

JAN 20 2017

A BILL FOR AN ACT

RELATING TO EMPLOYEES.

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

1 SECTION 1. Chapter 78, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§78- Shared leave program. (a) There is established,
5 within the department of labor and industrial relations, a
6 shared leave program to allow state employees to donate
7 accumulated sick leave and vacation leave credits to a shared
8 leave bank or directly to another state employee who has a
9 serious personal illness or injury or who has a family member
10 who has a serious personal illness or injury. The program shall
11 allow employees who are not entitled to vacation leave to donate
12 accumulated sick leave credits.

13 (b) An employee must meet the following conditions to be
14 eligible to receive shared leave credits:

15 (1) Be employed by the State in a position with at least
16 fifty per cent full-time equivalency, for at least six



- 1 consecutive months prior to the submittal of the
- 2 shared leave request;
- 3 (2) Have no disciplinary record relating to the use of
- 4 leave credits within the past two years;
- 5 (3) Be suffering from a serious personal illness or injury
- 6 or caring for a family member suffering from a serious
- 7 personal illness or injury that has caused the
- 8 employee to be absent from work for at least thirty
- 9 consecutive calendar days within the past twelve
- 10 months; and
- 11 (4) Exhaust all forms of paid leave available before using
- 12 any shared leave; provided that sick leave need not be
- 13 exhausted when the shared leave involves a family
- 14 member.

15 The director of labor and industrial relations may allow for an
16 exception to an employee whose absence from duty is determined
17 to be caused by circumstances that warrant special
18 consideration. A shared leave recipient shall receive no more
19 than a combined cumulative total of two hundred forty days of
20 shared leave credits while employed by the State. The director
21 of labor and industrial relations may allow for the transfer of



1 up to one hundred twenty additional days if the director of
2 labor and industrial relations determines that circumstances
3 exist that warrant special consideration. Shared leave shall be
4 applied toward days and hours the employee would normally have
5 worked. The effective date of shared leave shall not be earlier
6 than the date the shared leave application is filed with the
7 department of labor and industrial relations and all forms of
8 paid leaves available are exhausted. The director of labor and
9 industrial relations may allow for a retroactive effective date
10 for shared leave should the director of labor and industrial
11 relations determine that circumstances exist that warrant
12 consideration.

13 (c) State agencies shall:

- 14 (1) Ensure that all shared leave applications and donation
15 forms are properly completed and employees meet the
16 specified requirements;
- 17 (2) Determine if the employee's absence would impose an
18 undue hardship on the agency's operations;
- 19 (3) Approve or deny shared leave applications when an
20 employee has a life threatening illness or injury that
21 constitutes a serious personal illness or injury;



- 1 (4) Make recommendations to the director of labor and
2 industrial relations when an employee or an employee's
3 family member has a serious personal illness or
4 injury;
- 5 (5) Make recommendations to the director of labor and
6 industrial relations when an employee's absence from
7 duty does not meet the thirty consecutive calendar
8 days eligibility requirement, when a retroactive
9 effective date is involved, or when additional shared
10 leave is requested;
- 11 (6) Deduct donated leave from the donor's leave record
12 through payroll, time, and attendance entry;
- 13 (7) Periodically receive from the employee verification
14 that the employee's or family member's condition
15 continues to persist to ensure that the shared leave
16 recipient continues to be affected by the serious
17 personal illness or injury;
- 18 (8) Notify the shared leave recipient when the recipient
19 is about to exhaust two hundred forty shared leave
20 days; and



- 1 (9) Notify the shared leave coordinator when an employee
2 returns to work or separates from employment.
- 3 (d) The director of labor and industrial relations shall:
- 4 (1) Establish procedures for the shared leave program;
5 (2) Prescribe and approve shared leave applications for
6 employees who suffer from a serious personal illness
7 or injury and employees with family members who suffer
8 from a serious personal illness or injury;
- 9 (3) Approve or deny requests and appeals for an exception
10 to the thirty consecutive calendar days requirement;
- 11 (4) Approve or deny requests for a retroactive effective
12 date as provided in subsection (b) and requests for
13 additional shared leave; provided that the director of
14 labor and industrial relations determines that
15 circumstances exist that warrant such consideration;
- 16 (5) Designate a shared leave coordinator; and
17 (6) Issue a state-wide circular to announce that shared
18 leave donations may be made by state employees.
- 19 (e) The shared leave coordinator shall:
- 20 (1) Administer the shared leave bank;



- 1 (2) Transmit donated shared leave to respective payroll
- 2 sections;
- 3 (3) Designate the number of shared leave days to shared
- 4 leave recipients who do not receive adequate direct
- 5 donations each pay period;
- 6 (4) Maintain a file on each shared leave recipient;
- 7 (5) Notify the appointing authority when a shared leave
- 8 recipient is about to exhaust forty shared leave days;
- 9 and
- 10 (6) Administer appeals.
- 11 (f) Shared leave applicants shall:
- 12 (1) Complete a shared leave application and medical
- 13 certification form prescribed by the director of labor
- 14 and industrial relations and provide necessary
- 15 supporting documents, as requested by the director of
- 16 labor and industrial relations;
- 17 (2) Request the director of labor and industrial relations
- 18 for an exception to the thirty consecutive calendar
- 19 days requirement, a retroactive effective date, or
- 20 additional shared leave should the medical condition
- 21 warrant such request; and



1 (3) Notify the appointing authority of return to work or
2 separation from employment.

3 (g) Donors shall:

4 (1) Complete a donor form prescribed by the director of
5 labor and industrial relations and designate sick
6 leave or vacation leave credits directly to a specific
7 shared leave recipient or to the shared leave bank;

8 (2) Have at least ten days of vacation leave remaining
9 after the donation is made;

10 (3) Make donations in eight-hour increments;

11 (4) Donate vacation leave credits subject to forfeiture by
12 December 10; and

13 (5) Donate vacation leave credits at least twenty calendar
14 days before separation from service.

15 All shared leave donations shall be irrevocable.

16 (h) When a shared leave application is denied in part or
17 whole, the applicant may appeal the decision in accordance with
18 procedures prescribed by the director of labor and industrial
19 relations. The appeal decision shall be final and conclusive.

20 (i) A shared leave recipient shall stop receiving share
21 leave donations when the following occurs:



- 1 (1) The shared leave recipient's appointment ends on a
2 specified date;
- 3 (2) The employee separates or is separated from service;
- 4 (3) The appointing authority terminates the employee;
- 5 (4) The employee or the employee's family member no longer
6 suffers from the serious personal illness or injury
7 for which the shared leave was approved;
- 8 (5) The employee receives retroactive approval for
9 workers' compensation benefits, disability retirement,
10 or other similar benefits; or
- 11 (6) The employee returns to work.

12 An exception shall be made for shared leave recipients
13 undergoing medical treatment and returning to work on a part-
14 time basis. The shared leave recipient shall not receive a lump
15 sum payment for any unused shared leave donated.

16 (j) An employee shall not directly or indirectly
17 intimidate, threaten, or coerce, or attempt to intimidate,
18 threaten or coerce, any other employee for the purpose of
19 interfering with the right of an employee to donate, not to
20 donate, to receive, or to use shared leave under this section.



1 A donor shall not have solicited nor accepted anything of value
2 in exchange for the donation.

3 For the purposes of this subsection, "intimidate, threaten,
4 or coerce" includes promising to confer or conferring any
5 benefit, such as an appointment, promotion, or compensation, or
6 effecting or threatening to effect any reprisal, such as
7 deprivation of appointment, promotion, or compensation.

8 (k) In the event the shared leave program is terminated, a
9 shared leave recipient shall remain a recipient to the extent
10 all donated leaves are exhausted, subject to the limitations of
11 subsection (i). The appointing authorities shall deny all
12 shared leave requests and donations on the effective date of the
13 program's termination. The shared leave bank shall be dissolved
14 after all shared leave recipients have exhausted their
15 eligibility. Any remaining leaves shall be forfeited.

16 (l) For purposes of this section:

17 "Appointing authority" means the head of a state agency, or
18 designee, who has the power to make appointments or changes in
19 the status of employees of that state agency.

20 "Competent medical examiner" means a doctor of medicine, a
21 dentist or an osteopath.



1 "Donor" means an employee who voluntarily submits a written
2 shared leave donation form to transfer sick leave or vacation
3 leave credits to a leave recipient or to the leave bank.

4 "Employee" or "state employee" means any regular,
5 probationary, limited term or exempt employee who has been
6 employed for at least six continuous months by a state agency
7 and is entitled to accrue and use sick leave or vacation leave
8 and does not include individuals employed on a personal service
9 contract basis.

10 "Family member" means a person who is an employee's child
11 including an adopted child, biological child, or stepchild in a
12 parent-child relationship with the employee, who requires
13 vigilant medical attention for at least thirty consecutive
14 calendar days and a parent, parent-in-law, or spouse who
15 requires vigilant medical attention for at least thirty
16 consecutive calendar days and is unable to perform two or more
17 of the following activities of daily living:

18 (1) Ability to go to the toilet, get on and off the
19 toilet, and arrange clothes and clean oneself;

20 (2) Ability to get food into the system through normal
21 methods;



1 (3) Ability to control bowel and bladder functions
2 voluntarily and to maintain a reasonable level of
3 personal hygiene;

4 (4) Ability to move in and out of furniture and a bed with
5 the aid of equipment, such as a cane, walker, grab
6 bar, or other support devices; or

7 (5) Ability to take the proper medication when required;
8 provided that the medication is taken during the
9 employee's regular working hours and the employee is
10 the primary caregiver to the parent, parent-in-law, or
11 spouse.

12 "Serious personal illness or injury" means a life
13 threatening illness or injury or a catastrophic, debilitating
14 illness or injury that incapacitates the employee or employee's
15 family member and prevents the employee from performing the
16 primary duties of the employee's position and involves either
17 inpatient care or continuing treatment by a health care
18 provider, is certified by a competent medical examiner as being
19 the cause of the employee's inability to work or the family
20 member's need for vigilant medical attention for at least thirty
21 consecutive calendar days, and is not covered under chapter 386.



1 "Shared leave" means sick leave and vacation leave credits
2 donated to a shared leave recipient or the shared leave bank,
3 which are approved by the appointing authority.

4 "Shared leave coordinator" means a person designated by the
5 director of labor and industrial relations with the
6 responsibility for receiving all notices of approved shared
7 leave recipients and shared leave donation forms, administering
8 the shared leave bank, and reviewing appeals from employees
9 whose applications for shared leave have been denied.

10 "Shared leave recipient" means an eligible employee who is
11 approved by the appointing authority or director of labor and
12 industrial relations to receive shared leave.

13 "State" or "state agency" means each department, office,
14 commission, board, or other division of the executive,
15 legislative, or judicial branch of state government and includes
16 the office of Hawaiian affairs."

17 SECTION 2. New statutory material is underscored.

18 SECTION 3. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.

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1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 207

Report Title:

Shared Leave Program; State Employees

Description:

Establishes a shared leave program within the department of labor and industrial relations to allow state employees to donate accumulated sick leave and vacation leave credits to a shared leave bank or to another state employee who has a serious personal illness or injury or who has a family member who has a serious personal illness or injury.

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

