

HB1109, hd1

Measure Title:

RELATING TO FAMILY LEAVE

Report Title:

Allows an employee with a family member in the United States armed forces who is on active duty or notified of a call to active duty, to use family leave for certain activities for which an employee may take military family leave under federal law. Requires the Department of Labor and Industrial Relations in consultation with the Department of Defense to adopt administrative rules to implement those provisions. Effective July 1, 2030.
(HB1109 HD1)

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON HOUSE BILL 1109 HD1
A BILL FOR AN ACT RELATING TO FAMILY LEAVE

PRESENTATION TO THE
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS

BY

MAJOR GENERAL DARRYLL D. M. WONG
ADJUTANT GENERAL
March 15, 2011

Chair Espero, Vice Chair Kidani and Members of the Committee:

I am Major General Darryll D. M. Wong, State Adjutant General. I am testifying on House Bill 1109 HD1. This bill grants family leave to an employee during any calendar year during a military deployment.

We support the intent of House Bill 1109 HD1, however are concerned about the impact on Hawaii business. Additionally, State and federal laws provides family leave up to twelve weeks and applies to employers that have fifty or more employees. Expansion of additional leave benefits to current laws may not be appropriate during such difficult economic situation in our nation and state.

Chair Espero, thank you for the opportunity to provide this written testimony.



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dhir.director@hawaii.gov

March 14, 2011

To: The Honorable Will Espero, Chair
and Members of the Senate Committee on Public Safety, Government Operations,
and Military Affairs

Date: Tuesday, March 15, 2011
Time: 2:45 p.m.
Place: Conference Room 224, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. No. 1109, H.D. 1 Relating to Family Leave

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 1109, H.D.1 amends the Family Leave Law, Chapter 398, Hawaii Revised Statutes (HRS) by amending the family leave requirement to permit an employee to utilize family leave time for certain activities when a family member is on active duty or notified of a call to active duty. Requires the Dept. of Labor and Industrial Relations to adopt rules in conjunction with the Department of Defense.

The measure is effective July 1, 2030

II. CURRENT LAW

Employees are entitled to a total of four weeks of family leave during any calendar year upon the birth of a child of the employee, the adoption of a child, or to care for the employee's child, spouse or reciprocal beneficiary, or parent with a serious health condition. The care of employees whose family member is in the military is not covered.

III. HOUSE BILL

The department supports H.B. 1109, H.D. 1 with comments.

1. Hawaii has a rich tradition of cooperation and support of our service members. To extend the ability to take family leave to take care of activities necessitated by a family member who is proudly serving in the defense of one's country is

commendable.

Eligible employees to take the leave under this measure are likely to be those not already covered under the FMLA Military Family Leave Entitlements. These are likely to be employees of companies with 100 or more employees who have worked only 6 months for the company, or are reciprocal beneficiaries or grandparents-in-law of eligible service members.

This measure will also allow all eligible employees of 100 or more employees to take up to ten sick days for this type of leave where in the federal environment the employer can determine if sick leave will be used.

2. The Department supports the recommendations of the Department of Human Resources and Development that suggest changes to the language that mirror the Family Leave and Medical Act. This will cause less ambiguity and make the changes easier to comply with and enforce.

NEIL ABERCROMBIE
GOVERNOR



SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

BARBARA A. KRIEG
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 14, 2011

TESTIMONY TO THE
SENATE COMMITTEE ON PUBLIC SAFETY,
GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

For Hearing on Tuesday, March 15, 2011
2:45 P.M., Conference Room 224

BY
SUNSHINE P. W. TOPPING
INTERIM DIRECTOR

House Bill No. 1109, H.D.1
Relating to Family Leave

(WRITTEN TESTIMONY ONLY)

TO CHAIRPERSON WILL ESPERO AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 1109, H.D.1 is to allow an employee with a family member in the U. S. Armed Forces, who is on active duty or notified of a call to active duty, to use family leave for certain activities for which an employee may take military family leave under federal law. It requires the Department of Labor and Industrial Relations in consultation with the Department of Defense to adopt administrative rules to implement those provisions. The effective date is July 1, 2030.

The Department of Human Resources Development supports the intent of this measure and deeply appreciates the sacrifices made by those in the military service and their family members; however, we have the following concerns:

1. The federal Family and Medical Leave Act (FMLA) already provides for situations involving "qualifying exigencies."
2. The State government already provides generous leave benefits for our

employees which can be applied in "qualifying exigencies."

3. If H.B. No. 1109, H.D.1 is intended to mirror the FMLA, it does not reflect the amendments to the FMLA which were enacted via the National Defense Authorization Act (NDAA) of 2010 and so will be confusing and difficult for all employers to administer. For example, H.B. No. 1109, H.D.1 uses the phrase, "in support of a contingency operation," whereas, the NDAA of 2010 updated the FMLA by removing that phrase. H.B. No. 1109, H.D.1 uses the terminology, "active duty," whereas, the NDAA of 2010 replaced the phrase with "covered active duty."

Should this measure move forward, we recommend that the language for Section 398-3(a)(3) be revised to read as follows:

- "(3) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on covered active duty in the armed forces of the United States, as such conditions and terms are defined in Title 29 Code of Federal Regulations Part 825, the federal Family and Medical Leave Act of 1993, as amended."

The above recommended language would follow the language and application of the federal FMLA for terms such as "qualifying exigency," "spouse," "son or daughter," and "covered active duty," so that it will be easier to understand and administer. It is also intended to provide flexibility in conforming to amendments that may be made to the federal FMLA, without having to amend the State Family Leave law.

Thank you for the opportunity to testify on this measure.