

JAN 19 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; or

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

17 (c) If an eligible employee commences leave without thirty
18 days' advance notice, as described under subsection (b), the
19 employee shall give oral notice to the employer within
20 twenty-four hours after the commencement of leave and shall



1 provide written notice of leave within three days after the
2 commencement of leave.

3 **§398- Employment protection; retaliation prohibited.**

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

14 **§398- Family leave insurance fund; family leave**
15 **insurance benefits.** (a) There is established an insurance fund
16 to be known as the family leave insurance fund. The family
17 leave insurance fund shall be used to provide a covered
18 individual with up to sixteen weeks per calendar year of paid
19 family leave.

20 (b) The family leave insurance fund shall consist of
21 employer and employee contributions based on the employee's



1 average weekly wage, interest earned, income, dividends,
2 refunds, rate credits, and other returns received by the fund.
3 The rate of the contribution shall be in accordance with the
4 contribution rate to the temporary disability insurance fund.

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

15 **\$398- Eligibility for payment of benefits.** Family
16 leave insurance benefits shall be payable to:

17 (1) An employed covered individual; or
18 (2) An unemployed covered individual who meets one of the
19 following requirements:

20 (A) Because of birth, adoption, or placement through
21 foster care, is caring for a new child during the



1 first year after the birth, adoption, or
2 placement;

3 (B) Is caring for a family member having a serious
4 health condition;

5 (C) Is caring for a qualifying service member who is
6 the employee's next of kin; or

7 (D) Due to a qualifying exigency.

8 §398- Report to the legislature. The department shall
9 submit a report to the legislature no later than twenty days
10 prior to the convening of each regular session, beginning with
11 the regular session of 2025, on any outreach efforts and
12 projected and actual program participation, including the
13 percentage of covered employees who received family leave
14 insurance benefits, premium rates, and fund balances under the
15 family leave insurance program established pursuant to this
16 chapter.

17 §398- Outreach and education. The department shall
18 conduct a public outreach and education campaign to inform
19 employees and employers of the availability of family leave
20 insurance benefits. The department may use a portion of the
21 funds collected in a given year for the family leave insurance



1 program to pay for the public outreach and education campaign;
2 provided that the department shall use no more than per
3 cent per year or \$ per year, whichever is greater, for
4 the public outreach and education campaign. Outreach
5 information shall be available in English and other languages
6 spoken within the State.

7 **§398- Coverage of self-employed.** (a) A self-employed
8 person, including a sole proprietor, partner, or joint venture
9 partner, may elect coverage under this chapter by filing a
10 notice of election in writing with the director, as required by
11 the department, as follows:

12 (1) For an initial period of no less than three years; and
13 (2) Following the initial coverage period, no less than
14 one additional year of coverage;
15 provided that the election shall take effect on the date of
16 filing the notice.

17 (b) A self-employed person who has elected coverage may
18 withdraw from coverage within thirty days after the end of the
19 initial period of coverage, or at other times as the director
20 may prescribe by rule, by filing with the director a notice in



1 writing, as required by the department. The withdrawal shall
2 take effect no sooner than thirty days after filing the notice.

3 **§398- Wage withholding.** (a) An employer may deduct
4 and withhold contributions from each employee of up to one-half
5 of the cost of providing family leave insurance premiums, and
6 the employer shall provide for the remaining cost over the
7 amount of contributions of the employer's employees.

8 (b) If there is a dispute between the employee and the
9 employer relating to the withholding of wages as contributions
10 for family leave insurance benefits, either party may file with
11 the director a petition for determination of the amount to be
12 withheld. The matter shall be determined by an officer of the
13 department. If either an employer or employee is dissatisfied
14 with the department's determination, the aggrieved party may
15 appeal the petition for redetermination pursuant to the
16 procedure under part V of chapter 392.

17 **§398- Weekly benefit amount.** (a) The weekly benefit
18 amount shall be calculated as follows:

19 (1) If the individual's average weekly wage is fifty per
20 cent or less of the state average weekly wage, the



1 individual's weekly benefit shall be ninety per cent
2 of the individual's average weekly wage;

3 (2) If the individual's average weekly wage is more than
4 fifty per cent and less than one hundred per cent of
5 the state average weekly wage, the individual's weekly
6 benefit shall be seventy-five per cent of the
7 individual's average weekly wage; or

8 (3) If the individual's average weekly wage is one hundred
9 per cent or more of the state average weekly wage, the
10 individual's weekly benefit shall be fifty per cent of
11 the individual's average weekly wage.

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

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

16 1. By adding five new definitions to be appropriately
17 inserted and to read:

18 "Covered individual" means any person who:

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



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

4 (3) Submits an application for family leave insurance
5 benefits to the department.

6 "Designated person" means a family member designated by a
7 covered individual for whom the covered individual will provide
8 care under this chapter if the family member has a serious
9 health condition.

10 "Family leave insurance benefits" means the benefits
11 provided pursuant to this chapter.

12 "Family member" means a child; parent; person to whom the
13 covered individual is legally married under the laws of any
14 state; biological, foster, hanai, or adopted sibling; the spouse
15 or reciprocal beneficiary of a sibling; or a reciprocal
16 beneficiary.

17 "Qualifying exigency" means a circumstance arising from a
18 notice of deployment of a service member received within seven
19 days of deployment, or mandatory attendance of military events
20 or related activities by the covered individual or the covered



1 individual's family member that requires the covered individual
2 to:

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

6 (2) Make financial or legal arrangements for a service
7 member's absence or as a result of the service
8 member's absence;

9 (3) Attend counseling provided by someone other than a
10 health care provider if the need for counseling arises
11 from the active duty call or active duty of a service
12 member; or

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

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

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



1 3. By amending the definition of "employer" to read:
2 ""Employer" means any individual or organization, including
3 the State, any of its political subdivisions, any
4 instrumentality of the State or its political subdivisions, any
5 partnership, association, trust, estate, joint stock company,
6 insurance company, or corporation, whether domestic or foreign,
7 or receiver or trustee in bankruptcy, or the legal
8 representative of a deceased person, who employs one [~~hundred~~
9 or more employees for each working day during each of twenty or
10 more calendar weeks in the current or preceding calendar year."

11 4. By amending the definition of "parent" to read:
12 ""Parent" means a biological, foster, hanai or adoptive
13 parent, a parent-in-law, a stepparent, a legal guardian, a
14 grandparent, [~~or~~] a grandparent-in-law[~~or~~], a parent or
15 grandparent of a reciprocal beneficiary, or a person who stands
16 in loco parentis for a minor child."

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

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



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

4 ~~[(1) Upon the birth of a child of the employee or the
5 adoption of a child; or
6 (2) To care for the employee's child, spouse, reciprocal
7 beneficiary, sibling, grandchild, or parent with a
8 serious health condition.]~~

9 (1) To care for the covered individual's child within
10 twelve months of the child's birth, foster placement
11 with the covered individual, or placement for adoption
12 with the covered individual;

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

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

17 (4) Due to a qualifying exigency."

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

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



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

3 **"§398-4 Unpaid leave permitted; relationship to paid**
4 **leave; sick leave.** (a) Pursuant to section 398-3, [~~an~~
5 ~~employee]~~ a covered individual shall be entitled to [~~four~~
6 ~~sixteen~~ weeks of family leave. [~~The family leave shall consist~~
7 ~~of unpaid leave, paid leave, or a combination of paid and unpaid~~
8 ~~leave. If an employer provides paid family leave for fewer than~~
9 ~~four weeks, the additional period of leave added to attain the~~
10 ~~four-week total may be unpaid.] An employer who provides paid
11 family leave beyond what is required by this chapter may require
12 that the leave run concurrently with the sixteen weeks required
13 under this chapter; provided that the employer shall not require
14 the leave to be applied against accrued sick or vacation hours.~~

15 (b) Except as otherwise provided in subsection (c), [~~an~~
16 ~~employee]~~ a covered individual may elect to substitute any of
17 the [~~employee's~~] covered individual's accrued paid leaves,
18 including but not limited to vacation, personal, or family
19 leave, for any part of the [~~four-week~~] sixteen-week period in
20 subsection (a).



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

19 (d) Nothing in this chapter shall prevent a biological
20 mother who is receiving temporary disability benefits for
21 recovery from childbirth from applying for and receiving paid



1 family leave for the purpose of caregiving and bonding with her
2 child after the temporary disability time period has lapsed.
3 For family leave purposes, there shall be no waiting period for
4 benefits to begin.

5 (e) Benefits under the Family and Medical Leave Act of
6 1993 shall run concurrently with benefits under this chapter."

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

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

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

15 "(d) If the department determines after investigation that
16 this chapter has been violated[7] by an employer, the department
17 shall inform the employer and endeavor to remedy the violation
18 by informal methods, such as conference or conciliation. If the
19 department determines that family leave insurance benefits have
20 been wrongfully withheld, the department shall order immediate



1 payment to the covered individual found to be entitled to those
2 benefits."

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

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

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

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

11 (1) The amount of any family leave insurance benefits,
12 wages, salary, employment benefits, or other
13 compensation denied or lost to the employee by reason
14 of the violation; or

15 (2) In a case in which family leave insurance benefits,
16 wages, salary, employment benefits, or other
17 compensation have not been denied or lost to the
18 employee, any actual monetary losses sustained by the
19 employee as a direct result of the violation, such as
20 the cost of providing care, up to a sum equal to four
21 weeks of wages or salary for the employee."



1 SECTION 10. Section 398-2, Hawaii Revised Statutes, is
2 repealed.

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

6 SECTION 11. The department of labor and industrial
7 relations shall adopt rules pursuant to chapter 91, Hawaii
8 Revised Statutes, to implement the purposes of this Act.

9 SECTION 12. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2024-2025 for
12 the purpose of administering the family leave insurance program,
13 including the oversight of payroll deductions, administrative
14 processes, and payment to eligible employees.

15 The sums appropriated shall be expended by the department
16 of labor and industrial relations for the purposes of this Act.

17 SECTION 13. In accordance with section 9 of article VII of
18 the Hawaii State Constitution and sections 37-91 and 37-93,
19 Hawaii Revised Statutes, the legislature has determined that the
20 appropriations contained in H.B. No. , will cause the state
21 general fund expenditure ceiling for fiscal year 2024-2025 to be



1 exceeded by \$ or per cent. In addition, the
2 appropriation contained in this Act will cause the general fund
3 expenditure ceiling for fiscal year 2024-2025 to be further
4 exceeded by \$ or per cent. The combined total
5 amount of general fund appropriations contained in only these
6 two Acts will cause the state general fund expenditure ceiling
7 for fiscal year 2024-2025 to be exceeded by
8 \$ or per cent. The reasons for exceeding the
9 general fund expenditure ceiling are that:

10 (1) The appropriation made in this Act is necessary to
11 serve the public interest; and

12 (2) The appropriation made in this Act meets the needs
13 addressed by this Act.

14 SECTION 14. This Act does not affect rights and duties
15 that matured, penalties that were incurred, and proceedings that
16 were begun before its effective date.

17 SECTION 15. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 16. This Act shall take effect on July 1, 2024.

S.B. NO. 2474

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INTRODUCED BY:

A handwritten signature in black ink, appearing to be 'D. M. ...', is written over a horizontal line.



S.B. NO. 2474

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.

