



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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LATE

February 4, 2008

To: The Honorable Suzanne Chun Oakland, Chair
and Members of the Senate Committee on Human Services and Public Housing

The Honorable Brian Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, February 5, 2008
Time: 1:15 p.m.
Place: Conference Room 016, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**In Opposition
to
RE: S.B. 2044 – Relating to Caregivers**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

Senate Bill 2044 proposes to amend the Temporary Disability Insurance (“TDI”) Law, Chapter 392, Hawaii Revised Statutes, (“HRS”), and the Hawaii Family Leave Law, Chapter 398, HRS, 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 serious health condition.

II. CURRENT LAW

TDI Law

The Disability Compensation Division (“DCD”) currently administers Chapter 392, HRS, which requires employers to provide benefits to eligible employees who are unable to work due to non-work related injuries or illnesses. Employers may adopt one of the following methods of providing TDI benefits:

1. By purchasing insurance from an authorized insurance carrier (called an insured plan).

Insured plans provide statutory benefits as required by law. Benefits are paid at 58% of an employee's average weekly wage after a 7-consecutive day waiting period for a maximum of 26 weeks.

2. By adopting a sick leave policy, which must be approved by DCD (called a self-insured plan).

DCD will evaluate the disability benefits using the Equivalency Tables established by the Insurance Division which takes into consideration four components of the plan – waiting period for illness, waiting period for accident, duration of benefits, and percentage of wage loss replaced.

Employers with self-insured plans usually use some form of salary continuation to comply with Hawaii's TDI law. Some examples of plans that have been approved are:

- a. No waiting period, benefits paid at 100% of employees' wages for accident or illness for duration of three weeks. This is the most popular self-insured plan and is a form of salary continuation (State employees have this plan).
 - b. Seven-day waiting period, benefits paid at 75% of average weekly wage for eight weeks, then benefits are reduced to 58% and continues for another eight weeks for a total of 16 weeks.
3. By a collective bargaining agreement, which provides benefits at least as favorable as required by the TDI law and approved by DCD.

Most of the collectively bargained plans combine the employees' sick leave benefits with a statutory TDI policy. For example, the employees are required to exhaust their sick leave first and, thereafter, an authorized TDI carrier pays regular TDI benefits.

Most of the self-insured plans or collectively bargained agreements are better than what is required by law. Regardless, plans other than statutory must meet the equivalency provision of the TDI law and obtain approval from DCD. As shown by the above examples, benefits can range from 58% to 100% of wages, with no waiting periods to waiting periods of seven consecutive days and for duration of three weeks to 26 weeks.

TDI benefits are provided only to eligible employees and must meet certain minimum

standards for the employer's plan to be approved. To be eligible for benefits, employees must have been in Hawaii employment at least 14 weeks during each of which the employees were paid for 20 hours or more in the 52-week period preceding the onset of the employees' disability. There is no guarantee of job retention for employees who go out on TDI.

Hawaii Family Leave Act ("HFLA")

The Wage Standards Division ("WSD") administers the Family Leave Law, Chapter 398, HRS, which applies to employers with 100 or more employees. Currently, the HFLA provides eligible employees up to four (4) weeks of family leave per year, which may consist of unpaid leave, paid leave, or a combination of paid and unpaid leave.

The HFLA currently provides that family leave may be used for the birth or adoption of a child or the care for the employee's reciprocal beneficiary, child, spouse, or parent with a serious medical condition.

Moreover, under recent amendments to the HFLA, employers are (1) required to allow eligible employees to use up to ten (10) days per year of their accrued sick leave for any purposes listed in the HFLA; and (2) allow employees the sole discretion of substituting any portion of their accrued vacation, personal, or paid leave for any part of the four weeks of family leave granted under the HFLA.

III. SENATE BILL

The Department opposes S.B. 2044 for the following reasons:

1. The Department questions the need for such a program given that the State of Hawaii already allows employees that qualify to utilize up to ten (10) days per year of their accrued sick leave for any purposes listed in the HFLA. Additionally, employees are given the sole discretion of substituting any portion of their accrued vacation, personal, or paid leave for any part of the four weeks of family leave granted under the HFLA.

The Department notes that the existing Hawaii Family Leave Act provides generous options for employees seeking to balance work and family.

2. Employers should not be mandated to provide wage replacement benefits for employees unable to work due to family situations.

The application of TDI benefits to able employees who need to **care for family members** with a serious health condition is contrary to the intent of the TDI law, which is to provide partial **wage replacement to employees who become disabled** due to non-work related injuries or illnesses.

3. This measure will increase the cost of doing business in Hawaii.

The use of TDI benefits other than for the disabled employees is inconsistent with the purpose of the existing TDI insurance policies underwritten by the authorized TDI carriers. The current TDI coverage rate structure is actuarially designed to align TDI premiums with actual plan utilization. If the TDI carriers are required to cover able employees' time loss to care for family members with serious medical conditions other than only those eligible and insured employees who become disabled, the TDI policy and premium rate structure must be adjusted to accommodate payment of benefits to family caregivers. The increase in premium rates would increase the burden on businesses since under TDI, the employees share of insurance premiums is limited to .5% of their wage.

4. The use of TDI benefits for family members may result in reduced or no benefits at all for eligible employees who may subsequently suffer time loss for their own disability. Not all short-term disability plans offered by employers provide only statutory benefits. The TDI benefits can range from 100% of the disabled employees' average weekly wages (AWW) from the first day of disability for three weeks to the statutory benefits of 58% of the AWW after a 7-consecutive day waiting period for a maximum of 26 weeks within any benefit year.
4. The "conformity with other laws" provision for the Family Leave Law, Chapter 398, defers conflicts between chapters to provisions under Chapter 392, the TDI Law, which may lead to inconsistencies in the administration of each law.
 - a. All employers, regardless of size, with eligible employees are subject to the Chapter 392, the TDI Law, but only employers with 100 or more employees are subject to the State Family Leave law. Thus, all employees eligible for TDI benefits would be entitled to family caregiver benefits.
 - b. A family member's "serious health condition" is not defined in the TDI law and is defined in Section 398-1. Therefore, the Chapter 398 definition would apply.

14 weeks
20 hrs

- c. Family leave can be paid or unpaid, whereas TDI is all paid leave after a waiting period, if applicable. Therefore, all employees eligible for TDI would be paid family caregiver benefits under the TDI law.
- d. Chapter 398, the Family Leave Law provides job protection while Chapter 392, the TDI Law does not. Therefore, family caregivers would not have job protection.

20 hrs
14 weeks

LATE



Before the House Committee on Health and the
House Committee on Human Services & Housing

DATE: February 5, 2008

TIME: 1:15 p.m.

PLACE: Conference Room 016

SB 2044: Relating to Caregivers

My name is Melissa Pavlicek and I am the state director for the the National Federation of Independent Businesses (NFIB) in Hawaii. We oppose SB 2044 in its current form and respectfully ask that you hold this measure.

NFIB is the largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitols, with more than 1,000 members in Hawaii and 600,000 members nationally. NFIB members are a diverse group consisting of high-tech manufacturers, retailers, farmers, professional service providers and many more.

NFIB agrees that caregiving is an important issue, with the potential to affect many businesses as well as families, and that the public policy questions involved should be studied carefully. We are specifically concerned that because this bill proposes wage replacement for employees out to care for parents and/or children, it potentially places an administrative burden on employers, as well as a potentially unworkable burden to verify the legitimacy of the leave, given medical privacy laws. We have significant concerns about how this will impact small businesses.

With respect to developing creative solutions to promote workplace friendly policies, such as flextime, work-at-home options, job-sharing, counseling and employer-paid services of a care manager, NFIB generally favors empowering employers to offer their employees various options, without the potential unintended consequences that mandated benefits can sometimes entail. NFIB is a key stakeholder regarding small business issues and appreciates the opportunity to be included in this very important public policy discussion. Please do not advance this measure.

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