
A BILL FOR AN ACT

RELATING TO PAID FAMILY LEAVE.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

PAID FAMILY AND MEDICAL LEAVE

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Application year" means the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family and medical leave insurance benefits.

"Covered individual" means:

(1) Any person who:

(A) Meets the monetary eligibility criteria set forth in section 383-29(a)(5)(C); provided that for purposes of determining eligibility the term



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- 1 "individual's weekly benefit amount" means the
2 weekly benefit amount under section 383-22; or
3 (B) Is self-employed, elects coverage and meets the
4 requirements of section -13;
5 (2) Meets the administrative requirements outlined in this
6 chapter and in rules adopted thereunder; and
7 (3) Submits an application.
8 "Department" means the department of labor and industrial
9 relations.
10 "Director" means the director of labor and industrial
11 relations.
12 "Domestic partner" means a person at least eighteen years
13 of age who:
14 (1) Is dependent upon the covered individual for support
15 as shown by either unilateral dependence or mutual
16 interdependence that is evidenced by a nexus of
17 factors including but not limited to:
18 (A) Common ownership of real or personal property;
19 (B) Common householding;
20 (C) Children in common;
21 (D) Signs of intent to marry;



(E) Shared budgeting; and

(F) The length of the personal relationship with the covered individual; or

(2) Has registered as the domestic partner of the covered individual with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town or village in the United States.

"Employee" includes any individual employed by an employer.

"Employer" shall have the same meaning as that term is defined in section 387-1.

"Family and medical leave insurance benefits" means the benefits provided under the terms of this chapter.

"Family member" means:

(1) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the covered individual stands in loco parentis;

(2) A biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or a covered individual's spouse or domestic partner or a person



1 who stood in loco parentis when the covered individual
2 or the covered individual's spouse or domestic partner
3 was a minor child;

4 (3) A person to whom the covered individual is legally
5 married under the laws of any state, or a domestic
6 partner of a covered individual;

7 (4) A grandparent, grandchild or sibling (whether a
8 biological, foster, adoptive or step relationship) of
9 the covered individual or the covered individual's
10 spouse or domestic partner; or

11 (5) Any other individual with whom the covered individual
12 has a significant personal bond that is or is like a
13 family relationship, regardless of biological or legal
14 relationship.

15 "Health care provider" means any person licensed under
16 federal or State law to provide medical or emergency services,
17 including but not limited to doctors, nurses, and emergency room
18 personnel, or certified midwives.

19 "Next of kin" shall have the same meaning as that term is
20 defined in section 101(17) of the federal Family and Medical
21 Leave Act (29 U.S.C. 2611(17)).



1 "Qualifying exigency" means leave based on a need arising
2 out of a covered individual's family member's active duty
3 service or notice of an impending call or order to active duty
4 in the armed forces, including but not limited to providing for
5 the care or other needs of the military member's child or other
6 family member, making financial or legal arrangements for the
7 military member, attending counseling, attending military events
8 or ceremonies, spending time with the military member during a
9 rest and recuperation leave or following return from deployment
10 or making arrangements following the death of the military
11 member.

12 "Qualifying service member" means:

13 (1) A member of the armed forces, including a member of
14 the national guard or reserves, who is:

15 (A) Undergoing medical treatment, recuperation, or
16 therapy;

17 (B) Otherwise in outpatient status; or

18 (C) Is otherwise on the temporary disability retired
19 list for a serious injury or illness that was
20 incurred by the member in the line of duty on
21 active duty in the armed forces, or a serious



1 injury or illness that existed before the
2 beginning of the member's active duty and was
3 aggravated by service in the line of duty on
4 active duty in the armed forces; or

5 (2) A former member of the armed forces, including a
6 former member of the national guard or reserves, who
7 is undergoing medical treatment, recuperation, or
8 therapy for a serious injury or illness that was
9 incurred by the member in line of duty on active duty
10 in the armed forces, or a serious injury or illness
11 that existed before the beginning of the member's
12 active duty and was aggravated by service in line of
13 duty on active duty in the armed forces and manifested
14 before or after the member was discharged or released
15 from service.

16 "Retaliatory personnel action" means denial of any right
17 guaranteed under this chapter, including but not limited to any
18 threat, discharge, suspension, demotion, reduction of hours, any
19 other adverse action against an employee for the exercise of any
20 right guaranteed in this chapter, or reporting or threatening to
21 report an employee's suspected citizenship or immigration status



1 or the suspected citizenship or immigration status of a family
2 member of the employee to a federal or state agency.

3 "Retaliatory personnel action" includes interference with or
4 punishment for, in any manner, participating in or assisting an
5 investigation, proceeding, or hearing under this chapter.

6 "Serious health condition" is an illness, injury,
7 impairment, pregnancy, recovery from childbirth, or physical or
8 mental condition that involves inpatient care in a hospital,
9 hospice, or residential medical care facility, or continuing
10 treatment by a health care provider.

11 "State average weekly wage" shall have the same meaning as
12 that term is defined in section 386-1.

13 § -2 **Eligibility of benefits.** Beginning
14 January 1, 2024, family and medical leave insurance benefits
15 shall be payable to an individual who:

16 (1) Qualifies as a covered individual; and

17 (2) Meets one of the following requirements:

18 (A) 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
21 placement;



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

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

(D) Has a qualifying exigency.

§ -3 Duration of benefits. (a) The maximum number of weeks during which family and medical leave insurance benefits are payable in an application year shall be sixteen weeks.

(b) The first payment of benefits shall be made to an individual within two weeks after the claim is filed and subsequent payments shall be made every two weeks thereafter.

§ -4 Amount of benefits. (a) The weekly benefit shall be calculated based on the covered individual's average weekly wage during the twelve months preceding submission of the application or the average weekly wage during the time the covered individual worked, if less than twelve months.

(b) The benefit amount shall be as follows:

(1) If the covered individual's average weekly wage is equal to or less than one-half of the state average weekly wage, then the benefit amount is equal to



1 ninety per cent of the covered individual's average
2 weekly wage; and

3 (2) If the covered individual's average weekly wage is
4 greater than one-half of the state average weekly
5 wage, then the benefit amount is the sum of:

6 (A) Ninety per cent of one-half of the state average
7 weekly wage; and

8 (B) Fifty per cent of the difference of the covered
9 individual's average weekly wage and one-half of
10 the state average weekly wage.

11 (c) Family and medical leave insurance benefits shall not
12 payable for less than eight hours of family and medical leave
13 taken in one work week.

14 § -5 **Contributions.** (a) Payroll contributions shall be
15 authorized in order to finance the payment of benefits under the
16 family and medical leave insurance program.

17 (b) Beginning January 1, 2023, payroll contributions shall
18 be paid by employers in an amount to be determined by the
19 department. The department shall be responsible for evaluating
20 and determining on an annual basis the amount of payroll



1 contributions and maximum employer contribution necessary to
2 finance the family and medical leave insurance benefits program.

3 **§ -6 Reduced leave schedule.** (a) A covered individual
4 shall be entitled, at the option of the covered individual, to
5 take paid family and medical leave on an intermittent or reduced
6 leave schedule in which all of the leave authorized under this
7 chapter is not taken sequentially. Family and medical leave
8 insurance benefits for intermittent or reduced leave schedules
9 shall be prorated.

10 (b) The covered individual shall provide the employer with
11 prior notice of the schedule on which the covered individual
12 will be taking the leave, to the extent practicable. Paid
13 family and medical leave taken under this section shall not
14 result in a reduction of the total amount of leave to which an
15 employee is entitled beyond the amount of leave actually taken.

16 (c) Nothing in this section shall be construed to entitle
17 a covered individual to more leave than allowed under
18 section -3.

19 **§ -7 Leave and employment protection.** (a) Any covered
20 individual who exercises the covered individual's right to
21 family and medical leave insurance benefits shall, upon the



1 expiration of that leave, be entitled to be restored by the
2 employer to the position held by the covered individual when the
3 leave commenced, or to a position with equivalent seniority,
4 status, employment benefits, pay, and other terms and conditions
5 of employment, including but not limited to fringe benefits and
6 service credits that the covered individual had been entitled to
7 at the commencement of leave.

8 (b) During any leave taken pursuant to section -2, the
9 employer shall maintain any health care benefits the covered
10 individual had prior to taking such leave for the duration of
11 the leave as if the covered individual had continued in
12 employment continuously from the date the covered individual
13 commenced the leave until the date the family and medical leave
14 insurance benefits terminate; provided that the covered
15 individual shall continue to pay the covered individual's share
16 of the cost of health benefits as required prior to the
17 commencement of the leave.

18 (c) This section shall be enforced as provided in
19 chapter 398.

20 § -8 Retaliatory personnel actions prohibited. (a) It
21 shall be unlawful for an employer or any other person to



1 interfere with, restrain, or deny the exercise of, or the
2 attempt to exercise, any right protected under this chapter.

3 (b) An employer, temporary help company, employment
4 agency, employee organization, or other person shall not take
5 retaliatory personnel action or otherwise discriminate against a
6 person because the person exercised rights protected under this
7 chapter. These rights include but are not limited to the right
8 to request, file for, apply for or use benefits or leave
9 provided for under this chapter; communicate to the employer or
10 any other person or entity an intent to file a claim, a
11 complaint with the department or courts, or an appeal; or
12 testify, plan to testify, or assist in any investigation,
13 hearing, or proceeding under this chapter, at any time,
14 including during the period in which the person receives family
15 and medical leave insurance benefits under this chapter; inform
16 any person about any employer's alleged violation of this
17 chapter; and the right to inform any other person of the other
18 person's rights under this chapter.

19 (c) It shall be unlawful for an employer's absence control
20 policy to count paid family and medical leave taken under this



chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(d) Protections of this section shall apply to any person who mistakenly, but in good faith, alleges violations of this chapter.

(e) This section shall be enforced as provided in chapter 398.

§ -9 Coordination of benefits. (a) Leave taken with wage replacement under this chapter that also qualifies as leave under the federal Family and Medical Leave Act or chapter 398 shall run concurrently with leave taken under the federal Family and Medical Leave Act or chapter 398.

(b) An employer may require that payment made pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give employees written notice of this requirement.

(c) This chapter does not diminish an employer's obligation to comply with any of the following that provide more generous leave:



1 (1) A collective bargaining agreement;

2 (2) An employer policy; or

3 (3) Any other law.

4 (d) An individual's right to leave under this chapter may
5 not be diminished by a collective bargaining agreement entered
6 into or renewed, or an employer policy adopted or retained,
7 after the effective date of this chapter. Any agreement by an
8 individual to waive the individual's rights under this chapter
9 is void as against public policy.

10 § -10 Notice. (a) Each employer shall provide written
11 notice to each employee upon hiring and annually thereafter. An
12 employer shall also provide written notice to an employee when
13 the employee requests leave under this chapter, or when the
14 employer acquires knowledge that an employee's leave may be for
15 a qualifying reason under section -2(2). Such notice shall
16 include:

17 (1) The employee's right to family and medical leave
18 insurance benefits under this chapter and the terms
19 under which the benefits may be used;

20 (2) The amount of family and medical leave insurance
21 benefits;



1 (3) The procedure for filing a claim for benefits;

2 (4) The procedure for selecting a designated person;

3 (5) The right to employment protection and benefits
4 continuation under section -7;

5 (6) That discrimination and retaliatory personnel actions
6 against a person for requesting, applying for or using
7 family and medical leave insurance benefits is
8 prohibited under section -8; and

9 (7) That the employee has a right to file a complaint for
10 violations of this chapter.

11 (b) An employer shall display and maintain a poster in a
12 conspicuous place accessible to employees at the employer's
13 place of business that contains the information required by this
14 section in English, Ilocano, Tagalog, Japanese, and any language
15 that is the first language spoken by at least five per cent of
16 the employer's workforce; provided that the notice has been
17 provided by the department. The director may adopt regulations
18 to establish additional requirements concerning the means by
19 which employers shall provide such notice.



1 (c) Employees shall provide notice to their employers as
2 soon as practicable of their intention to take leave under this
3 chapter.

4 § -11 Appeals. (a) The director shall establish a
5 system for appeals in the case of a denial of family and medical
6 leave insurance benefits. In establishing the system, the
7 director may utilize any and all procedures and appeals
8 mechanisms established under section 383-38.

9 (b) Judicial review of any decision with respect to family
10 and medical leave insurance benefits shall be permitted in a
11 court of competent jurisdiction after an aggrieved party has
12 exhausted all administrative remedies established by the
13 director.

14 (c) The director shall implement procedures to ensure
15 confidentiality of all information related to any claims filed
16 or appeals taken to the maximum extent permitted by applicable
17 laws.

18 § -12 Erroneous payments and disqualifications for
19 benefits. (a) A covered individual shall be disqualified from
20 family and medical leave insurance benefits for one year if the
21 individual is determined by the director to have wilfully made a



1 false statement or misrepresentation regarding a material fact,
2 or wilfully failed to report a material fact, to obtain benefits
3 under this chapter.

4 (b) If family and medical leave insurance benefits are
5 paid erroneously or as a result of wilful misrepresentation, or
6 if a claim for family and medical leave insurance benefits is
7 rejected after benefits are paid, the department may seek
8 repayment of benefits from the recipient. The director shall
9 exercise the director's discretion to waive, in whole or in
10 part, the amount of any payments where the recovery would be
11 against equity and good conscience.

12 § -13 **Elective coverage.** (a) A self-employed person,
13 including a sole proprietor, partner, or joint venturer, may
14 elect coverage under this chapter for an initial period of not
15 less than three years. The self-employed person shall file a
16 notice of election in writing with the director, as required by
17 the department. The election shall become effective on the date
18 of filing the notice. As a condition of election, the self-
19 employed person shall agree to supply any information concerning
20 income that the department deems necessary.



(b) A self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the three-year period of coverage, or at other times as the director may prescribe by rule, by filing written notice with the director. The withdrawal shall take effect no sooner than thirty days after filing the notice.

§ -14 Family and medical leave insurance program. (a)

By January 1, 2023, the department shall establish and administer a family and medical leave insurance program and begin collecting contributions as specified in this chapter. By January 1, 2024, the department shall begin receiving claims and paying family and medical leave insurance benefits as specified in this chapter.

(b) The department shall establish reasonable procedures and forms for filing claims for benefits under this chapter and shall specify the necessary supporting documentation to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition.

(c) The department shall notify the employer within five business days of a claim being filed pursuant to this chapter.



1 (d) The department shall use information sharing and
2 integration technology to facilitate the disclosure of relevant
3 information or records so long as an individual consents to the
4 disclosure as required under state law.

5 (e) Information contained in the files and records
6 pertaining to an individual under this chapter shall be
7 confidential and not open to public inspection, other than to
8 public employees in the performance of their official duties;
9 provided that the individual or an authorized representative of
10 an individual may review the records or receive specific
11 information from the records upon the presentation of the
12 individual's signed authorization.

13 (f) The director shall adopt rules as necessary to
14 implement this chapter.

15 § -15 **Federal income tax.** If the Internal Revenue
16 Service determines that family and medical leave insurance
17 benefits under this chapter are subject to federal income tax,
18 the department shall advise an individual filing a new claim for
19 family and medical leave insurance benefits, at the time of
20 filing the claim, that:



- 1 (1) The Internal Revenue Service has determined that
2 benefits are subject to federal income tax;
- 3 (2) Requirements exist pertaining to estimated tax
4 payments;
- 5 (3) The individual may elect to have federal income tax
6 deducted and withheld from the individual's payment of
7 benefits in the amount specified in the federal
8 internal revenue code; and
- 9 (4) The individual is permitted to change a previously
10 elected withholding status.

11 **§ -16 Family and medical leave trust fund.** (a) There
12 is established in the treasury of the State as a trust fund,
13 separate and apart from all public moneys or funds of the State,
14 a family and medical leave trust fund, which shall be
15 administered by the department exclusively for the purposes of
16 this chapter. All contributions pursuant to this chapter shall
17 be paid into the fund and all benefits payable pursuant to this
18 chapter shall be paid from the fund. All moneys in the fund
19 shall be mingled and undivided.

20 (b) Whenever in the judgment of the director of finance
21 there shall be in the trust fund an amount of funds in excess of



1 that amount deemed by director of finance to be sufficient to
2 meet the current expenditures properly payable there from, the
3 director of finance shall have full power to invest, reinvest,
4 manage, contract, sell or exchange investments acquired with the
5 excess funds in the manner prescribed by law.

6 **§ -17 Reports.** Beginning January 1, 2025, the
7 department shall report to the legislature by April 1 of each
8 year on projected and actual program participation by
9 section -2(2) purpose, gender of beneficiary, premium rates,
10 fund balances, outreach efforts, and, for leaves taken under
11 section -2(2)(B), family members for whom leave was taken to
12 provide care.

13 **§ -18 Public education.** The department shall conduct a
14 public education campaign to inform employees and employers
15 regarding the availability of family and medical leave insurance
16 benefits. Outreach information shall be available in English,
17 Ilocano, Tagalog, Japanese, and other languages spoken by more
18 than five per cent of the State's population.

19 **§ -19 Sharing technology.** The department may use state
20 data collection and technology to the extent possible and to
21 integrate the program with existing state policies.



1 § -20 **Severability.** If any provision of this chapter or
2 its application to any person or circumstance is held invalid,
3 the invalidity shall not affect other provisions or applications
4 of the chapter which can be given effect without the invalid
5 provision or application, and to this end the provisions of this
6 chapter are declared to be severable."

7 SECTION 2. The department shall adopt all rules necessary
8 for implementation of this Act within one hundred twenty days
9 after its enactment.

10 SECTION 3. This Act shall take effect upon its approval.

11
INTRODUCED BY:



JAN 27 2021



H.B. NO. 1272

Report Title:

Family and Medical Leave Insurance Program; Family and Medical Leave Insurance Benefits; Department of Labor and Industrial Relations

Description:

By 1/1/2023, requires the department of labor and industrial relations to establish a family and medical leave insurance program and begin collecting payroll contributions to finance payment of benefits. By 1/1/2024, requires the department to start receiving claims and paying benefits under the program. Specifies eligibility requirements and employee protections under the program.

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