

1 "Employee" means a person who performs services for hire
2 for not fewer than six consecutive months for the employer from
3 whom benefits are sought under this chapter.

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

13 "Employment" or "employed" means service, including service
14 in interstate commerce, performed for wages under any contract
15 of hire, written or oral, express or implied, with an employer.

16 "Employment benefits" means all benefits (other than salary
17 or wages) provided or made available to employees by an
18 employer, and includes group life insurance, accident and health
19 or sickness insurance, sick leave, annual leave, educational
20 benefits, and pensions, regardless of whether the benefits are
21 provided by a policy or practice of an employer or by an



1 employee benefit plan as defined in section 3(3) of the Employee
2 Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)).

3 "Health care provider" means a physician as defined under
4 section 386-1.

5 "Relative" means a person who is related by blood,
6 marriage, adoption, or legal guardianship.

7 "Sick leave":

8 (1) Means accrued increments of compensated leave provided
9 by an employer to an employee for use by the employee
10 for any of the following reasons:

11 (A) The employee is physically or mentally unable to
12 perform the employee's duties due to illness,
13 injury, or a medical condition of the employee;

14 (B) The absence is for the purpose of obtaining
15 professional diagnosis or treatment for a medical
16 condition of the employee; or

17 (C) The absence is for other medical reasons of the
18 employee, such as pregnancy or obtaining a
19 physical examination; and

20 (2) Shall not include any insurance benefit, workers'
21 compensation benefit, unemployment compensation due to



1 illness or disability, or temporary disability
2 insurance benefit.

3 § -2 **Posting of notices.** Every employer shall post and
4 keep posted notices clearly setting forth the rights of
5 employees provided by this chapter in a form prescribed by the
6 director in conspicuous places in every establishment where any
7 employee is employed so as to permit the employee to observe
8 readily a copy on the way to or from the employee's place of
9 employment.

10 § -3 **Inapplicability.** The rights provided under this
11 chapter shall not apply to employees of an employer with fewer
12 than one hundred employees.

13 § -4 **Caregiving leave requirement.** (a) An employee
14 shall be entitled to a total of twelve months of paid caregiving
15 leave during any calendar year to care for the employee's
16 spouse, civil union partner, reciprocal beneficiary, significant
17 other, relative, friend, or neighbor who has a significant
18 relationship with the employee.

19 (b) During each calendar year, the leave may be taken
20 intermittently.



1 (c) Upon medical review by a health care provider, leave
2 may be cumulative.

3 § -5 Relationship to sick leave; vacation leave;
4 compensatory leave. An employer who provides sick leave,
5 vacation leave, or compensatory leave for employees shall not
6 require an employee to use the employee's accrued and available
7 sick leave, vacation leave, or compensatory leave for purposes
8 of this chapter.

9 § -6 Notice. In any case in which the necessity for
10 caregiving leave is foreseeable, the employee shall provide the
11 employer with prior notice of the expected leave in a manner
12 that is reasonable and practicable. Requests for caregiving
13 leave shall include evidence that the employee has submitted the
14 request and provided required data in accordance with section
15 -11.

16 § -7 Certification. An employer may require that a
17 claim for caregiving leave be supported by written certification
18 issued by the health care provider of the individual requiring
19 care. Certification shall be considered sufficient if it
20 provides information as required by the director.



1 § -8 **Employment and benefits protection.** (a) Upon
2 return from caregiving leave, the employee shall be entitled to
3 be restored by the employer to the position of employment held
4 by the employee when the leave commenced, or restored to an
5 equivalent position with equivalent employment benefits, pay,
6 and other terms and conditions of employment. If, however,
7 during a leave, the employer experiences a layoff or workforce
8 reduction and the employee would have lost a position had the
9 employee not been on caregiving leave, the employee is not
10 entitled to reinstatement in the former or equivalent position.
11 In such circumstances, the employee retains all rights,
12 including seniority rights, pursuant to the good faith operation
13 of a bona fide layoff and recall system.

14 (b) The taking of caregiving leave shall not result in the
15 loss of any employment benefit accrued before the date on which
16 the leave commenced.

17 (c) Nothing in this chapter shall be construed to entitle
18 or deny any employee to the accrual of any seniority or
19 employment benefits during any period of leave, or any right,
20 employment benefit, or position to which the employee would have
21 been entitled had the employee not taken the leave.



1 § -9 **Prohibited acts.** (a) It shall be unlawful for any
2 employer to interfere with, restrain, or deny the exercise of or
3 the attempt to exercise, any right provided under this chapter.

4 (b) It shall be unlawful for any employer to discharge or
5 in any other manner discriminate against any individual for
6 opposing any practice made unlawful by this chapter.

7 (c) It shall be unlawful for any person to discharge or in
8 any other manner discriminate against any individual because the
9 individual has:

10 (1) Filed any charge, or instituted or caused to be
11 instituted any proceeding, under or related to this
12 chapter;

13 (2) Given or is about to give any information in
14 connection with any inquiry or proceeding relating to
15 any right provided under this chapter; or

16 (3) Testified or is about to testify in any inquiry or
17 proceeding relating to any right provided under this
18 chapter.

19 § -10 **Administration.** (a) The director shall have
20 jurisdiction over those prohibited acts made unlawful by this
21 chapter.



1 (b) The department shall assist employers in the placement
2 of temporary help to perform the work of those employees on
3 caregiving leave.

4 (c) The director may hire, subject to chapter 76,
5 investigators, hearings officers, clerical, stenographic, and
6 other staff as may be necessary to administer and enforce this
7 chapter.

8 § -11 Caregiving leave data collection system;
9 establishment. (a) There is established a caregiving leave
10 data collection system to:

- 11 (1) Ensure that all employees covered by the benefits of
12 this chapter are informed of their rights under this
13 chapter and their names are entered into the database
14 upon application for benefits;
- 15 (2) Collect pertinent data, consistent with state and
16 federal privacy statutes, on the use and potential
17 demand for caregiving leave benefits for both public
18 and private-sector employees, including information on
19 who and under what circumstances employees are using
20 caregiving leave benefits, the nature and duration of
21 the spouse, civil union partner, reciprocal



1 beneficiary, significant other, relative, friend, or
2 neighbor's needs, and the adequacy of current
3 caregiving leave benefits;

4 (3) Provide analysis of the data to assist in the
5 development and implementation of an efficient system
6 of caregiving leave for employees in Hawaii; and

7 (4) Provide analysis of data to assist in the future
8 development of caregiver services for senior citizens
9 in Hawaii.

10 (b) The department shall work with the University of
11 Hawaii center on aging to create a web-based data system with
12 the following capabilities:

13 (1) The capacity for all employees seeking caregiving
14 leave benefits under this chapter to log into the data
15 system and enter pertinent data on the circumstances
16 and need for caregiving leave benefits;

17 (2) The ability to secure confidential information,
18 consistent with state and federal privacy statutes,
19 available only in aggregate form for managers and
20 analysts of the data system;



1 (3) The ability of the employee to print out a simple form
2 to be submitted to the employer certifying that
3 required data has been entered;

4 (4) The ability of data managers and analysts to
5 manipulate and query the database to achieve the
6 purpose of this chapter;

7 (5) A back-up paper system that can be used when computer
8 access or printing is unavailable; and

9 (6) A user-friendly format that can be translated into
10 multiple languages for employees.

11 (c) The state auditor shall be provided access to the
12 database and shall prepare annual reports to the legislature,
13 department, and University of Hawaii center on aging.

14 § -12 **Applicability.** (a) Nothing in this chapter shall
15 be construed to limit an employee's rights under chapter 398.

16 (b) Section -4 shall set a minimum standard that is not
17 intended to replace caregiving leave policies that exist as of
18 the effective date of this Act and that provide for equal or
19 greater employment benefits than those benefits afforded under
20 this chapter.



1 (c) Nothing in this chapter shall be construed to modify,
2 eliminate, or otherwise abrogate any existing caregiving leave
3 policies, employment benefits, or protections that employees may
4 have pursuant to any employment contracts or collective
5 bargaining agreements, to the extent that the contracts and
6 agreements provide greater protections than those afforded under
7 this chapter.

8 (d) To the extent the provisions of this chapter
9 contradict or otherwise conflict with any contract rights or
10 collective bargaining agreements in existence as of the date of
11 this Act, the provisions that provide greater benefits to the
12 employees shall control.

13 § -13 Rules. Subject to chapter 91, the director may
14 adopt rules necessary for the enforcement and administration of
15 this chapter. The rules shall have the force and effect of law.

16 PART II. ENFORCEMENT

17 § -21 Filing of complaint. (a) Any individual claiming
18 to be aggrieved by an alleged unlawful act may file with the
19 department a verified complaint in writing.

20 (b) The attorney general or the department, in like
21 manner, may file a complaint on behalf of an individual.



1 (c) A complaint may be filed on behalf of a class by the
2 attorney general or the department.

3 (d) No complaint shall be filed after the expiration of
4 ninety days after the:

5 (1) Date of the alleged unlawful act; or

6 (2) Date of discovery by the employee of the alleged
7 unlawful act; however, in no event shall such a
8 complaint be filed after the expiration of one hundred
9 eighty days of the alleged unlawful act.

10 (e) After the filing of any complaint, the attorney
11 general or the department, as applicable, shall serve a copy of
12 the complaint upon the employer.

13 § -22 **Predetermination settlement.** At any time after
14 the filing of a complaint, but before a determination by the
15 department that this chapter has been violated, the parties may
16 agree to resolve the complaint through a predetermination
17 settlement.

18 § -23 **Investigation and conciliation.** (a) The
19 department may investigate and conciliate any complaint filed
20 under this chapter.



1 (b) Every employer shall furnish or provide to the
2 department access to records, documents, and other material to
3 determine compliance with this chapter. The department shall
4 have the right to examine, photograph, or copy the material and
5 interview witnesses at the place of employment or business
6 during regular working hours with respect to any matter under
7 this chapter.

8 (c) The department may require by subpoena the attendance
9 and testimony of witnesses and the production of all records,
10 payrolls, correspondence, documents, and other material relative
11 to any matter under investigation.

12 (d) If the department determines after investigation that
13 this chapter has been violated, the department shall inform the
14 employer and endeavor to remedy the violation by informal
15 methods, such as conference or conciliation.

16 (e) If the department finds that methods in subsection (d)
17 will not resolve the complaint, the department shall issue an
18 order and a demand for compliance.

19 (f) If the department issues an order that finds that an
20 employer has violated the requirements of this chapter, the
21 department may prescribe relief as provided under this chapter.



1 § -24 **Appeal and hearing.** (a) Upon appeal by the
2 employer, the order issued by the department shall be subject to
3 a de novo review by a hearings officer appointed by the
4 director.

5 (b) The hearings officer shall schedule a contested case
6 hearing that shall be heard in accordance with chapter 91.

7 (c) At any time after the filing of an appeal under
8 subsection (a), but before the hearing, the hearings officer may
9 hold a prehearing conference with the parties or their
10 representatives.

11 (d) If a hearing is held as provided under subsection (b),
12 the hearings officer shall issue a decision and grant relief as
13 provided under this chapter.

14 (e) Any person aggrieved by the decision of the hearings
15 officer shall be entitled to judicial review as provided by
16 section 91-14.

17 (f) The hearings officer may administer oaths, take or
18 cause to be taken depositions of witnesses, and may issue
19 subpoenas to compel the attendance and testimony of witnesses or
20 the production of records, payrolls, correspondence, documents,
21 or other material relating to any matter to be heard.



1 § -25 Civil action. (a) If an employer fails or
2 neglects to comply with the:
3 (1) Final order of the department from which no appeal has
4 been taken as provided by this chapter; or
5 (2) Final decision of the hearings officer,
6 the department or the affected employee may apply to any court
7 of competent jurisdiction to enforce the provisions of the final
8 order or decision and for any other appropriate relief. In any
9 proceeding to enforce the provisions of the final order or
10 decision, the department or the affected employee need only file
11 with the court proof that a certified copy of the final order or
12 decision was served. In the case of the final decision, proof
13 that the notice of hearing was given must also be filed with the
14 court.
15 (b) Any action to enforce this chapter, or to recover
16 damages or equitable relief prescribed by this chapter, may be
17 maintained in any court of competent jurisdiction by any one or
18 more employees for and on behalf of the employee or employees,
19 or the employee or employees may designate an agent or
20 representative to maintain the action.



1 (c) In any action brought under this chapter, the court
2 shall allow, in addition to any judgment awarded to the
3 plaintiff, costs of action, including fees of any nature, and
4 reasonable attorney's fees to be paid by the defendant.

5 § -26 Remedies. (a) In addition to all employment
6 terms and benefits provided under section -8, remedies
7 prescribed and ordered by the department or the court under this
8 chapter may include any legal, equitable, and other relief the
9 department or court deems appropriate.

10 (b) Relief under this section may include:

11 (1) The amount of any wages, salary, employment benefits,
12 or other compensation denied or lost to the employee
13 by reason of the violation; or

14 (2) In a case in which wages, salary, employment benefits,
15 or other compensation have not been denied or lost to
16 the employee, any actual monetary losses sustained by
17 the employee as a direct result of the violation, such
18 as the cost of providing care, up to a sum equal to
19 twelve months of wages or salary for the employee.

20 (c) An employer may be liable for an additional amount as
21 liquidated damages equal to the sum of the applicable amount in



1 subsection (b) (1) and (2); provided that if an employer who has
2 violated this chapter proves to the satisfaction of the
3 department or court that the act or omission that violated this
4 chapter was in good faith and that the employer had reasonable
5 grounds for believing that the act or omission was not a
6 violation of this chapter, the department or the court may
7 reduce the amount of the liability to the applicable amount
8 determined under subsection (b) (1) or (2).

9 **§ -27 Notice of right to sue and employee remedies. (a)**
10 The department may issue a notice of right to sue. Within
11 ninety days after the receipt of a notice of right to sue, the
12 complainant may bring a civil action under this chapter. The
13 department may intervene in a civil action brought pursuant to
14 this chapter if the case is of general importance.

15 (b) An action by an employee to enforce the provisions of
16 this chapter may be maintained in any court of competent
17 jurisdiction by any one or more employees for and in behalf of
18 oneself or themselves, or the employee or employees may
19 designate an agent or representative to maintain the action.

20 (c) The court in any action brought under this section, in
21 addition to any judgment awarded to the plaintiff or plaintiffs,



1 shall allow costs of action, including costs of fees of any
2 nature, and reasonable attorney's fees, to be paid by the
3 defendant.

4 (d) The court may also provide injunctive relief in
5 appropriate circumstances.

6 § -28 **Compliance review.** The department may investigate
7 whether the terms of an agreement, settlement, order, or
8 decision are being complied with by the employer. If the
9 employer is not in compliance, the department shall take
10 appropriate action as provided under this chapter.

11 § -29 **Penalty.** Any employer who intentionally resists,
12 prevents, impedes, or interferes with the department in the
13 performance of duties pursuant to this chapter, or who in any
14 manner intentionally violates this chapter, shall be guilty of a
15 petty misdemeanor."

16 SECTION 2. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 3. This Act shall take effect on January 1, 2021.

20



H.B. NO. 1652

INTRODUCED BY:

Ray A. Alford

JAN 13 2020



H.B. NO. 1652

Report Title:

Caregivers; Paid Leave

Description:

Requires certain employers to provide employees with 12 months of paid caregiving leave during any calendar year to care for the employee's spouse, civil union partner, reciprocal beneficiary, significant other, relative, friend, or neighbor.

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