

## ACT 44

H.B. NO. 389

A Bill for an Act Relating to Family Leave.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that existing law does not require an employer to permit an employee to use sick leave to attend to the illness of a child, parent, spouse, or reciprocal beneficiary.

The purpose of this Act is to require an employer who provides sick leave for employees, including the State and its political subdivisions, to permit employees to use any accrued and available sick leave above the amount required under the temporary disability insurance law for family leave purposes.

The legislature intends that this Act not be construed to:

- (1) Allow an employer to deny an employee the right to use sick leave, discharge, or threaten to discharge, demote, suspend, or in any manner discriminate against an employee for exercising the employee's right to use sick leave to attend to a child, parent, spouse, or reciprocal beneficiary with a serious health condition; nor
- (2) Require an employer, including the State, any of its political subdivisions, and any instrumentality of the State or its political subdivisions, to diminish an employee's accrued and available sick leave below the amount required under the temporary disability insurance law.

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

1. By adding the definition of "sick leave" to read:

““Sick leave” means accrued increments of compensated leave provided by an employer to an employee for use by the employee for any of the following reasons:

- (1) The employee is physically or mentally unable to perform the employee’s duties due to illness, injury, or a medical condition of the employee;
- (2) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee; or
- (3) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination.

“Sick leave” shall not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 and shall not include any insurance benefit, workers’ compensation benefit, unemployment compensation disability benefit, temporary disability insurance benefit, or benefit not payable from the employer.”

2. By amending the definition of “employer” to read:

““Employer” means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.”

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

**“§398-4 Unpaid leave permitted; relationship to paid leave[-]; sick leave.** (a) Pursuant to section 398-3, an employee shall be entitled to four weeks of family leave. The family leave shall consist of unpaid leave, paid leave, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid.

(b) ~~[An] Except as otherwise provided in subsection (c), an employee or employer may elect to substitute any of the employee’s accrued paid leaves [such as sick], including but not limited to vacation, personal, or family leave for any part of the four-week period in subsection (a); provided that an employer or employee may not substitute an employee’s accrued sick leave in any situation under this chapter unless:~~

- ~~(1) Sick leave is normally granted for such purposes by an employer’s policy or practice; or~~
- ~~(2) Upon mutual agreement by the employer and the employee].~~

(c) An employer who provides sick leave for employees shall permit an employee to use the employee’s accrued and available sick leave for purposes of this chapter; provided that an employee shall not use more than ten days per year for this purpose unless an express provision of a valid collective bargaining agreement authorizes the use of more than ten days of sick leave for family leave purposes. Nothing in this section shall require an employer to diminish an employee’s accrued and available sick leave below the amount required pursuant to section 392-41.”

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 6. This Act shall take effect on July 1, 2003.

**Note**

(Became law on April 30, 2003, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)