
A BILL FOR AN ACT

RELATING TO EMPLOYEE BENEFITS.

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

1 PART I

2 SECTION 1. The legislature finds that in 2020, one in ten
3 babies in Hawaii, or ten per cent of live births, were preterm,
4 meaning that the baby was born prior to thirty-seven completed
5 weeks of gestation. The legislature also finds that
6 approximately 1.6 per cent of these live births in the State
7 were "very preterm", which means that a baby was born before
8 thirty-two completed weeks of gestation.

9 The legislature further finds that these preterm and very
10 preterm babies spent weeks or months in neonatal intensive care
11 units (NICU), which in turn required their parents to also spend
12 weeks or months at the NICU in support of their babies' care. A
13 2015 research published in the medical journal *Pediatrics* found
14 that parental skin-to-skin contact, also known as "kangaroo
15 care", reduces infant mortality by thirty-six per cent, lowers
16 the risk of sepsis or major infection by forty-seven per cent,
17 and reduces the length of a baby's stay in the NICU by up to one



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

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



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

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

17 Accordingly, the purpose of this Act is to:

18 (1) Extend, under certain conditions, the family leave
19 period under state law, for up to eight additional
20 weeks for employees who are unable to perform their



1 employment duties due to the birth of a child who is
2 required to stay in a neonatal intensive care unit;

3 (2) Amend the definition of "because of sex" in section
4 378-1, Hawaii Revised Statutes, that governs
5 discriminatory employment practices, to include
6 neonatal care; and

7 (3) Require the civil rights commission to amend its
8 administrative rules to ensure that neonatal care is
9 included as a "related medical condition" wherever the
10 phrase "pregnancy, childbirth, or related medical
11 condition" or any similar phrase is used.

12 PART II

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

15 "**§398-3 Family leave requirement.** (a) An employee shall
16 be entitled to a total of four weeks of family leave during any
17 calendar year:

18 (1) Upon the birth of a child of the employee or the
19 adoption of a child; or



1 (2) To care for the employee's child, spouse, reciprocal
2 beneficiary, sibling, grandchild, or parent with a
3 serious health condition[-];
4 provided that any employee who experiences a total inability to
5 perform the duties of the employee's employment that results
6 from the birth of a child who is required to stay in a neonatal
7 intensive care unit shall be entitled to additional family leave
8 equivalent to the duration the child is in a neonatal intensive
9 care unit, for up to eight weeks, starting from the date the
10 child is discharged from the neonatal intensive care unit;
11 provided further that during the additional period of family
12 leave, the employee provides kangaroo care to the child or
13 expresses breast milk for the child.

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

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

19 (d) If unpaid leave under this chapter conflicts with the
20 unreduced compensation requirement for exempt employees under
21 the federal Fair Labor Standards Act, an employer may require



1 the employee to make up for the leave taken within the same pay
2 period.

3 (e) Nothing in this chapter shall entitle an employee to
4 more than a total of four weeks of leave in any twelve-month
5 period~~[-]~~, except as provided in subsection (a).

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

9 SECTION 3. Section 398-4, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

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



1 beyond the period of paid family leave provided by the employer
2 may be unpaid.

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

9 PART III

10 SECTION 4. Section 378-1, Hawaii Revised Statutes, is
11 amended by amending the definition of "because of sex" to read
12 as follows:

13 "Because of sex" shall include, but is not limited to,
14 because of pregnancy, childbirth, or related medical
15 conditions[~~,~~] which includes neonatal care; and women affected
16 by pregnancy, childbirth, or related medical conditions
17 including neonatal care, shall be treated the same for all
18 employment-related purposes, including receipt of benefits under
19 fringe benefit programs, as other individuals not so affected
20 but similar in their ability or inability to work."



1 SECTION 5. The civil rights commission 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" or any similar phrase
5 is used.

6 PART IV

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

9 SECTION 7. This Act shall take effect on July 1, 2024.



Report Title:

Employee Benefits; Family Leave; Childbirth; Neonatal Intensive Care Unit; Kangaroo Care

Description:

Extends, under certain conditions, the family leave period under state law, for up to eight additional weeks 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. Amends the definition of "because of sex" in section 378-1, HRS, that governs discriminatory employment practices, to include neonatal care. Requires the Civil Rights Commission to amend its administrative rules to ensure that neonatal care is included as a "related medical condition" wherever the phrase "pregnancy, childbirth, or related medical condition" or any similar phrase is used. (SD1)

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