
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 do not receive adequate support during times of
3 caregiving and illness. According to the 2018 Aloha United Way
4 ALICE (Asset Limited Income Constrained Employed) Study, almost
5 half 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, who are often the primary caregivers of infants,



1 children, and elderly parents, are affected disproportionately
 2 by the absence of paid family and medical leave. In Hawaii,
 3 247,000 people serve as family caregivers. Hawaii has the
 4 fastest growing population over the age of sixty-five in the
 5 nation, and that number is expected to grow by eighty-one per
 6 cent by the year 2030. Nearly a third of those who need but do
 7 not have access to family leave will need the time off to care
 8 for an ill spouse or 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 who 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
4 require an eligible employee to give the employer written notice
5 at 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), the employee shall give oral notice
16 to the employer within twenty-four hours of the commencement of
17 the leave and shall provide the written notice required under
18 subsection (a) within three days after the commencement of
19 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 the 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. All sums
5 contributed or paid from any source to the family leave fund,
6 and all assets of the fund including all interest and earnings,
7 shall be held by the department for the exclusive use and
8 benefit of the employee-beneficiaries. The fund shall be used
9 to finance benefits, administration, outreach, and education or
10 study of family leave insurance. The fund shall not be subject
11 to appropriation for any other purpose.

12 §398- Eligibility for payment of benefits. Family
13 leave insurance benefits are payable to an:

14 (1) Employed covered individual; or

15 (2) Unemployed covered individual who meets one of the
16 following requirements:

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



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

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

5 (D) Has a qualifying exigency.

6 §398- Report to the legislature. Beginning July 1,
7 2021, the department shall submit an annual report to the
8 legislature no later than twenty days prior to the convening of
9 each regular session on any outreach efforts, projected and
10 actual program participation including the percentage of covered
11 employees who received family leave insurance benefits, premium
12 rates, and fund 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 in a given year for the family leave
18 insurance program to pay for the public education program;
19 provided that the department shall use no more than per
20 cent per year or \$ per year, whichever is greater, for
21 the public education program. Outreach information shall be



1 available in English and other languages spoken within the
2 State.

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

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

11 (2) A self-employed person shall be permitted to elect no
12 less than one additional year of coverage following
13 the initial coverage period.

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

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



1 §398- Wage withholding. (a) An employer may deduct
2 and withhold contributions from each employee of up to one-half
3 the cost of providing family leave insurance benefits, and the
4 employer shall provide for the remaining cost over the amount of
5 contributions of the employer's employees.

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

15 §398- Weekly benefit amount. (a) The weekly benefit
16 amount shall be calculated as follows:

17 (1) If the individual's average weekly wage is fifty per
18 cent or less of the state average weekly wage, the
19 individual's weekly benefit shall be ninety per cent
20 of the individual's average weekly wage;



1 (2) If the individual's average weekly wage is more than
2 fifty per cent and less than one hundred per cent of
3 the state average weekly wage, the individual's weekly
4 benefit shall be seventy-five per cent of the
5 individual's average weekly wage; or

6 (3) If the individual's average weekly wage is one hundred
7 per cent or more of the state average weekly wage, the
8 individual's weekly benefit shall be fifty per cent of
9 the individual's average weekly wage.

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

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

14 1. By adding five new definitions to be appropriately
15 inserted and to read:

16 "Covered individual" means any person who:

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

19 (2) Meets the requirements set forth in section 392-25 and
20 the requirements in the rules implemented pursuant to
21 this chapter; and



1 (3) Submits an application for family leave insurance
2 benefits to the department.

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

7 "Family leave insurance benefits" means the benefits
8 provided pursuant to this chapter.

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

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



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

14 2. By amending the definition of "child" to read:

15 "Child" means an individual who is a biological, adopted,

16 or foster son or daughter; a stepchild; ~~[or]~~ a legal ward of ~~[an~~

17 ~~employee.]~~ a covered individual; a child of a reciprocal

18 beneficiary; a grandchild; or a child of a covered individual

19 who stands in loco parentis; or a hanai parent."

20 3. By amending the definition of "employer" to read:



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

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

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

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

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

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



1 ~~[-(1) Upon the birth of a child of the employee or the~~
2 ~~adoption of a child; or~~

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

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

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

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

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

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

18 "**§398-4 Unpaid leave permitted; relationship to paid**
19 **leave; sick leave.** (a) Pursuant to section 398-3, [an
20 ~~employee]~~ a covered individual shall be entitled to ~~[four]~~
21 sixteen weeks of family leave. ~~[The family leave shall consist~~



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

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

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



1 ~~shall require an employer to diminish an employee's accrued and~~
2 ~~available sick leave below the amount required pursuant to~~
3 ~~section 392-41; provided that any sick leave in excess of the~~
4 ~~minimum statutory equivalent for temporary disability benefits~~
5 ~~as determined by the department may be used for purposes of this~~
6 ~~chapter.]~~

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

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

20 (e) Benefits under the Family and Medical Leave Act of
21 1993 shall run concurrently with benefits under this chapter."



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

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

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

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

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

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



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

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

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

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

15 SECTION 10. Section 398-2, Hawaii Revised Statutes, is
16 repealed.

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



1 SECTION 11. The department shall establish rules pursuant
2 to chapter 91, Hawaii Revised Statutes, to implement the
3 purposes of this Act.

4 SECTION 12. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$ or so much
6 thereof as may be necessary for fiscal year 2020-2021 for the
7 purpose of hiring and employing an administrator, administrative
8 assistant, and an accountant to perform functions relating to
9 the administration of the family leave insurance program,
10 including the oversight of payroll deductions, administrative
11 processes, and payment to eligible employees.

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

14 SECTION 13. This Act does not affect rights and duties
15 that matured, penalties that were incurred, and proceedings that
16 were begun before its effective date.

17 SECTION 14. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 15. This Act shall take effect on July 1, 2050.



Report Title:

Family Leave Insurance Program; Appropriation

Description:

Provides family leave insurance benefits and extends period of family leave to 16 weeks for businesses that employs one or more employees who meet the hourly qualifications. Appropriates funds. Effective 7/1/2050. (SD2)

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

