

JAN 18 2024

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 state and
2 county employees are not adequately supported during times of
3 birth, adoption, fostering a new child, or caregiving for a
4 family member during illness. While the Federal Employee Paid
5 Leave Act of 2019 allows twelve weeks of paid leave to federal
6 employees, Hawaii's state and county employees are not given the
7 same opportunity and can struggle to afford to take unpaid leave
8 to care for a child or an elderly family member who has a
9 serious health condition. Hawaii state and county employees are
10 currently covered by the Federal Medical Leave Act and the
11 Hawaii Family Leave Law, which allow for unpaid leave times of
12 twelve weeks and four weeks, respectively. State and county
13 employees have the option to use accrued vacation or sick pay,
14 the amount of which will depend on time of service and prior
15 use.

16 Seven in ten keiki have both married parents or a single
17 parent in the workforce, leaving no full-time caregiver. Women,



1 as primary caregivers of infants, children, and elderly parents,
2 are affected disproportionately by the unavailability of paid
3 family and medical leave. According to the Hawaii Children's
4 Action Network, paid family leave is associated with a twenty
5 per cent decrease in infant mortality.

6 Hawaii has the nation's fastest growing population of
7 individuals over the age of sixty-five, which is expected to
8 grow even further by the year 2030. Of those who would benefit
9 from paid family leave, nearly one third would take those leave
10 benefits to care for an ill spouse or elderly parent. In short,
11 most workers, at some point, will need to take time off to care
12 for an ill or aging family member, but very few can afford it.
13 The majority of these workers are women.

14 The legislature further finds that providing paid family
15 leave to state and county employees could enhance recruitment
16 and retention of employees, fulfill the government's role as a
17 model employer, significantly improve the bonding between a
18 newborn, adopted, or new foster child and a parent, and reduce
19 stress and other negative impacts.



1 The purpose of this Act is to establish paid family leave
2 for all state and county employees that they can access when
3 those employees need to provide care for a family member.

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

7 **"PART . PAID FAMILY LEAVE**

8 **§78-A Definitions.** As used in this part, unless the
9 context otherwise requires:

10 "Child" means an individual who is a biological, adopted,
11 or foster son or daughter; a stepchild; or a legal ward of an
12 employee.

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

15 "Parent" means a biological, foster, or adoptive parent, a
16 parent-in-law, a stepparent, a legal guardian, a grandparent, or
17 a grandparent-in-law.

18 "Qualified employee" means an employee who has completed at
19 least 1,250 hours of service over at least twelve months of
20 service as an employee.



1 "Reduced leave schedule" means a leave schedule that
2 reduces the usual number of hours per workweek or hours per
3 workday of a qualified employee.

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

6 (1) Inpatient care at a hospital, hospice, or residential
7 medical care facility; or

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

9 "Sibling" means an individual who is a biological, adopted,
10 or foster brother or sister; or a stepbrother or stepsister of
11 an employee.

12 **§78-B Paid family leave; general requirements.** (a) A
13 qualified employee shall be entitled to a total of twelve weeks
14 of paid leave during any twelve-month period for one or more of
15 the following:

16 (1) The birth and care of a child of the qualified
17 employee;

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

20 (3) To care for the qualified employee's spouse,
21 reciprocal beneficiary, child, grandchild, parent, or



1 sibling if the spouse, reciprocal beneficiary, child,
2 grandchild, parent, or sibling has a serious health
3 condition.

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

7 (c) Leave under subsection (a)(1), (2), and (3) may be
8 taken intermittently or on a reduced leave schedule when
9 medically necessary; provided that:

10 (1) Any hours of leave taken shall be subtracted from the
11 total amount of leave remaining available to the
12 qualified employee under subsection (a), for purposes
13 of the twelve-month period involved, on an
14 hour-for-hour basis;

15 (2) If a qualified employee requests intermittent leave or
16 leave on a reduced leave schedule that is foreseeable
17 based on planned medical treatment, the employer may
18 require the qualified employee to transfer temporarily
19 to an available alternative position offered by the
20 employing agency for which the qualified employee is
21 qualified and that:



- 1 (A) Has equivalent pay and benefits; and
- 2 (B) Better accommodates recurring periods of leave
- 3 than the regular employment position of the
- 4 qualified employee; and
- 5 (3) The qualified employee complies with subsection (h)
- 6 and section 78-C(a) (5).
- 7 (d) A qualified employee taking leave under this section
- 8 may elect to use one of the following types of paid leave:
- 9 (1) Twelve administrative workweeks of paid family leave
- 10 under this paragraph in connection with the birth or
- 11 placement involved; or
- 12 (2) During the twelve-month period referred to in
- 13 subsection (a), and in addition to the twelve
- 14 administrative workweeks under paragraph (1), any
- 15 leave accrued or accumulated by the qualified
- 16 employee;
- 17 provided that nothing in this subsection shall be construed to
- 18 require that a qualified employee first use all or any portion
- 19 of the leave described in paragraph (2) before being allowed to
- 20 use paid parental leave described in paragraph (1); provided
- 21 further that nothing in this section shall require an employer



1 to provide paid sick leave in any situation in which the
2 employer would not normally provide paid leave.

3 (e) Paid family leave taken under subsection (d)(1):

4 (1) Shall be payable from any appropriation or fund
5 available for salaries or expenses for positions
6 within the employing agency;

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

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

13 Nothing in this subsection shall be construed to modify the
14 requirement that the qualified employee complete at least twelve
15 months of service as an employee, as described in the definition
16 of "qualified employee" in section 78-A, before becoming
17 eligible to take leave pursuant to this part.

18 (f) If a qualified employee fails to return from paid
19 leave provided under subsection (d)(1) after the date the leave
20 concludes, the employing agency may recover from the qualified
21 employee an amount equal to the total amount of government



1 contributions paid by the agency on behalf of the qualified
2 employee for maintaining the qualified employee's health
3 coverage during the period of the leave; provided that this
4 subsection shall not apply to a qualified employee who fails to
5 return from leave due to:

6 (1) The continuation, recurrence, or onset of a serious
7 health condition, including a mental health condition;
8 or

9 (2) Any other circumstance beyond the control of the
10 qualified employee.

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

19 (h) In any case in which the necessity for leave under
20 subsection (a)(3) is foreseeable based on planned medical
21 treatment, the qualified employee:



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

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

13 (i) The State or county may establish regulations to
14 increase the amount of leave available to an employee under
15 subsection (a) to a total of not more than sixteen
16 administrative workweeks, based on the consideration of:

17 (1) The benefits provided to the State or county
18 government of increasing the leave, including enhanced
19 recruitment and retention of employees;

20 (2) The government's role as a model employer;



- 1 (3) The impact of increased leave on lower-income and
2 economically disadvantaged employees;
- 3 (4) The benefits to the child of parental bonding; and
- 4 (5) Other factors the State or county considers necessary.

5 **§78-C Paid family leave; certification requirements.** (a)

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

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



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

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

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



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

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

8 **§78-D Paid family leave; protection of employment and**
9 **benefits.** (a) Any qualified employee who takes leave under
10 section 78-B for the intended purpose of the leave shall be
11 entitled, upon return from the leave:

- 12 (1) To be restored by the employer to the position held by
13 the qualified employee when the leave commenced; or
14 (2) To be restored to an equivalent position with
15 equivalent benefits, pay, status, and other terms and
16 conditions of employment.

17 (b) The taking of leave under section 78-B shall not
18 result in the loss of any employment benefit accrued prior to
19 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, but no more than
13 twice a month, to the employer on the status and intention of
14 the qualified employee to return to 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,



S.B. NO. 2207

Report Title:

Maui County Council Package; State and County Employees; Paid Family Leave

Description:

Establishes a paid family leave program for state and county employees. Authorizes a qualifying employee to take up to 12 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. Establishes procedures for a health care provider to provide a certification to an employee requesting paid family leave. Requires the State and counties to establish the paid family leave program by 1/1/2025.

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

