

JAN 24 2018

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



S.B. NO. 3047

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.



S.B. NO. 3047

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:

[Handwritten Signature]

[Handwritten Signature]

By Request



S.B. NO. 3047

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.

