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# A BILL FOR AN ACT

RELATING TO CAREGIVERS.

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

1           SECTION 1. The joint legislative committee on family  
2 caregiving was created to develop a comprehensive public policy  
3 to strengthen support for family caregivers. The committee's  
4 mandate was expanded in 2007 to require the committee to explore  
5 the provision of wage replacement benefits to employees who need  
6 time off from work to care for a family member with a serious  
7 health condition.

8           In furtherance of this mandate, the committee held  
9 informational hearings on the subject and contracted with the  
10 University of Hawaii, school of social work, to conduct a  
11 comprehensive assessment of the needs of care recipients aged  
12 sixty or older with physical or cognitive disabilities and the  
13 needs of their family caregivers. In addition to providing the  
14 demographics of care recipients and their family caregivers,  
15 researchers were asked to focus on the impact family caregiving  
16 has on employment, in general, to determine, among other things,  
17 whether the relationship warrants wage replacement benefits.



1           The preliminary results of the needs assessment  
2 substantiate the critical role that family caregiving has in  
3 Hawaii's health and long-term care system. According to the  
4 needs assessment, over one quarter of Hawaii's households  
5 contain at least one individual providing informal, unpaid care  
6 for an adult aged sixty or older with physical or cognitive  
7 disabilities. This percentage is expected to increase. That is  
8 because projections indicate that by 2020, more than one in four  
9 individuals will be aged sixty or older, and an individual's  
10 need for personal care assistance due to physical, sensory,  
11 cognitive, and self-care disabilities increases with age.

12           The legislature finds that given the preliminary needs  
13 assessment data, wage replacement benefits are an appropriate  
14 and productive means of supporting family caregivers. The data  
15 indicates that the average age of family caregivers is  
16 fifty-four years old, well below the age of retirement. Over  
17 fifty-five per cent of the family caregivers are employed, and  
18 of these, over twenty-six per cent indicate that their  
19 employment is affected by their caregiving responsibilities.  
20 Reduction in work hours was an often-cited effect, followed by  
21 turning down promotions and taking leaves of absence. Nearly  
22 all of the family caregivers stated that they frequently



1 rearrange their work schedules, and over seventy-seven per cent  
2 take time off from work, to deal with caregiving  
3 responsibilities. The most startling effect is that over  
4 ninety-six per cent of the unemployed family caregivers  
5 indicated that they retired to deal with family caregiving  
6 responsibilities.

7 Over the years, Hawaii has experienced a labor shortage  
8 that threatens to debilitate some areas of the economy.  
9 According to U.S. Census Bureau projections, one of six workers  
10 in Hawaii is at least fifty-five years old and nearing  
11 retirement. With the current unemployment rate below three per  
12 cent, Hawaii employers need to do more than increase salaries to  
13 retain employees. More emphasis should be placed on  
14 accommodating employee's family needs in a way that encourages  
15 and enables an employee to participate in the workforce.

16 When polled for the needs assessment, most family  
17 caregivers indicated that no family caregiving benefits were  
18 offered by their employers. Overwhelmingly, family caregivers  
19 are in favor of public policies to support family caregiving.  
20 Women are significantly more likely than men to support public  
21 policies, which closely reflects the estimate that over  
22 seventy-three per cent of family caregivers are women.



1           The current temporary disability insurance law provides an  
2 eligible employee with up to twenty-six weeks of temporary  
3 disability benefits if the employee suffers a qualifying  
4 disability that prevents the employee from working. Employers  
5 are responsible for providing temporary disability insurance  
6 coverage to eligible employees, but may deduct and withhold  
7 contributions from each employee of one-half the cost of  
8 providing the coverage as long as the contributions do not  
9 exceed .5 per cent of the weekly wages earned by the employee.

10           The purpose of this Act is to amend the temporary  
11 disability insurance law to permit an eligible employee to  
12 collect up to four weeks of temporary disability insurance  
13 benefit payments to care for a family member with a serious  
14 health condition. An employee will be required to provide proof  
15 that the employee's family member has a serious health condition  
16 pursuant to section 398-1, Hawaii Revised Statutes. "Serious  
17 health condition" is currently defined under section 398-1,  
18 Hawaii Revised Statutes as a physical or mental condition that  
19 warrants the participation of the employee to provide care  
20 during the period of treatment or supervision by a health care  
21 provider, and: (1) involves inpatient care in a hospital,  
22 hospice, or residential health care facility; or (2) requires



1 continuing treatment or continuing supervision by a health care  
2 provider.

3 SECTION 2. Chapter 398, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§398- Conformity with other laws. If any provision of  
7 this chapter, or the application thereof to any person or  
8 circumstance conflicts with the provision of temporary  
9 disability insurance benefits to an employee when the employee's  
10 family member suffers a disability pursuant to chapter 392, the  
11 provisions of chapter 392 shall control."

12 SECTION 3. Section 392-2, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[+]§392-2[+] **Findings and purpose.** (a) A large portion  
15 of the labor force of this State annually is disabled from  
16 pursuing gainful employment by reason of nonoccupational  
17 sickness or accident and as a result suffers serious loss of  
18 income. In approximately ten per cent of the cases such  
19 sickness or accident can be expected to cause disability of more  
20 than one week's duration. More than two-fifths of the employees  
21 in private employment have either no fixed legal protection  
22 against wage loss from disabling nonoccupational sickness or



1 accident, or only protection for a period of one workweek or  
2 less; more than one-third of the workers covered by formal sick  
3 leave plans are not protected against disability extending  
4 beyond two workweeks. Since the hardship for workers and their  
5 families mounts with the extension of the duration of the  
6 disability from whatever cause, there is a need to fill the  
7 existing gaps in protection and to provide benefits to  
8 individuals in current employment that will afford to them  
9 reasonable compensation for wage loss caused by disabling  
10 nonoccupational sickness or accident where the disability is  
11 temporary in nature and exceeds the period of one workweek.  
12 This legislation is designed not to impede the growth of  
13 voluntary plans which afford additional protection.

14 (b) In addition, a large portion of the labor force of  
15 this State are providing care to family members with serious  
16 health conditions. Their employment is often affected by their  
17 caregiving responsibilities. Family caregivers may need to  
18 reduce hours, take time off from work, or rearrange their work  
19 schedules to balance their family caregiving responsibilities  
20 with their employment. Some family caregivers leave or retire  
21 from employment because a lack of benefits makes it difficult to  
22 balance the conflicting demands. The State's economy depends



1 upon a robust labor force. It is in the public's interest to  
2 support and encourage family caregivers' participation in the  
3 labor force by providing reasonable compensation for wage loss  
4 caused by the need to care for a family member with a serious  
5 health condition.

6 (c) This chapter shall be liberally construed in the light  
7 of the stated reasons for its enactment and its declared  
8 purpose."

9 SECTION 4. Section 392-3, Hawaii Revised Statutes, is  
10 amended by:

11 1. Amending the definition of "disability" to read as  
12 follows:

13 ""Disability" means [~~total~~]:

14 (1) Total inability of an employee to perform the duties  
15 of the employee's employment caused by sickness,  
16 pregnancy, termination of pregnancy, or accident other  
17 than a work injury as defined in section 386-3[~~-~~]; or

18 (2) With regard to an employee's family member, a serious  
19 health condition, as that term is defined under  
20 section 398-1."

21 2. By adding a new definition to be appropriately inserted  
22 and to read as follows:



1        "Family member" includes a child and a parent, as those  
2 terms are defined under section 398-1, a spouse, and a  
3 reciprocal beneficiary."

4        SECTION 5. Section 392-7, Hawaii Revised Statutes, is  
5 amended to read as follows:

6        "[+]§392-7[+] **Average weekly wage.** The "average weekly  
7 wage" for the purpose of computing the weekly benefit amount  
8 shall be based upon the wages that the employee would receive  
9 from the employee's employer except for the employee's  
10 disability[-] or the disability of the employee's family member.

11 In the case of salaried employees the "average weekly wage"  
12 shall be the weekly salary of the employee in the last week  
13 prior to the commencement of disability."

14        SECTION 6. Section 392-21, Hawaii Revised Statutes, is  
15 amended to read as follows:

16        "§392-21 **Establishment of temporary disability benefits.**

17 (a) [~~Any~~] An individual in current employment [who] shall be  
18 entitled to receive temporary disability insurance benefits in  
19 the amount and manner provided in this chapter if:

- 20        (1) The individual suffers disability resulting from  
21                accident, sickness, pregnancy, or termination of  
22                pregnancy, except accident or disease connected with



1           or resulting from employment as defined in section  
2           386-3 or any other applicable workers' compensation  
3           law[~~, shall be entitled to receive temporary~~  
4           ~~disability benefits in the amount and manner provided~~  
5           ~~in this chapter.~~]; or

6           (2) The individual's family member suffers a disability.

7           (b) It is the policy of this chapter that the computation  
8           and distribution of benefit payments shall correspond to the  
9           greatest extent feasible, to the employee's wage loss due to the  
10          employee's or the employee's family member's disability; that an  
11          employee shall not be entitled to temporary disability benefits  
12          for periods of disability during which the employee would not  
13          have earned wages from employment according to the schedule of  
14          operations of the employee's employer[~~7~~]; and that an employee  
15          is entitled to benefits only for periods of disability during  
16          which, but for the disability, the employee would have earned  
17          wages from employment. This policy, however, shall not be  
18          applied to terminate the benefits of an employee who is  
19          receiving benefits under this chapter for a disability that  
20          commenced while the employee was in current employment, nor  
21          shall it be applied to deny benefits under this chapter if a  
22          disability that commenced while the employee was in current



1 employment continues into a period during which the employee  
2 would earn wages but for the disability."

3 SECTION 7. Section 392-23, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~f~~]**\$392-23**[~~f~~] **Duration of benefit payments.** (a)  
6 Temporary disability benefits shall be payable for any period of  
7 disability following the expiration of the waiting period  
8 required in section 392-24[~~-~~]; provided that the duration of  
9 temporary disability benefits payments for the period of  
10 disability of an employee's family member shall not exceed four  
11 weeks.

12 The total duration of temporary disability benefit payments  
13 shall not exceed twenty-six weeks for any period of disability  
14 or during any benefit year."

15 SECTION 8. Section 392-26, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "(a) An individual shall be ineligible to receive  
18 temporary disability benefits with respect to any period during  
19 which the individual or the individual's family member, as the  
20 case may be, is not under the care of a person duly licensed to  
21 practice medicine, surgery, dentistry, chiropractic, osteopathy,  
22 or naturopathy, who shall certify, in the form and manner



1 specified by [~~regulation~~] rule of the director, the disability  
2 of the [~~claimant,~~] employee or the employee's family member, the  
3 probable duration [~~thereof,~~] of the disability, and [~~such~~] other  
4 medical facts within the person's knowledge as required by  
5 [~~regulation-~~] rule.

6 (b) This section shall not apply to an individual [~~who,~~]  
7 if the individual or the individual's family member, pursuant to  
8 the teachings, faith, or belief of any group, depends for  
9 healing upon prayer or other spiritual means. In that case the  
10 disability, the probable duration thereof, and any other  
11 pertinent facts required to be certified by [~~regulation~~] rule of  
12 the director shall be certified, in the form and manner  
13 specified by [~~the regulation,~~] rule, by a duly authorized or  
14 accredited practitioner of such group.

15 (c) The proof of disability duly certified by a person  
16 licensed to practice medicine, surgery, dentistry, chiropractic,  
17 osteopathy, or naturopathy, or an authorized or accredited  
18 practitioner of any group which depends for healing upon prayer  
19 or other spiritual means shall be submitted by [~~such~~] the  
20 certifying person to the [~~disabled employee~~] recipient  
21 designated by the department within seven working days after the  
22 date [~~on which~~] that the employee or the employee's family



1 member was examined and found disabled. If the certifying  
2 person fails to submit the required proof within seven working  
3 days, the director, upon notification by the insurer, may levy a  
4 penalty of \$25 for each delinquent certification where the  
5 certifying person fails to show good cause for the person's  
6 failure to file on time."

7 SECTION 9. Section 392-27, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "**§392-27 Ineligibility in certain cases.** An individual  
10 shall not be eligible to receive temporary disability benefits:

11 (1) For any period of disability during which the  
12 individual or, with regard to the disability of an  
13 individual's family member, the family member would be  
14 disqualified from receiving benefits under the Hawaii  
15 employment security law by reason of unemployment due  
16 to a stoppage of work existing because of a labor  
17 dispute for the duration of such disqualification[-];

18 (2) If the director finds that the individual or another  
19 person has knowingly made a false statement or  
20 representation of a fact or knowingly failed to  
21 disclose a material fact in order for the individual  
22 to obtain benefits under this chapter to which the



1 individual is not otherwise entitled. The  
2 ineligibility shall be for a period determined by the  
3 director, but shall not exceed the period of  
4 disability with respect to which the false statement  
5 or representation was made or the nondisclosure  
6 occurred~~[.]~~;

7 (3) For any period of disability due to wilfully and  
8 intentionally self-inflicted injury or to injury  
9 sustained in the commission of a criminal offense  
10 specified in title 37~~[.]~~;

11 (4) For any day of disability during which the employee  
12 performed work for remuneration or profit, except  
13 ~~[that,~~ if an employee returning to work suffers a  
14 relapse after performing work for less than a full  
15 day, the employee shall be paid benefits or be given  
16 waiting period credit~~[.]~~; provided that the employee's  
17 wages for the partial day's work did not equal or  
18 exceed the prorated disability benefits to which the  
19 employee is entitled. The amount of the benefit  
20 payable ~~[is]~~ shall be derived by subtracting the gross  
21 wages received for performing less than a full day's



1 work, from the prorated disability benefits to which  
2 the employee is entitled~~[+]~~;

3 (5) With regard to the disability of an individual's  
4 family member, any day of disability during which the  
5 family member performed work for remuneration or  
6 profit; or

7 ~~[(5)]~~ (6) Unless the claim for disability benefits is filed  
8 within ninety days after the commencement of the  
9 period of disability or as soon thereafter as is  
10 reasonably possible."

11 SECTION 10. Section 392-41, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) During any period in which any plan or agreement or  
14 extension or modification thereof authorized under subsection  
15 (a) (4) or (5) provides for payments of benefits under this  
16 chapter, the responsibility of the employer and the obligations  
17 and benefits of the employees shall be as provided in the plan  
18 or agreement or its extension or modification rather than as  
19 required under this chapter; provided that~~[+]~~

20 ~~(1)~~ ~~The]~~ the employer or insurer has agreed in writing  
21 with the director to pay the assessments imposed by  
22 section 392-67~~[+]~~ ~~and~~



1       ~~(2) If the benefits provided by the plan or agreement or~~  
2       ~~extension or modification thereof include benefits~~  
3       ~~falling within the definition of "sick leave" as~~  
4       ~~defined in section 398-1, any amount in excess of the~~  
5       ~~minimum statutory equivalent, as determined by the~~  
6       ~~department, may be used for the purposes of chapter~~  
7       ~~398]."~~

8       SECTION 11. Section 392-66, Hawaii Revised Statutes, is  
9       amended by amending subsection (a) to read as follows:

10       "(a) An employee whose employment with a covered employer  
11       is terminated and who during a period of unemployment within  
12       twenty-six weeks immediately following [~~such~~] the termination of  
13       employment becomes ineligible for benefits claimed under chapter  
14       383 solely because of the individual's disability commencing on  
15       or after January 1, 1970, and who on the day the individual's  
16       disability commences is not employed and is not then otherwise  
17       eligible for benefits under this chapter, shall be entitled to  
18       receive disability benefits as hereinafter provided for each  
19       week of [~~such~~] the individual's disability for which week the  
20       employee would have received unemployment insurance benefits if  
21       the employee were not so disabled."



1 SECTION 12. Section 392-72, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) If a person disputes the amount of benefits, paid  
4 under part III or part IV, or the denial of benefits, the  
5 claimant may file an appeal, in the form and manner prescribed  
6 by regulation of the director, at the office of the department  
7 in the county in which the claimant resides or in the county in  
8 which the claimant was employed prior to the ~~[claimant's]~~  
9 disability, within twenty days after the date of payment of such  
10 disputed benefits or the denial thereof. Notice of the appeal  
11 shall be served upon the employer or insurer or the special fund  
12 for disability benefits in the form and manner prescribed by  
13 regulation of the director."

14 SECTION 13. Section 398-4, Hawaii Revised Statutes, is  
15 amended by amending subsections (b) and (c) to read as follows:

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

21 (c) An employer who provides sick leave for employees  
22 shall permit an employee to use the employee's accrued and





1 available sick leave for purposes of this chapter; provided  
2 that, unless the employee is entitled to receive temporary  
3 disability insurance benefits when the employee's family member  
4 suffers a disability pursuant to chapter 392, and the employer  
5 provides that temporary disability insurance benefit by a sick  
6 leave policy or sick leave benefit, an employee shall not use  
7 more than ten days per year for this purpose, unless an express  
8 provision of a valid collective bargaining agreement authorizes  
9 the use of more than ten days of sick leave for family leave  
10 purposes. [~~Nothing in this section shall require an employer to~~  
11 ~~diminish an employee's accrued and available sick leave below~~  
12 ~~the amount required pursuant to section 392-41; provided that~~  
13 ~~any sick leave in excess of the minimum statutory equivalent for~~  
14 ~~temporary disability benefits as determined by the department~~  
15 ~~may be used for purposes of this chapter.]"~~

16 SECTION 14. The department of labor and industrial  
17 relations shall submit an interim report to the legislature no  
18 later than twenty days prior to the convening of the 2009  
19 regular session, and submit a final report to the legislature no  
20 later than twenty days prior to the convening of the 2010  
21 regular session, on the implementation of this Act.



1 SECTION 15. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 16. This Act shall take effect on July 1, 2009;  
4 provided that section 14 of this Act shall take effect upon its  
5 approval.

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JAN 18 2008



**Report Title:**

Temporary Disability Insurance; Paid Family Leave

**Description:**

Amends the temporary disability insurance law to permit an eligible employee to collect up to 4 weeks of temporary disability insurance benefit payments to care for a family member with a qualifying disability. Effective 07/01/09.

