
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 both the babies and parents of early



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

- 17 (1) Expand the State's temporary disability insurance
18 coverage to, and exempt from temporary disability
19 benefit eligibility requirements that are employment-
20 related, employees who are unable to perform their
21 employment duties due to the employee's giving of



1 birth to a child or provision of kangaroo care to, or
2 expression of breast milk for, the employee's child
3 who is required to stay in a neonatal intensive care
4 unit; and

5 (2) Extend, under certain conditions, the temporary
6 disability benefit payment period and family leave
7 period for employees who are unable to perform their
8 employment duties due to:

9 (A) Preterm birth of a child who is required to stay
10 in a neonatal intensive care unit; or

11 (B) Birth of a child who is required to stay in a
12 neonatal intensive care unit for more than eight
13 weeks.

14 SECTION 2. Section 392-3, Hawaii Revised Statutes, is
15 amended as follows:

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

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

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

21 "Disability" means total inability of an employee to



1 perform the duties of the employee's employment caused by
2 [~~sickness,~~] :

3 (1) Sickness, pregnancy, termination of pregnancy, organ
4 donation, or accident other than a work injury as
5 [~~defined~~] specified in section 386-3 [~~;~~];

6 (2) The employee's giving birth to a child; or

7 (3) The employee's provision of kangaroo care to, or
8 expression of breast milk for, the employee's child
9 who is required to stay in a neonatal intensive care
10 unit."

11 SECTION 3. Section 392-21, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Any individual in current employment who suffers
14 disability resulting from [~~accident,~~]:

15 (1) Accident, sickness, pregnancy, termination of
16 pregnancy, or organ donation, except accident or
17 disease connected with or resulting from employment as
18 [~~defined~~] specified in section 386-3 or any other
19 applicable workers' compensation law[~~;~~];

20 (2) Giving birth to a child; or



1 (3) Providing kangaroo care to, or expressing breast milk
2 for, the individual's child who is required to stay in
3 a neonatal intensive care unit,
4 shall be entitled to receive temporary disability benefits in
5 the amount and manner provided in this chapter."

6 SECTION 4. Section 392-23, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§392-23[+] Duration of benefit payments. (a)
9 Temporary disability benefits shall be payable for any period of
10 disability following the expiration of the waiting period
11 required in section 392-24.

12 (b) The duration of benefit payments shall not exceed
13 twenty-six weeks for any period of disability or during any
14 benefit year[-]; provided that any employee who suffers from
15 disability resulting from a pregnancy involving:

16 (1) Preterm birth of a child who is required to stay in a
17 neonatal intensive care unit; or

18 (2) Birth of a child who is required to stay in a neonatal
19 intensive care unit for more than eight weeks,
20 shall be entitled to benefit payments for an additional period
21 not to exceed six weeks while the child is in a neonatal



1 intensive care unit or after the child is discharged from the
2 unit; provided further that during the additional period of
3 benefit payment, the employee provides kangaroo care to, or
4 expresses breast milk for, the child, which requires the
5 employee to continually be in close physical proximity to the
6 child.

7 (c) As used in this section, "preterm birth" means a live
8 birth of a child that occurs before thirty-seven completed weeks
9 of gestation."

10 SECTION 5. Section 392-25, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§392-25 Eligibility for benefits[-]; exemption.** An
13 individual is eligible to receive temporary disability benefits
14 if the individual has been in employment for at least fourteen
15 weeks during each of which the individual has received
16 remuneration in any form for twenty or more hours and earned
17 wages of at least \$400, during the fifty-two weeks immediately
18 preceding the first day of disability[-]; provided that an
19 individual who is disabled due to giving birth to a child or
20 providing kangaroo care to, or expressing breast milk for, the
21 individual's child who is required to stay in a neonatal



1 intensive care unit shall not be required to fulfill these
2 eligibility requirements."

3 SECTION 6. Section 398-3, Hawaii Revised Statutes, is
4 amended to read as follows:

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

8 (1) Upon the birth of a child of the employee or the
9 adoption of a child; or

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

13 provided that any employee who suffers from total inability to
14 perform the duties of the employee's employment resulting from a
15 preterm birth of a child who is required to stay in a neonatal
16 intensive care unit, or birth of a child who is required to stay
17 in a neonatal intensive care unit for more than eight weeks,
18 shall be entitled to additional family leave not to exceed
19 twelve weeks while the child is in a neonatal intensive care
20 unit or after the child is discharged from the neonatal
21 intensive care unit; provided further that during the additional



1 period of family leave, the employee provides kangaroo care to,
2 or expresses breast milk for, the child, which requires the
3 employee to continually be in close physical proximity to the
4 child.

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

8 (c) Leave pursuant to this section shall not be
9 cumulative[-] from one calendar to another.

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

15 (e) Nothing in this chapter shall entitle an employee to
16 more than a total of four weeks of leave in any twelve-month
17 period[-]; provided that any employee who suffers from total
18 inability to perform the duties of the employee's employment
19 resulting from a preterm birth of a child who is required to
20 stay in a neonatal intensive care unit or birth of a child who
21 is required to stay in a neonatal intensive care unit for more



1 than eight weeks shall be entitled to additional family leave
 2 not to exceed twelve weeks while the child is in a neonatal
 3 intensive care unit or after the child is discharged from the
 4 neonatal intensive care unit; provided further that during the
 5 additional period of family leave, the employee provides
 6 kangaroo care to, or expresses breast milk for, the child, which
 7 requires the employee to continually be in close physical
 8 proximity to the child.

9 (f) For purposes of this section, "kangaroo care" shall
 10 have the same meaning as in section 392-3."

11 SECTION 7. Section 398-4, Hawaii Revised Statutes, is
 12 amended by amending subsections (a) and (b) to read as follows:

13 "~~(a) [Pursuant to section 398-3, an employee shall be~~
 14 ~~entitled to four weeks of family leave. The family leave shall]~~
 15 Nothing in this chapter shall be construed to require an
 16 employer to provide its employees with paid family leave. If an
 17 employer provides its employees with paid family leave, family
 18 leave taken by an employee pursuant to section 398-3 may consist
 19 of unpaid leave, paid leave, or a combination of paid and unpaid
 20 leave. If an employer provides paid family leave for fewer than
 21 [four weeks,] the family leave period to which an employee is



1 entitled pursuant to section 398-3, [the additional period of
 2 leave added leave to attain the four week total] leave taken by
 3 the employee beyond the period of paid family leave provided by
 4 the employer may be unpaid.

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

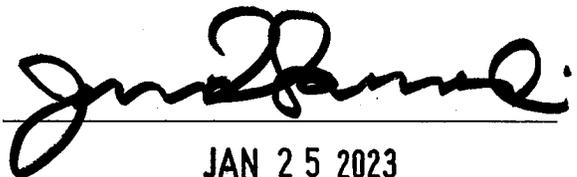
11 SECTION 8. The department of health shall amend its
 12 administrative rules to ensure that neonatal care is included as
 13 a "related medical condition" wherever the phrase "pregnancy,
 14 childbirth, or related medical condition" is used.

15 SECTION 9. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect upon its approval.

18

INTRODUCED BY:


 JAN 25 2023



Report Title:

Temporary Disability Insurance; Eligibility Criteria Exemption; Family Leave; Pregnancy; Childbirth; Preterm Birth; Neonatal Intensive Care Unit; Kangaroo Care; Breast Milk Expression

Description:

Expands the State's temporary disability insurance (TDI) coverage to, and exempt from TDI benefit eligibility requirements that are employment-related, employees who are unable to perform their employment duties due to the employee's childbirth or provision of kangaroo care to, or expression of breast milk for, the employee's child who is required to stay in a neonatal intensive care unit. Extend under certain conditions, the temporary disability benefit payment period and family leave period for employees who are unable to perform their employment duties due to a preterm birth of a child who is required to stay in a neonatal intensive care unit or birth of a child who is required to stay in a neonatal intensive care unit for more than eight weeks. Defines "kangaroo care" and "preterm birth". Requires the Department of Health to amend its rules to include neonatal care as related condition where the phrase "pregnancy, childbirth, or other related condition" is used.

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