

JAN 17 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 working
2 families are not adequately supported during times of caregiving
3 and illness. According to a 2018 report commissioned by Aloha
4 United Way, entitled "ALICE (Asset Limited, Income Constrained,
5 Employed) a Study of Financial Hardship in Hawaii", forty-two
6 per cent of families in Hawaii are living paycheck to paycheck.
7 While the federal Family and Medical Leave Act of 1993 allows
8 twelve weeks of unpaid leave to employees who have worked at a
9 business that employs fifty or more employees, the majority of
10 Hawaii's workforce cannot afford to take unpaid leave to care
11 for a new child or attend to the needs of a family member with a
12 serious health condition. Hawaii law, which offers a modest
13 four-week extension of unpaid leave, is available only to
14 employees of large employers with more than one hundred
15 employees.

16 The legislature further finds that according to the Hawaii
17 Children's Action Network, seven in ten keiki have either their



1 married parents, or their single parent, in the workforce,
2 leaving them with no full-time caregiver. Yet, mothers with
3 paid leave are thirty-nine per cent less likely to receive
4 public assistance after the birth of a child than those without.
5 Furthermore, paid family leave is associated with a twenty per
6 cent decrease in infant mortality, greater health equity among
7 different racial and socioeconomic groups, and increases in
8 worker retention and loyalty. An actuarial analysis conducted
9 in 2016 found that the annual cost to cover sixteen weeks of
10 leave for a Hawaii worker making \$48,000 would be around fifty-
11 eight dollars, averaging out to cost about \$1.11 per week.

12 The legislature additionally finds that in 2018, only
13 seventeen per cent of workers in the United States had access to
14 paid family leave through their employers. Women, as primary
15 caregivers of infants, children, and elderly parents, are
16 disproportionately affected by the absence of paid family and
17 medical leave. According to AARP Hawaii, there are
18 approximately 157,000 unpaid family caregivers in the State.
19 Hawaii has one of the fastest growing populations over the age
20 of sixty-five in the nation; from 2020 to 2030, the percentage
21 of people aged sixty-five and over is expected to increase from



1 19.1 per cent to 22.5 per cent of the State's population.
2 Nearly one-third of those who need but do not have access to
3 family leave will need the time off to care for an ill spouse or
4 elderly parent.

5 The legislature additionally finds that the coronavirus
6 disease 2019 (COVID-19) spread globally and was declared a
7 pandemic by the World Health Organization on March 11, 2020.
8 Upon reaching Hawaii's shores, COVID-19 became a public health
9 emergency that infected thousands of people, overwhelmed
10 hospital capacities, created medical supply shortages, and
11 claimed the lives of numerous Hawaii residents. Enacting a
12 comprehensive family leave program would allow employees whose
13 family members are impacted by serious health conditions to
14 provide adequate care for their loved ones.

15 The purpose of this Act is to ensure that employees in
16 Hawaii are provided family leave insurance benefits when they
17 need to provide care for their families.

18 SECTION 2. Chapter 398, Hawaii Revised Statutes, is
19 amended by adding ten new sections to be appropriately
20 designated and to read as follows:



1 "§398- Family leave insurance program. (a) The
2 department shall establish and administer a family leave
3 insurance program and pay family leave insurance benefits as
4 specified in this chapter.

5 (b) The department shall establish procedures and forms
6 for filing claims for family leave insurance benefits.

7 (c) The information collected and the files and records
8 retained about a covered individual pursuant to this chapter,
9 including the existence of a claim, shall be confidential and
10 shall not be open to inspection; provided that:

11 (1) An employee who applied for family leave insurance
12 benefits or that employee's representative, upon
13 presentation of an authorization signed by the
14 employee to the department, shall be allowed to review
15 any information, files, and records obtained by the
16 department;

17 (2) A public employee acting within the scope of the
18 public employee's official duties shall be permitted
19 to review the minimum necessary information, files,
20 and records to accomplish the public employee's



1 purpose for reviewing the information, files, and
2 records; and

3 (3) The department shall notify an employee's employer
4 that an employee filed a claim pursuant to this
5 chapter within _____ days after the claim has been
6 filed.

7 **§398- _____ Notice to employers.** (a) An employer may
8 require an eligible employee to give the employer written notice
9 at least thirty days before commencing a period of family leave.

10 (b) An eligible employee may commence leave without thirty
11 days' advance notice if the leave is not foreseeable, as in
12 circumstances including but not limited to:

13 (1) An unexpected serious health condition of the employee
14 or a family member of the employee;

15 (2) A premature birth, unexpected adoption, or unexpected
16 foster placement by or with the employee; or

17 (3) Absence due to domestic abuse, sexual assault, or
18 stalking of the employee or a family member.

19 (c) If an eligible employee commences leave without thirty
20 days' advance notice, as described under subsection (b), the
21 employee shall give oral notice to the employer within



1 twenty-four hours after the commencement of leave and shall
2 provide written notice of leave within three days after the
3 commencement of leave.

4 **§398- Employment protection; retaliation prohibited.**

5 After returning to work after a period of family leave, an
6 eligible employee shall be entitled to be restored to the
7 position of employment held by the employee when the leave
8 commenced, if that position still exists, without regard to
9 whether the employer filled the position with a replacement
10 worker during the period of leave. If the position held by the
11 employee at the time the leave commenced no longer exists, the
12 employee shall be entitled to be restored to any available
13 equivalent position with equivalent employment benefits, pay,
14 and other terms and conditions of employment.

15 **§398- Family leave insurance fund; family leave**
16 **insurance benefits.** (a) There is established an insurance fund
17 to be known as the family leave insurance fund. The family
18 leave insurance fund shall be used to provide a covered
19 individual with up to sixteen weeks per calendar year of paid
20 family leave.



1 (b) The family leave insurance fund shall consist of
2 employer and employee contributions based on the employee's
3 average weekly wage, interest earned, income, dividends,
4 refunds, rate credits, and other returns received by the fund.
5 The rate of the contribution shall be _____.

6 (c) The family leave insurance fund shall be under the
7 control of and administered by the department. All sums
8 contributed or paid from any source to the family leave
9 insurance fund, and all assets of the fund including all
10 interest and earnings, shall be held by the department for the
11 exclusive use and benefit of the employee-beneficiaries. The
12 fund shall be used to finance benefits, administration,
13 outreach, and education or study of family leave insurance. The
14 fund shall not be subject to appropriation for any other
15 purpose.

16 **§398- Eligibility for payment of benefits.** Family
17 leave insurance benefits shall be payable to a covered
18 individual who meets one of the following requirements:

19 (1) Because of birth, adoption, or placement through
20 foster care, is caring for a new child during the
21 first year after the birth, adoption, or placement;



1 percentage of covered employees who received family leave
2 insurance benefits, premium rates, and fund balances under the
3 family leave insurance program established pursuant to this
4 chapter.

5 §398- Outreach and education. The department shall
6 conduct a public outreach and education campaign to inform
7 employees and employers of the availability of family leave
8 insurance benefits. The department may use a portion of the
9 funds collected in a given year for the family leave insurance
10 program to pay for the public outreach and education campaign;
11 provided that the department shall use no more than per
12 cent per year or \$ per year, whichever is greater, for
13 the public outreach and education campaign. Outreach
14 information shall be available in English and other languages
15 spoken within the State.

16 §398- Coverage of self-employed. (a) A self-employed
17 person, including a sole proprietor, partner, or joint venture
18 partner, may elect coverage under this chapter by filing a
19 notice of election in writing with the director, as required by
20 the department, as follows:

21 (1) For an initial period of no less than three years; and



1 (2) Following the initial coverage period, no less than
2 one additional year of coverage;
3 provided that the election shall take effect on the date of
4 filing the notice.

5 (b) A self-employed person who has elected coverage may
6 withdraw from coverage within thirty days after the end of the
7 initial period of coverage, or at other times as the director
8 may prescribe by rule, by filing with the director a notice in
9 writing, as required by the department. The withdrawal shall
10 take effect no sooner than thirty days after filing the notice.

11 **§398- Wage withholding.** (a) An employer may deduct
12 and withhold contributions from each employee of up to one-half
13 of the cost of providing family leave insurance premiums, and
14 the employer shall provide for the remaining cost over the
15 amount of contributions of the employer's employees.

16 (b) If there is a dispute between the employee and the
17 employer relating to the withholding of wages as contributions
18 for family leave insurance benefits, either party may file with
19 the director a petition for determination of the amount to be
20 withheld. The matter shall be determined by an officer of the
21 department. If either an employer or employee is dissatisfied



1 with the department's determination, the aggrieved party may
2 appeal the petition for redetermination pursuant to the
3 procedure under part V of chapter 392.

4 **§398- Weekly benefit amount.** (a) The weekly benefit
5 amount shall be calculated as follows:

6 (1) If the individual's average weekly wage is fifty per
7 cent or less of the state average weekly wage, the
8 individual's weekly benefit shall be ninety per cent
9 of the individual's average weekly wage;

10 (2) If the individual's average weekly wage is more than
11 fifty per cent and less than one hundred per cent of
12 the state average weekly wage, the individual's weekly
13 benefit shall be seventy-five per cent of the
14 individual's average weekly wage; or

15 (3) If the individual's average weekly wage is one hundred
16 per cent or more of the state average weekly wage, the
17 individual's weekly benefit shall be fifty per cent of
18 the individual's average weekly wage.

19 (b) In no case shall the weekly benefit amount exceed the
20 state average weekly wage."



1 SECTION 3. Section 398-1, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding five new definitions to be appropriately
4 inserted and to read:

5 "Covered individual" means any person who:

6 (1) Is an employee or is currently unemployed but has been
7 an employee within the last twenty-six weeks;

8 (2) Meets the requirements set forth in section 392-25 and
9 the requirements in the rules implemented pursuant to
10 this chapter; and

11 (3) Submits an application for family leave insurance
12 benefits to the department.

13 "Designated person" means a family member designated by a
14 covered individual for whom the covered individual will provide
15 care under this chapter if the family member has a serious
16 health condition.

17 "Family leave insurance benefits" means the benefits
18 provided pursuant to this chapter.

19 "Family member" means a child; parent; person to whom the
20 covered individual is legally married under the laws of any
21 state; biological, foster, hanai, or adopted sibling; the spouse



1 or reciprocal beneficiary of a sibling; or a reciprocal
2 beneficiary.

3 "Qualifying exigency" means a circumstance arising from a
4 notice of deployment of a service member received within seven
5 days of deployment, or mandatory attendance of military events
6 or related activities by the covered individual or the covered
7 individual's family member that requires the covered individual
8 to:

9 (1) Provide child care or attend school activities, if due
10 directly or indirectly to the active duty call or
11 active duty status of a service member;

12 (2) Make financial or legal arrangements for a service
13 member's absence or as a result of the service
14 member's absence;

15 (3) Attend counseling provided by someone other than a
16 health care provider if the need for counseling arises
17 from the active duty call or active duty of a service
18 member; or

19 (4) Spend up to five days with a service member for each
20 instance of short-term, temporary rest and
21 recuperation leave during a period of deployment."



1 2. By amending the definition of "child" to read:

2 ""Child" means an individual who is a biological, adopted,
3 hanai, or foster son or daughter; a stepchild; ~~[or]~~ a legal ward
4 of ~~[an employee.]~~ a covered individual; a child of a reciprocal
5 beneficiary; a grandchild; or a child of a covered individual
6 who stands in loco parentis."

7 3. By amending the definition of "employer" to read:

8 ""Employer" means any individual or organization, including
9 the State, any of its political subdivisions, any
10 instrumentality of the State or its political subdivisions, any
11 partnership, association, trust, estate, joint stock company,
12 insurance company, or corporation, whether domestic or foreign,
13 or receiver or trustee in bankruptcy, or the legal
14 representative of a deceased person, who employs one ~~[hundred]~~
15 or more employees for each working day during each of twenty or
16 more calendar weeks in the current or preceding calendar year."

17 4. By amending the definition of "parent" to read:

18 ""Parent" means a biological, foster, hanai or adoptive
19 parent, a parent-in-law, a stepparent, a legal guardian, a
20 grandparent, ~~[or]~~ a grandparent-in-law~~[or]~~, a parent or



1 grandparent of a reciprocal beneficiary, or a person who stands
2 in loco parentis for a minor child."

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

5 1. By amending subsection (a) to read:

6 "(a) [~~An employee~~] A covered individual shall be entitled
7 to a total of [~~four~~] sixteen weeks of family leave during any
8 calendar year:

9 [~~(1) Upon the birth of a child of the employee or the~~
10 ~~adoption of a child; or~~

11 ~~(2) To care for the employee's child, spouse, reciprocal~~
12 ~~beneficiary, sibling, grandchild, or parent with a~~
13 ~~serious health condition.]~~

14 (1) To care for the covered individual's child within
15 twelve months of the child's birth, foster placement
16 with the covered individual, or placement for adoption
17 with the covered individual;

18 (2) To care for a covered individual's family member with
19 a serious health condition;

20 (3) To care for a qualifying service member who is the
21 covered individual's next of kin; or



1 (4) Due to a qualifying exigency."

2 2. By amending subsection (e) to read:

3 "(e) Nothing in this chapter shall entitle [~~an employee~~] a
4 covered individual to more than a total of [~~four~~] sixteen weeks
5 of leave in any twelve-month period."

6 SECTION 5. Section 398-4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§398-4 Unpaid leave permitted; relationship to paid**

9 **leave; sick leave.** (a) Pursuant to section 398-3, [~~an~~
10 ~~employee~~] a covered individual shall be entitled to [~~four~~]
11 sixteen weeks of family leave. [~~The family leave shall consist~~
12 ~~of unpaid leave, paid leave, or a combination of paid and unpaid~~
13 ~~leave. If an employer provides paid family leave for fewer than~~
14 ~~four weeks, the additional period of leave added to attain the~~
15 ~~four-week total may be unpaid.] An employer who provides paid
16 family leave beyond what is required by this chapter may require
17 that the leave run concurrently with the sixteen weeks required
18 under this chapter; provided that the employer shall not require
19 the leave to be applied against accrued sick or vacation hours.~~

20 (b) Except as otherwise provided in subsection (c), [~~an~~
21 ~~employee~~] a covered individual may elect to substitute any of



1 the ~~[employee's]~~ covered individual's accrued paid leaves,
2 including but not limited to vacation, personal, or family
3 leave, for any part of the ~~[four-week]~~ sixteen-week period in
4 subsection (a).

5 (c) ~~[An employer who provides sick leave for employees
6 shall permit an employee to use the employee's accrued and
7 available sick leave for purposes of this chapter; provided that
8 an employee shall not use more than ten days per year for this
9 purpose, unless an express provision of a valid collective
10 bargaining agreement authorizes the use of more than ten days of
11 sick leave for family leave purposes. Nothing in this section
12 shall require an employer to diminish an employee's accrued and
13 available sick leave below the amount required pursuant to
14 section 392-41; provided that any sick leave in excess of the
15 minimum statutory equivalent for temporary disability benefits
16 as determined by the department may be used for purposes of this
17 chapter.]~~ No assignment, pledge, or encumbrance of any right to
18 benefits that is or may become due or payable under this chapter
19 shall be valid; and any right to benefits shall be exempt from
20 levy, execution, attachment, garnishment, or any other remedy



1 whatsoever provided for the collection of debt. No waiver of
2 any exemption in this section shall be valid.

3 (d) Nothing in this chapter shall prevent a biological
4 mother who is receiving temporary disability benefits for
5 recovery from childbirth from applying for and receiving paid
6 family leave for the purpose of caregiving and bonding with her
7 child after the temporary disability time period has lapsed.
8 For family leave purposes, there shall be no waiting period for
9 benefits to begin.

10 (e) Benefits under the Family and Medical Leave Act of
11 1993 shall run concurrently with benefits under this chapter."

12 SECTION 6. Section 398-21, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Any individual claiming to be aggrieved by an alleged
15 unlawful act under this chapter, including the denial of family
16 leave insurance benefits, may file with the department a
17 verified complaint in writing."

18 SECTION 7. Section 398-23, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) If the department determines after investigation that
21 this chapter has been violated[~~r~~] by an employer, the department



1 shall inform the employer and endeavor to remedy the violation
2 by informal methods, such as conference or conciliation. If the
3 department determines that family leave insurance benefits have
4 been wrongfully withheld, the department shall order immediate
5 payment to the covered individual found to be entitled to those
6 benefits."

7 SECTION 8. Section 398-24, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Upon appeal by a complainant or the employer, the
10 order issued by the department shall be subject to a de novo
11 review by a hearings officer appointed by the director."

12 SECTION 9. Section 398-26, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) Relief under this section may include:

15 (1) The amount of any family leave insurance benefits,
16 wages, salary, employment benefits, or other
17 compensation denied or lost to the employee by reason
18 of the violation; or

19 (2) In a case in which family leave insurance benefits,
20 wages, salary, employment benefits, or other
21 compensation have not been denied or lost to the



1 employee, any actual monetary losses sustained by the
 2 employee as a direct result of the violation, such as
 3 the cost of providing care, up to a sum equal to four
 4 weeks of wages or salary for the employee."

5 SECTION 10. Subpart B of part VI of Chapter 378, Hawaii
 6 Revised Statutes, is repealed.

7 SECTION 11. Section 398-2, Hawaii Revised Statutes, is
 8 repealed.

9 ~~["**S398-2** **Inapplicability.** The rights provided under
 10 this chapter shall not apply to employees of an employer with
 11 fewer than one hundred employees."]~~

12 SECTION 12. The department of labor and industrial
 13 relations shall adopt rules pursuant to chapter 91, Hawaii
 14 Revised Statutes, to implement the purposes of this Act.

15 SECTION 13. There is appropriated out of the general
 16 revenues of the State of Hawaii the sum of \$ or so
 17 much thereof as may be necessary for fiscal year 2024-2025 for
 18 the purpose of administering the family leave insurance program,
 19 including the oversight of payroll deductions, administrative
 20 processes, and payment to eligible employees.



1 The sum appropriated shall be expended by the department of
2 labor and industrial relations for the purposes of this Act.

3 SECTION 14. In accordance with section 9 of article VII of
4 the Hawaii State Constitution and sections 37-91 and 37-93,
5 Hawaii Revised Statutes, the legislature has determined that the
6 appropriations contained in H.B. No. , will cause the state
7 general fund expenditure ceiling for fiscal year 2024-2025 to be
8 exceeded by \$ or per cent. In addition, the
9 appropriation contained in this Act will cause the general fund
10 expenditure ceiling for fiscal year 2024-2025 to be further
11 exceeded by \$ or per cent. The combined total
12 amount of general fund appropriations contained in only these
13 two Acts will cause the state general fund expenditure ceiling
14 for fiscal year 2024-2025 to be exceeded by
15 \$ or per cent. The reasons for exceeding the
16 general fund expenditure ceiling are that:

- 17 (1) The appropriation made in this Act is necessary to
18 serve the public interest; and
19 (2) The appropriation made in this Act meets the needs
20 addressed by this Act.



S.B. NO. 2046

1 SECTION 15. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 16. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 17. This Act shall take effect on July 1, 2024.

7

INTRODUCED BY: 



S.B. NO. 2046

Report Title:

Family Leave Insurance Program; Family Leave Insurance Benefits; Appropriation; Expenditure Ceiling

Description:

Requires the department of labor and industrial relations to establish and administer a family leave insurance program. Provides family leave insurance benefits and extends the period of family leave to 16 weeks for businesses that employ one or more employees who meet the hourly qualifications. Eliminates the previous threshold of 100 employees for employers to be subject to the family leave law. Appropriates funds.

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

