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## A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1           SECTION 1. The legislature finds that Hawaii's working  
2 families are not adequately supported during times of caregiving  
3 and illness. While the federal Family and Medical Leave Act of  
4 1993 allows twelve weeks of unpaid leave to employees who have  
5 worked at a business that employs fifty or more employees, the  
6 majority of Hawaii's workforce cannot afford to take unpaid  
7 leave when needing to provide care to a newborn, bond with a new  
8 child, or care for a family member with a serious health  
9 condition. The legislature also finds that the Hawaii family  
10 leave law further restricts eligibility by extending only four  
11 weeks of unpaid leave to those employees who work at a business  
12 with more than one hundred employees.

13           The legislature further finds that only eleven per cent of  
14 workers in the United States have access to paid family leave  
15 through their employers. Approximately 247,000 people in Hawaii  
16 serve as family caregivers. Hawaii has the fastest growing  
17 sixty-five-plus population in the nation, which is expected to



1 grow by eighty-one per cent by the year 2030. Of those who need  
2 leave but cannot take it, nearly one in three need leave to care  
3 for an ill spouse or parent. Women, as primary caregivers of  
4 infants, children, and elderly parents, are affected  
5 disproportionately by the unavailability of paid family and  
6 medical leave.

7 The purpose of this Act is to ensure that employees within  
8 the State are provided partial wage replacement during times  
9 when they need to provide care.

10 SECTION 2. Chapter 398, Hawaii Revised Statutes, is  
11 amended by adding a new part to be appropriately designated and  
12 to read as follows:

13 "PART . WAGE REPLACEMENT FOR FAMILY AND MEDICAL LEAVE  
14 §398-A Partial wage replacement; trust fund established.

15 (a) There is established outside the state treasury, a trust  
16 fund to be known as the partial wage replacement for leave trust  
17 fund.

18 (b) The trust fund shall consist of employee  
19 contributions, the employee's contributions of which shall not  
20 exceed per cent of each employee's wages per pay period, as  
21 well as interest earned and income, dividends, refunds, rate



1 credits, and other returns received by the trust fund. It is  
2 hereby declared that all sums contributed or paid from any  
3 source to the trust fund created by this part, and all assets of  
4 the trust fund including all interest and earnings of the same,  
5 shall be held in trust by the department for the exclusive use  
6 and benefit of employees and shall not be subject to  
7 appropriation for any other purpose.

8 (c) The trust fund shall be used to provide an eligible  
9 employee with twelve weeks per calendar year of paid family  
10 leave; provided that an employee shall not be paid more than  
11 sixty-six per cent of the employee's monthly wage.

12 (d) The trust fund shall be under the control of and  
13 administered by the department.

14 **§398-B Wage withholding.** (a) Each employer and employee  
15 shall make a contribution to the partial wage replacement for  
16 leave trust fund per pay period.

17 (b) If an employee's contribution to the trust fund is not  
18 withheld and transmitted to the trust fund, the employee shall  
19 pay per cent of the employee's wage per pay period directly  
20 to the trust fund by the first day of each month."



1 SECTION 3. Section 398-1, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted  
4 and to read:

5 "Trust fund" means the partial wage replacement for leave  
6 trust fund."

7 2. By amending the definition of "employer" to read:

8 "Employer" means any individual or organization, including  
9 the State, any of its political subdivisions, any  
10 instrumentality of the State or its political subdivisions, any  
11 partnership, association, trust, estate, joint stock company,  
12 insurance company, or corporation, whether domestic or foreign,  
13 or receiver or trustee in bankruptcy, or the legal  
14 representative of a deceased person, who employs one [~~hundred~~]  
15 or more employees for each working day during each of twenty or  
16 more calendar weeks in the current or preceding calendar year."

17 SECTION 4. Section 398-3, Hawaii Revised Statutes, is  
18 amended as follows:

19 1. By amending subsection (a) to read:

20 "(a) An employee shall be entitled to a total of [~~four~~]  
21 twelve weeks of family leave during any calendar year [~~upon the~~



1 ~~birth of a child of the employee or the adoption of a child, or~~  
2 ~~to care]~~ :

3       (1) To care for the employee's child within twelve months  
4       of the child's birth, or foster placement, or  
5       placement for adoption with the employee; or

6       (2) To care for the employee's child, spouse or reciprocal  
7       beneficiary, or parent with a serious health  
8       condition."

9       2. By amending subsection (e) to read:

10       "(e) Nothing in this chapter shall entitle an employee to  
11 more than a total of [~~four~~] twelve weeks of leave in any twelve-  
12 month period."

13       SECTION 5. Section 398-4, Hawaii Revised Statutes, is  
14 amended by amending its title and subsections (a) and (b) to  
15 read as follows:

16       "~~§398-4 [Unpaid leave]~~ Leave permitted; relationship to  
17 paid leave; sick leave. (a) Pursuant to section 398-3[~~7~~] and  
18 section 398-A, an employee shall be entitled to [~~four~~] twelve  
19 weeks of family leave. [~~The family leave shall consist of~~  
20 ~~unpaid leave, paid leave, or a combination of paid and unpaid~~  
21 ~~leave.~~] If an employer provides paid family leave other than



1 that required by this chapter for fewer than [four] twelve  
2 weeks, [the additional] that period of leave [added] shall be  
3 subtracted from the twelve weeks required by section 398-3 to  
4 attain the [four-week] twelve-week total [may be unpaid], not  
5 including accrued sick or vacation hours.

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

11 SECTION 6. Section 398-2, Hawaii Revised Statutes, is  
12 repealed.

13 ~~["§398-2] Inapplicability. The rights provided under~~  
14 ~~this chapter shall not apply to employees of an employer with~~  
15 ~~fewer than one hundred employees."]~~

16 SECTION 7. There is appropriated out of the general  
17 revenues of the State of Hawaii the sum of \$                    or so  
18 much thereof as may be necessary for fiscal year 2015-2016 and  
19 the same sum or so much thereof as may be necessary for fiscal  
20 year 2016-2017 for the purpose of hiring an administrator, an  
21 administrative assistant, and an accountant to administer the



1 partial wage replacement for leave trust fund, including  
2 oversight of payroll deductions, administrative processes, and  
3 payment to eligible employees.

4 The sums appropriated shall be expended by the department  
5 of labor and industrial relations for the purposes of this Act.

6 SECTION 8. In codifying the new sections added by section  
7 2 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10 SECTION 9. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 10. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 11. This Act shall take effect on July 1, 2015.

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# H.B. NO. 1049

**Report Title:**

Family Leave; Partial Wage Replacement

**Description:**

Requires twelve weeks of family leave. Establishes a partial wage replacement for leave trust fund funded by employee wage withholdings. Uses the trust fund to provide partial wage replacement for the weeks of family leave that are unpaid. Appropriates moneys to administer the trust fund.

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