

JAN 17 2020

A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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. According to the 2018 Aloha United Way ALICE
4 (Asset Limited Income Constrained Employed) Study, almost half
5 of the families in Hawaii are living paycheck to paycheck.
6 While the Federal Family and Medical Leave Act of 1993 allows
7 twelve weeks of unpaid leave to employees who have worked at a
8 business that employs fifty or more employees, the majority of
9 Hawaii's workforce cannot afford to take unpaid leave to care
10 for a new child or attend to the needs of a family member with a
11 serious health condition. Hawaii law, which offers a modest
12 four-week extension of unpaid leave, is available only to
13 employees of large employers having more than one hundred
14 employees.

15 Only seventeen per cent of workers in the United States
16 have access to paid family leave through their employers.
17 Women, as primary caregivers of infants, children, and elderly



1 parents, are affected disproportionately by the absence of paid
2 family and medical leave. In Hawaii, 247,000 people serve as
3 family caregivers. Hawaii has the fastest growing population
4 over the age of sixty-five in the nation, and that number is
5 expected to grow by eighty-one per cent by the year 2030.
6 Nearly a third of those who need but do not have access to
7 family leave will need the time off to care for an ill spouse or
8 elderly parent.

9 In short, most workers will need family leave at some point
10 to care for family members, but very few can afford it.

11 The purpose of this Act is to ensure that employees in
12 Hawaii are provided family leave insurance benefits during times
13 when they need to provide care for their families.

14 SECTION 2. Chapter 398, Hawaii Revised Statutes, is
15 amended by adding ten new sections to be appropriately
16 designated and to read as follows:

17 "§398- Family leave insurance program. (a) The
18 department shall establish and administer a family leave
19 insurance program and pay family leave insurance benefits as
20 specified in this chapter.



1 (b) The department shall establish procedures and forms
2 for filing claims for family leave insurance benefits.

3 (c) The information collected and the files and records
4 retained about a covered individual pursuant to this chapter,
5 including the existence of a claim, shall be confidential and
6 shall not be open to inspection; provided that:

7 (1) An employee that applied for family leave insurance
8 benefits or that employee's representative, upon
9 presentation of an authorization signed by the
10 employee to the department, shall be allowed to review
11 any information, files, and records obtained by the
12 department;

13 (2) A public employee acting within the scope of the
14 public employee's official duties shall be permitted
15 to review the minimum necessary information, files,
16 and records to accomplish the public employee's
17 purpose for reviewing the information, files, and
18 records; and

19 (3) The department shall notify an employee's employer
20 that an employee filed a claim pursuant to this



1 chapter within _____ days after the claim has been
2 filed.

3 §398- Notice to employers. (a) An employer may require
4 an eligible employee to give the employer written notice at
5 least thirty days before commencing a period of family leave,
6 medical leave or safe leave.

7 (b) An eligible employee may commence leave without thirty
8 days advance notice if the leave is not foreseeable, as in
9 circumstances including but not limited to:

10 (1) An unexpected serious health condition of the employee
11 or a family member of the employee; or

12 (2) A premature birth, unexpected adoption or unexpected
13 foster placement by or with the employee.

14 (c) If an eligible employee commences leave without prior
15 notice under subsection (b) of this section, the employee must
16 give oral notice to the employer within twenty-four hours of the
17 commencement of the leave and must provide the written notice
18 required under subsection (a) of this section within three days
19 after the commencement of leave.

20 §398- Employment protection; retaliation prohibited.

21 After returning to work after a period of family leave, an



1 eligible employee is entitled to be restored to the position of
2 employment held by the employee when the leave commenced, if
3 that position still exists, without regard to whether the
4 employer filled the position with a replacement worker during
5 the period of leave. If the position held by the employee at
6 the time leave commenced no longer exists, the employee is
7 entitled to be restored to any available equivalent position
8 with equivalent employment benefits, pay and other terms and
9 conditions of employment.

10 §398- Family leave insurance fund; family leave
11 insurance benefits. (a) There is established an insurance fund
12 to be known as the family leave insurance fund. The family
13 leave insurance fund shall be used to provide a covered
14 individual with up to sixteen weeks per calendar year of paid
15 family leave.

16 (b) The family leave insurance fund shall consist of
17 employer and employee contributions based on the employee's
18 average weekly wage, interest earned, income, dividends,
19 refunds, rate credits, and other returns received by the fund.
20 The taxable rate of the contribution shall be in accordance with



1 the contribution rate to the temporary disability insurance
2 fund.

3 (c) The family leave insurance fund shall be under the
4 control of and administered by the department. Any and all sums
5 contributed or paid from any source to the family leave fund,
6 and all assets of the fund including any and all interest and
7 earnings of the same, shall be held by the department for the
8 exclusive use and benefit of the employee-beneficiaries. The
9 fund shall be used to finance benefits, administration,
10 outreach, and education or study of family leave insurance. The
11 fund shall not be subject to appropriation for any other
12 purpose.

13 §398- Eligibility for payment of benefits. Family leave
14 insurance benefits are payable to:

15 (a) An employed covered individual; or

16 (b) An unemployed covered individual who meets one of the
17 following requirements:

18 (1) Because of birth, adoption, or placement through
19 foster care, is caring for a new child during the
20 first year after the birth, adoption, or placement;



1 (2) Is caring for a family member with a serious health
2 condition;

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

5 (4) Has a qualifying exigency.

6 §398- Report to the legislature. Beginning July 1,
7 2020, the department shall report to the legislature no later
8 than twenty days prior to the convening of each regular session
9 on outreach efforts, projected and actual program participation,
10 including the percentage of covered employees who received
11 family leave insurance benefits, the premium rates, and fund
12 balances.

13 §398- Outreach and education. The department shall
14 conduct a public outreach and education campaign to inform
15 employees and employers regarding the availability of family
16 leave insurance benefits. The department may use a portion of
17 the funds collected for the family leave insurance program in a
18 given year to pay for the public education program, but no more
19 than per cent per year or \$ per year, whichever
20 is greater. Outreach information shall be available in English
21 and other languages spoken within the State.



1 §398- Coverage of self-employed. (a) A self-employed
2 person, including a sole proprietor, partner, or joint venture
3 partner, shall be permitted to elect coverage under this chapter
4 by filing a notice of election in writing with the director, as
5 required by the department, as follows:

6 (1) A self-employed person shall be permitted to elect
7 coverage under this chapter for an initial period of
8 not less than three years; and

9 (2) A self-employed person shall be permitted to elect no
10 less than an additional year of coverage following the
11 initial three-year period.

12 The election shall take effect on the date of filing the notice.

13 (b) A self-employed person who has elected coverage may
14 withdraw from coverage within thirty days after the end of the
15 three-year period of coverage, or at other times as the director
16 may prescribe by rule, by filing a notice in writing with the
17 director, as required by the department. The withdrawal shall
18 take effect no sooner than thirty days after filing the notice.

19 §398- Wage withholding. (a) An employer may deduct and
20 withhold contributions from each employee of up to one-half the
21 cost of providing family leave insurance benefits, and the



1 employer shall provide for the remaining cost over the amount of
2 contributions of the employer's employees.

3 (b) If there is a dispute between the employee and the
4 employer relating to the withholding of wages as contributions
5 for family leave insurance benefits, either party may file a
6 petition for determination of the amount to be withheld with the
7 director. The matter shall be determined by the department. If
8 either an employer or employee is dissatisfied with the
9 department's determination, the aggrieved party shall be able to
10 petition for redetermination and thereupon the petition shall be
11 transferred to the referee.

12 §398- Weekly benefit amount. (a) The weekly benefit
13 amount shall be calculated as follows:

- 14 (1) If the individual's average weekly wage is fifty per
15 cent or less of the state average weekly wage, the
16 individual's weekly benefit is ninety per cent of the
17 individual's average weekly wage;
- 18 (2) If the individual's average weekly wage is more than
19 fifty per cent and less than one hundred per cent of
20 the state average weekly wage, the individual's weekly



1 benefit is seventy-five per cent of the individual's
2 average weekly wage; or

3 (3) If the individual's average weekly wage is one hundred
4 per cent or more of the state average weekly wage, the
5 individual's weekly benefit is fifty per cent of the
6 individual's average weekly wage.

7 (b) In no case shall the weekly benefit amount exceed the
8 maximum weekly benefit amount of \$1,000.00."

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

11 1. By adding five new definitions to be appropriately
12 inserted and to read:

13 "Covered individual" means any person who:

14 (1) Is an employee, or is currently unemployed but has
15 been an employee within the last twenty-six weeks;

16 (2) Meets the requirements set forth in section 392-25 and
17 the requirements in the rules implemented pursuant to
18 this chapter; and

19 (3) Submits an application for family leave insurance
20 benefits to the department.



1 "Designated person" means a family member designated by a
2 covered individual for whom the covered individual will provide
3 care under this chapter if the family member has a serious
4 health condition.

5 "Family leave insurance benefits" means the benefits
6 provided pursuant to this chapter.

7 "Family member" means a child, parent, person to whom the
8 covered individual is legally married under the laws of any
9 state, a biological, foster, or adopted sibling, or the spouse
10 or reciprocal beneficiary of a sibling, or a reciprocal
11 beneficiary.

12 "Qualifying exigency" means a circumstance arising from a
13 notice of deployment of a service member, received within seven
14 days of deployment, or mandatory attendance of military events
15 or related activities by the covered individual or the covered
16 individuals' family member that requires the covered individual
17 to:

- 18 (1) Provide child care or attendance of school activities,
19 if due directly or indirectly to the active duty call
20 or active duty status of a service member;



- 1 (2) Make financial or legal arrangements for a service
2 member's absence or as a result of the service
3 member's absence;
- 4 (3) Attend counseling provided by someone other than a
5 health care provider if the need for counseling arises
6 from the active duty call or active duty of a service
7 member; or
- 8 (4) Spend up to five days with a service member for each
9 instance of short-term, temporary rest and
10 recuperation leave during a period of deployment."

11 2. By amending the definition of "child" to read:
12 "Child" means an individual who is a biological, adopted,
13 or foster son or daughter; a stepchild; ~~[or]~~ a legal ward of ~~[an~~
14 ~~employee.]~~ a covered individual; a child of a reciprocal
15 beneficiary; a grandchild; or a child of a covered individual
16 who stands in loco parentis; or a hanai parent."

17 3. By amending the definition of "employer" to read:
18 "Employer" means any individual or organization, including
19 the State, any of its political subdivisions, any
20 instrumentality of the State or its political subdivisions, any
21 partnership, association, trust, estate, joint stock company,



1 insurance company, or corporation, whether domestic or foreign,
2 or receiver or trustee in bankruptcy, or the legal
3 representative of a deceased person, who employs one [hundred]
4 or more employees for each working day during each of twenty or
5 more calendar weeks in the current or preceding calendar year."

6 4. By amending the definition of "parent" to read:

7 "Parent" means a biological, foster, or adoptive parent, a
8 parent-in-law, a stepparent, a legal guardian, a grandparent,
9 ~~[or]~~ a grandparent-in-law[-], a parent or grandparent of a
10 reciprocal beneficiary, or a person who stands in loco parentis
11 for a minor child."

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

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

15 "(a) ~~[An employee]~~ A covered individual shall be entitled
16 to a total of ~~[four]~~ sixteen weeks of family leave during any
17 calendar year:

18 ~~[(1) Upon the birth of a child of the employee or the~~
19 ~~adoption of a child, or~~



1 ~~(2) To care for the employee's child, spouse, reciprocal~~
2 ~~beneficiary, sibling, or parent with a serious health~~
3 ~~condition.]~~

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

8 (2) To care for a covered individual's family member with
9 a serious health condition."

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

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

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

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



1 ~~period of leave added to attain the four week total may be~~
2 ~~unpaid.] An employer who provides paid family leave beyond what
3 is required by this chapter may require that the leave run
4 concurrently with the sixteen weeks required under this chapter,
5 but shall not require the leave to be applied against accrued
6 sick or vacation hours.~~

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

12 ~~[(c) An employer who provides sick leave for employees~~
13 ~~shall permit an employee to use the employee's accrued and~~
14 ~~available sick leave for purposes of this chapter; provided that~~
15 ~~an employee shall not use more than ten days per year for this~~
16 ~~purpose, unless an express provision of a valid collective~~
17 ~~bargaining agreement authorizes the use of more than ten days of~~
18 ~~sick leave for family leave purposes. Nothing in this section~~
19 ~~shall require an employer to diminish an employee's accrued and~~
20 ~~available sick leave below the amount required pursuant to~~
21 ~~section 392 41; provided that any sick leave in excess of the~~



1 ~~minimum statutory equivalent for temporary disability benefits~~
2 ~~as determined by the department may be used for purposes of this~~
3 ~~chapter.]~~

4 (c) No assignment, pledge, or encumbrance of any right to
5 benefits that are or may become due or payable under this
6 chapter shall be valid; and the rights to benefits shall be
7 exempt from levy, execution, attachment, garnishment, or any
8 other remedy whatsoever provided for the collection of debt. No
9 waiver of any exemption in this section shall be valid.

10 (d) Nothing in this chapter shall prevent a biological
11 mother who is receiving temporary disability benefits for
12 recovery from childbirth from applying for and receiving paid
13 family leave for the purpose of caregiving and bonding with her
14 child after the temporary disability time period has lapsed.
15 For family leave purposes, there shall be no waiting period for
16 benefits to begin.

17 (e) Benefits under the Family and Medical Leave Act of
18 1993 shall run concurrently with benefits under this chapter."

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



1 "(a) Any individual claiming to be aggrieved by an alleged
2 unlawful act under this chapter, including the denial of family
3 leave insurance benefits, may file with the department a
4 verified complaint in writing."

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

7 "(d) If the department determines after investigation that
8 this chapter has been violated[7] by an employer, the department
9 shall inform the employer and endeavor to remedy the violation
10 by informal methods, such as conference or conciliation. If the
11 department determines that family medical leave insurance
12 benefits have been wrongfully withheld, the department shall
13 order immediate payment to the employee found to be entitled to
14 those benefits."

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

17 "(a) Upon appeal by a complainant by the employer, the
18 order issued by the department shall be subject to a de novo
19 review by a hearings officer appointed by the director."

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



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

2 (1) The amount of any family leave insurance benefits,
3 wages, salary, employment benefits, or other
4 compensation denied or lost to the employee by reason
5 of the violation; or

6 (2) In a case in which family leave insurance benefits,
7 wages, salary, employment benefits, or other
8 compensation have not been denied or lost to the
9 employee, any actual monetary losses sustained by the
10 employee as a direct result of the violation, such as
11 the cost of providing care, up to a sum equal to four
12 weeks of wages or salary for the employee."

13 SECTION 10. Section 398-2, Hawaii Revised Statutes, is
14 repealed.

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

18 SECTION 11. The department shall establish rules pursuant
19 to chapter 91 to implement the purposes of this Act.

20 SECTION 12. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$300,000 or so much



1 thereof as may be necessary for fiscal year 2020-2021 for the
2 purpose of hiring and employing an administrator, administrative
3 assistant, and an accountant to perform functions relating to
4 the administration of the family leave trust fund, including the
5 oversight of payroll deductions, administrative processes, and
6 payment to eligible employees.

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

9 SECTION 13. This Act does not affect rights and duties
10 that matured, penalties that were incurred, and proceedings that
11 were begun before its effective date.

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

14 SECTION 15. This Act shall take effect on July 1, 2020.

15

INTRODUCED BY: 



S.B. NO. 2491

Report Title:

Family Leave Insurance; Appropriation

Description:

Provides family leave insurance benefits and extends period of family leave to sixteen weeks for businesses that employs one or more employees who meet the hourly qualifications.

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

