
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. According to a 2018 report commissioned by Aloha
4 United Way, entitled "ALICE [Asset Limited, Income Constrained,
5 Employed] a Study of Financial Hardship in Hawaii", forty-two
6 per cent of families in Hawaii are living paycheck to paycheck.
7 While the federal Family and Medical Leave Act of 1993 allows
8 twelve weeks of unpaid leave to employees who have worked at a
9 business that employs fifty or more employees, the majority of
10 Hawaii's workforce cannot afford to take unpaid leave to care
11 for a new child or attend to the needs of a family member with a
12 serious health condition. Hawaii law, which offers a modest
13 four-week extension of unpaid leave, is available only to
14 employees of large employers with more than one hundred
15 employees.

16 The legislature further finds that in 2018, only seventeen
17 per cent of workers in the United States have access to paid



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1 family leave through their employers. Women, as primary
2 caregivers of infants, children, and elderly parents, are
3 disproportionately affected by the absence of paid family and
4 medical leave. According to AARP Hawaii, there are
5 approximately 157,000 unpaid family caregivers in the State.
6 Hawaii has one of the fastest growing populations over the age
7 of sixty-five in the nation; from 2020 to 2030 the percentage of
8 people age sixty-five and over is expected to go from 19.1 per
9 cent of the State's population to 22.5 per cent. Nearly a third
10 of those who need but do not have access to family leave will
11 need the time off to care for an ill spouse or elderly parent.

12 The legislature additionally finds that the virus known as
13 SARS-CoV-2 causes a disease named coronavirus disease 2019
14 (COVID-19), which spread globally and was declared a pandemic by
15 the World Health Organization on March 11, 2020. Upon reaching
16 Hawaii's shores, COVID-19 became a public health emergency that
17 infected thousands of people, overburdened hospital capacities,
18 created medical supply shortages, and claimed the lives of
19 numerous Hawaii residents. Enacting a comprehensive family
20 leave program would allow employees whose family members are



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1 impacted by serious health conditions to provide adequate care
2 for their loved ones.

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

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

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

13 (b) The department shall establish procedures and forms
14 for filing claims for family leave insurance benefits.

15 (c) The information collected and the files and records
16 retained about a covered individual pursuant to this chapter,
17 including the existence of a claim, shall be confidential and
18 shall not be open to inspection; provided that:

19 (1) An employee who applied for family leave insurance
20 benefits or that employee's representative, upon
21 presentation of an authorization signed by the



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1 employee to the department, shall be allowed to review
2 any information, files, and records obtained by the
3 department;

4 (2) A public employee acting within the scope of the
5 public employee's official duties shall be permitted
6 to review the minimum necessary information, files,
7 and records to accomplish the public employee's
8 purpose for reviewing the information, files, and
9 records; and

10 (3) The department shall notify an employee's employer
11 that an employee filed a claim pursuant to this
12 chapter within days after the claim has been
13 filed.

14 §398- Notice to employers. (a) An employer may
15 require an eligible employee to give the employer written notice
16 at least thirty days before commencing a period of family leave,
17 medical leave, or safe leave.

18 (b) An eligible employee may commence leave without thirty
19 days advance notice if the leave is not foreseeable, as in
20 circumstances including but not limited to:



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- 1 (1) An unexpected serious health condition of the employee
2 or a family member of the employee; or
- 3 (2) A premature birth, unexpected adoption, or unexpected
4 foster placement by or with the employee.
- 5 (c) If an eligible employee commences leave without prior
6 notice under subsection (b), the employee shall give oral notice
7 to the employer within twenty-four hours of the commencement of
8 the leave and shall provide the written notice required under
9 subsection (a) within three days after the commencement of
10 leave.

11 §398- Employment protection; retaliation prohibited.

12 After returning to work after a period of family leave, an
13 eligible employee shall be entitled to be restored to the
14 position of employment held by the employee when the leave
15 commenced, if that position still exists, without regard to
16 whether the employer filled the position with a replacement
17 worker during the period of leave. If the position held by the
18 employee at the time the leave commenced no longer exists, the
19 employee shall be entitled to be restored to any available
20 equivalent position with equivalent employment benefits, pay,
21 and other terms and conditions of employment.



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1 §398- Family leave insurance fund; family leave
2 insurance benefits. (a) There is established an insurance fund
3 to be known as the family leave insurance fund. The family
4 leave insurance fund shall be used to provide a covered
5 individual with up to sixteen weeks per calendar year of paid
6 family leave.

7 (b) The family leave insurance fund shall consist of
8 employer and employee contributions based on the employee's
9 average weekly wage, interest earned, income, dividends,
10 refunds, rate credits, and other returns received by the fund.
11 The taxable rate of the contribution shall be in accordance with
12 the contribution rate to the temporary disability insurance
13 fund.

14 (c) The family leave insurance fund shall be under the
15 control of and administered by the department. All sums
16 contributed or paid from any source to the family leave fund,
17 and all assets of the fund including all interest and earnings,
18 shall be held by the department for the exclusive use and
19 benefit of the employee-beneficiaries. The fund shall be used
20 to finance benefits, administration, outreach, and education or



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1 study of family leave insurance. The fund shall not be subject
2 to appropriation for any other purpose.

3 §398- Eligibility for payment of benefits. Family
4 leave insurance benefits shall be payable to an:

5 (1) Employed covered individual; or
6 (2) Unemployed covered individual who meets one of the
7 following requirements:

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

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

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

16 (D) Has a qualifying exigency.

17 §398- Report to the legislature. The department shall
18 submit an annual report to the legislature no later than twenty
19 days prior to the convening of each regular session, beginning
20 with the regular session of 2022, on any outreach efforts and
21 projected and actual program participation, including the



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1 percentage of covered employees who received family leave
2 insurance benefits, premium rates, and fund balances under the
3 family leave insurance program established pursuant to this
4 chapter.

5 §398- Outreach and education. The department shall
6 conduct a public outreach and education campaign to inform
7 employees and employers of the availability of family leave
8 insurance benefits. The department may use a portion of the
9 funds collected in a given year for the family leave insurance
10 program to pay for the public education program; provided that
11 the department shall use no more than _____ per cent per year or
12 \$ _____ per year, whichever is greater, for the public
13 education program. Outreach information shall be available in
14 English and other languages spoken within the State.

15 §398- Coverage of self-employed. (a) A self-employed
16 person, including a sole proprietor, partner, or joint venture
17 partner, may elect coverage under this chapter by filing a
18 notice of election in writing with the director, as required by
19 the department, as follows:

20 (1) For an initial period of not less than three years;
21 and



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1 (2) Following the initial coverage period, no less than
2 one additional year of coverage;
3 provided that the election shall take effect on the date of
4 filing the notice.

5 (b) A self-employed person who has elected coverage may
6 withdraw from coverage within thirty days after the end of the
7 initial period of coverage, or at other times as the director
8 may prescribe by rule, by filing with the director a notice in
9 writing, as required by the department. The withdrawal shall
10 take effect no sooner than thirty days after filing the notice.

11 §398- Wage withholding. (a) An employer may deduct
12 and withhold contributions from each employee of up to one-half
13 the cost of providing family leave insurance benefits, and the
14 employer shall provide for the remaining cost over the amount of
15 contributions of the employer's employees.

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



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1 with the department's determination, the aggrieved party may
2 appeal the petition for redetermination pursuant to the
3 procedure under part V of chapter 392.

4 §398- Weekly benefit amount. (a) The weekly benefit
5 amount shall be calculated as follows:

6 (1) If the individual's average weekly wage is fifty per
7 cent or less of the state average weekly wage, the
8 individual's weekly benefit shall be ninety per cent
9 of the individual's average weekly wage;

10 (2) If the individual's average weekly wage is more than
11 fifty per cent and less than one hundred per cent of
12 the state average weekly wage, the individual's weekly
13 benefit shall be seventy-five per cent of the
14 individual's average weekly wage; or

15 (3) If the individual's average weekly wage is one hundred
16 per cent or more of the state average weekly wage, the
17 individual's weekly benefit shall be fifty per cent of
18 the individual's average weekly wage.

19 (b) In no case shall the weekly benefit amount exceed the
20 maximum weekly benefit amount of \$1,000."



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

3 1. By adding five new definitions to be appropriately
4 inserted and to read:

5 "Covered individual" means any person who:

- 6 (1) Is an employee or is currently unemployed but has been
7 an employee within the last twenty-six weeks;
8 (2) Meets the requirements set forth in section 392-25 and
9 the requirements in the rules implemented pursuant to
10 this chapter; and
11 (3) Submits an application for family leave insurance
12 benefits to the department.

13 "Designated person" means a family member designated by a
14 covered individual for whom the covered individual will provide
15 care under this chapter if the family member has a serious
16 health condition.

17 "Family leave insurance benefits" means the benefits
18 provided pursuant to this chapter.

19 "Family member" means a child; parent; person to whom the
20 covered individual is legally married under the laws of any
21 state; biological, foster, or adopted sibling; the spouse or



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1 reciprocal beneficiary of a sibling; or a reciprocal
2 beneficiary.

3 "Qualifying exigency" means a circumstance arising from a
4 notice of deployment of a service member received within seven
5 days of deployment, or mandatory attendance of military events
6 or related activities by the covered individual or the covered
7 individual's family member that requires the covered individual
8 to:

- 9 (1) Provide child care or attend school activities, if due
10 directly or indirectly to the active duty call or
11 active duty status of a service member;
- 12 (2) Make financial or legal arrangements for a service
13 member's absence or as a result of the service
14 member's absence;
- 15 (3) Attend counseling provided by someone other than a
16 health care provider if the need for counseling arises
17 from the active duty call or active duty of a service
18 member; or
- 19 (4) Spend up to five days with a service member for each
20 instance of short-term, temporary rest and
21 recuperation leave during a period of deployment."



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1 2. By amending the definition of "child" to read:

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

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

8 "\"Employer\" means any individual or organization, including
9 the State, any of its political subdivisions, any
10 instrumentality of the State or its political subdivisions, any
11 partnership, association, trust, estate, joint stock company,
12 insurance company, or corporation, whether domestic or foreign,
13 or receiver or trustee in bankruptcy, or the legal
14 representative of a deceased person, who employs one [~~hundred~~
15 or more employees for each working day during each of twenty or
16 more calendar weeks in the current or preceding calendar year."

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

18 "\"Parent\" means a biological, foster, or adoptive parent, a
19 parent-in-law, a stepparent, a legal guardian, a grandparent,
20 [~~or~~] a grandparent-in-law[-], a parent or grandparent of a



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1 reciprocal beneficiary, or a person who stands in loco parentis
2 for a minor child."

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

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

6 "(a) [~~An employee~~] A covered individual shall be entitled
7 to a total of [~~four~~] sixteen weeks of family leave during any
8 calendar year:

9 [~~(1) Upon the birth of a child of the employee or the~~
10 ~~adoption of a child; or~~

11 ~~(2) To care for the employee's child, spouse, reciprocal~~
12 ~~beneficiary, sibling, grandchild, or parent with a~~
13 ~~serious health condition.]~~

14 (1) To care for the covered individual's child within
15 twelve months of the child's birth, foster placement
16 with the covered individual, or placement for adoption
17 with the covered individual; or

18 (2) To care for a covered individual's family member with
19 a serious health condition."

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



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1 "(e) Nothing in this chapter shall entitle [~~an employee~~] a
2 covered individual to more than a total of [~~four~~] sixteen weeks
3 of leave in any twelve-month period."

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

6 "**§398-4 Unpaid leave permitted; relationship to paid**
7 **leave; sick leave.** (a) Pursuant to section 398-3, [~~an~~
8 ~~employee~~] a covered individual shall be entitled to [~~four~~]
9 sixteen weeks of family leave. [~~The family leave shall consist~~
10 ~~of unpaid leave, paid leave, or a combination of paid and unpaid~~
11 ~~leave. If an employer provides paid family leave for fewer than~~
12 ~~four weeks, the additional period of leave added to attain the~~
13 ~~four week total may be unpaid.] An employer who provides paid
14 family leave beyond what is required by this chapter may require
15 that the leave run concurrently with the sixteen weeks required
16 under this chapter; provided that the employer shall not require
17 the leave to be applied against accrued sick or vacation hours.~~

18 (b) Except as otherwise provided in subsection (c), [~~an~~
19 ~~employee~~] a covered individual may elect to substitute any of
20 the [~~employee's~~] covered individual's accrued paid leaves,
21 including but not limited to vacation, personal, or family leave



1 for any part of the [~~four-week~~] sixteen-week period in
2 subsection (a).

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

16 (c) No assignment, pledge, or encumbrance of any right to
17 benefits that is or may become due or payable under this chapter
18 shall be valid; and any right to benefits shall be exempt from
19 levy, execution, attachment, garnishment, or any other remedy
20 whatsoever provided for the collection of debt. No waiver of
21 any exemption in this section shall be valid.



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1 (d) Nothing in this chapter shall prevent a biological
2 mother who is receiving temporary disability benefits for
3 recovery from childbirth from applying for and receiving paid
4 family leave for the purpose of caregiving and bonding with her
5 child after the temporary disability time period has lapsed.
6 For family leave purposes, there shall be no waiting period for
7 benefits to begin.

8 (e) Benefits under the Family and Medical Leave Act of
9 1993 shall run concurrently with benefits under this chapter."

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

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

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

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



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1 department determines that family medical leave insurance
2 benefits have been wrongfully withheld, the department shall
3 order immediate payment to the covered individual found to be
4 entitled to those benefits."

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

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

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

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

13 (1) The amount of any family leave insurance benefits,
14 wages, salary, employment benefits, or other
15 compensation denied or lost to the employee by reason
16 of the violation; or

17 (2) In a case in which family leave insurance benefits,
18 wages, salary, employment benefits, or other
19 compensation have not been denied or lost to the
20 employee, any actual monetary losses sustained by the
21 employee as a direct result of the violation, such as



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1 the cost of providing care, up to a sum equal to four
2 weeks of wages or salary for the employee."

3 SECTION 10. Section 398-2, Hawaii Revised Statutes, is
4 repealed.

5 ~~["§398-2] Inapplicability. The rights provided under
6 this chapter shall not apply to employees of an employer with
7 fewer than one hundred employees."]~~

8 SECTION 11. The department shall establish rules pursuant
9 to chapter 91, Hawaii Revised Statutes, to implement the
10 purposes of this Act.

11 SECTION 12. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$300,000 or so much
13 thereof as may be necessary for fiscal year 2021-2022 and the
14 same sum or so much thereof as may be necessary for fiscal year
15 2022-2023 for the purpose of hiring and employing an
16 administrator, administrative assistant, and an accountant to
17 perform functions relating to the administration of the family
18 leave insurance program, including the oversight of payroll
19 deductions, administrative processes, and payment to eligible
20 employees.



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

3 SECTION 13. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun before its effective date.

6 SECTION 14. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 15. This Act shall take effect on July 1, 2021.

9

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Jean Joseph", is written over a horizontal line.

JAN 20 2021



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Report Title:

Family Leave Insurance Program; Family Leave Insurance Benefits; Appropriation

Description:

Requires the department of labor and industrial relations to establish and administer a family leave insurance program. Provides family leave insurance benefits and extends period of family leave to 16 weeks for businesses that employs one or more employees who meet the hourly qualifications. Appropriates funds.

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

