

HB 1402

**RELATING TO EMPLOYEES
LAB, JUD**

HB1402



Submit Testimony

Measure Title: RELATING TO EMPLOYEES.

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.

Companion:

Package: None

Current Referral: LAB, JUD

Introducer(s): NISHIMOTO, BELATTI, JOHANSON, LUKE, SAIKI, SOUKI

<u>Sort by Date</u>		Status Text
1/25/2017	H	Introduced and Pass First Reading.
1/30/2017	H	Referred to LAB, JUD, referral sheet 6
2/3/2017	H	Bill scheduled to be heard by LAB on Tuesday, 02-07-17 9:00AM in House conference room 309.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

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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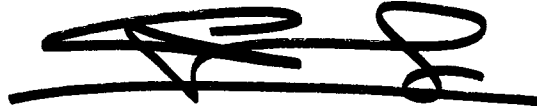
H.B. NO. 1402

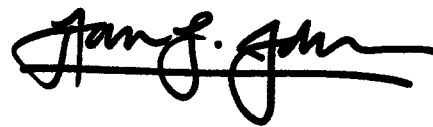
1 SECTION 4. This Act shall take effect upon its approval.

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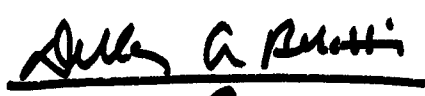
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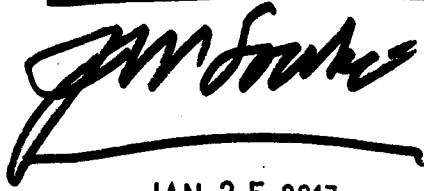












JAN 25 2017



H.B. NO. 1402

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.



HB1402
Relating to Employees
House Committee on Labor & Public Employment
February 7, 2017

My name is Malia Espinda. I am a state employee. However, I do not represent my department with this testimony.

Currently if a state employee is seriously ill or injured and has used up all accumulated sick *and* vacation leave, the employee may be able to seek donated vacation leave from fellow employees within the same department that the employee works in.

The state employee is not permitted to seek donated leave from fellow state employees across other departments or agencies.

This measure would address the following:

- A life-long Department of Health employee may have an established relationship with a fellow-state employee who works in the Department of the Attorney General. Over the years these state employees are more than respectful colleagues, they have become caring friends. However, if one of those employees should become seriously ill or injured, the other is prohibited from helping with donated vacation leave. This is simply not representative of the Aloha we share as state employees with our larger state employee Ohana.
- In the Capitol alone, there are 5 different departments/budgets that interface every day. If he/she ever needed the support, the Governor's, LG's, PSD Sheriff's, or Legislative staff could not assist the DAGS Janitor who has dutifully cleared out office trash for decades.
- State employees who work in a comparatively small department to that of the State's much larger departments are at an extreme disadvantage simply because the smaller number of staff presents limitations to the pool of potentially available donated leave. This is not fair.

- Currently, when an employee is seriously sick or injured and in need of donated leave, a common practice across departments is a department-wide e-mail blast soliciting donations. While this is an understandable means to garner donations, it may impact employee's desire for personal privacy during a difficult time. A broader pool may allow the employee to more comfortably seek support from close colleagues he or she work more directly with.
- When a state employee transfers from one state department to another, the employee's sick and vacation time transfers, as well. This suggests that there is a potential mechanism for departments to manage cross-department donated leave within their budgets. Alternatively, in the era of Go Funds accounts, perhaps an innovative solution could be considered and developed.

Finally, there may be overall state budget cost-savings to establishing a shared-leave program across all departments as employees opt to donate accumulated leave that might otherwise be paid out in retirement.

Thank you for considering this measure.

Aloha,
Malia Espinda

HB 1402

LATE TESTIMONY

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dliir.director@hawaii.gov

LATE

LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

LATE

LATE

February 7, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 7, 2017
Time: 9:00 a.m.
Place: Conference Room 309 State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1402 Relating to Employees

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal provides for a shared leave program for public employees, under the Public Service Law, chapter 78 Hawaii Revised Statutes (HRS).

II. CURRENT LAW

The Department of Labor and Industrial Relations does not currently have authority over the shared leave programs administered under other Departments and neither does it have access to information about any employees other than its own. DLIR administers its own shared leave program as authorized under Hawaii Administrative Rules 14-18.1.

III. COMMENTS ON THE HOUSE BILL

DLIR notes that sick leave is part of an employee's Temporary Disability Insurance (TDI) benefit required by chapter 392, HRS, which provides the employee wage replacement while the employee is unable to work due to the employee's own nonindustrial illness or injury. If after donating sick leave, the donor employee has less sick leave than required for TDI purposes, the State may be responsible to pay TDI benefits to the donor employee. This issue could be avoided by prohibiting or limiting the donation of sick leave.

DLIR further notes that if it is required to administer these provisions that broaden its scope of authority, it would likely need additional staffing and resources.

For other substantive comments DLIR defers to DHRD.

The Twenty-Ninth Legislature
Regular Session of 2017

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, February 7, 2017; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1402
RELATING TO EMPLOYEES**

The ILWU Local 142 supports H.B. 1402, which 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.

All employees, to varying degrees, constantly struggle with striking the right balance between their job responsibilities and their family responsibilities. H.B. 1402 will provide another tool for employees in the department of labor and industrial relations to achieve that proper balance.

The shared leave program under the bill, will allow greater flexibility for an employee who has exhausted their own leave credit and continues to battle a serious personal illness or injury or who has a family member dealing with a serious personal illness or injury. This shared leave program, established in the department of labor and industrial relations will serve as a pilot program, so that it can be analyzed based on the benefits created and any negative outcomes.

This will then provide a model that can be expanded to all public sector employees and if it works in the public sector, it will offer a potential model for the private sector employees and employers. The situations where this leave share program would actually be used will probably not be frequent, however the special support it will provide when the need arises will probably be of great value to that employee.

The ILWU urges passage of H.B. 1402. Thank you for the opportunity to share our views on this matter.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

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The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

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Testimony by
Hawaii Government Employees Association

February 7, 2017

H.B. 1402 – RELATING TO EMPLOYEES

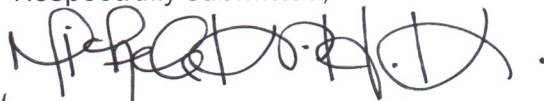
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1402, which establishes a leave share program to allow state employees to donate accumulated sick or vacation leave credits to a shared leave bank or to another state employee who has a serious personal illness or injury, with suggested amendments.

Currently, many state departments offer a shared leave program for their employees; however, each program is run independently from each other, governed by different policies, and without the ability to participate in cross-departmental sharing. The shared leave program as proposed in H.B. 1402 will allow employees not only to donate into a shared leave bank which employees in need can utilize, but also lends the ability to directly assist another state employee. Creating a statewide shared leave program not only significantly expands the pool of eligible leave donors and allows for more employees to participate, but will also ensure consistency and fairness in implementation.

We respectfully request the Committee's consideration in appropriately housing and administering the leave share program. As currently drafted, H.B. 1402 establishes the program within the Department of Labor and Industrial Relations; however, because this legislation is a newly created section in Ch. 78, Hawaii Revised Statutes, it may be more appropriate to place the program within the Department of Human Resources and Development. Additionally, we respectfully request that should this measure become law that the Employer consult with the Exclusive Representatives on its implementation.

Thank you for the opportunity to testify in strong support of H.B. 1402.

Respectfully submitted,


Randy Perreira
Executive Director