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# A BILL FOR AN ACT

RELATING TO EMPLOYEE BENEFITS.

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

1           SECTION 1. The legislature finds that in 2020, one in ten  
2 babies, or ten per cent of live births, was born preterm in the  
3 State, meaning that those births occurred before thirty-seven  
4 completed weeks of gestation. The legislature also finds that  
5 approximately 1.6 per cent of live births in the State are "very  
6 preterm", denoting that the babies were born before thirty-two  
7 completed weeks of gestation.

8           The legislature further finds that these preterm and very  
9 preterm babies spend weeks or months in neonatal intensive care  
10 units (NICU), requiring their parents to also spend weeks or  
11 months at the NICU in support of their babies' care. Research  
12 published in 2015 in the medical journal *Pediatrics* shows that  
13 parental "kangaroo care", meaning continual skin-to-skin  
14 contact, reduces infant mortality by thirty-six per cent, lowers  
15 risk of sepsis or major infection by forty-seven per cent, and  
16 reduces the length of stay in the NICU by up to one week.  
17 Additional benefits include better neurological development of



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

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



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

8 The legislature additionally finds that according to the  
9 State Health Planning and Development Agency's 2020 Health Care  
10 Utilization Report, the cost of an average NICU stay is between  
11 \$7,700 to \$8,500 per day in Hawai'i. Thus, the cost of a twelve-  
12 week NICU stay could easily exceed \$650,000. Reducing a NICU  
13 stay by one week could save an average of \$57,000 per baby.  
14 Furthermore, the cost of temporary disability insurance for  
15 twelve weeks for two parents is less than \$40,000.

16 Accordingly, the purpose of this Act is to extend, under  
17 certain conditions, the family leave period for employees who  
18 are unable to perform their employment duties due to the birth  
19 of a child who is required to stay in a neonatal intensive care  
20 unit for up to eight weeks.



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

3 **"§398-3 Family leave requirement.** (a) An employee shall  
4 be entitled to a total of four weeks of family leave during any  
5 calendar year:

6 (1) Upon the birth of a child of the employee or the  
7 adoption of a child; or

8 (2) To care for the employee's child, spouse, reciprocal  
9 beneficiary, sibling, grandchild, or parent with a  
10 serious health condition[-];

11 provided that any employee who suffers from a total inability to  
12 perform the duties of the employee's employment resulting from  
13 the birth of a child who is required to stay in a neonatal  
14 intensive care unit for up to eight weeks, shall be entitled to  
15 additional family leave equivalent to the duration the child is  
16 in a neonatal intensive care unit, starting from the date the  
17 child is discharged from the neonatal intensive care unit;  
18 provided further that during the additional period of family  
19 leave, the employee:

20 (1) Provides kangaroo care to the child; or

21 (2) Expresses breast milk for the child.



1           (b) ~~[During each calendar year, the leave]~~ Leave pursuant  
2 to this section may be taken intermittently~~[-]~~ during each  
3 calendar year.

4           (c) Leave pursuant to this section shall not be  
5 cumulative~~[-]~~ from one calendar year to another.

6           (d) If unpaid leave under this chapter conflicts with the  
7 unreduced compensation requirement for exempt employees under  
8 the federal Fair Labor Standards Act, an employer may require  
9 the employee to make up for the leave taken within the same pay  
10 period.

11           (e) Nothing in this chapter shall entitle an employee to  
12 more than a total of four weeks of leave in any twelve-month  
13 period~~[-]~~; except as provided in subsection (a) for any employee  
14 who suffers from a total inability to perform the duties of the  
15 employee's employment resulting from the birth of a child who is  
16 required to stay in a neonatal intensive care unit for up to  
17 eight weeks.

18           (f) For purposes of this section, "kangaroo care" means a  
19 technique of newborn care where the baby is kept chest-to-chest  
20 and skin-to-skin with a parent."



1 SECTION 3. Section 398-4, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) and (b) to read as follows:  
3 "(a) [~~Pursuant to section 398-3, an employee shall be~~  
4 ~~entitled to four weeks of family leave. The family leave shall]~~  
5 Nothing in this chapter shall be construed to require an  
6 employer to provide its employees with paid family leave. If an  
7 employer provides its employees with paid family leave, family  
8 leave taken by an employee pursuant to section 398-3 may consist  
9 of unpaid leave, paid leave, or a combination of paid and unpaid  
10 leave. If an employer provides paid family leave for fewer than  
11 [~~four weeks,~~] the family leave period to which an employee is  
12 entitled pursuant to section 398-3, [~~the additional period of~~  
13 leave added leave to attain the four-week total] leave taken by  
14 the employee beyond the period of paid family leave provided by  
15 the employer may be unpaid.

16 (b) Except as otherwise provided in subsection (c), an  
17 employee may elect to substitute any part of family leave to  
18 which the employee is entitled pursuant to section 398-3, with  
19 any of the employee's accrued paid leaves, including [~~but not~~  
20 limited to] vacation[~~,~~] or personal[~~, or family leave for any~~  
21 part of the four-week period in subsection (a).] leave."



1           SECTION 4. The department of health shall amend its  
2 administrative rules to ensure that neonatal care is included as  
3 a "related medical condition" wherever the phrase "pregnancy,  
4 childbirth, or related medical condition" is used.

5           SECTION 5. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7           SECTION 6. This Act shall take effect on June 30, 3000.

8



**Report Title:**

Family Leave; Childbirth; Neonatal Intensive Care Unit; Kangaroo Care; Breast Milk Expression

**Description:**

Extends under certain conditions, the family leave period for employees who are unable to perform their employment duties due to the birth of a child who is required to stay in a neonatal intensive care unit for up to eight weeks. Requires the Department of Health to amend its rules to include neonatal care as a related medical condition wherever the phrase "pregnancy, childbirth, or other related condition" is used. Effective 6/30/3000. (HD1)

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

