

JAN 21 2022

A BILL FOR AN ACT

RELATING TO EMPLOYEE LEAVE.

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

1 SECTION 1. The legislature finds that each year
2 approximately ten per cent of live births in Hawaii, or
3 approximately one thousand seven hundred babies, are preterm,
4 meaning that those births occurred before the thirty-seventh
5 week of pregnancy. Of these preterm babies, approximately two
6 hundred sixty, or 1.5 per cent of all births statewide, are
7 "very preterm", denoting that they were born before thirty-two
8 weeks of gestation.

9 The legislature further finds that these preterm and very
10 preterm babies spend weeks or months in neonatal intensive care
11 units (NICU), which requires their parents to also spend weeks
12 or months at the NICU in support of their babies' care.

13 Research published in 2015 in the medical journal *Pediatrics*
14 shows that this type of parental 'kangaroo care' or continual
15 skin-to-skin contact reduces infant mortality by thirty-six per
16 cent, lowers risk of sepsis or major infection by forty-seven
17 per cent, and reduces the length of stay in NICU by up to one



1 week. Additional benefits include better neurological development of the baby, reduced depression for the mother, and a fifty per cent increase in likelihood of exclusive breastfeeding after discharge, which itself has well-known and unique benefits for child health and development. For babies in the NICU, it is vitally important that mothers continually express breast milk for them, which requires up to an hour of pumping every few hours throughout the day and night.

9 The legislature also finds that in Hawaii, only Oahu has high risk NICUs, resulting in parents from other islands being forced to relocate at significant disruption and expense for an extended period of time. Even for parents on Oahu, it is nearly impossible to maintain full time employment when parents are constantly caring for their babies in the NICU. Added to this time, expense, and stress, parents caring for their NICU child do not necessarily qualify for financial assistance through temporary disability insurance or protection from job loss under the federal Family and Medical Leave Act. When parents do qualify, they often use a large proportion of family leave while their baby is in the NICU, and often feel financial pressure to return to work when their babies are still very young, which



1 deprives both children and parents of early bonding that is an
2 important factor in child development and long term outcomes.
3 Sometimes, parents return to work while their babies are still
4 in the NICU to preserve their leave upon discharge.
5 Furthermore, many parents following NICU discharge are advised
6 not to enroll their babies in childcare due to concerns with
7 infection, which further interferes with the parents' planned
8 return to work.

9 The legislature also finds that the cost of an average NICU
10 stay is between \$7,000 to \$8,000 per day in Hawaii. Thus, the
11 cost for a twelve-week NICU stay could easily exceed \$500,000.
12 Reducing a NICU stay by one week would save \$60,000 per baby.
13 Furthermore, the cost of temporary disability insurance for
14 twelve weeks for two parents is less than \$40,000.

15 Accordingly, the purpose of this Act is to expand the
16 State's temporary disability insurance and family leave
17 requirements to cover extended stays in a NICU where a parent
18 provides kangaroo care to or expresses breast milk for the
19 child.



SECTION 2. Chapter 398, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§398- Family leave requirement for parents of preterm babies. (a) Upon the preterm birth of a child who is required to stay in a neonatal intensive care unit or upon birth of a child who is required to stay in a neonatal intensive care unit for more than eight weeks, an employee shall be entitled to family leave not to exceed twelve weeks after the child is discharged from the neonatal intensive care unit; provided that during the time the child is in the neonatal intensive care unit, the employee shall provide kangaroo care to or express breast milk for the baby, which requires the employee's continual physical presence.

(b) For the purposes of this section:

"Kangaroo care" means a technique of newborn care where the baby is kept chest-to-chest and skin-to-skin with a parent.

"Preterm birth" means a birth that occurs before the thirty-seventh week of pregnancy."

SECTION 3. Section 392-3, Hawaii Revised Statutes, is amended as follows:



1 1. By adding a new definition to be appropriately inserted
2 and to read:

3 "Kangaroo care" means a technique of newborn care where
4 the baby is kept chest-to-chest and skin-to-skin with a parent."

5 2. By amending the definition of "disability" to read:

6 "Disability" means [~~total~~]:

7 (1) Total inability of an employee to perform the duties
8 of the employee's employment caused by sickness,
9 pregnancy, termination of pregnancy, organ donation,
10 or accident other than a work injury as defined in
11 section 386-3[-]; or

12 (2) Total inability of an employee to perform the duties
13 of the employee's employment due to:

14 (A) The employee's giving birth to a child; or

15 (B) Providing kangaroo care to or expressing breast
16 milk for the employee's child who is required to
17 stay in a neonatal intensive care unit."

18 SECTION 4. Section 392-21, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Any individual in current employment who suffers
21 disability resulting from [~~accident~~];



- (1) Accident, sickness, pregnancy, termination of pregnancy, or organ donation, except accident or disease connected with or resulting from employment;
- (2) Giving birth to a child; or
- (3) Providing kangaroo care to or expressing breast milk for the individual's child who is required to stay in a neonatal intensive care unit,

as defined in section 386-3 or any other applicable workers' compensation law, shall be entitled to receive temporary disability benefits in the amount and manner provided in this chapter."

SECTION 5. Section 392-23, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~392-23[~~]~~] Duration of benefit payments. (a)

Temporary disability benefits shall be payable for any period of disability following the expiration of the waiting period required in section 392-24.

(b) The duration of benefit payments shall not exceed twenty-six weeks for any period of disability or during any benefit year[~~-~~], except as provided in subsection (c).



1 (c) For any employee who suffers from disability resulting
2 from a pregnancy that results in:

3 (1) A preterm birth with the newborn baby being required
4 to stay in a neonatal intensive care unit; or

5 (2) The newborn baby being required to stay in a neonatal
6 intensive care unit for more than eight weeks,
7 the duration of benefit payments shall not exceed six weeks
8 after the baby is discharged from the neonatal intensive care
9 unit; provided that during the time the baby is in the neonatal
10 intensive care unit, the employee shall provide kangaroo care to
11 or express breast milk for the baby, which requires the
12 employee's continual physical presence.

13 (d) As used in this section, "preterm birth" means a birth
14 that occurs before the thirty-seventh week of pregnancy."

15 SECTION 6. Section 392-25, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§392-25 Eligibility for benefits.** An individual is
18 eligible to receive temporary disability benefits if the
19 individual has been in employment for at least fourteen weeks
20 during each of which the individual has received remuneration in
21 any form for twenty or more hours and earned wages of at least



1 \$400, during the fifty-two weeks immediately preceding the first
2 day of disability[-] provided that this section shall not apply
3 to an individual who is disabled due to:

4 (1) Giving birth to a child; or

5 (2) Providing kangaroo care to or expresses breast milk
6 for the individual's child who is required to stay in
7 a neonatal intensive care unit."

8 SECTION 7. The department of health shall amend the Hawaii
9 administrative rules to ensure that neonatal care is included as
10 a "related medical condition" wherever the phrase "pregnancy,
11 childbirth, or related medical condition" is used.

12 SECTION 8. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 9. This Act shall take effect upon its approval.

15
INTRODUCED BY: _____

Jana Acasio



S.B. NO. 2831

Report Title:

Temporary Disability Insurance; Family Leave; Pregnancy; Preterm Birth; Kangaroo Care; Breast Milk Expression

Description:

Requires temporary disability insurance to provide extended coverage to an employee who has a preterm birth requiring the newborn baby to stay in a neonatal intensive care unit or birth requiring the newborn baby to stay in a neonatal intensive care unit for more than eight weeks, provided the employee provides kangaroo care to or expresses breast milk for the newborn. Requires family leave to be extended for an employee who has a preterm birth requiring the newborn baby to stay in a neonatal intensive care unit or birth requiring the newborn baby to stay in a neonatal intensive care unit for more than eight weeks, provided the employee provides kangaroo care to or expresses breast milk for the newborn. Requires the Department of Health to amend the Hawaii Administrative Rules to include neonatal care as related condition where the phrase "pregnancy, childbirth, or other related condition" is used.

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