

JAN 20 2017

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

1 SECTION 1. The legislature finds that Hawaii's working
2 families are not adequately supported during times of caregiving
3 and illness. While the federal Family and Medical Leave Act of
4 1993 allows twelve weeks of unpaid leave to employees who have
5 worked at a business that employs fifty or more employees, the
6 majority of Hawaii's workforce cannot afford to take unpaid
7 leave when needing to provide care to a newborn, bond with a new
8 child, or care for a family member with a serious health
9 condition. The legislature further finds that current Hawaii
10 law only extends four weeks of unpaid leave to employees working
11 for a business with over one hundred employees.

12 Only approximately eleven per cent of workers in the United
13 States have access to paid family leave through their employers.
14 Women, as primary caregivers of infants, children, and elderly
15 parents, are affected disproportionately by the unavailability
16 of paid family and medical leave. On any given day in Hawaii,
17 two hundred forty-seven thousand people in the State serve as



1 family caregivers. Hawaii has the fastest growing population
2 over the age of sixty-five in the nation, and that number is
3 expected to grow by at least eighty-one per cent by the year
4 2030. Of those who need leave but do not have that benefit,
5 nearly one in three need leave to care for an ill spouse or
6 elderly parent.

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

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

13 "§398-A Designation of a designated person. An employer
14 may establish a process for a covered individual to designate a
15 designated person within thirty days of the covered individual
16 becoming eligible for benefits under this chapter; provided that
17 the employer shall notify the department of all designations and
18 changed designations. Thereafter, the employer shall permit the
19 covered individual to make or change a designation, as
20 applicable, on an annual basis. If a covered individual's
21 employer establishes a process, the covered individual shall



1 comply with the process. If a covered individual's employer
2 does not establish a process, the covered individual may make or
3 change a designation when filing a claim for family leave
4 insurance benefits under this chapter. The department shall
5 adopt rules pursuant to chapter 91 to implement this section.

6 **§398-B Family leave trust fund; family leave insurance**
7 **benefits.** (a) There is established a trust fund to be known as
8 the family leave trust fund.

9 (b) The trust fund shall consist of employee contributions
10 based on the employee's average weekly wage as well as interest
11 earned and income, dividends, refunds, rate credits, and other
12 returns received by the fund. The taxable rate of the
13 contribution shall be in accordance with the employee
14 contribution rate to the temporary disability insurance fund.
15 Any and all sums contributed or paid from any source to the fund
16 created by this section, and all assets of the fund including
17 any and all interest and earnings of the same, are and shall be
18 held in trust by the department for the exclusive use and
19 benefit of the employee-beneficiaries, including to finance
20 benefits, administration, outreach, education or study of or



1 related to family leave insurance, and shall not be subject to
2 appropriation for any other purpose.

3 (c) The trust fund shall be used to provide a covered
4 individual with up to twelve weeks per calendar year of family
5 leave insurance benefits.

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

8 §398-C Eligibility for payment of benefits. Family leave
9 insurance benefits are payable to:

10 (1) A person who:

11 (A) Is a covered individual, as defined in section
12 398-1; and

13 (B) Meets one of the following requirements:

14 (i) Because of birth, adoption, or placement
15 through foster care, is caring for a new
16 child during the first year after the birth,
17 adoption, or placement;

18 (ii) Is caring for a family member with a serious
19 health condition;

20 (iii) Is caring for a qualifying service member
21 who is the employee's next of kin; or



1 (iv) Has a qualifying exigency, as defined in
2 section 398-1, arising out of the deployment
3 of a family member or the employee; or

4 (2) An individual who is not currently employed, but who
5 is a covered individual, as defined in section 398-1,
6 and meets one of the requirements listed in paragraph
7 (1) (B).

8 §398-D Family leave insurance program. (a) The
9 department shall establish and administer a family leave
10 insurance program and pay family leave insurance benefits as
11 specified in this chapter.

12 (b) The department shall establish procedures and forms
13 for filing claims for benefits under this chapter. The
14 department shall notify the employer of a covered individual who
15 files a claim for benefits under this chapter that the claim has
16 been filed.

17 (c) The department shall use information sharing and
18 integration technology to facilitate the disclosure of relevant
19 information or records including use of information and
20 technology already existing in the temporary disability



1 insurance program to the extent feasible following any
2 requirements for consent to disclosure under state law.

3 (d) Information contained in the files and records
4 pertaining to an individual under this chapter are confidential
5 and not available for public inspection, other than to public
6 employees in the performance of their official duties. However,
7 the individual or an authorized representative of an individual
8 may review the records or receive specific information from the
9 records on the presentation of the signed authorization of the
10 individual.

11 §398-E Report to the legislature. Beginning July 1, 2018,
12 the department shall report to the legislature no later than
13 twenty days prior to the convening of each regular session on
14 outreach efforts, projected and actual program participation,
15 including the percentage of those eligible for family leave
16 insurance benefits under this chapter who receive benefits,
17 premium rates, and fund balances.

18 §398-F Outreach and education. The department shall
19 conduct a public outreach and education campaign to inform
20 employees and employers regarding the availability of family
21 leave insurance benefits. The department may use a proportion



1 of the funds collected for the family leave insurance program in
2 a given year to pay for the public education program. Outreach
3 information shall be available in English and other languages
4 spoken within the State.

5 §398-G Wage withholding. (a) Each employee shall make a
6 contribution to the family leave trust fund per pay period, via
7 wage withholding per pay period, transmitted by the employer to
8 the trust fund.

9 (b) If there is a dispute between the employee and the
10 employer relating to the withholding of wages as contributions
11 for paid family leave insurance benefits, either party may file
12 with the director a petition for determination of the amount to
13 be withheld. The matter shall be determined by an officer of
14 the department. If either party is dissatisfied with the
15 determination, the party may petition for redetermination and
16 thereupon the petition shall be transferred to the referee.

17 §398-H Weekly benefit amount. (a) Benefits shall be
18 computed as weekly amounts in the manner provided by section
19 392-22.

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



1 §398-I Duplication of benefits not permitted. No family
2 leave insurance benefits shall be payable for any period of
3 leave for which the employee is entitled to receive:

4 (1) Weekly benefits under the Employment Security Law or
5 similar laws of this State or of any other state or of
6 the United States, or under any temporary disability
7 benefits law of any other state or of the United
8 States except as provided in section 392-66;

9 (2) Weekly disability insurance benefits under title 42
10 United States Code Annotated section 423;

11 (3) Weekly benefits for total disability under the
12 Workers' Compensation Law of this State or any other
13 state or of the United States, except benefits for
14 permanent partial or permanent total disability
15 previously incurred. If the claimant does not receive
16 benefits under such workers' compensation law and the
17 claimant's entitlement to such benefits is seriously
18 disputed, the employee, if otherwise eligible, shall
19 receive temporary disability benefits under this
20 chapter, but any insurer or employer or the trust fund
21 for disability benefits providing such benefits shall



1 be subrogated, as hereinafter provided, to the
2 employee's right to benefits under the workers'
3 compensation law for the period of disability for
4 which the employee received benefits under this
5 chapter to the extent of the benefits so received; and
6 (4) Indemnity payments for wage loss under any applicable
7 employers' liability law of this State, or of any
8 other state or of the United States. If an employee
9 has received benefits under this chapter for a period
10 of disability for which the employee is entitled to
11 such indemnity payments, any insurer or employer or
12 the trust fund for disability benefits providing such
13 benefits shall be subrogated to the employee's right
14 to such indemnity payments in the amount of the
15 benefits paid under this chapter as hereinafter
16 provided."

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

19 1. By adding five new definitions to be appropriately
20 inserted and to read:

21 "Covered individual" means any person who:



- 1 (1) Is an employee or has been an employee within the last
- 2 twenty-six weeks if currently unemployed;
- 3 (2) Meets the requirements of this chapter and in rules
- 4 implemented pursuant to this chapter; and
- 5 (3) Submits an application for family leave insurance
- 6 benefits to the department.

7 "Designated person" means one person designated by a
8 covered individual for whom the covered individual will provide
9 care under this chapter if the designated person has a serious
10 health condition.

11 "Family leave insurance benefits" means the benefits
12 provided pursuant to this chapter.

13 "Family member" means a child, parent, person to whom the
14 covered individual is legally married under the laws of any
15 state, a biological, foster, or adopted sibling, or the spouse
16 or reciprocal beneficiary of a sibling, a reciprocal
17 beneficiary, or a designated person.

18 "Qualifying exigency" means:

- 19 (1) Notice of deployment of a service member received
- 20 within seven days of deployment;
- 21 (2) Attendance of military events or related activities;



- 1 (3) Child care or attendance of school activities, if due
2 directly or indirectly to the active duty call or
3 active duty status of a service member;
- 4 (4) To make financial or legal arrangements for a service
5 member's absence or as a result of the service
6 member's absence;
- 7 (5) Attending counseling provided by someone other than a
8 health care provider if the need for counseling arises
9 from the active duty call or active duty of a service
10 member; or
- 11 (6) To spend up to five days with a service member for
12 each instance of short-term, temporary rest and
13 recuperation leave during a period of deployment."

14 2. By amending the definition of "child" to read:
15 ""Child" means an individual who is a biological, adopted,
16 or foster son or daughter; a stepchild; [~~e~~] a legal ward of [~~an~~
17 ~~employee.~~] a covered individual; a child of a reciprocal
18 beneficiary; a grandchild; or a child of a covered individual
19 who stands in loco parentis."

20 3. By amending the definition of "employer" to read:



1 "Employer" means any individual or organization, including
2 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, or corporation, whether domestic or foreign,
6 or receiver or trustee in bankruptcy, or the legal
7 representative of a deceased person, who employs [~~one hundred~~
8 fifty or more employees for each working day during each of
9 twenty or more calendar weeks in the current or preceding
10 calendar year."

11 4. By amending the definition of "parent" to read:

12 "Parent" means a biological, foster, or adoptive parent, a
13 parent-in-law, a stepparent, a legal guardian, a grandparent,
14 [~~or~~] a grandparent-in-law[-], a parent or grandparent of a
15 reciprocal beneficiary, or a person who stood in loco parentis
16 when the covered individual was a minor child."

17 SECTION 4. Section 398-2, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "~~[+] §398-2~~ **Inapplicability.** The rights provided under
20 this chapter shall not apply to employees of an employer with
21 fewer than [~~one hundred~~] fifty employees."



1 SECTION 5. Section 398-3, Hawaii Revised Statutes, is
2 amended as follows:

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

4 "(a) [~~An employee~~] A covered individual shall be entitled
5 to a total of [~~four~~] twelve weeks of family leave during any
6 calendar year [~~upon the birth of a child of the employee or the~~
7 ~~adoption of a child, or to care for the employee's child, spouse~~
8 ~~or reciprocal beneficiary, or parent with a serious health~~
9 ~~condition.~~];

10 (1) To care for the covered individual's child during the
11 first year after the child's birth, foster placement,
12 or placement for adoption with the covered individual;
13 or

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

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

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

20 SECTION 6. Section 398-4, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§398-4 ~~[Unpaid leave]~~ Leave permitted; relationship to
2 paid leave; sick leave. (a) Pursuant to section 398-3, an
3 employee shall be entitled to ~~[four]~~ twelve weeks of family
4 leave. ~~[The family leave shall consist of unpaid leave, paid~~
5 ~~leave, or a combination of paid and unpaid leave. If an~~
6 ~~employer provides paid family leave for fewer than four weeks,~~
7 ~~the additional period of leave added to attain the four week~~
8 ~~total may be unpaid.] An employer who provides paid family leave
9 insurance benefits beyond what is required by this chapter may
10 require that the leave run concurrently with the twelve weeks
11 required under this chapter, but subject to section
12 392-41(b)(2), shall not require the leave to be applied against
13 accrued sick or vacation hours.~~

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

19 (c) ~~[An employer who provides sick leave for employees~~
20 ~~shall permit an employee to use the employee's accrued and~~
21 ~~available sick leave for purposes of this chapter; provided that~~



1 ~~an employee shall not use more than ten days per year for this~~
2 ~~purpose, unless an express provision of a valid collective~~
3 ~~bargaining agreement authorizes the use of more than ten days of~~
4 ~~sick leave for family leave purposes.]~~ Nothing in this section
5 shall require an employer to diminish an employee's accrued and
6 available sick leave below the amount required pursuant to
7 section 392-41; provided that any sick leave in excess of the
8 minimum statutory equivalent for temporary disability benefits
9 as determined by the department may be used for purposes of this
10 chapter.

11 (d) No assignment, pledge, or encumbrance of any right to
12 benefits that are or may become due or payable under this
13 chapter shall be valid; and the rights to benefits shall be
14 exempt from levy, execution, attachment, garnishment, or any
15 other remedy whatsoever provided for the collection of debt. No
16 waiver of any exemption provided for in this section shall be
17 valid.

18 (e) Nothing in this chapter shall prevent a biological
19 mother receiving temporary disability benefits for recovery from
20 childbirth from applying for and receiving paid family leave for
21 the purpose of caregiving and bonding with her child after the



1 period during which temporary disability insurance benefits are
2 compensable. For family leave purposes, there shall be no
3 waiting period for benefits to begin.

4 (f) Benefits under the Family and Medical Leave Act of
5 1993 shall run concurrently with benefits under this chapter.

6 (g) An employee receiving paid family leave insurance
7 benefits shall not earn wages during such period."

8 SECTION 7. Section 398-21, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Any individual claiming to be aggrieved by an alleged
11 unlawful act under this chapter, including the denial of family
12 leave insurance benefits, may file with the department a
13 verified complaint in writing."

14 SECTION 8. Section 398-23, Hawaii Revised Statutes, is
15 amended by amending subsection (d) to read as follows:

16 "(d) If the department determines after investigation that
17 this chapter has been violated[7] by an employer, the department
18 shall inform the employer and endeavor to remedy the violation
19 by informal methods, such as conference or conciliation. If the
20 department determines that family leave insurance benefits have



1 been wrongfully withheld, the department shall order immediate
2 payment to the employee found entitled to those benefits."

3 SECTION 9. Section 398-24, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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

8 SECTION 10. Section 398-26, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

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

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

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



1 SECTION 11. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$300,000 or so much
3 thereof as may be necessary for fiscal year 2017-2018 and the
4 same sum or so much thereof as may be necessary for fiscal year
5 2018-2019 for the purpose of hiring and employing an
6 administrator, administrative assistant, and an accountant to
7 perform functions relating to the administration of the family
8 leave trust fund, including the oversight of payroll deductions,
9 administrative processes, and payment to eligible employees.

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

12 SECTION 12. The department of labor and industrial
13 relations shall submit a report to the legislature regarding the
14 implementation of family leave insurance benefits established
15 under this Act, including the feasibility of extending family
16 leave insurance benefits to self-employed persons, no later than
17 twenty days prior to the convening of the regular session of
18 2018.

19 SECTION 13. The department of budget and finance, in
20 collaboration with the Hawaii commission on the status of women,
21 shall perform an actuarial study on the economic impact and



1 operational requirements of providing the family leave insurance
2 benefits established under this Act. The department of budget
3 and finance shall submit the actuarial study to the legislature
4 no later than twenty days prior to the convening of the regular
5 session of 2018.

6 SECTION 14. In codifying the new sections added by section
7 2 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 15. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun before its effective date.

13 SECTION 16. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 17. This Act shall take effect on July 1, 2017;
16 provided that sections 2 through 10 shall take effect on
17 January 1, 2018.

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INTRODUCED BY:

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S.B. NO. 408

Report Title:

Family Leave; Family Leave Insurance Program; Family Leave Trust Fund; Paid Leave; Study; Appropriation

Description:

Establishes a family leave insurance program, which requires employees to make contributions into a trust fund that can be used to provide employees with family leave insurance benefits to care for a designated person. Expands the number of weeks of family leave from four to twelve weeks under the family leave law. Appropriates funds to the department of labor and industrial relations to implement the family leave insurance program. Requires a study to be performed by the department of labor and industrial relations and an actuarial study to be performed by the department of budget and finance.

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

