
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 60
12 or older with physical or cognitive disabilities and the needs
13 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 25 per cent of Hawaii's households have
5 at least one individual providing informal, unpaid care for an
6 adult aged 60 or older with physical or cognitive disabilities.
7 This percentage is expected to increase. That is because
8 projections indicate that by 2020, more than one in four
9 individuals will be aged 60 or older, and an individual's need
10 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 54 years
16 old, well below the age of retirement. Over 55 per cent of the
17 family caregivers are employed, and of these, over 26 per cent
18 indicate that their employment is affected by their caregiving
19 responsibilities. Reduction in work hours was an often-cited
20 effect, followed by turning down promotions and taking leaves of
21 absence. Nearly all of the family caregivers stated that they
22 frequently rearrange their work schedules, and over 77 per cent



1 take time off from work, to deal with caregiving
2 responsibilities. The most startling effect is that over 96 per
3 cent of the unemployed family caregivers indicated that they
4 retired to deal with family caregiving responsibilities.

5 Over the years, Hawaii has experienced a labor shortage
6 that threatens to debilitate some areas of the economy.
7 According to United States Census Bureau projections, one of six
8 workers in Hawaii is at least 55 years old and nearing
9 retirement. With the current unemployment rate below three per
10 cent, Hawaii employers need to do more than increase salaries to
11 retain employees. More emphasis should be placed on
12 accommodating employee's family needs in a way that encourages
13 and enables an employee to participate in the workforce.

14 When polled for the needs assessment, most family
15 caregivers indicated that no family caregiving benefits were
16 offered by their employers. Overwhelmingly, family caregivers
17 are in favor of public policies to support family caregiving.
18 Women are significantly more likely than men to support public
19 policies, which closely reflects the estimate that over 73 per
20 cent of family caregivers are women.

21 The current temporary disability insurance law provides an
22 eligible employee with up to 26 weeks of temporary disability



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

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

- 20 (1) Involves inpatient care in a hospital, hospice, or
21 residential health care facility; or



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

3 SECTION 2. Chapter 392, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§392-A Employment and benefits protection. (a) The
7 taking of leave and temporary disability benefits when an
8 employee's family member suffers a disability under this chapter
9 shall not result in the loss of any employment benefit accrued
10 before the date on which the duration of temporary disability
11 benefits commenced.

12 (b) Upon the expiration of the duration of temporary
13 disability benefit payments for the period of disability of an
14 employee's family member under this chapter, the employee shall
15 be entitled to be restored by the employer to:

16 (1) The position of employment the employee held when the
17 duration of temporary disability benefits commenced;

18 or

19 (2) An equivalent position with equivalent employment
20 benefits, pay, and other terms and conditions of
21 employment.



1 (c) Notwithstanding subsections (a) and (b), if during the
2 taking of leave and temporary disability benefits when an
3 employee's family member suffers a disability under this
4 chapter, the employer experiences a layoff or workforce
5 reduction and the employee would have lost a position had the
6 employee not been taking leave and temporary disability
7 benefits, the employee shall not be entitled to reinstatement in
8 the former or equivalent position; provided that the employee
9 retains all rights, including seniority rights, pursuant to the
10 good faith operation of a bona fide layoff and recall system.

11 (d) Nothing in this chapter shall be construed to entitle
12 or deny any employee to the accrual of any seniority or
13 employment benefits during any duration of temporary disability
14 benefit payments for the period of disability of an employee's
15 family member, or any right, employment benefit, or position to
16 which the employee would have been entitled had the employee not
17 taken the temporary disability benefits.

18 **§392-B Multiple employees with same family member.**
19 Nothing in this chapter shall be construed to prohibit more than
20 one eligible employee from receiving temporary disability
21 insurance benefits if a common family member suffers a
22 disability pursuant to section 392-21(a)(2); provided that the



1 eligible employees shall not receive temporary disability
2 insurance benefits concurrently."

3 SECTION 3. 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 take precedence."

12 SECTION 4. 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~~] the 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 the
15 state is providing care to family members with serious health
16 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 5. Section 392-3, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By adding a new definition to be appropriately inserted
12 and to read:

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

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

17 "'Disability" means [~~total~~]:

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



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

3 SECTION 6. Section 392-7, Hawaii Revised Statutes, is
4 amended to read as follows:

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

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

13 SECTION 7. Section 392-21, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**\$392-21 Establishment of temporary disability benefits.**

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

19 (1) The individual suffers disability resulting from
20 accident, sickness, pregnancy, or termination of
21 pregnancy, except accident or disease connected with
22 or resulting from employment as defined in section



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

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

6 (b) It is the policy of this chapter that the computation
7 and distribution of benefit payments shall correspond to the
8 greatest extent feasible, to the employee's wage loss due to the
9 employee's or the employee's family member's disability; that an
10 employee shall not be entitled to temporary disability benefits
11 for periods of disability during which the employee would not
12 have earned wages from employment according to the schedule of
13 operations of the employee's employer[~~τ~~]; and that an employee
14 is entitled to benefits only for periods of disability during
15 which, but for the disability, the employee would have earned
16 wages from employment. This policy, however, shall not be
17 applied to terminate the benefits of an employee who is
18 receiving benefits under this chapter for a disability that
19 commenced while the employee was in current employment, nor
20 shall it be applied to deny benefits under this chapter if a
21 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 8. Section 392-23, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§392-23[+] **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 benefit payments for the period of
10 disability of an employee's family member shall not exceed four
11 weeks.

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

15 SECTION 9. Section 392-26, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§392-26 **Care by physician or equivalent required.** (a)

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



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

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

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



1 date [~~on which~~] that the employee or the employee's family
2 member was examined and found disabled[-] for the department,
3 among other things, to ensure compliance with section 392-B. If
4 the certifying person fails to submit the required proof within
5 seven working days, the director, upon notification by the
6 insurer, may levy a penalty of \$25 for each delinquent
7 certification where the certifying person fails to show good
8 cause for the person's failure to file on time."

9 SECTION 10. Section 392-27, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§392-27 Ineligibility in certain cases.** An individual
12 shall not be eligible to receive temporary disability benefits:

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

20 (2) If the director finds that the individual or another
21 person has knowingly made a false statement or
22 representation of a fact or knowingly failed to



1 disclose a material fact [~~in order~~] to obtain benefits
2 under this chapter to which the individual is not
3 otherwise entitled. The ineligibility shall be for a
4 period determined by the director, but shall not
5 exceed the period of disability with respect to which
6 the false statement or representation was made or the
7 nondisclosure occurred[~~+~~];

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

12 (4) For any day of disability during which the employee
13 performed work for remuneration or profit, except
14 [~~that,~~] if an employee returning to work suffers a
15 relapse after performing work for less than a full
16 day, the employee shall be paid benefits or be given
17 waiting period credit[~~+~~]; provided that the employee's
18 wages for the partial day's work did not equal or
19 exceed the prorated disability benefits to which the
20 employee is entitled. The amount of the benefit
21 payable [~~is~~] shall be derived by subtracting the gross
22 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 11. Section 392-41, Hawaii Revised Statutes, is
12 amended by amending subsection (d) to read as follows:

13 "(d) As used in subsection (a)(4) or (5), "benefits at
14 least as favorable as the disability benefits required by this
15 chapter" means the temporary disability benefits under any plan
16 or agreement, in whole or in part, whose component parts
17 (waiting period for illness, waiting period for accident,
18 duration of benefits for the period of disability of an
19 employee's family member, total duration of benefits, and
20 percentage of wage loss replaced) add in total to cash benefits
21 or wages that are determined by the director to be at least as
22 favorable as the disability benefits required by this chapter.



1 The insurance commissioner shall establish a set of tables
2 showing the relative value of different types of cash benefits
3 and wages to assist the director in determining whether the cash
4 benefits and wages under a plan are at least as favorable as the
5 temporary disability benefits required by this chapter."

6 SECTION 12. Section 392-66, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

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

20 SECTION 13. Section 392-72, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



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

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

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

19 (c) An employer who provides sick leave for employees
20 shall permit an employee to use the employee's accrued and
21 available sick leave for purposes of this chapter; provided that



1 an employee shall not use more than ten days per year for this
2 purpose[~~r~~] unless [~~an~~]:

3 (1) The employee is entitled to receive temporary
4 disability insurance benefits when the employee's
5 family member suffers a disability pursuant to chapter
6 392, and the employer provides that temporary
7 disability insurance benefit by a sick leave policy or
8 sick leave benefit; or

9 (2) An express provision of a valid collective bargaining
10 agreement authorizes the use of more than ten days of
11 sick leave for family leave purposes. Nothing in this
12 section shall require an employer to diminish an
13 employee's accrued and available sick leave below the
14 amount required pursuant to section 392-41; provided
15 that any sick leave in excess of the minimum statutory
16 equivalent for temporary disability benefits as
17 determined by the department may be used for purposes
18 of this chapter."

19 SECTION 15. (a) The department of labor and industrial
20 relations shall submit an interim report to the legislature no
21 later than twenty days prior to the convening of the 2009
22 regular session, and submit a final report to the legislature no



1 later than twenty days prior to the convening of the 2010
2 regular session, on the implementation of this Act.

3 (b) In the interim report, the department of labor and
4 industrial relations, among other things, shall:

5 (1) Identify areas of inconsistency between chapters 392
6 and 398, Hawaii Revised Statutes, if any, that may
7 impede the implementation of either chapter; and

8 (2) Recommend legislation that will remedy the
9 inconsistencies and further the intent of this Act.

10 SECTION 16. In codifying the new sections added by section
11 2 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

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

16 SECTION 18. This Act shall take effect on July 1, 2009;
17 provided that section 15 of this Act shall take effect upon its
18 approval.



Report Title:

Temporary Disability Insurance; Paid Family Leave

Description:

Amends the temporary disability insurance law to permit an eligible employee to collect up to four weeks of temporary disability insurance benefit payments to care for a family member with a qualifying disability. Effective 07/01/2009.
(HB2520 HD3)

