

JAN 20 2023

A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYMENT.

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

1 SECTION 1. Chapter 78, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART . PAID FAMILY LEAVE

5 §78-A Definitions. As used in this part, unless the
6 context otherwise requires:

7 "Child" means an individual who is a biological, adopted,
8 or foster son or daughter; a stepchild; or a legal ward of an
9 employee.

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

12 "Parent" means a biological, foster, or adoptive parent, a
13 parent-in-law, a stepparent, a legal guardian, a grandparent, or
14 a grandparent-in-law.

15 "Qualified employee" means an employee who has completed at
16 least 1,250 hours of service over at least twelve months of
17 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 of a child of the qualified employee and in
17 order to care for the child;

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) and (2) shall not be
8 taken by a qualified employee intermittently or on a reduced
9 leave schedule unless the qualified employee and the employer
10 agree otherwise.

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

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

19 (2) If a qualified employee requests intermittent leave or
20 leave on a reduced leave schedule that is foreseeable
21 based on planned medical treatment, the employer may



1 require the qualified employee to transfer temporarily
2 to an available alternative position offered by the
3 employing agency for which the qualified employee is
4 qualified and that:

5 (A) Has equivalent pay and benefits; and

6 (B) Better accommodates recurring periods of leave
7 than the regular employment position of the
8 qualified employee; and

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

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

13 (1) Twelve administrative workweeks of paid family leave
14 under this paragraph in connection with the birth or
15 placement involved; or

16 (2) During the twelve-month period referred to in
17 subsection (a), and in addition to the twelve
18 administrative workweeks under paragraph (1), any
19 leave accrued or accumulated by the qualified
20 employee;



1 provided that nothing in this subsection shall be construed to
2 require that a qualified employee first use all or any portion
3 of the leave described in paragraph (2) before being allowed to
4 use the paid parental leave described in paragraph (1); provided
5 further that nothing in this section shall require an employer
6 to provide paid sick leave in any situation in which the
7 employer would not normally provide paid leave.

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

9 (1) Shall be payable from any appropriation or fund
10 available for salaries or expenses for positions
11 within the employing agency;

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

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

18 Nothing in this subsection shall be construed to modify the
19 requirement that the qualified employee complete at least twelve
20 months of service as an employee, as described in the definition



1 of "qualified employee" in section 78-A, before becoming
2 eligible to take leave pursuant to this part.

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

8 (1) The head of the agency shall waive this requirement in
9 any instance where the qualified employee is unable to
10 return to work because of the continuation,
11 recurrence, or onset of a serious health condition,
12 including a mental health condition, related to the
13 applicable birth or placement of a child of the
14 qualified employee or the child; and

15 (2) The head of the employing agency may require that a
16 qualified employee who claims to be unable to return
17 to work because of a health condition described under
18 paragraph (1) provide certification supporting that
19 claim by the health care provider of the qualified
20 employee or the child, as the case may be. The



1 qualified employee shall provide the certification to
2 the head in a timely manner.

3 (h) If a qualified employee fails to return from paid
4 leave provided under subsection (e) (1) after the date the leave
5 concludes, the employing agency may recover from the qualified
6 employee an amount equal to the total amount of government
7 contributions paid by the agency on behalf of the qualified
8 employee for maintaining the qualified employee's health
9 coverage during the period of the leave; provided that this
10 subsection shall not apply to a qualified employee who fails to
11 return from leave due to:

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

15 (2) Any other circumstance beyond the control of the
16 qualified employee.

17 (i) In any case in which the necessity for leave under
18 subsection (a) (1) or (2) is foreseeable based upon an expected
19 birth or placement, the qualified employee shall provide the
20 employer with not less than thirty days' notice before the date
21 the leave is to begin of the qualified employee's intention to



1 take leave, except that if the date of the birth or placement
2 requires leave to begin in less than thirty days, the qualified
3 employee shall provide as much notice as is practicable.

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

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

12 (2) Shall provide the employer with not less than thirty
13 days' notice before the date the leave is to begin of
14 the qualified employee's intention to take leave,
15 except that if the date of the treatment requires
16 leave to begin in less than thirty days, the qualified
17 employee shall provide as much notice as is
18 practicable.

19 **§78-C Paid family leave; certification requirements.** (a)
20 An employing agency may require that a request for leave under
21 section 78-B(a)(3) be supported by certification issued by the

1 health care provider of the child, spouse, parent, or sibling of
2 the qualified employee. The qualified employee shall provide,
3 in a timely manner, a copy of the certification to the employing
4 agency. A certification shall be sufficient if it states:

- 5 (1) The date on which the serious health condition
6 commenced;
- 7 (2) The probable duration of the condition;
- 8 (3) The appropriate medical facts within the knowledge of
9 the health care provider regarding the condition;
- 10 (4) A statement that the qualified employee is needed to
11 care for the child, spouse, parent, or sibling, and an
12 estimate of the amount of time that the qualified
13 employee is needed to care for the child, spouse,
14 parent, or sibling; and
- 15 (5) In the case of certification for intermittent leave,
16 or leave on a reduced leave schedule, for planned
17 medical treatment, the dates on which the treatment is
18 expected to be given and the duration of the
19 treatment.

20 (b) In any case in which the employer has reason to doubt
21 the validity of the certification provided under subsection (a),



1 the employer may require, at the expense of the agency, that the
2 qualified employee obtain the opinion of a second health care
3 provider designated or approved by the employing agency
4 concerning any information certified under subsection (a) for
5 the leave. Any health care provider designated or approved
6 pursuant to this subsection shall not be employed on a regular
7 basis by the employing agency.

8 (c) In any case in which the second opinion described in
9 subsection (b) differs from the original certification provided
10 under subsection (a), the employing agency may require, at the
11 expense of the agency, that the qualified employee obtain the
12 opinion of a third health care provider designated or approved
13 jointly by the employing agency and the qualified employee
14 concerning the information certified under subsection (a). The
15 opinion of the third health care provider concerning the
16 information certified under subsection (a) shall be considered
17 to be final and shall be binding on the employing agency and the
18 qualified employee.

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



1 §78-D Paid family leave; protection of employment and
2 benefits. (a) Any qualified employee who takes leave under
3 section 78-B for the intended purpose of the leave shall be
4 entitled, upon return from the leave:

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

7 (2) To be restored to an equivalent position with
8 equivalent benefits, pay, status, and other terms and
9 conditions of employment.

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

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

16 (1) The accrual of any employment benefits during any
17 period of leave; or

18 (2) Any right, benefit, or position of employment other
19 than any right, benefit, or position to which the
20 qualified employee would have been entitled had the
21 qualified employee not taken the leave.



1 (d) Nothing in this section shall be construed to prohibit
2 an employing agency from requiring a qualified employee on leave
3 under this section to report periodically to the employer on the
4 status and intention of the qualified employee to return to
5 work.

6 **§78-E Paid family leave; prohibition of coercion.** (a) An
7 employee shall not directly or indirectly intimidate, threaten,
8 or coerce, or attempt to intimidate, threaten, or coerce, any
9 other employee for the purpose of interfering with the exercise
10 of any rights that the other employee may have under this part.

11 (b) For purposes of this section:

12 "Intimidate, threaten, or coerce" includes promising to
13 confer or conferring any benefit, such as appointment,
14 promotion, or compensation; or taking or threatening to take any
15 reprisal, such as deprivation of appointment, promotion, or
16 compensation.

17 **§78-F Paid family leave; health insurance.** A qualified
18 employee enrolled in a health benefits plan who is placed in a
19 leave status pursuant to this part shall continue to be enrolled
20 in that plan while in the leave status; provided that the



1 qualified employee continues to pay any required employee
2 contributions.

3 **§78-G Construction.** The benefits and protections
4 established by this part shall be in addition to any other
5 benefits or protections offered by other federal, state, or
6 county laws, including the federal Family and Medical Leave Act
7 and chapter 398. Nothing in this part shall be construed to
8 modify, eliminate, or otherwise abrogate any existing leave
9 policies, employment benefits, or protections that employees may
10 have pursuant to any other laws, employment contracts or
11 collective bargaining agreements, to the extent that the laws,
12 contracts, and agreements provide greater protections than those
13 afforded under this part.

14 **§78-H Rules.** The director shall adopt rules necessary for
15 the administration of this part."

16 SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended
17 by designating sections 78-1 to section 78-65 as part I, and
18 inserting a title before section 78-1 to read as follows:

19 "PART I. GENERAL PROVISIONS"



S.B. NO. 1051

Report Title:

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. Requires the employee to agree to subsequently work for the employer for at least 12 weeks upon return to service except under certain conditions.

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

