
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 the 2022 Aloha United Way ALICE
4 (Asset Limited Income Constrained Employed) Facts and Figures,
5 nearly half of Hawaii families would not have enough money to
6 cover expenses for four weeks. An unexpected medical emergency
7 would put families under significant financial strain. While
8 the Federal Family and Medical Leave Act of 1993 allows twelve
9 weeks of unpaid leave to employees who have worked at a business
10 that employs fifty or more employees, the majority of Hawaii's
11 workforce cannot afford to take unpaid leave to care for a new
12 child or attend to the needs of a family member with a serious
13 health condition.

14 In Hawaii, 247,000 people serve as family caregivers.
15 Hawaii has the fastest growing population over the age of sixty-
16 five in the nation, and that number is expected to grow by
17 eighty-one per cent by the year 2030. Nearly a third of those



1 who need but do not have access to family leave will need the
2 time off to care for a family member experiencing serious
3 illness or requiring end-of-life care. Women, as primary
4 caregivers of infants, children, and elderly parents, are
5 affected disproportionately by the absence of paid family and
6 medical leave. Further, father-infant bonding is important in
7 the emotional, social, cognitive, and physical development of
8 the newborn baby.

9 The purpose of this Act is to ensure that state and county
10 employees are provided family leave insurance benefits during
11 times when they need to provide care for their families.

12 SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended
13 by adding a new part to be appropriately designated and to read
14 as follows:

15 **"PART . PAID FAMILY LEAVE**

16 **§78-A Definitions.** As used in this part, unless the
17 context otherwise requires:

18 "Child" means an individual who is a biological, adopted,
19 hanai, or foster son or daughter; a stepchild; a legal ward of
20 an employee; a grandchild; a child of a reciprocal beneficiary;
21 or a child of an employee who stands in loco parentis.



1 "Health care provider" means a physician as defined under
2 section 386-1.

3 "Parent" means a biological, foster, hanai or adoptive
4 parent, a parent-in-law, a stepparent, a legal guardian, a
5 grandparent, a grandparent-in-law, a parent or grandparent of a
6 reciprocal beneficiary, or a person who stands in loco parentis
7 for a minor child.

8 "Qualified employee" means an employee who has completed at
9 least 1,250 hours of service over at least twelve months of
10 service as an employee.

11 "Reduced leave schedule" means a leave schedule that
12 reduces the usual number of hours per workweek or hours per
13 workday of a qualified employee.

14 "Serious health condition" means an illness, injury,
15 impairment, or physical or mental condition that involves:

16 (1) Inpatient care at a hospital, hospice, or residential
17 medical care facility; or

18 (2) Continuing treatment by a health care provider.

19 "Sibling" means an individual who is a biological, adopted,
20 hanai, or foster brother or sister; or a stepbrother or
21 stepsister of an employee.



1 **§78-B Paid family leave; general requirements.** (a) A
2 qualified employee shall be entitled to a total of twelve weeks
3 of paid leave during any twelve-month period for one or more of
4 the following:

5 (1) The birth of a child of the qualified employee and in
6 order to care for the child;

7 (2) The placement of a child with the qualified employee
8 for adoption or foster care; or

9 (3) To care for the qualified employee's spouse,
10 reciprocal beneficiary, child, grandchild, parent, or
11 sibling if the spouse, reciprocal beneficiary, child,
12 grandchild, parent, sibling, or a service member who
13 is the qualified employee's next of kin has a serious
14 health condition.

15 (b) The entitlement to leave under subsection (a)(1) or
16 (2) shall expire at the end of the twelve-month period beginning
17 on the date of birth or placement of the child.

18 (c) Leave under subsection (a)(1) and (2) shall not be
19 taken by a qualified employee intermittently or on a reduced
20 leave schedule unless the qualified employee and the employer
21 agree otherwise.



1 (d) Leave under subsection (a)(3) may be taken
2 intermittently or on a reduced leave schedule when medically
3 necessary; provided that:

4 (1) Any hours of leave taken shall be subtracted from the
5 total amount of leave remaining available to the
6 qualified employee under subsection (a), for purposes
7 of the twelve-month period involved, on an hour-for-
8 hour basis;

9 (2) If a qualified employee requests intermittent leave or
10 leave on a reduced leave schedule that is foreseeable
11 based on planned medical treatment, the employer may
12 require the qualified employee to transfer temporarily
13 to an available alternative position offered by the
14 employing agency for which the qualified employee is
15 qualified and that:

16 (A) Has equivalent pay and benefits; and

17 (B) Better accommodates recurring periods of leave
18 than the regular employment position of the
19 qualified employee; and

20 (3) The qualified employee complies with subsection (j)
21 and section 78-C(a)(5).



1 (e) A qualified employee taking leave under this section
2 may elect to use one of the following types of paid leave:

3 (1) Twelve administrative workweeks of paid family leave
4 under this paragraph in connection with the birth or
5 placement involved; or

6 (2) During the twelve-month period referred to in
7 subsection (a), and in addition to the twelve
8 administrative workweeks under paragraph (1), any
9 leave accrued or accumulated by the qualified
10 employee;

11 provided that nothing in this subsection shall be construed to
12 require that a qualified employee first use all or any portion
13 of the leave described in paragraph (2) before being allowed to
14 use the paid parental leave described in paragraph (1); provided
15 further that nothing in this section shall require an employer
16 to provide paid sick leave in any situation in which the
17 employer would not normally provide paid leave.

18 (f) Paid family leave taken under subsection (e) (1):

19 (1) Shall be payable from any appropriation or fund
20 available for salaries or expenses for positions
21 within the employing agency;



1 (2) Shall not be considered to be vacation leave or any
2 other type of leave; and

3 (3) If not used by the qualified employee before the end
4 of the twelve-month period described in subsection (a)
5 to which it relates, shall not accumulate for any
6 subsequent use.

7 Nothing in this subsection shall be construed to modify the
8 requirement that the qualified employee complete at least twelve
9 months of service as an employee, as described in the definition
10 of "qualified employee" in section 78-A, before becoming
11 eligible to take leave pursuant to this part.

12 (g) A qualified employee shall not take leave under
13 subsection (e)(1) unless the qualified employee agrees in
14 writing, before the leave commences, to work for the applicable
15 employing agency for not less than a period of twelve weeks
16 beginning on the date the leave concludes; provided that:

17 (1) The head of the agency shall waive this requirement in
18 any instance where the qualified employee is unable to
19 return to work because of the continuation,
20 recurrence, or onset of a serious health condition,
21 including a mental health condition, related to the



1 applicable birth or placement of a child of the
2 qualified employee or the child; and
3 (2) The head of the employing agency may require that a
4 qualified employee who claims to be unable to return
5 to work because of a health condition described under
6 paragraph (1) provide certification supporting that
7 claim by the health care provider of the qualified
8 employee or the child, as the case may be. The
9 qualified employee shall provide the certification to
10 the head in a timely manner.

11 (h) If a qualified employee fails to return from paid
12 leave provided under subsection (e) (1) after the date the leave
13 concludes, the employing agency may recover from the qualified
14 employee an amount equal to the total amount of government
15 contributions paid by the agency on behalf of the qualified
16 employee for maintaining the qualified employee's health
17 coverage during the period of the leave; provided that this
18 subsection shall not apply to a qualified employee who fails to
19 return from leave due to:



1 (1) The continuation, recurrence, or onset of a serious
2 health condition as described under, and consistent
3 with the requirements of, subsection (g); or

4 (2) Any other circumstance beyond the control of the
5 qualified employee.

6 (i) In any case in which the necessity for leave under
7 subsection (a)(1) or (2) is foreseeable based upon an expected
8 birth or placement, the qualified employee shall provide the
9 employer with not less than thirty days' notice before the date
10 the leave is to begin of the qualified employee's intention to
11 take leave, except that if the date of the birth or placement
12 requires leave to begin in less than thirty days, the qualified
13 employee shall provide as much notice as is practicable.

14 (j) In any case in which the necessity for leave under
15 subsection (a)(3) is foreseeable based on planned medical
16 treatment, the qualified employee:

17 (1) Shall make a reasonable effort to schedule the
18 treatment so as not to disrupt unduly the operations
19 of the employer, subject to the approval of the health
20 care provider of the child, spouse, parent, or sibling
21 of the qualified employee, as appropriate; and



1 (2) Shall provide the employer with not less than thirty
2 days' notice before the date the leave is to begin of
3 the qualified employee's intention to take leave,
4 except that if the date of the treatment requires
5 leave to begin in less than thirty days, the qualified
6 employee shall provide as much notice as is
7 practicable.

8 **§78-C Paid family leave; certification requirements. (a)**

9 An employing agency may require that a request for leave under
10 section 78-B(a) (3) be supported by certification issued by the
11 health care provider of the child, spouse, parent, or sibling of
12 the qualified employee. The qualified employee shall provide,
13 in a timely manner, a copy of the certification to the employing
14 agency. A certification shall be sufficient if it states:

- 15 (1) The date on which the serious health condition
16 commenced;
- 17 (2) The probable duration of the condition;
- 18 (3) The appropriate medical facts within the knowledge of
19 the health care provider regarding the condition;
- 20 (4) A statement that the qualified employee is needed to
21 care for the child, spouse, parent, or sibling, and an



1 estimate of the amount of time that the qualified
2 employee is needed to care for the child, spouse,
3 parent, or sibling; and

4 (5) In the case of certification for intermittent leave,
5 or leave on a reduced leave schedule, for planned medical
6 treatment, the dates on which the treatment is expected to be
7 given and the duration of the treatment.

8 (b) In any case in which the employer has reason to doubt
9 the validity of the certification provided under subsection (a),
10 the employer may require, at the expense of the agency, that the
11 qualified employee obtain the opinion of a second health care
12 provider designated or approved by the employing agency
13 concerning any information certified under subsection (a) for
14 the leave. Any health care provider designated or approved
15 pursuant to this subsection shall not be employed on a regular
16 basis by the employing agency.

17 (c) In any case in which the second opinion described in
18 subsection (b) differs from the original certification provided
19 under subsection (a), the employing agency may require, at the
20 expense of the agency, that the qualified employee obtain the
21 opinion of a third health care provider designated or approved



1 jointly by the employing agency and the qualified employee
2 concerning the information certified under subsection (a). The
3 opinion of the third health care provider concerning the
4 information certified under subsection (a) shall be considered
5 to be final and shall be binding on the employing agency and the
6 qualified employee.

7 (d) The employer may require, at the expense of the
8 agency, that the qualified employee obtain subsequent
9 recertifications on a reasonable basis.

10 **§78-D Paid family leave; protection of employment and**
11 **benefits.** (a) Any qualified employee who takes leave under
12 section 78-B for the intended purpose of the leave shall be
13 entitled, upon return from the leave:

14 (1) To be restored by the employer to the position held by
15 the qualified employee when the leave commenced; or

16 (2) To be restored to an equivalent position with
17 equivalent benefits, pay, status, and other terms and
18 conditions of employment.

19 (b) The taking of leave under section 78-B shall not
20 result in the loss of any employment benefit accrued prior to
21 the date on which the leave commenced.



1 (c) Except as otherwise provided by law, nothing in
2 subsections (a) or (b) shall be construed to entitle any
3 restored qualified employee to:

4 (1) The accrual of any employment benefits during any
5 period of leave; or

6 (2) Any right, benefit, or position of employment other
7 than any right, benefit, or position to which the
8 qualified employee would have been entitled had the
9 qualified employee not taken the leave.

10 (d) Nothing in this section shall be construed to prohibit
11 an employing agency from requiring a qualified employee on leave
12 under this section to report periodically to the employer on the
13 status and intention of the qualified employee to return to
14 work.

15 **§78-E Paid family leave; prohibition of coercion.** (a) An
16 employee shall not directly or indirectly intimidate, threaten,
17 or coerce, or attempt to intimidate, threaten, or coerce, any
18 other employee for the purpose of interfering with the exercise
19 of any rights that the other employee may have under this part.

20 (b) For purposes of this section:



1 "Intimidate, threaten, or coerce" includes promising to
2 confer or conferring any benefit, such as appointment,
3 promotion, or compensation; or taking or threatening to take any
4 reprisal, such as deprivation of appointment, promotion, or
5 compensation.

6 **§78-F Paid family leave; health insurance.** A qualified
7 employee enrolled in a health benefits plan who is placed in a
8 leave status pursuant to this part shall continue to be enrolled
9 in that plan while in the leave status; provided that the
10 qualified employee continues to pay any required employee
11 contributions.

12 **§78-G Construction.** The benefits and protections
13 established by this part shall be in addition to any other
14 benefits or protections offered by other federal, state, or
15 county laws, including the federal Family and Medical Leave Act
16 and chapter 398. Nothing in this part shall be construed to
17 modify, eliminate, or otherwise abrogate any existing leave
18 policies, employment benefits, or protections that employees may
19 have pursuant to any other laws, employment contracts or
20 collective bargaining agreements, to the extent that the laws,



1 contracts, and agreements provide greater protections than those
2 afforded under this part.

3 §78-H Rules. The director shall adopt rules necessary for
4 the administration of this part."

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

8 SECTION 4. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on July 1, 2024.

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INTRODUCED BY:

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JAN 18 2024



H.B. NO. 1713

Report Title:

Minority Caucus Package; Paid Family Leave; Public Employees

Description:

Establishes a paid family leave program for state and county employees. Authorizes a qualifying employee to take up to twelve weeks of paid leave for the birth or placement of a child or to care for a family member who has a serious health condition.

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

