent employee. The director shall direct the transfer,  
3 which shall occur on or before June 30 of the year in which the  
4 temporary employment is terminated.

5 (d) Money transferred as provided in subsection (c) for  
6 the repayment of benefits not charged to employers shall be  
7 deposited in the unemployment compensation trust fund and shall  
8 remain a part of the unemployment compensation trust fund until  
9 expended. The director shall maintain a separate record of the  
10 deposit, obligation, expenditure, and return of funds so  
11 deposited. Any funds deposited in the unemployment compensation  
12 trust fund pursuant to this subsection which are not obligated  
13 or expended at the end of each fiscal year shall remain in the  
14 unemployment compensation trust fund.

15 **§ -13 Family and medical leave enforcement fund.** There  
16 is created in the state treasury the family and medical leave  
17 enforcement fund. Any overpayments, penalties, or interest  
18 collected under this chapter shall be deposited into the family  
19 and medical leave enforcement fund and shall be used only for  
20 the purposes of administering and enforcing this chapter. Only  
21 the director may authorize expenditures from the family and



1 medical leave enforcement fund. The fund shall be subject to  
2 allotment procedures under chapter 37; provided that an  
3 appropriation shall not be required for expenditures.

4 § -14 **Uncollectible accounts.** The director may charge  
5 off as uncollectible and no longer an asset of the family and  
6 medical leave insurance fund or the family and medical leave  
7 enforcement fund, as applicable, any delinquent premiums,  
8 interest, penalties, credits, or benefit overpayment liabilities  
9 if the director is satisfied that there are no cost-effective  
10 means of collecting the premiums, interest, penalties, credits,  
11 or benefit overpayment liabilities.

12 § -15 **Benefit; amount and duration.** (a) Beginning  
13 January 1, , family and medical leave shall be available and  
14 benefits shall be payable to qualified employees pursuant to  
15 this section. Benefits shall become payable after a waiting  
16 period consisting of the first seven calendar days of leave;  
17 provided that no waiting period shall be required for leave for  
18 the birth or placement of a child. Benefits shall continue up  
19 to the maximum period specified in subsection (c), subject to  
20 the maximum and minimum weekly benefits, duration, and other  
21 conditions and limitations established in this chapter.



1 Successive periods of family and medical leave caused by the  
2 same or related injury or sickness shall be deemed a single  
3 period of family and medical leave only if separated by less  
4 than four months.

5 (b) The weekly benefit amount paid shall be prorated by  
6 the percentage of hours on leave compared to the number of hours  
7 provided as the typical workweek hours; provided that:

8 (1) The benefit amount, if not a multiple of \$1, shall be  
9 reduced to the next lower multiple of \$1;

10 (2) Hours on leave claimed for benefits under this  
11 chapter, if not a multiple of one hour, shall be  
12 reduced to the next lower multiple of one hour; and

13 (3) The minimum claim duration payment shall be for eight  
14 consecutive hours of leave.

15 (c) The maximum duration of paid family leave shall not  
16 exceed twelve times the typical workweek hours during a period  
17 of fifty-two consecutive calendar weeks. The maximum duration  
18 of paid medical leave shall not exceed twelve times the typical  
19 workweek hours during a period of fifty-two consecutive calendar  
20 weeks. Leave may be extended an additional two times the



1 typical workweek hours if the employee experiences a serious  
2 health condition with a pregnancy that results in incapacity.

3 An employee shall not be entitled to paid family and  
4 medical leave benefits under this chapter in excess of a  
5 combined total of sixteen times the typical workweek hours;  
6 provided that if the employee experiences a serious health  
7 condition with a pregnancy that results in incapacity, the  
8 employee shall be entitled to a combined total of family and  
9 medical leave benefits not in excess of eighteen times the  
10 typical workweek hours.

11 (d) The weekly family and medical leave benefit amount  
12 shall be determined as follows:

13 (1) If the employee's average weekly wage is fifty per  
14 cent or less of the state average weekly wage, the  
15 employee's weekly benefit shall be ninety per cent of  
16 the employee's average weekly wage; or

17 (2) If the employee's average weekly wage is greater than  
18 fifty per cent of the state average weekly wage, the  
19 employee's weekly benefit shall be the sum of ninety  
20 per cent of the employee's average weekly wage up to  
21 fifty per cent of the state average weekly wage plus



1            fifty per cent of the portion of the employee's  
 2            average weekly wage that exceeds fifty per cent of the  
 3            state average weekly wage.

4            (e) The maximum weekly family and medical leave benefit  
 5 amount payable on or after January 1,            , shall be \$1,000. By  
 6 September 30,            , and by each subsequent September 30, the  
 7 director shall adjust the maximum weekly benefit amount to  
 8 reflect ninety per cent of the state average weekly wage. The  
 9 adjusted maximum weekly benefit amount shall take effect on the  
 10 following January 1 each year. The minimum weekly benefit shall  
 11 not be less than \$100 per week; provided that if the employee's  
 12 average weekly wage at the time of family or medical leave is  
 13 less than \$100 per week, the weekly benefit amount shall be the  
 14 employee's full average weekly wage.

15            (f) An employer may allow an employee who has accrued  
 16 vacation, sick, or other paid time off to choose whether:

- 17            (1) To take such leave; or
- 18            (2) Not to take such leave and receive paid family or
- 19            medical leave benefits, as provided in this section.

20            § -16 **Employee eligibility; tenure.** Employees shall be  
 21 eligible for paid family and medical leave benefits as provided



1 in this chapter after working for at least eight hundred twenty  
2 hours in employment during the qualifying period.

3 § -17 **Employment protection.** (a) Except as provided in  
4 subsection (f) and section -11(f), any employee who takes family  
5 or medical leave under this chapter shall be entitled, on return  
6 from the leave to be restored by the employer to:

7 (1) The position of employment held by the employee when  
8 the leave commenced; or

9 (2) To an equivalent position with equivalent employment  
10 benefits, pay, and other terms and conditions of  
11 employment.

12 (b) The taking of leave under this chapter shall not  
13 result in the loss of any employment benefits accrued before the  
14 date on which the leave commenced.

15 (c) Nothing in this section shall be construed to entitle  
16 any employee to:

17 (1) The accrual of any seniority or employment benefits  
18 during any period of leave; or

19 (2) Any right, benefit, or position of employment other  
20 than any right, benefit, or position to which the



1           employee would have been entitled had the employee not  
2           taken the leave.

3           (d) As a condition of restoration under subsection (a) for  
4 an employee who has taken medical leave, the employer may have a  
5 uniformly applied practice or policy that requires each such  
6 employee to receive certification from the employee's health  
7 care provider that the employee is able to resume work.

8           (e) Nothing in this section shall be construed to prohibit  
9 an employer from requiring an employee on leave to report  
10 periodically to the employer on the status and intention of the  
11 employee to return to work.

12           (f) This section shall not apply unless the employee:

- 13           (1) Is employed by an employer with fifty or more  
14           employees;
- 15           (2) Has been employed by the current employer for twelve  
16           months or more; and
- 17           (3) Has been employed by the current employer for at least  
18           1,250 hours during the twelve months immediately  
19           preceding the date on which leave commences.

20 For purposes of this section, an employer shall be considered to  
21 employ fifty or more employees if the employer employs fifty or



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

4 (g) An employer may deny restoration under this section to  
5 any salaried employee who is among the highest paid ten per cent  
6 of the employees employed by the employer within seventy-five  
7 miles of the facility at which the employee is employed if:

8 (1) Denial is necessary to prevent substantial and  
9 grievous economic injury to the operations of the  
10 employer;

11 (2) The employer notifies the employee of the intent of  
12 the employer to deny restoration on such basis at the  
13 time the employer determines that the economic injury  
14 would occur; and

15 (3) The employee's leave has commenced and the employee  
16 elects not to return to employment after receiving the  
17 notice.

18 § -18 Employee notice to employer. (a) If the  
19 necessity for leave for the birth or placement of a child with  
20 the employee is foreseeable based on an expected birth or  
21 placement, the employee shall provide the employer with not less



1 than thirty days' written notice, before the date the leave is  
2 to begin, of the employee's intention to take leave for the  
3 birth or placement of a child. If the date of the birth or  
4 placement requires leave to begin in less than thirty days, the  
5 employee shall provide such notice as is practicable.

6 (b) If the necessity for leave for a family member's  
7 serious health condition or the employee's serious health  
8 condition is foreseeable based on planned medical treatment, the  
9 employee shall:

10 (1) Make a reasonable effort to schedule the treatment so  
11 as not to disrupt unduly the operations of the  
12 employer, subject to the approval of the health care  
13 provider of the employee or of the family member, as  
14 appropriate; and

15 (2) Provide the employer with not less than thirty days'  
16 written notice, before the date the leave is to begin,  
17 of the employee's intention to take leave for a family  
18 member's serious health condition or the employee's  
19 serious health condition; provided that if the date of  
20 the treatment requires leave to begin in less than



1 thirty days, the employee shall provide such notice as  
2 practicable.

3 § -19 Application for benefits; requirements and  
4 documentation. (a) Family and medical leave insurance benefits  
5 shall be payable to an employee during a period of family and  
6 medical leave; provided that the employee:

- 7 (1) Files an application for benefits as required by rules  
8 adopted by the director;
- 9 (2) Has met the eligibility requirements of section -16  
10 or has elected coverage under section -32;
- 11 (3) Consents to the disclosure of information or records  
12 deemed private and confidential under state and  
13 federal law solely for purposes related to  
14 qualification for benefits and the administration of  
15 this chapter and subject to sections -8 and -27,  
16 and chapter 92F;
- 17 (4) Discloses whether or not the employee owes child  
18 support obligations as defined in chapter 576D;
- 19 (5) Provides the employee's social security number;
- 20 (6) Provides a document authorizing the family member's or  
21 employee's health care provider, as applicable, to



1 disclose the family member's or employee's health care  
2 information in the form of the certification of a  
3 serious health condition;

4 (7) Provides the employer from whom family and medical  
5 leave is to be taken with written notice of the  
6 employee's intention to take family leave as provided  
7 in section -18 and, in the employee's initial  
8 application for benefits, attests that written notice  
9 has been provided; and

10 (8) If requested by the employer, provides documentation  
11 of a qualifying exigency.

12 (b) An employee who is not in employment for an employer  
13 at the time of filing an application for benefits shall be  
14 exempt from subsection (a)(7) and (8).

15 § -20 **Timing of benefit payments; no disruption during**  
16 **contest of eligibility.** (a) Benefits provided under this  
17 chapter shall be paid periodically and promptly, except as  
18 provided in this section. The department shall send the first  
19 benefit payment to the employee within fourteen calendar days of  
20 receipt of a completed application that establishes eligibility



1 for benefits. Subsequent payments shall be sent at least  
2 biweekly thereafter.

3 (b) The department shall establish by rule a process that  
4 conforms to the requirements of chapter 91 and part V by which  
5 an employer may contest an employee's eligibility for paid  
6 family or medical leave benefits at the time of initial  
7 application and during the leave period.

8 (c) An employee who has received at least one benefit  
9 payment under this chapter may receive conditional benefit  
10 payments without disruption or delay during the pendency of any  
11 proceeding under part V related to the employee's eligibility  
12 for benefits. Rules governing conditional benefits shall  
13 contain, but not be limited to, provisions authorizing:

14 (1) At the employee's request, the department to withhold  
15 conditional benefit payments until the question of  
16 eligibility has been resolved;

17 (2) The immediate payment of any conditional benefit  
18 payments withheld upon the department's determination  
19 that the employee is eligible for benefits; and

20 (3) The repayment of any conditional benefit amounts  
21 erroneously paid to an employee determined by the



1 department to have been ineligible for benefit  
2 payments.

3 § -21 Benefit exclusions and disqualification; employee  
4 penalties. (a) An employee shall not be entitled to paid  
5 family or medical leave benefits under this chapter:

6 (1) For any absence occasioned by the willful intention of  
7 the employee to bring about injury to or the sickness  
8 of the employee or another individual, or resulting  
9 from any injury or sickness sustained in the  
10 perpetration by the employee of an illegal act;

11 (2) For any leave that commences before the employee  
12 becomes eligible for benefits;

13 (3) While the employee is on suspension from the  
14 employee's employment; or

15 (4) For any day in which the employee works at least part  
16 of that day for remuneration or profit during the same  
17 or substantially similar working hours as those of the  
18 employer from which family or medical leave benefits  
19 are claimed; provided that occasional scheduling  
20 adjustments with respect to secondary employments



1           shall not prevent receipt of family or medical leave  
2           benefits.

3           (b) An employee shall be disqualified from receiving  
4 benefits for knowingly and willfully making a false statement or  
5 representation involving a material fact or knowingly and  
6 willfully failing to report a material fact for the purpose of  
7 obtaining or attempting to obtain any benefit under this  
8 chapter. The disqualification shall begin at the start of the  
9 first benefit week for which eligibility was affected by the  
10 statement, representation, or failure to report. The department  
11 shall determine an employee's disqualification under this  
12 subsection pursuant to part V. An individual disqualified under  
13 this subsection for the:

14           (1) First time shall be disqualified for an additional  
15           twenty-six weeks beginning with the Sunday of the week  
16           in which the department determines the employee's  
17           disqualification and shall be subject to an additional  
18           penalty of fifteen per cent of the amount of benefits  
19           overpaid;

20           (2) Second time shall be disqualified for an additional  
21           fifty-two weeks beginning with the Sunday of the week



1           in which the department determines the employee's  
2           disqualification and shall be subject to an additional  
3           penalty of twenty-five per cent of the amount of  
4           benefits overpaid; and

5           (3) Third time and any time thereafter shall be  
6           disqualified for an additional one hundred four weeks  
7           beginning with the Sunday of the week in which the  
8           department determines the employee's disqualification  
9           and shall be subject to an additional penalty of fifty  
10          per cent of the amount of benefits overpaid or deemed  
11          overpaid.

12          (c) All penalties collected under this section shall be  
13          deposited in the family and medical leave enforcement fund  
14          created under section     -13.

15          §   -22   **Expiration of benefits.** (a) The entitlement to  
16          family leave benefits for the birth or placement of a child  
17          shall expire at the end of the twelve-month period beginning on  
18          the date of the birth or placement.

19          (b) The entitlement to family leave benefits for a family  
20          member's serious health condition, or leave for qualifying  
21          exigency, shall expire at the end of the twelve-month period



1 beginning on the date of which the employee filed an application  
2 for the benefits.

3 (c) The entitlement to medical leave benefits for the  
4 employee's own serious health condition shall expire at the end  
5 of the twelve-month period beginning on the date on which the  
6 employee filed an application for medical leave benefits.

7 § -23 Federal income taxes; withholding. (a) If the  
8 Internal Revenue Service determines that family or medical leave  
9 benefits under this chapter are subject to federal income tax,  
10 the department shall advise each employee filing a new  
11 application for benefits, at the time of filing such  
12 application, that:

13 (1) The Internal Revenue Service has determined that  
14 benefits are subject to federal income tax;

15 (2) Requirements exist pertaining to estimated tax  
16 payments;

17 (3) The employee may elect to have federal income tax  
18 deducted and withheld from the employee's payment of  
19 benefits at the amount specified in the federal  
20 Internal Revenue Code; and



1           (4) The employee shall be permitted to change a previously  
2           elected withholding status.

3           (b) Amounts deducted and withheld from benefits pursuant  
4 to this section shall remain in the family and medical leave  
5 insurance fund until transferred to the federal taxing authority  
6 as a payment of income tax.

7           (c) The director shall follow all procedures specified by  
8 the federal Internal Revenue Service pertaining to the deducting  
9 and withholding of income tax.

10          §   -24   **Child support obligations; withholding.** If an  
11 employee owes delinquent child support obligations and the  
12 department determines that the employee is qualified for  
13 benefits, the department shall notify the applicable child  
14 support enforcement agency and shall deduct and withhold any  
15 benefit amount as required by the child support enforcement  
16 agency, any applicable court order, or other applicable state or  
17 federal law. The department may verify delinquent child support  
18 obligations with the child support enforcement agency of this  
19 State or other relevant jurisdiction.

20          §   -25   **Employee notice of rights.** Whenever an employee  
21 of an employer who is eligible for benefits under this chapter



1 is absent from work due to family or medical leave, or takes  
2 medical leave for more than seven consecutive days, the employer  
3 shall provide the employee with a written statement of the  
4 employee's rights under this chapter in a form prescribed by the  
5 director. The statement shall be provided to the employee  
6 within five business days after the employee's seventh  
7 consecutive day of absence due to family or medical leave, or  
8 within five business days after the employer has received notice  
9 that the employee's absence is due to family or medical leave,  
10 whichever is later.

11 § -26 Posting of notice regarding chapter; penalties.

12 Each employer shall post and keep posted, in conspicuous places  
13 on the premises of the employer where notices to employees and  
14 applicants for employment are customarily posted, a notice in a  
15 form prescribed by the director, setting forth excerpts from or  
16 summaries of the pertinent provisions of this chapter and  
17 information pertaining to the filing of a complaint for  
18 violations of this chapter. Any employer that willfully  
19 violates this section shall be subject to a civil penalty of not  
20 more than \$100 for each separate offense. Any penalties



1 collected by the department under this section shall be  
2 deposited into the family and medical leave enforcement fund.

3       **§ -27 Employer requirements.** (a) In the form and at  
4 the times specified in this chapter and by the director, an  
5 employer shall make reports, furnish information, and collect  
6 and remit premiums as required by this chapter to the  
7 department. If the employer is a temporary help services  
8 company that provides employees on a temporary basis to its  
9 customers, the temporary help services company is considered the  
10 employer for purposes of this section.

11       (b) An employer shall keep at the employer's place of  
12 business a record of employment, for a period of six years, from  
13 which the information needed by the department for purposes of  
14 this chapter may be obtained. This record shall at all times be  
15 open to the inspection of the director. Information obtained  
16 under this chapter from employer records is confidential and not  
17 open to public inspection, other than to public employees in the  
18 performance of their official duties; provided that an  
19 interested party shall be supplied with information from  
20 employer records to the extent necessary for the proper



1 presentation of the case in question. An employer may authorize  
2 inspection of the employer's records by written consent.

3 (c) All requirements relating to the collection of family  
4 and medical leave premiums are as provided in this chapter and  
5 rules adopted by the department pursuant to chapter 91. The  
6 department shall pursue the collection of premiums through  
7 enforcement procedures as specified in part V. The following  
8 shall constitute employer violations of this chapter:

- 9 (1) Failure to submit required reports;
- 10 (2) Failure to remit the full amount of premiums when due;
- 11 (3) Willfully making a false statement or  
12 misrepresentation regarding a material fact or willful  
13 failure to report a material fact in order to avoid  
14 submitting required reports or remitting the full  
15 amount of premiums when due under this chapter; and
- 16 (4) Any act enumerated in paragraphs (1) through (3)  
17 committed by a successor subject to section -31 or  
18 by an officer, member, or owner who has control or  
19 supervision of payment or reporting of family and  
20 medical leave premiums or who is charged with the  
21 responsibility for the filing of returns.



1           §   -28   Unlawful acts; employers.   (a)   It shall be  
2 unlawful for any employer to:  
3           (1)   Interfere with, restrain, or deny the exercise or  
4                attempted exercise of any valid right provided under  
5                this chapter; or  
6           (2)   Discharge or in any other manner discriminate against  
7                any employee for opposing any practice made unlawful  
8                by this chapter.  
9           (b)   It is unlawful for any person to discharge or in any  
10 other manner discriminate against any employee because the  
11 employee has:  
12           (1)   Filed any complaint, instituted, or caused to be  
13                instituted any proceeding under or related to this  
14                chapter;  
15           (2)   Given or intended to give any information in  
16                connection with any inquiry or proceeding relating to  
17                any right provided under this chapter; or  
18           (3)   Testified or intended to testify, in any inquiry or  
19                proceeding relating to any right provided under this  
20                chapter.



1           §   -29   Premiums; solvency surcharge; limitation on local  
2 regulation. (a) Beginning January 1,           , the department  
3 shall assess for each individual in employment with an employer  
4 and for each self-employed individual electing coverage a  
5 premium based on the amount of the individual's wages subject to  
6 subsection (d). The premium rate for family leave benefits  
7 shall be equal to one-third of the total premium rate. The  
8 premium rate for medical leave benefits shall be equal to two-  
9 thirds of the total premium rate.

10           (b) For calendar year           and thereafter, the director  
11 shall determine the percentage of paid claims related to family  
12 leave benefits and the percentage of paid claims related to  
13 medical leave benefits and shall adjust the premium rates set in  
14 subsection (a) by the proportional share of paid claims.

15           (c) Beginning January 1,           , and ending December 31,  
16           , the total premium rate shall be           of           per  
17 cent of the individual's wages subject to subsection (d). For  
18 family leave premiums, an employer may deduct from the wages of  
19 each employee up to the full amount of the premium required.  
20 For medical leave premiums, an employer may deduct from the  
21 wages of each employee up to forty-five per cent of the full



1 amount of the premium required. An employer may elect to pay  
2 all or any portion of the employee's share of the premium for  
3 family leave or medical leave benefits, or both.

4 (d) The director shall annually set a maximum limit on the  
5 amount of wages subject to a premium assessment under this  
6 section that is equal to the maximum wages subject to taxation  
7 for social security benefits as determined by the social  
8 security administration.

9 (e) Employers with fewer than twenty-five employees  
10 employed in the State shall not be required to pay the employer  
11 portion of premiums for family leave and medical leave benefits.

12 (f) For calendar year and thereafter, the total  
13 premium rate shall be based on the family and medical leave  
14 insurance fund balance ratio as of September 30 of the prior  
15 year. The director shall calculate the fund balance ratio by  
16 dividing the balance of the family and medical leave insurance  
17 fund by total covered wages paid by employers and self-employed  
18 individuals who elect coverage. The division shall be carried  
19 to the fourth decimal place with the remaining fraction  
20 disregarded unless it amounts to five hundred-thousandths or



1 more, in which case the fourth decimal place shall be rounded to  
2 the next higher digit. If the account balance ratio is:

3 (1) Zero to nine hundredths of one per cent, the premium  
4 shall be six tenths of one per cent of the  
5 individual's wages;

6 (2) One tenth of one per cent to nineteen hundredths of  
7 one per cent, the premium shall be five tenths of one  
8 per cent of the individual's wages;

9 (3) Two tenths of one per cent to twenty-nine hundredths  
10 of one per cent, the premium shall be four tenths of  
11 one per cent of the individual's wages;

12 (4) Three tenths of one per cent to thirty-nine hundredths  
13 of one per cent, the premium shall be three tenths of  
14 one per cent of the individual's wages;

15 (5) Four tenths of one per cent to forty-nine hundredths  
16 of one per cent, the premium shall be two tenths of  
17 one per cent of the individual's wages; or

18 (6) Five tenths of one per cent or greater, the premium  
19 shall be one tenth of one per cent of the individual's  
20 wages.



1 (g) Beginning January 1, , if the account balance ratio  
2 calculated in subsection (f) is below of per  
3 cent, the director shall assess a solvency surcharge at the  
4 lowest rate necessary to provide revenue to pay for the  
5 administrative and benefit costs of family and medical leave,  
6 for the calendar year, as determined by the director. The  
7 solvency surcharge shall be at least of per  
8 cent and no more than of per cent and shall be  
9 added to the total premium rate for family and medical leave  
10 benefits.

11 (h) Each employer shall collect from its employees the  
12 premiums and any surcharges provided under this section through  
13 payroll deductions and shall remit the amounts collected to the  
14 department. In collecting employee premiums through payroll  
15 deductions, the employer shall act as the agent of the employees  
16 and shall remit the amounts to the department as required by  
17 this chapter. On September 30 of each year, the department  
18 shall average the number of employees reported by each employer  
19 over the last four completed calendar quarters to determine the  
20 size of the employer for the next calendar year for the purposes  
21 of this section.



1 (i) Premiums shall be collected in the manner and at such  
2 intervals as provided in this chapter and rules adopted pursuant  
3 to chapter 91 by the department.

4 (j) Premiums collected under this section shall be placed  
5 in trust for the employees and employers that the program is  
6 intended to assist.

7 (k) No political subdivision may enact a charter,  
8 ordinance, regulation, rule, or resolution:

9 (1) Creating a paid family or medical leave insurance  
10 program that alters or amends the requirements of this  
11 chapter for any private employer;

12 (2) Providing for local enforcement of the provisions of  
13 this chapter; or

14 (3) Requiring private employers to supplement duration of  
15 leave or amount of wage replacement benefits provided  
16 under this chapter.

17 § -30 **Out-of-state employees; premium waiver.** (a) An  
18 employer may file an application with the department for a  
19 conditional waiver for the payment of family and medical leave  
20 premiums assessed under section -29, for any employee who is:

21 (1) Physically based outside of the State;



1           (2)   Employed in the State on a limited or temporary work  
2                    schedule; and

3           (3)   Not expected to be employed in the State for eight  
4                    hundred twenty hours or more in a qualifying period.

5           (b)   The department shall approve an application that has  
6   been signed by both the employee and employer verifying the  
7   reasonable belief that the conditions in subsection (a) will be  
8   met during the qualifying period.

9           (c)   If the employee's employment in the State exceeds  
10   eight hundred twenty hours in a qualifying period, the  
11   conditional waiver shall expire and the employer and employee  
12   shall be responsible for their respective shares of all premiums  
13   that would have been paid during the qualifying period in which  
14   the employee exceeded eight hundred twenty hours of employment  
15   had the waiver not been granted. Upon payment of premiums  
16   pursuant to this subsection, the employee shall be credited for  
17   the hours worked and shall be eligible for benefits under this  
18   chapter as if the premiums were paid during the qualifying  
19   period.

20           §   -31   Termination or disposal of business; premium  
21   payment; successor liability. Whenever any employer ceases



1 business, or sells out, exchanges, or otherwise disposes of the  
2 employer's business or stock of goods, any premiums payable  
3 under this chapter shall become immediately due and payable and  
4 the employer shall, within ten days, make a return and pay the  
5 premiums due. Any person who becomes a successor to the  
6 business shall become liable for the full amount of the premiums  
7 and shall withhold from the purchase price a sum sufficient to  
8 pay any premiums due from the employer until such time as the  
9 employer produces a receipt from the department showing payment  
10 in full of any premiums due or a certificate that no premium is  
11 due. If the premium is not paid by the employer within ten days  
12 from the date of the cessation, sale, exchange, or disposal, the  
13 successor shall become liable for the payment of the full amount  
14 of premiums and the payment thereof by the successor shall be  
15 deemed a payment upon the purchase price. If the premium  
16 payment is greater than the purchase price, the amount of the  
17 difference shall become a debt due the successor from the  
18 employer. A successor shall not be liable for any premiums due  
19 from an employer from whom the successor has acquired a business  
20 or stock of goods if the successor gives written notice to the  
21 department of the acquisition and the department issues no



1 assessment against the employer for premiums due within one  
2 hundred eighty days of receipt of the notice.

3 **PART III. ELECTIVE COVERAGE**

4 **§ -32 Elective coverage; self-employed individuals. (a)**

5 For benefits payable beginning January 1, , any self-  
6 employed individual, including a sole proprietor, independent  
7 contractor, partner, or joint venturer, may elect coverage under  
8 this chapter for an initial period of not less than three years  
9 and subsequent periods of not less than one year each  
10 immediately following a previous period of coverage.

11 Individuals electing coverage under this section shall elect  
12 coverage for both family leave and medical leave and shall be  
13 responsible for payment of one hundred per cent of all premiums  
14 and surcharges assessed under section -29. The self-employed  
15 individual shall file a notice of election in writing with the  
16 department, in a manner as required by the department by rule  
17 adopted pursuant to chapter 91. A self-employed individual  
18 shall be eligible for family and medical leave benefits after  
19 working eight hundred twenty hours in the State during the  
20 qualifying period following the date of filing the notice of  
21 election.



1           (b) A self-employed individual who has elected coverage  
2 may withdraw from coverage within thirty days after the end of  
3 each period of coverage or at such other times as the director  
4 may adopt by rule by filing a notice of withdrawal in writing  
5 with the director. Withdrawal of coverage shall take effect not  
6 sooner than thirty days after filing the notice of withdrawal  
7 with the director.

8           (c) The department may cancel elective coverage if the  
9 self-employed individual fails to make required payments or file  
10 required reports, subject to service of notice of cancellation  
11 to the self-employed individual. The department may collect due  
12 and unpaid premiums after cancellation and may levy an  
13 additional premium for the remainder of the period of coverage.  
14 Cancellation pursuant to this subsection shall be effective no  
15 later than thirty days from the date of the notice advising the  
16 self-employed individual of the cancellation. Cancellation and  
17 assessment under this subsection shall be subject to part V.

18           (d) Self-employed individuals who elect coverage shall be  
19 considered employers or employees under this chapter where the  
20 context so dictates.



1 (e) For the purposes of this section, "independent  
2 contractor" means an individual excluded from the definition of  
3 employment.

4 (f) In adopting rules pursuant to chapter 91 implementing  
5 the requirements of this section, the department shall adopt  
6 government efficiencies to improve administration and reduce  
7 costs. These efficiencies may include, but are not limited to,  
8 requiring that payments be made in a manner and at intervals  
9 unique to the elective coverage program.

10 (g) The department shall adopt rules pursuant to chapter  
11 91 for determining the hours worked and the wages of self-  
12 employed individuals who elect coverage under this section and  
13 for enforcement of this section.

14 PART IV. VOLUNTARY PLANS

15 § -33 Voluntary plans authorized. (a) An employer may  
16 voluntarily provide secure family and medical leave benefits for  
17 its employees in one or more of the following ways:

18 (1) By insuring and keeping insured the payment of family  
19 and medical leave benefits with any stock, mutual,  
20 reciprocal or other insurer authorized to transact the  
21 business of disability insurance in the State;



- 1           (2) By depositing and maintaining with the state director  
2           of finance, securities, or the bond of a surety  
3           company authorized to transact business in the State,  
4           as are satisfactory to the director securing the  
5           payment by the employer of family and medical leave  
6           benefits according to the terms of this chapter;
- 7           (3) Upon furnishing satisfactory proof to the director of  
8           the employer's or its solvency and financial ability  
9           to pay the family and medical leave benefits herein  
10          provided, no insurance or security or surety bond  
11          shall be required, and the employer shall make  
12          payments directly to the employer's employees, as they  
13          may become entitled to receive the same under the  
14          terms and conditions of this chapter;
- 15          (4) By a plan, entitling employees to cash benefits or  
16          wages during a period family or medial leave, in  
17          existence on January 1,           .
- 18                (A) If the employees of an employer or any class or  
19                classes of such employees are entitled to receive  
20                family and medical leave benefits under a plan or  
21                agreement which remains in effect on January 1,



1                   , the employer, subject to the requirements  
2 of this section, shall be relieved of  
3 responsibility for making provision for benefit  
4 payments required under this chapter until the  
5 earliest date, determined by the director for the  
6 purposes of this chapter, upon which the employer  
7 has the right to discontinue the plan or  
8 agreement or to discontinue the employer's  
9 contributions toward the cost of the family and  
10 medical leave benefits. Any plan or agreement  
11 referred to in this subparagraph may be extended,  
12 with or without modification, by agreement or  
13 collective bargaining between the employer or  
14 employers or an association of employers and an  
15 association of employees; provided the benefits  
16 under the plan or agreement, as extended or  
17 modified, are found by the director to be at  
18 least as favorable as the family and medical  
19 leave benefits required by this chapter;  
20                   (B) Any other plan or agreement in existence on  
21                   January 1,                   , which the employer may, by the



1 employer's sole act, terminate at any time, or  
2 with respect to which the employer is not  
3 obligated to continue for any period to make  
4 contributions, may be accepted by the director as  
5 satisfying the obligation to provide for the  
6 payment of benefits under this chapter if the  
7 plan or agreement provides benefits at least as  
8 favorable as the family and medical leave  
9 benefits required by this chapter and does not  
10 require contributions of any employee or of any  
11 class or classes of employees in excess of the  
12 employee premium contribution amount specified in  
13 section -29, except by agreement and provided  
14 the contribution is reasonably related to the  
15 value of the benefits as determined by the  
16 director. The director may require the employer  
17 to enter into an agreement in writing with the  
18 director that until the employer shall have filed  
19 written notice with the director of the  
20 employer's election to terminate such plan or  
21 agreement or to discontinue making necessary



1                    contributions toward the cost of providing  
2                    benefits under the plan or agreement, the  
3                    employer will continue to provide for the payment  
4                    of family and medical leave benefits under the  
5                    plan or agreement. Any plan or agreement  
6                    referred to in this subparagraph may be extended,  
7                    with or without modification; provided the  
8                    benefits under the plan or agreement, as extended  
9                    or modified, are found by the director to be at  
10                   least as favorable as the disability benefits  
11                   required by this chapter; or

12                   (5) By a new plan or agreement. On or after January 1,  
13                                      , a new plan or agreement with an insurer may be  
14                   accepted by the director as satisfying the obligation  
15                   to provide for the payment of benefits under this  
16                   chapter if the plan or agreement provides benefits at  
17                   least as favorable as the family and medical leave  
18                   benefits required by this chapter and does not require  
19                   contributions of any employee or of any class or  
20                   classes of employees in excess of the employee premium  
21                   contribution amount specified in section        -29,



1           except by agreement and provided the contribution is  
2           reasonably related to the value of the benefits as  
3           determined by the director. Any such plan or  
4           agreement shall continue until written notice is filed  
5           with the director of intention to terminate the plan  
6           or agreement, and any modification of the plan or  
7           agreement shall be subject to the written approval of  
8           the director.

9           (b) During any period in which any plan or agreement or  
10          extension or modification thereof authorized under subsection  
11          (a) (4) or (5) provides for payments of benefits under this  
12          chapter, the responsibility of the employer and the obligations  
13          and benefits of the employees shall be as provided in the plan  
14          or agreement or its extension or modification rather than as  
15          required under this chapter; provided that the director shall  
16          assess the solvency surcharge as provided in section     -29(g)  
17          to the same extent as provided in that section.

18          (c) If any plan or agreement authorized under subsection  
19          (a) (4) or (5) covers less than all of the employees of a covered  
20          employer, the requirements of this chapter shall apply with



1 respect to the employer's remaining employees not covered under  
2 the plan or agreement.

3 (d) As used in subsection (a) (4) and (5), "benefits at  
4 least as favorable as the family and medical leave benefits  
5 required by this chapter" means the family and medical leave  
6 benefits under any plan or agreement, in whole or in part, whose  
7 component parts (waiting period for illness, waiting period for  
8 accident, duration of benefits, and percentage of wage loss  
9 replaced) add in total to cash benefits or wages that are  
10 determined by the director to be at least as favorable as the  
11 family and medical leave benefits required by this chapter. The  
12 insurance commissioner shall establish a set of tables showing  
13 the relative value of different types of cash benefits and wages  
14 to assist the director in determining whether the cash benefits  
15 and wages under a plan are at least as favorable as the family  
16 and medical leave benefits required by this chapter.

17 (e) Any decision of the director rendered pursuant to this  
18 section with respect to the amount of security required,  
19 refusing to permit security to be given or refusing to accept a  
20 plan or agreement as satisfying the obligation to provide for  
21 the payment of benefits under this chapter shall be subject to



1 review on appeal in conformity with the provisions of this  
2 chapter.

3       §   -34 Voluntary plans; generally. (a) An employer that  
4 offers a voluntary plan subject to this part shall apply to the  
5 director for approval of a voluntary plan for the payment of  
6 either family leave benefits or medical leave benefits, or both.  
7 The application shall be submitted on a form and in the manner  
8 as prescribed by the director by rule. The department may  
9 charge a fee for review of each application for approval of a  
10 voluntary plan as determined by the department by rule adopted  
11 pursuant to chapter 91.

12       (b) The benefits payable as indemnification for loss of  
13 wages under any voluntary plan shall be separately stated and  
14 designated separately and distinctly in the plan from other  
15 benefits, if any.

16       (c) Neither an employee nor an employer shall be liable  
17 for any premiums under section   -29, except for the solvency  
18 surcharge assessed under section   -29(g), for benefits covered  
19 by an approved voluntary plan.

20       (d) Except as provided in this section, an employee  
21 covered by an approved voluntary plan at the commencement of a



1 period of family leave or medical leave shall not be entitled to  
2 benefits from the family and medical leave program established  
3 under section -3. Benefits payable to the employee shall be  
4 the liability of the approved voluntary plan under which the  
5 employee was covered at the commencement of the family leave or  
6 medical leave period, regardless of any subsequent serious  
7 health condition or family leave which may occur during the  
8 benefit period. The director shall adopt rules pursuant to  
9 chapter 91 to allow benefits and to prevent duplication of  
10 benefits to employees simultaneously covered by one or more  
11 approved voluntary plans and the family and medical leave  
12 program established under section -3.

13 (e) A voluntary plan may be withdrawn by the employer  
14 effective as of the date of any law that increases the plan's  
15 benefit amounts or the date of any change in the rate of  
16 employee premiums; provided that the employer transmits notice  
17 of the withdrawal to the director not less than thirty days  
18 prior to the effective date of the applicable law or change.  
19 Any plan subject to a statutory increase in benefit amounts or  
20 to a change in premiums that is not withdrawn shall be amended  
21 to provide for the increased benefit amount or change in the



1 rate of the employee's premium on the date of the increase or  
2 change.

3 (f) The director shall approve a voluntary plan if:  
4 (1) The plan covers at least one employee in employment;  
5 (2) The benefits afforded to covered employees are at  
6 least equivalent to the benefits to which the  
7 employees are entitled under the family and medical  
8 leave program established under section -3;  
9 provided that during of leave shall be considered  
10 equivalent if the voluntary plan provides for:

11 (A) The same duration of leave and benefit amount  
12 specified in section -15; or  
13 (B) At least one-half of the duration of leave  
14 specified in section -15 with full salary paid  
15 plus a monetary benefit amount equal to or  
16 greater than the total monetary benefit amount to  
17 which the employee would be entitled under  
18 section -15;

19 (3) Any sick leave to which an employee is entitled to is  
20 in addition to the family and medical leave benefits  
21 under the voluntary plan;



- 1           (4) The voluntary plan is available to all eligible  
2           employees of the employer employed in this State,  
3           including future employees;
- 4           (5) The employer consents to make the payroll deductions  
5           required, if any, and transmit the proceeds to the  
6           department for any premiums for employees not covered  
7           by the voluntary plan and for any solvency surcharge  
8           assessed;
- 9           (6) A voluntary plan shall be in effect for a period of  
10          not less than one year and, thereafter, continuously  
11          unless the director finds that the employer has given  
12          notice of withdrawal of the plan pursuant to  
13          subsection (e) in a manner specified by the director  
14          by rule adopted pursuant to chapter 91;
- 15          (7) The amount of payroll deductions from the wages of an  
16          employee shall not exceed the maximum payroll  
17          deduction authorized under section     -29, may be  
18          increased only on an anniversary of the effective date  
19          of the plan, and may be increased only to an amount  
20          that does not exceed the maximum rate authorized under  
21          section     -29;



1           (8) The voluntary plan provides for employee eligibility  
 2           for coverage under terms that comport with the  
 3           requirements of section       -36;

4           (9) The voluntary plan provides the same employment  
 5           protection provisions contained in section       -17 for  
 6           employees who have worked for the employer for at  
 7           least nine months and nine hundred sixty-five hours  
 8           during the twelve months immediately preceding the  
 9           date leave will commence; and

10          (10) The voluntary plan provides that the employer  
 11          maintains the employee's existing health benefits as  
 12          provided under section       -57.

13          §   -35 **Voluntary plans; reapproval.** Each employer that  
 14 offers a voluntary plan shall apply for reapproval by the  
 15 director annually for the first three years in which the plan is  
 16 in effect after January 1,       . After three consecutive  
 17 reapprovals are granted, the employer shall not be required to  
 18 apply for reapproval unless the employer makes changes to the  
 19 plan that were not mandated by changes to state law.

20          §   -36 **Voluntary plans; employee eligibility.** (a) To be  
 21 eligible for any family or medical leave, an employee shall be



1 in employment for eight hundred twenty hours during the  
2 qualifying period with any employer subject to this chapter or  
3 that offers a voluntary plan. An employee shall be eligible for  
4 benefits under an employer's voluntary plan only after the  
5 employee works at least three hundred forty hours for that  
6 employer.

7 (b) An employee of an employer that offers a voluntary  
8 plan who had coverage under the family and medical leave program  
9 established under section -3 shall retain coverage under the  
10 program until the employee is eligible for coverage under the  
11 employer's voluntary plan.

12 (c) An employee who was eligible for coverage under a  
13 prior employer's voluntary plan shall be immediately eligible  
14 for coverage under a subsequent employer's voluntary plan.

15 **§ -37 Voluntary plans; cessation of coverage. (a)**  
16 Coverage under an approved voluntary plan shall not apply to  
17 family or medical leave that occurs after termination of an  
18 employee's employment relationship with the employer that  
19 provided the voluntary plan or termination of a voluntary plan's  
20 approval by the director.



1 (b) An employee who has ceased to be covered by an  
2 approved voluntary plan, if otherwise eligible pursuant to  
3 section -16, shall be immediately entitled to benefits from  
4 the family and medical leave program established under section  
5 -3.

6 § -38 **Voluntary plans; employee costs.** An employer that  
7 offers a voluntary plan may assume all or a greater part of the  
8 cost of voluntary plan premiums than required for premiums under  
9 section -29. An employer may deduct from the wages of an  
10 employee covered by the voluntary plan, for the purpose of  
11 providing benefits under the voluntary plan, an amount not in  
12 excess of the employee premium amount specified in section -  
13 29.

14 § -39 **Voluntary plans; remaining wage deductions upon**  
15 **withdrawal of plan.** All deductions from employee wages  
16 remaining in the possession of an employer upon the termination  
17 or withdrawal of a voluntary plan shall be disbursed in  
18 conformity with rules adopted by the department pursuant to  
19 chapter 91 or remitted to the department for deposit in the  
20 family and medical leave insurance fund.



1           §   -40   **Voluntary plans; employee contributions and income**  
2 **held in trust.** Any employee contributions to and income arising  
3 from an approved voluntary plan received or retained by an  
4 employer shall be held in trust and shall not be considered to  
5 be part of the employer's assets. Each employer that offers a  
6 voluntary plan shall maintain a separate, specifically  
7 identifiable trust account in a financial institution for  
8 deposit of employee contributions to and income arising from the  
9 voluntary plan.

10           §   -41   **Voluntary plans; successor employer.** Any  
11 successor that acquires an employer, substantially all the  
12 assets of an employer, or a distinct and severable portion of an  
13 employer that offers a voluntary plan that is in force and  
14 effect at the time of acquisition and continues the employers  
15 operations without substantial reduction of personnel resulting  
16 from the acquisition shall continue the voluntary plan unless  
17 the successor:

18           (1)   Submits a request for withdrawal of the plan in a  
19               manner and at a time specified by the director; or



1           (2) Submits notice of termination of the plan to the  
2           director within ninety days from the date of the  
3           acquisition.

4           § -42 **Voluntary plans; amendment.** The director shall  
5 approve any amendment to a voluntary plan adjusting the  
6 provisions thereof, as to periods after the effective date of  
7 the amendment, if the director finds that:

8           (1) The plan, as amended, will conform to the standards  
9           set forth in this chapter; and

10          (2) Notice of the amendment has been delivered to  
11          employees at least ten days prior to the approval.

12          § -43 **Voluntary plans; termination by the director.** (a)  
13 The director may terminate any voluntary plan if the director  
14 finds that there is risk that the benefits accrued or that will  
15 accrue will not be paid, that the plan does not conform with the  
16 requirements of this part, or for other good cause shown.

17          (b) The director shall give notice of the director's  
18 intention to terminate a voluntary plan to the relevant employer  
19 at least ten days before taking any final action to terminate  
20 the plan. The notice shall state the effective date of and the  
21 reason for the termination.



1 (c) The employer may, after service of the notice required  
2 by subsection (b), file an appeal in the time, manner, method,  
3 and procedure provided in part V.

4 (d) The payment of benefits by and the operations,  
5 including transfer of moneys, of a voluntary plan shall not be  
6 delayed or interrupted during the pendency of an employer's  
7 appeal under this section.

8 (e) If an employer's voluntary plan has been terminated by  
9 the director the employer shall not be eligible to apply for  
10 approval of another voluntary plan for a period of three years.

11 (f) On the effective date of the termination of a plan by  
12 the director, all moneys in the plan, including moneys paid by  
13 the employer, moneys paid by the employees and held in trust,  
14 moneys owed to the voluntary plan by the employer but not yet  
15 paid to the plan, and any interest accrued shall be remitted to  
16 the department and deposited into the family and medical leave  
17 insurance fund.

18 § -44 Voluntary plans; reports, information, and  
19 records. Employers who offer coverage through an approved  
20 voluntary plan shall maintain all reports, information, and  
21 records relating to the voluntary plan and claims under the plan



1 for six years and shall furnish them to the director upon  
2 request.

3 **PART V. ENFORCEMENT**

4 **§ -45 Filing of complaint.** (a) Any individual claiming  
5 to be aggrieved by an alleged violation of this chapter,  
6 contesting a determination of eligibility for benefits, or  
7 contesting any decision or order of the department may file with  
8 the department a verified complaint in writing.

9 (b) The attorney general or the department, in like  
10 manner, may file a complaint on behalf of an individual.

11 (c) A complaint may be filed on behalf of a class by the  
12 attorney general or the department.

13 (d) Except as otherwise provided in this chapter, no  
14 complaint shall be filed after the expiration of ninety days  
15 after the:

16 (1) Date of the alleged violation, determination,  
17 decision, or order; or

18 (2) Date of discovery by the employee of the alleged  
19 violation; provided that in no event shall such a  
20 complaint be filed after the expiration of one hundred  
21 eighty days of the alleged violation;



1 (e) After the filing of any complaint, the attorney  
2 general or the department, as applicable, shall serve a copy of  
3 the complaint upon the employer.

4 § -46 **Predetermination settlement.** At any time after  
5 the filing of a complaint, but prior to a determination by the  
6 department that this chapter has been violated, the parties may  
7 agree to resolve the complaint through a predetermination  
8 settlement.

9 § -47 **Investigation and conciliation.** (a) The  
10 department may investigate and conciliate any complaint filed  
11 under this chapter.

12 (b) Every employer shall furnish or provide to the  
13 department access to records, documents, and other material to  
14 determine compliance with this chapter. The department shall  
15 have the right to examine, photograph, or copy the material and  
16 interview witnesses at the place of employment or business  
17 during regular working hours with respect to any matter under  
18 this chapter.

19 (c) The department may require by subpoena the attendance  
20 and testimony of witnesses and the production of all records,



1 payrolls, correspondence, documents, and other material relative  
2 to any matter under investigation.

3 (d) If the department determines after investigation that  
4 this chapter has been violated, the department shall inform the  
5 alleged violator and endeavor to remedy the violation by  
6 informal methods, such as conference or conciliation.

7 (e) If the department finds that methods in subsection (d)  
8 will not resolve the complaint, the department shall issue an  
9 order and a demand for compliance.

10 (f) If the department issues an order that finds that a  
11 person has violated the requirements of this chapter, the  
12 department may prescribe relief as provided under this chapter.

13 **§ -48 Appeal and hearing.** (a) Upon appeal by the  
14 subject of the order, the order issued by the department shall  
15 be subject to a de novo review by a hearings officer appointed  
16 by the director.

17 (b) The hearings officer shall schedule a contested case  
18 hearing that shall be heard in accordance with chapter 91.

19 (c) At any time after the filing of an appeal under  
20 subsection (a), but prior to the hearing, the hearings officer



1 may hold a prehearing conference with the parties or their  
2 representatives.

3 (d) If a hearing is held as provided under subsection (b),  
4 the hearings officer shall issue a decision and grant relief as  
5 provided under this chapter.

6 (e) Any person aggrieved by the decision of the hearings  
7 officer shall be entitled to judicial review as provided by  
8 section 91-14.

9 (f) The hearings officer may administer oaths, take or  
10 cause to be taken depositions of witnesses, and may issue  
11 subpoenas to compel the attendance and testimony of witnesses or  
12 the production of records, payrolls, correspondence, documents,  
13 or other material relating to any matter to be heard.

14 § -49 Civil action. (a) If any party fails or neglects  
15 to comply with the:

16 (1) Final order of the department from which no appeal has  
17 been taken as provided by this chapter; or

18 (2) Final decision of the hearings officer,  
19 the department or the affected party may apply to any court of  
20 competent jurisdiction to enforce the provisions of the final  
21 order or decision and for any other appropriate relief. In any



1 proceeding to enforce the provisions of the final order or  
 2 decision, the department or the affected party need only file  
 3 with the court proof that a certified copy of the final order or  
 4 decision was served. In the case of the final decision, proof  
 5 that the notice of hearing was given also must be filed with the  
 6 court.

7 (b) Any action to enforce this chapter, or to recover  
 8 damages or equitable relief prescribed by this chapter, may be  
 9 maintained in any court of competent jurisdiction by any one or  
 10 more employees for and on behalf of the employee or employees,  
 11 or the employee or employees may designate an agent or  
 12 representative to maintain the action.

13 (c) In any action brought under this chapter, the court  
 14 shall allow, in addition to any judgment awarded to the  
 15 plaintiff, costs of action, including fees of any nature, and  
 16 reasonable attorney's fees to be paid by the defendant.

17 § -50 Remedies. (a) Remedies prescribed and ordered by  
 18 the department or the court under this chapter may include any  
 19 legal, equitable, and other relief the department or court deems  
 20 appropriate.

21 (b) Relief under this section may include:



- 1           (1) The amount of any wages, salary, employment benefits,  
2           or other compensation denied or lost to the employee  
3           by reason of the violation;
- 4           (2) In a case in which wages, salary, employment benefits,  
5           or other compensation have not been denied or lost to  
6           the employee, any actual monetary losses sustained by  
7           the employee as a direct result of the violation, such  
8           as the cost of providing care, up to a sum equal to  
9           four weeks of wages or salary for the employee; or
- 10          (3) Repayment of any overpayment liability owed.
- 11          (c) An employer may be liable for an additional amount as  
12 liquidated damages equal to the sum of the applicable amount in  
13 subsection (b) (1) and (2); provided that if an employer who has  
14 violated this chapter proves to the satisfaction of the  
15 department or the court that the act or omission that violated  
16 this chapter was in good faith and that the employer had  
17 reasonable grounds for believing that the act or omission was  
18 not a violation of this chapter, the department or the court may  
19 reduce the amount of the liability to the applicable amount  
20 determined under subsection (b) (1) or (2).



1           §   -51   **Notice of right to sue and employee remedies.**   (a)

2   The department may issue a notice of right to sue.   Within  
3   ninety days after the receipt of a notice of right to sue, the  
4   complainant may bring a civil action under this chapter.   The  
5   department may intervene in a civil action brought pursuant to  
6   this chapter if the case is of general importance.

7           (b)   An action by an employee to enforce the provisions of  
8   this chapter may be maintained in any court of competent  
9   jurisdiction by any one or more employees for and in behalf of  
10   oneself or themselves, or the employee or employees may  
11   designate an agent or representative to maintain the action.

12          (c)   The court in any action brought under this section, in  
13   addition to any judgment awarded to the plaintiff or plaintiffs,  
14   shall allow costs of action, including costs of fees of any  
15   nature, and reasonable attorney's fees, to be paid by the  
16   defendant.

17          (d)   The court also may provide injunctive relief in  
18   appropriate circumstances.

19           §   -52   **Compliance review.**   The department may investigate  
20   whether the terms of an agreement, settlement, order, or  
21   decision are being complied with by any party.   If the party is



1 not in compliance, the department shall take appropriate action  
2 as provided under this chapter.

3 § -53 **Penalty.** Any employer who intentionally resists,  
4 prevents, impedes, or interferes with the department in the  
5 performance of duties pursuant to this chapter, or who in any  
6 manner intentionally violates this chapter, shall be guilty of a  
7 petty misdemeanor.

8 § -54 **Repayment and recovery of benefit overpayments.**

9 (a) Any individual who is paid any amount of benefits under  
10 this chapter to which the individual is not entitled, unless  
11 otherwise relieved pursuant to this section, shall be liable for  
12 repayment of the amount overpaid. The department shall issue an  
13 overpayment assessment setting forth the reasons for and the  
14 amount of the overpayment. The amount assessed, to the extent  
15 not collected, may be deducted from any future benefits payable  
16 to the individual under this chapter. In the absence of a back  
17 pay award, a settlement affecting the allowance of benefits,  
18 fraud, misrepresentation, or willful nondisclosure every  
19 determination of liability shall be served as provided in  
20 chapter 91 no later than two years after the close of or final  
21 payment made on the individual's applicable eligibility period



1 for which the purported overpayment was made. If the  
2 overpayment assessment is subjected to administrative or  
3 judicial review as provided in this part, the determination of  
4 liability shall be served within six months of following the  
5 final decision affecting the claim.

6 (b) The director may waive an overpayment liability if the  
7 director finds that the overpayment was not the result of fraud,  
8 misrepresentation, willful nondisclosure, conditional payment,  
9 or fault attributable to the individual and that the recovery  
10 thereof would be against equity and good conscience. An  
11 overpayment liability waived under this subsection shall be  
12 charged against the individual's applicable entitlement for the  
13 eligibility period containing the weeks to which the overpayment  
14 was attributed as though the benefits had been properly paid.

15 (c) Any overpayment assessment issued pursuant to  
16 subsection (a) shall constitute a determination of liability  
17 subject to this part.

18 (d) Any employer who is a party to a back pay award or  
19 settlement due to loss of wages shall, within thirty days of the  
20 award or settlement, report to the department the amount of the  
21 award or settlement, the name and social security number of the



1 recipient of the award or settlement, and the period for which  
2 it is awarded. When an individual has been awarded or receives  
3 back pay, for benefit purposes the amount of the back pay shall  
4 constitute wages paid in the period for which it was awarded.  
5 For premium purposes, the back pay award or settlement shall  
6 constitute wages paid in the period in which it was actually  
7 paid. The following requirements shall also apply:

8 (1) The employer shall reduce the amount of the back pay  
9 award or settlement by an amount determined by the  
10 department based upon the amount of paid family or  
11 medical leave benefits received by the recipient of  
12 the award or settlement during the period for which  
13 the back pay award or settlement was awarded;

14 (2) The employer shall pay to the family and medical leave  
15 insurance fund, in a manner specified by the director,  
16 an amount equal to the amount of the reduction;

17 (3) The employer shall also pay to the department any  
18 premiums due for family and medical leave program  
19 purposes on the entire amount of the back pay award or  
20 settlement notwithstanding any reduction made pursuant  
21 to (a) of this subsection;



1           (4) If the employer fails to reduce the amount of the back  
2           pay award or settlement as required in paragraph (1),  
3           the department shall issue an overpayment assessment  
4           against the recipient of the award or settlement in  
5           the amount that the back pay award or settlement  
6           should have been reduced; and

7           (5) If the employer fails to pay to the department an  
8           amount equal to the reduction as required in paragraph  
9           (2), the department shall issue an assessment of  
10          liability against the employer that shall be collected  
11          pursuant to the procedures for collection of  
12          overpayment liability assessments provided in this  
13          section.

14          (e) If an individual fails to repay an overpayment  
15          liability assessment that is due and fails to arrange for  
16          satisfactory repayment terms, the director shall impose a  
17          penalty of one per cent per month of the outstanding balance.  
18          The penalty shall accrue when the individual has missed two or  
19          more of the individual's monthly payments either partially or in  
20          full.



1 (f) Any penalties and interest collected pursuant to this  
2 section shall be deposited into the family and medical leave  
3 enforcement fund.

4 (g) The department shall:

5 (1) Conduct social security number cross-match audits or  
6 engage in other more effective activities that ensure  
7 that individuals are entitled to all amounts of  
8 benefits that they are paid; and

9 (2) Engage in other detection and recovery of overpayment  
10 and collection activities.

11 PART VI. INTERACTION WITH OTHER LAWS AND BENEFIT PROGRAMS

12 § -55 Collective bargaining agreements. Nothing in this  
13 chapter shall require any party to a collective bargaining  
14 agreement in existence on , , to reopen negotiations  
15 of the agreement or to apply any of the rights and  
16 responsibilities under this chapter unless and until the  
17 existing agreement is reopened or renegotiated by the parties or  
18 expires.

19 § -56 Workers' compensation; unemployment benefits;  
20 disability insurance. (a) Leave from employment under this  
21 chapter shall be separate from and in addition to leave from



1 employment during which benefits are paid or are payable under  
2 chapter 386 or other applicable federal or state workers'  
3 compensation laws.

4 (b) In any week in which an employee is eligible to  
5 receive benefits under chapters 383, 385, 386, or 398A, or other  
6 applicable federal or state unemployment compensation, workers'  
7 compensation, or disability insurance laws, the employee shall  
8 be disqualified from receiving family or medical leave benefits  
9 under this chapter.

10 § -57 Continuation of health benefits. During any  
11 period of family or medical leave taken under this chapter, the  
12 employer shall maintain any existing health benefits of the  
13 employee in force for the duration of such leave as if the  
14 employee had continued to work from the date the employee  
15 commenced family or medical leave until the date the employee  
16 returns to employment. If the employer and employee share the  
17 cost of the existing health benefits, the employee shall remain  
18 responsible for the employee's share of the cost. This section  
19 shall not apply to an employee who is not in employment for an  
20 employer at the time of filing an application for benefits.



1           §   -58   Leave available under other laws; coordination.

2   (a)   Leave under this chapter and leave under the federal Family  
3   and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107  
4   Stat. 6) is in addition to any leave for sickness or temporary  
5   disability because of pregnancy or childbirth.

6           (b)   Unless otherwise expressly permitted by the employer,  
7   leave taken under this chapter shall be taken concurrently with  
8   any leave taken under the federal Family and Medical Leave Act  
9   of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

10          §   -59   Discrimination laws not affected. Nothing in this  
11   chapter shall be construed to modify or affect any state or  
12   local law prohibiting discrimination on the basis of race,  
13   color, religion, age, sex, including gender identity or  
14   expression, sexual orientation, marital status, national origin,  
15   ancestry, or disability.

16          §   -60   Employer supplementation; rights not subject to  
17   waiver or diminishment. (a) Nothing in this chapter shall be  
18   construed to discourage employers from:

19           (1)   Adopting or retaining leave policies more generous  
20                   than any policies that comply with the requirements  
21                   under this chapter; or



1 (2) Making payments to supplement the benefit payments  
2 provided under section -15 to an employee on family  
3 or medical leave.

4 (b) Any agreement by an individual to waive his or her  
5 rights under this chapter is void as against public policy.

6 (c) After January 1, , subject to section -55, an  
7 employee's rights under this chapter shall not be diminished by  
8 a collective bargaining agreement or employer policy.

9 § -61 No continuing entitlement or contractual right.

10 This chapter does not create a continuing entitlement or  
11 contractual right. The legislature reserves the right to amend  
12 or repeal all or part of this chapter at any time, and a benefit  
13 or other right granted under this chapter exists subject to the  
14 legislature's power to amend or repeal this chapter. There is  
15 no vested private right of any kind against such amendment or  
16 repeal.

17 § -62 Conflict with federal requirements. If any part

18 of this chapter is found to be in conflict with federal  
19 requirements that are a prescribed condition to the allocation  
20 of federal funds to the State or the eligibility of employers in  
21 this State for federal unemployment tax credits, the conflicting



1 part of this chapter shall be inoperative solely to the extent  
2 of the conflict, and the finding or determination does not  
3 affect the operation of the remainder of this chapter. Rules  
4 adopted under this chapter shall meet federal requirements that  
5 are a necessary condition to the receipt of federal funds by the  
6 State or the granting of federal unemployment tax credits to  
7 employers in this State."

8 SECTION 3. Chapter 392, Hawaii Revised Statutes, is  
9 repealed.

10 SECTION 4. Chapter 398, Hawaii Revised Statutes, is  
11 repealed.

12 SECTION 5. If any provision of this Act, or the  
13 application thereof to any person or circumstance, is held  
14 invalid, the invalidity does not affect other provisions or  
15 applications of the Act that can be given effect without the  
16 invalid provision or application, and to this end the provisions  
17 of this Act are severable.

18 SECTION 6. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun before its effective date.



1 SECTION 7. This Act shall take effect upon its approval;  
2 provided that sections 3 and 4 shall take effect upon  
3 implementation of the provisions in section 2 on January 1,

4 .

5

INTRODUCED BY:

*T. Tolson*

JAN 18 2018



# H.B. NO. 1867

**Report Title:**

Employment; Health; Paid Family and Medical Leave; Insurance

**Description:**

Establishes the Paid Family and Medical Leave Program. Creates fund.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

