

Joint Legislative Committee on Aging in Place
Family Leave Working Group
September 12, 2008, 1:00 PM
State Capitol Conference Room 224

- I. Welcome and Introductions conducted by Jim Shon
- II. Attendance

Members Present

Jim Shon	Kokua Council
Gerard Russo	UHM Department of Economics
Sherry Menor-McNamara	Chamber of Commerce
Jessica Horiuchi	NFIB
Jacob Herlitz	DOTAX
Eudice Schick	PABEA
Christine Ann Akau	DHS
Joy Kuwabara	HGEA
Joanne Kealoha	ILWU
Harold J. Dias, Jr.	IBEW
Shawn Cabrey	SHRM HI
James Hardway	DLIR

Members Absent

Glenn Ida	Hawaii Teamsters
Wes Lum	Hawaii Family Caregivers Coalition
Adele Ching	EOA

Guests

Ed Wang	DLIR
Andrei Soto	DLIR
Ellen Kai	DLIR – UI
Caroleen Tabata	DLIR
Ryan Markham	DLIR
Ann Thornock	Office of Representative Marilyn Lee

- II. Motion was made by Harold Diaz and seconded by Joanne Kealoha to approve the minutes of the August 26, 2008 minutes. Minutes approved unanimously.
- III. Jim Shon distributed information from the State Data Book (see attachment #1)
- IV. Shon indicated that if the working group were to create subcommittees, they would come under the Sunshine Law, unlike an investigative committee. Agendas must be posted with the Lieutenant Governor's office. Minutes must be posted within 30 days of a meeting.

- V. Per Legislative Reference Bureau study, the State receives about \$700,000 for family and caregiver support programs. The funds go directly to the counties.
- VI. General Discussion Points:
- We need to look at both federal and state FMLA laws.
 - The question is whether the State can do something to provide some benefit for paid family leave.
 - With FMLA, most companies let employees use paid time off (PTO) or vacation time to provide care for a family member
 - In Hawaii, every employee in a firm of 50 or more is getting FMLA benefits.
 - Under FMLA you must have been employed for a year to receive benefits. The employment requirement under HFLA may be just 6 months.
 - Family caregivers often have no idea that there are any benefits; although, they are supposed to be advised of this benefit when first hired.
 - According to the LRB study, 78% don't take family leave because they can't afford to take leave without pay.
 - There are difficult staffing challenges for very small employers if an employee must take family leave. One of the challenges in considering paid family leave will be to address small business concerns.
 - Even with current time off, it may still not be enough for caregivers. Most will need to provide care for a longer period of time.
 - Are employees required to document use of federal and state law? Yes. If employees are gone for two days or more employer should advise the possibility of using FMLA and provide paper work. Verification paper work must be completed by a doctor. Separate files are kept for each employee.
 - Congress is looking at what constitutes large or small businesses. The threshold seems to be 50 employees. It differs depending on application of the law.
 - TDI covers an employee's own injury or illness. The TDI law is enforced by the State but the State does not provide the benefits. An employer must provide TDI but can share the cost with employees up to 50%.
 - Utilization of TDI is relevant to the discussion. Every year, insurance carriers are required to file a summary report showing the number of claims filed—male and female. The Labor Department would get involved only if an insurance company won't pay a claim.
 - FMLA provides protection from discipline when employees are absent. FMLA utilization figures may be inflated since employees often file for FMLA as well as sick leave to avoid disciplinary action.
- VII. James Hardway made a presentation comparing New Jersey, California and Washington State paid family leave laws. (see attached) Discussion followed:

- Polling of employers to see who offers Hawaii family leave benefits would be beneficial.
- It is possible that 80% of local companies offer paid leave in the form of vacation or PTO, but not necessarily family leave. Many companies will let you take your paid leave to care for a family member.
- What kind of data base does California have concerning their paid family leave? Are there any specifics by industry, i.e. visitor industry?
- Is the employee contribution in the New Jersey plan pre-tax or post-tax? The LRB report indicated that a certain amount is pre-taxed.
- Voluntary compliance with providing family leave means records are not generally available.
- It was suggested that a confidential system be established where employers could provide information without indentifying individuals.
- James Hardway will contact California to see how their program is working and any data they may have.
- Need data on utilization. Is the imposition on employees imagined or real? Data may answer that question.
- We need some kind of consensus of whether paid family leave is required and how it should be implemented.
- Is it philosophically better to be able to provide paid family leave so employers don't have to go through the process of hiring new employees? Providing paid family leave would probably be desirable but economics may make it difficult.
- Senator Chun Oakland stated that the Legislature does want paid family leave. It is hoped that the working group can determine the simplest way to implement it at the lowest cost to all. A major concern is how it should be funded.
- The possibility was raised of increasing the Unemployment Insurance tax as a means of financing paid family leave. The costs involved and additional staffing that would be required are of some concern. It was suggested that a UI presentation may be needed. ERISA and HIPA should be part of the discussion.

VIII. Meeting adjourned at 2:45 PM

IX: Announcements:
Next meeting is scheduled for October 17, 2008, 1:00 PM in Room 224 at the State Capitol.

Attachment #1

According to the State Data Book, in 2007 there were 591,900 full & part time non- federal employees in Hawaii. State law (**CHAPTER 398 FAMILY LEAVE**) covers **100 employees or more**: *"Employer" means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year."*

The following chart indicates that in 2006, of the 511,508 private sector employees in the State, **209,731 (41%)** are covered by state law for family leave, and **301,777 (59%)** are not covered. **IF** the law were to be amended to cover employers who employ **fifty or more employees**, this would extend coverage to an additional 74,706 employees, for a total of 284,437 or 56% of the private work force.

Table 12.26-- REPORTING UNITS AND EMPLOYMENT, BY SIZE OF FIRM: DECEMBER 2006

[Excluding government]

County	Subject 1/	All units	Size of firm						
			0 to 4	5 to 9	10 to 19	20 to 49	50 to 99	100 to 249	250 or more
State total	Reporting units	35,600	19,603	6,685	4,505	2,956	1,089	544	218
	Employment	511,508	32,457	44,284	60,631	89,699	74,706	81,405	128,326
City and County of Honolulu	Reporting units	24,110	13,408	4,355	2,994	2,004	801	399	149
	Employment	364,837	21,968	28,787	40,498	60,829	55,195	60,254	97,306
Hawaii County	Reporting units	4,698	2,550	958	618	385	109	53	25
	Employment	56,223	4,144	6,371	8,188	11,566	7,403	7,748	10,803
Maui County	Reporting units	4,737	2,564	942	623	388	120	65	35
	Employment	63,979	4,444	6,270	8,297	11,695	8,212	9,570	15,491
Kauai County	Reporting units	2,055	1,081	430	270	179	59	27	9
	Employment	26,469	1,901	2,856	3,648	5,609	3,896	3,833	4,726

1/ Multi-establishment employers are counted for each worksite reported, except for the construction industry, which reports separately only for major projects. Some worksites are further distributed by industrial classification.

Source: Hawaii State Department of Labor and Industrial Relations, *2006 Employment and Payrolls in Hawaii* (October 2007)
 <http://www.hawaii.org/admin/uploadedPublications/1804_ES2006.PDF> accessed November 30, 2007.

§398-3 Family leave requirement. (a) An employee shall be entitled to a total of four weeks of family leave during any calendar year upon the birth of a child of the employee or the adoption of a child, or to care for the employee's child, spouse or reciprocal beneficiary, or parent with a serious health condition.

(b) During each calendar year, the leave may be taken intermittently.

c) Leave shall not be cumulative.

(d) If unpaid leave under this chapter conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period.

(e) Nothing in this chapter shall entitle an employee to more than a total of four weeks of leave in any twelve-month period.

§398-4 Unpaid leave permitted; relationship to paid leave; sick leave. (a) Pursuant to section 398-3, an employee shall be entitled to four weeks of family leave. The family leave shall consist of unpaid leave, paid leave, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid.

(b) Except as otherwise provided in subsection (c), an employee may elect to substitute any of the employee's accrued paid leaves, including but not limited to vacation, personal, or family leave for any part of the four-week period in subsection (a).

(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.

Options Worksheet

Options	Number of employees	Potential Costs
1. Same coverage (100+) increase benefits (days, flexibility, etc.)		
2. Extend coverage & same benefits to firms with 50+		
3. Extend coverage & extend days		
4. Same coverage & benefits, add some % of days as paid leave.		
5. Same coverage & benefits, add 100% as paid leave.		
6. Other options?		