

ACT 243

H.B. NO. 325

A Bill for an Act Relating to Employment Practices.

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

SECTION 1. Section 392-41, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) During any period in which any plan or agreement or extension or modification thereof authorized under subsection (a)(4) or (5) provides for payments of benefits under this chapter, the responsibility of the employer and the obligations and benefits of the employees shall be as provided in the plan or agreement or its extension or modification rather than as required under this chapter; provided ~~the~~ that:

- (1) The employer or insurer has agreed in writing with the director to pay the assessments imposed by section 392-67[-]; and
- (2) If the benefits provided by the plan or agreement or extension or modification thereof include benefits falling within the definition of “sick leave” as defined in section 398-1, any amount in excess of the minimum statutory equivalent, as determined by the department, may be used for the purposes of chapter 398.’’

2. By amending subsection (d) to read:

“(d) As used in subsection (a)(4) or (5), “benefits at least as favorable as the disability benefits required by this chapter” means the temporary disability benefits under any plan or agreement, in whole or in part, whose component parts (waiting period for illness, waiting period for accident, duration of benefits, and percentage of wage loss replaced) add in total to cash benefits or wages [~~which~~ that are determined by the director to be at least as favorable as the disability benefits required by this chapter. The insurance commissioner shall establish a set of tables showing the relative value of different types of cash benefits and wages to assist the director in determining whether the cash benefits and wages under a plan are at least as favorable as the temporary disability benefits required by this chapter.”

SECTION 2. Section 398-1, Hawaii Revised Statutes, is amended by amending the definition of “sick leave” to read as follows:

““Sick leave” [means]:

(1) 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)~~] (A) 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)~~] (B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee; or

[~~(3)~~] (C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination[.]; and

[“Sick leave” shall]

(2) 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 due to illness or disability [benefit], or temporary disability insurance benefit[.]; or benefit not payable from the employer].”

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

“(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[.]; provided that any sick leave in excess of the minimum statutory equivalent for temporary disability benefits as determined by the department may be used for purposes of this chapter.”

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

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)