

JAN 22 2016

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. The legislature further finds that women and
4 families are disproportionately affected by the lack of access
5 to paid leave for several reasons, including women across the
6 age spectrum still primarily serving as caregivers to family
7 members, women not being supported by labor policies that fail
8 to reflect the changing reality of our workplace demographics,
9 and women often facing the difficult decision of choosing
10 between paid employment and caring for a child or a family
11 member.

12 Paid family and medical leave has been identified as one
13 method of closing the wage gap between men and women. Given the
14 current stagnation of wages in Hawaii, the gender wage gap is
15 not projected to close until 2059. The legislature finds that
16 supporting working families is an issue of economic justice and
17 that infants, children, elderly family members, and 'ohana are



1 healthier and more economically self-sufficient when working
2 families are adequately supported.

3 While the federal Family and Medical Leave Act of 1993
4 allows twelve weeks of unpaid leave to employees who have worked
5 for at least twelve months at a business that employs fifty or
6 more employees, the majority of Hawaii's workforce cannot afford
7 to take unpaid leave when needing to provide care to a newborn,
8 bond with a new child, or care for a family member with a
9 serious health condition. The legislature further finds that
10 the Hawaii Family Leave Law also has restrictive eligibility
11 criteria and guarantees only the limited benefit of up to four
12 weeks of unpaid leave to those employees who work at a business
13 with more than one hundred employees. As such, the law applies
14 to only 2.2 per cent of employers in the State.

15 The legislature finds that forty-three per cent of workers
16 in Hawaii do not have access to a single day of leave, whether
17 it be for sick leave or family leave. In Hawaii, 247,000 people
18 serve as family caregivers. Hawaii has the fastest growing
19 sixty-five plus population in the nation. This population is
20 expected to grow by eighty-one per cent by 2030. Of those who
21 need leave but cannot take it, nearly one in three need leave to



1 care for an ill spouse or parent. The legislature finds that
2 previous joint task forces on family caregiving have all
3 rendered the same request and recommendation: family caregivers
4 need adequate wage replacement and support when providing care.

5 The purpose of this Act is to ensure that employees within
6 the State are provided employee funded partial wage replacement
7 during times when they need to provide care for family members
8 or bond with a new family member.

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

12 "§398-A Family leave insurance program. (a) The
13 department shall establish and administer a family leave
14 insurance program and pay family leave insurance benefits as
15 specified in this chapter.

16 (b) The department shall establish procedures and forms
17 for filing claims for benefits under this chapter. The
18 department shall notify the employer of an employee who files a
19 claim for benefits under this chapter.

20 (c) The department shall use information sharing and
21 integration technology to facilitate the disclosure of relevant



1 information or records, including use of information and
2 technology already existing in the temporary disability
3 insurance program, to the extent feasible pursuant to any
4 requirements for consent to disclosure under state law.

5 (d) Information contained in the files and records
6 pertaining to an individual under this chapter are confidential
7 and not open to public inspection, other than to public
8 employees in the performance of their official duties. An
9 individual or an authorized representative of the individual who
10 presents a signed authorization may review the individual's
11 records or receive specific information from the records.

12 §398-B Family leave trust fund. (a) There is established
13 outside of the state treasury a trust fund to be known as the
14 family leave trust fund.

15 (b) The trust fund shall consist of employee contributions
16 based on the employee's average weekly wage, interest earned,
17 and income, dividends, refunds, rate credits, and other returns
18 received by the fund. All sums contributed or paid from any
19 source to the trust fund and all assets of the trust fund,
20 including all interest and earnings, shall be held in trust by



1 the department for the exclusive use and benefit of employee-
2 beneficiaries.

3 (c) The trust fund shall be used to provide covered
4 individuals with up to twelve weeks per calendar year of paid
5 family leave and may be used for the administration of the fund,
6 and to finance outreach, education, or studies for the benefit
7 of employee-beneficiaries. The trust fund shall not be subject
8 to appropriation for any other purpose.

9 (d) The trust fund shall be administered by the
10 department.

11 §398-C Wage withholding. (a) Each employee shall make a
12 contribution to the family leave trust fund per pay period via
13 wage withholding, transmitted by the employer to the fund. The
14 rate of contribution shall be computed in the same manner as
15 provided by section 392-43.

16 (b) In the case that there is a dispute between the
17 employee and the employer relating to the withholding of wages
18 as contributions for family leave insurance benefits, either
19 party may file with the director a petition for determination of
20 the amount to be withheld. The matter shall be determined by an
21 officer of the department. If either party is dissatisfied with



1 the determination, the party may appeal the determination
2 pursuant to Part II.

3 §398-D Weekly benefit amount. (a) Benefits shall be
4 computed as weekly amounts in the manner provided by section
5 392-22.

6 (b) In no case shall the weekly benefit amount exceed the
7 maximum weekly benefit amount specified in section 386-31.

8 §398-E Eligibility for payment of benefits. (a) Family
9 leave insurance benefits are payable to covered individuals who
10 meet one of the following requirements:

11 (1) Because of birth, adoption or placement through foster
12 care, are caring for a new child during the first year
13 after the birth, adoption, or placement;

14 (2) Are caring for a family member or designated person
15 with a serious health condition;

16 (3) Are caring for a qualifying service member who is the
17 employee's next of kin; or

18 (4) Have a qualifying exigency arising out of the
19 deployment of a family member or the employee.

20 (b) To receive benefits under this chapter, covered
21 individuals shall submit an application for family leave



1 insurance benefits in the form and manner prescribed by the
2 director by role pursuant to chapter 91.

3 §398-F Designated person. An employer may establish a
4 process for an employee to designate a designated person within
5 thirty days of the employee becoming eligible for benefits under
6 this chapter. The process shall permit the employee to make or
7 change such a designation, as applicable, on an annual basis. If
8 an employer establishes such a process, employees shall make
9 such a designation using the employer's process. If an employer
10 does not establish such a process, employees may make such a
11 designation when filing a claim for benefits.

12 §398-G Coverage of self-employed persons. (a) A self-
13 employed person, including a sole proprietor, partner, or joint
14 venturer, may elect coverage under this chapter for an initial
15 period of not less than three years or a subsequent period of
16 not less than one year immediately following another period of
17 coverage. The self-employed person shall file a notice of
18 election in writing with the director, as required by the
19 director according to rule. The election shall become effective
20 on the date of filing the notice.



1 (b) A self-employed person who has elected coverage may
2 withdraw from coverage within thirty days after the end of the
3 three-year period of coverage, or at such other times as the
4 director may prescribe by rule, by filing written notice with
5 the director. Withdrawal shall take effect not sooner than
6 thirty days after filing the notice.

7 §398-H Outreach and education. The department shall
8 conduct a public outreach and education campaign to inform
9 employees and employers of the availability of family leave
10 insurance benefits. The department may use a portion of the
11 funds collected for the family leave insurance program in a
12 given year to pay for the public education program. Outreach
13 information shall be available in English and other languages
14 spoken within the State.

15 §398-I Report to the legislature. Beginning July 1, 2017,
16 the department shall report to the legislature each year on
17 outreach efforts, projected and actual program participation,
18 including the percentage of those eligible for family leave
19 insurance benefits under this chapter who received them, premium
20 rates, and fund balances."



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

3 1. By adding five new definitions to be appropriately
4 inserted and to read:

5 "Covered individual" means any person who:

6 (1) Is an employee or, if currently unemployed, was an
7 employee in the last twenty-six weeks; and

8 (2) Meets the requirements of section 398-E and
9 administrative rules adopted by the director.

10 "Designated person" means one person designated by a
11 covered individual for whom the covered individual may provide
12 care that qualifies the covered individual for leave under this
13 chapter if the designated person has a serious health condition.

14 "Family leave insurance benefits" means the benefits
15 provided under this chapter.

16 "Family member" means a child; a parent; a person to whom
17 the covered individual is legally married under the laws of any
18 state; a biological, foster or adopted sibling, or the spouse or
19 reciprocal beneficiary of such a sibling; or a reciprocal
20 beneficiary.



1 "Qualifying exigency" means a circumstance that qualifies a
2 family member of a service member for leave under this chapter
3 for any of the following reasons:

- 4 (1) Seven or fewer days notice of deployment;
5 (2) Attendance at military events and related activities;
6 (3) Attendance at child care and school activities only if
7 the leave is required due, indirectly or directly, to
8 the active duty call or active duty status of the
9 service member;
10 (4) Making financial and legal arrangements for the
11 service member's absence or because of the absence;
12 (5) Attendance at counseling provided by someone other
13 than a healthcare provider; provided that the need for
14 counseling arises from the active duty or call to
15 active duty status of a covered military member;
16 (6) Spending time with a service member who is on short-
17 term, temporary rest and recuperation leave during the
18 period of deployment; provided that a covered
19 individual may take up to five days of leave for each
20 instance of rest and recuperation;
21 (7) Attendance at post deployment activities; or



1 (8) Issues that arise out of active duty or a call to
2 active duty that an employer and employee agree should
3 be covered."

4 2. By amending the definition of "child", "employer", and
5 "parent" to read:

6 "Child" means an individual who is a biological, adopted,
7 or foster son or daughter; a stepchild; ~~[or]~~ a legal ward ~~[of an~~
8 ~~employee.]~~; a child of a reciprocal beneficiary; or a grandchild
9 of a covered individual; or a child for whom a covered
10 individual stands in loco parentis.

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

20 "Parent" means a biological, foster, or adoptive parent, a
21 parent-in-law, a stepparent, a legal guardian, a grandparent,



1 ~~[or]~~ a grandparent-in-law~~[-]~~, or a parent or grandparent of a
2 reciprocal beneficiary, or a person who stood in loco parentis
3 when the covered individual was a minor."

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

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

7 "(a) ~~[An employee]~~ A covered individual shall be entitled
8 to a total of ~~[four]~~ twelve weeks of family leave during any
9 calendar year ~~[upon the birth of a child of the employee or the~~
10 ~~adoption of a child, or to care for the employee's child, spouse~~
11 ~~or reciprocal beneficiary, or parent with a serious health~~
12 ~~condition.]~~ :

13 (1) To care for the covered individual's child within
14 twelve months of the child's birth, or foster
15 placement, or placement for adoption with the covered
16 individual; or

17 (2) To care for the covered individual's family member or
18 designated person with a serious health condition."

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



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

4 SECTION 5. Section 398-4, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§398-4 [~~Unpaid leave~~] Leave permitted; relationship to
7 other paid leave; sick leave. (a) Pursuant to section 398-3,
8 an employee shall be entitled to [~~four~~] twelve weeks of family
9 leave. [~~The family leave shall consist of unpaid leave, paid~~
10 ~~leave, or a combination of paid and unpaid leave. If an~~
11 ~~employer provides paid family leave for fewer than four weeks,~~
12 ~~the additional period of leave added to attain the four week~~
13 ~~total may be unpaid.] An employer who provides paid family leave
14 beyond what is required by this chapter may require that such
15 leave run concurrently with the twelve weeks required under this
16 chapter, but shall not require the leave to be applied against
17 accrued sick or vacation hours.~~

18 (b) Except as otherwise provided in subsection [~~(e,)~~] (a),
19 an employee may elect to substitute any of the employee's
20 accrued paid leaves, including but not limited to vacation,



1 personal, or family leave for any part of the [~~four-week~~]
2 twelve-week period in subsection (a).

3 ~~[(c) An employer who provides sick leave for employees~~
4 ~~shall permit an employee to use the employee's accrued and~~
5 ~~available sick leave for purposes of this chapter, provided that~~
6 ~~an employee shall not use more than ten days per year for this~~
7 ~~purpose, unless an express provision of a valid collective~~
8 ~~bargaining agreement authorizes the use of more than ten days of~~
9 ~~sick leave for family leave purposes. Nothing in this section~~
10 ~~shall require an employer to diminish an employee's accrued and~~
11 ~~available sick leave below the amount required pursuant to~~
12 ~~section 392-41, provided that any sick leave in excess of the~~
13 ~~minimum statutory equivalent for temporary disability benefits~~
14 ~~as determined by the department may be used for purposes of this~~
15 ~~chapter.]~~

16 (c) No assignment, pledge, or encumbrance of any right to
17 benefits that are or may become due or payable under this
18 chapter shall be valid; and such rights to benefits shall be
19 exempt from levy, execution, attachment, garnishment, or any
20 other remedy whatsoever provided for the collection of debt. No



1 waiver of any exemption provided for in this section shall be
2 valid.

3 (d) Nothing in this chapter shall prevent a biological
4 mother receiving temporary disability insurance benefits for
5 recovery from childbirth from applying for and receiving paid
6 family leave for the purpose of caregiving and bonding with her
7 child after the temporary disability time period has lapsed.
8 For paid family leave purposes, there shall be no waiting period
9 for benefits to begin.

10 (e) Benefits under the Family and Medical Leave Act of
11 1993 shall run concurrently with benefits under this chapter."

12 SECTION 6. Section 398-21, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Any individual claiming to be aggrieved by an alleged
15 unlawful act, under this chapter, including but not limited to
16 the denial of family leave insurance benefits, may file with the
17 department a verified complaint in writing."

18 SECTION 7. Section 398-23, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) If the department determines after investigation that
21 this chapter has been violated [7] by an employer, the



1 department shall inform the employer and endeavor to remedy the
2 violation by informal methods, such as conference or
3 conciliation. If the department determines that family leave
4 insurance benefits have been wrongfully withheld, the department
5 shall order immediate payment to the employee found entitled to
6 those benefits."

7 SECTION 8. Section 398-24, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Upon appeal by a complainant or by the employer, the
10 order issued by the department shall be subject to a de novo
11 review by a hearings officer appointed by the director."

12 SECTION 9. Section 398-26, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) Relief under this section may include:

15 (1) The amount of any family leave insurance benefits,
16 wages, salary, employment benefits, or other
17 compensation denied or lost to the employee by reason
18 of the violation; or

19 (2) In a case in which family leave insurance benefits,
20 wages, salary, employment benefits, or other
21 compensation have not been denied or lost to the



1 employee, any actual monetary losses sustained by the
2 employee as a direct result of the violation, such as
3 the cost of providing care, up to a sum equal to
4 ~~[four]~~ twelve weeks of wages or salary for the
5 employee."

6 SECTION 10. Section 398-2, Hawaii Revised Statutes, is
7 repealed.

8 ~~["§398-2] Inapplicability. The rights provided under
9 this chapter shall not apply to employees of an employer with
10 fewer than one hundred employees."]~~

11 SECTION 11. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$300,000 or so much
13 thereof as may be necessary for fiscal year 2016-2017 for the
14 purpose of hiring and employing an administrator, administrative
15 assistant, and an accountant to perform functions relating to
16 the administration of the family leave trust fund, including the
17 oversight of payroll deductions, administrative processes, and
18 payment to eligible employees.

19 The sum appropriated shall be expended by the department of
20 labor and industrial relations for the purposes of this Act.



1 SECTION 12. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 13. This Act does not affect rights and duties
6 that matured, penalties that were incurred, and proceedings that
7 were begun before its effective date.

8 SECTION 14. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 15. This Act shall take effect on July 1, 2016.

11

INTRODUCED BY: *Erwann Chun Oakland*



S.B. NO. 2477

Report Title:

Family Leave Trust Fund; Family Leave Insurance Benefits;
Appropriation

Description:

Establishes a family leave insurance program, which requires employees to make contributions into a trust fund to be used to provide employees with family leave insurance benefits. Appropriates funds to DLIR to implement the program.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

