

JAN 22 2010

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE INSURANCE.

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

1 SECTION 1. The federal Family and Medical Leave Act was
2 the first national initiative designed to help working people
3 fulfill both their work and family responsibilities. It
4 guarantees covered employees twelve weeks of unpaid leave each
5 year to care for a newborn, newly adopted child, or a family
6 member with a serious illness. Because the federal law
7 guarantees only unpaid leave, many men and women are unable to
8 take essential time off. A 1996 report to Congress on family
9 and medical leave policies noted that nearly two-thirds of
10 employees who qualify for family and medical leave do not take
11 it because they cannot go without pay. Of those that do take
12 family or medical leave, the financial hardship is great and
13 sometimes they are forced on to public assistance to make ends
14 meet.

15 Chapter 398, Hawaii Revised Statutes, "Family Leave", is
16 the state counterpart of the Family and Medical Leave Act.
17 Under the chapter 398, employers who employ one hundred or more
18 employees, must provide up to four weeks of family leave during



1 any calendar year. Family leave under chapter 398 may consist
2 of unpaid leave, paid leave, or a combination of both.

3 Around the world, paid family leave is a proven success.
4 Of one hundred fifty-eight countries around the world, one
5 hundred thirty countries have family leave policies for both
6 mothers and fathers. Ninety per cent of those countries have
7 paid leave. Only the United States, Ethiopia, and Australia
8 provide unpaid leave.

9 The legislature believes that some type of wage replacement
10 should be available to assist those who qualify and need to take
11 family leave.

12 The purpose of this Act is to strengthen families by
13 creating a family leave insurance fund, as part of the workers'
14 compensation system, to finance family leave benefits.

15 SECTION 2. Chapter 386, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§386- Family leave insurance fund; established and
19 maintained. (a) There is created in the state treasury a
20 special fund, to be held separate and apart from all other funds
21 in this State, to be known as the family leave insurance fund.
22 All contributions collected pursuant to subsection (c) and all



1 other moneys received for the purposes of the fund from any
2 other source shall be deposited into the family leave insurance
3 fund.

4 (b) The moneys in the family leave insurance fund shall be
5 used only to pay employees benefits for family leave taken
6 pursuant to chapter 398. The benefits received shall be no more
7 than \$250 per week per employee, subject to a one-week waiting
8 period, and the benefit amount shall be prorated for employees
9 who work less than forty hours per week.

10 (c) Every employer and employee shall each contribute not
11 more than one cent per hour into the fund or not more than
12 \$2,000 per year for each employee, whichever is less.

13 (d) The director of finance shall be the custodian of the
14 fund, and all disbursements from the fund shall be paid by the
15 director of finance upon request by the director of labor and
16 industrial relations."

17 SECTION 3. Section 386-3, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§386-3 Injuries covered.** (a) If an employee suffers
20 personal injury either by accident arising out of and in the
21 course of the employment or by disease proximately caused by or
22 resulting from the nature of the employment, the employee's



1 employer or the special compensation fund shall pay compensation
2 to the employee or the employee's dependents as provided in this
3 chapter.

4 "Accident arising out of and in the course of the
5 employment" includes the wilful act of a third person directed
6 against an employee because of the employee's employment.

7 (b) No compensation shall be allowed for an injury
8 incurred by an employee by the employee's wilful intention to
9 injure oneself or another by actively engaging in any unprovoked
10 non-work related physical altercation other than in self-
11 defense, or by the employee's intoxication.

12 (c) A claim for mental stress resulting solely from
13 disciplinary action taken in good faith by the employer shall
14 not be allowed; provided that if a collective bargaining
15 agreement or other employment agreement specifies a different
16 standard than good faith for disciplinary actions, the standards
17 set in the collective bargaining agreement or other employment
18 agreement shall be applied in lieu of the good faith standard.
19 For purposes of this subsection, the standards set in the
20 collective bargaining agreement or other employment agreement
21 shall be applied in any proceeding before the department, the
22 appellate board, and the appellate courts.



1 (d) An employee taking family leave pursuant to chapter
 2 398 shall qualify for compensation from the family leave
 3 insurance fund as set forth in section 386- ."

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: *[Signature]*

Anzanne Chun Cleveland

Jim

Randy H. Paul

Michelle N. Sidani

Carol Zukowski

[Signature]

[Signature]



Report Title:

Workers' Compensation; Family Leave Insurance

Description:

Creates a family leave insurance fund to be administered by DLIR under the workers' compensation statute. Amends the definition of injuries covered under the workers' compensation statute to include family leave.

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