



STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

March 18, 2024

To: The Honorable Henry J.C. Aquino, Chair,
The Honorable Sharon Y. Moriwaki, Vice Chair, and
Members of the Senate Committee on Labor and Technology

The Honorable Joy A. San Buenaventura, Chair,
The Honorable, Henry J.C. Aquino, Vice Chair, and
Members of the Senate Committee on Health and Human Services

Date: Monday, March 18, 2024
Time: 3:10 p.m.
Place: Conference Room 224, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 2552 H.D.1 RELATING TO EMPLOYEE BENEFITS

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this proposal that amends the Hawaii Family Leave Law, Chapter 398, Hawaii Revised Statutes, by providing up to eight weeks of additional family leave for the birth of a child who is required to stay in a neonatal intensive care unit (NICU). The additional family leave (up to 8 weeks after discharge from the NICU) shall be equivalent to the duration the child is in a NICU if during the additional period of family leave the employee provides kangaroo care or expresses breast milk for the child. The measure defines "kangaroo care."

II. CURRENT LAW

Chapter 398, HRS, requires employers with one hundred or more employees to provide eligible employees with four weeks of unpaid, job-protected leave for the birth or adoption of a child or to care for a child, spouse, reciprocal beneficiary, sibling, grandchild, or parent with a serious health condition. The employee may elect to substitute any of the employee's accrued paid leaves for any part of the four-week period.

III. COMMENTS ON THE HOUSE BILL

For the birth of a child who is required to stay in a NICU, this measure provides additional family leave of up to eight weeks that starts from the date that the child

is discharged from the NICU so long as the employee provides the child kangaroo care or expresses breast milk. The additional family leave is equivalent to the duration the child is in a NICU up to a maximum of eight weeks. For example, if the child stays in the NICU for two weeks, the employee would be entitled to an additional two weeks of family leave, or a total of 6 weeks of family leave. If the child stays in the NICU for ten weeks, the employee would be entitled to an additional eight weeks of family leave, or a total of twelve weeks of Hawaii family leave.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • TTY (808) 586-8162 • Fax (808) 586-8129

March 18, 2024

TESTIMONY TO THE SENATE COMMITTEES ON LABOR AND TECHNOLOGY AND ON HEALTH AND HUMAN SERVICES

House Bill 2552 HD1 – Relating to Employee Benefits

The Disability and Communication Access Board (DCAB) supports House Bill 2552 HD1 – Relating to Employee Benefits.

This bill extends, under certain conditions, the family leave period for up to eight additional weeks for employees who are unable to perform their employment duties due to the birth of a child who is required to stay in a neonatal intensive care unit. The bill also requires the Civil Rights Commission to amend its rules to include neonatal care as a related medical condition whenever certain phrases are used.

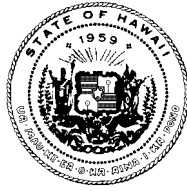
Statistics indicate that only seventeen percent of workers in the United States have access to paid family leave through employers. This gap negatively impacts our residents and can lead to parents making the difficult choice to quit their jobs in order to provide care to their newborn child. There is also a negative impact on businesses that must recruit and train replacement employees.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 16, 2024

TO: The Honorable Senator Henry J.C. Aquino, Chair
Senate Committee on Labor & Technology

The Honorable Senator Joy A. San Buenaventura, Chair
Senate Committee on Health & Human Services

FROM: Cathy Betts, Director

SUBJECT: [HB 2552 HD1](#) – RELATING TO EMPLOYEE BENEFITS.

Hearing: March 18, 2024, 3:10 p.m.
Conference Room 224, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this measure and provides comments. The Department defers to the Hawaii Civil Rights Commission.

Extending the family leave period for employees whose child is required to stay in a neonatal intensive care unit is a prime example of the importance of family leave. However, currently, only one in four private sector workers have access to a single day of paid leave in Hawaii. Low-wage workers have the least access to paid leave and often struggle financially to provide care without losing employment. As we witnessed during the pandemic, working families need support and strong public policies to remain employed and self-sufficient and care for their family members. DHS looks forward to the day when Hawaii will have a paid family leave program available to all residents.

PURPOSE: This bill extends, under certain conditions, the family leave period for up to eight additional weeks for employees who are unable to perform their employment duties due to the birth of a child who is required to stay in a neonatal intensive care unit. Requires the Civil Rights Commission to amend its rules to include neonatal care as a related medical condition whenever certain phrases are used. Effective 7/1/3000. (HD1)

The Committee on Labor & Government Operations (HD1) amended the measure by:

- (1) Changing the effective date to July 1, 3000, to encourage further discussion;
- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Thank you for the opportunity to provide comments on this measure.



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Osa Tui, Jr.
President

Logan Okita
Vice President

Lisa Thompson
Secretary-Treasurer

Ann Mahi
Executive Director

**TESTIMONY TO THE HAWAII SENATE COMMITTEE ON LABOR AND TECHNOLOGY
AND COMMITTEE ON HEALTH AND HUMAN SERVICES**

Item: **HB2552 HD1 - Relating to Employee Benefits**
Position: **Support**
Hearing: **March 18, 2024, 3:00 p.m., Conference Room 224**
Submitter: **Osa Tui, Jr. – President, Hawai'i State Teachers Association**

Chair Aquino, Chair San Buenaventura, Vice Chair Moriwaki, Vice Chair Aquino, and members of the committees,

The Hawai'i State Teachers Association **supports** HB2552 HD1 which extends, under certain conditions, the family leave period for up to eight additional weeks for employees who are unable to perform their employment duties due to the birth of a child who is required to stay in a neonatal intensive care unit and requires the Civil Rights Commission to amend its rules to include neonatal care as a related medical condition whenever certain phrases are used..

It can be quite traumatizing for parents whose child must remain in the ICU after delivery. During this period of time, it is not easy to focus on work while at the same time being in constant worry about the health of one's newborn child.

The Hawai'i State Teachers Association asks your committee to **support** this bill.

To: Senate Committees on Labor and Technology and on Health and Human Services
Re: **HB 2552 HD1 – Relating to Employee Benefits**
Hawai'i State Capitol & Via Videoconference
March 18, 2024, 3:10 PM

Dear Chairs Aquino and San Buenaventura, Vice Chair Moriwaki, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of HB 2552 HD1**. This bill extends, under certain conditions, the family leave period for up to eight additional weeks for employees who are unable to perform their employment duties due to the birth of a child who is required to stay in a neonatal intensive care unit. It also requires the Civil Rights Commission to amend its rules to include neonatal care as a related medical condition whenever certain phrases are used.

Neonatal intensive care is for infants who are born prematurely or have such serious health or developmental issues that that require intensive medical attention. In Hawai'i, the only high-risk neonatal intensive care unit (NICU) is on O'ahu, which means that parents from other islands often must relocate to O'ahu, away from their employment, for the period of time that their babies need NICU care. Even parents on O'ahu often are unable to fulfill their work duties because they need to care for their babies while they are in the NICU.

This bill would amend the Hawaii Family Leave Law¹ to allow parents to receive up to eight weeks of additional unpaid, but protected, time off when their babies are in the NICU, in order to enable parents to provide kangaroo care and/or breast milk expression for their preterm infant during that time. There is much research supporting the benefits of breastfeeding and kangaroo care to babies, mothers, and society.²

This policy is intended to give additional support to parents who face the unique challenge of combining work with caring for an infant who requires neonatal intensive care. The leave provided by this bill would allow more parents to provide such crucial care to their preterm infants.

Mahalo for the opportunity to provide this testimony. Please pass this bill.

Thank you,

Nicole Woo
Director of Research and Economic Policy

¹ <https://labor.hawaii.gov/wsd/hawaii-family-leave/>

² <https://www.hsph.harvard.edu/news/press-releases/mothers-holding-newborns-skin-to-skin-linked-with-lower-death-risk/>



HAWAI‘I CIVIL RIGHTS COMMISSION **KOMIKINA PONO KIWILA O HAWAI‘I**

830 PUNCHBOWL STREET, ROOM 411, HONOLULU, HI 96813 · PHONE: (808) 586-8636 · FAX: (808) 586-8655 · TDD: (808) 586-8692

Monday, March 18, 2024

3:00pm

Conference Room 224 & Videoconference
State Capitol, 415 South Beretania Street

To: The Honorable Henry J.C. Aquino, Chair
The Honorable Sharon Y. Moriwaki, Vice Chair
Members of the Senate Committee on Labor and Technology

The Honorable Joy A. San Buenaventura, Chair
The Honorable Henry J.C. Aquino, Vice Chair
Members of the Senate Committee on Health and Human Services

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 2552, H.D. 1

The Hawai‘i Civil Rights Commission (HCRC) supports the intent of H.B. No. 2552, H.D. 1, with comments. This bill amends Chapter 398, the Family Leave law. It also requires the HCRC to amend its administrative rules to add that “neonatal care is included as a ‘related medical condition’ wherever the phrase ‘pregnancy, childbirth, or related medical condition’ or any similar phrase is used.” The HCRC does not enforce Chapter 398 and expresses concerns that family care obligations, which may include caring for a newborn or an infant in neonatal care, is not a protected class under Hawai‘i Revised Statutes (HRS) § 378 Part I.

As background, the HCRC has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment (Chapter 378, Part I, HRS), housing (Chapter 515, HRS), public accommodations (Chapter 489, HRS), and access to state and state-funded services (HRS § 368-1.5). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the

exercise of their civil rights. Art. I, Sec. 5.

Chapter 378 Part I, HRS, prohibits unlawful discrimination on employment based on sex, which is defined in HRS § 378-1 to include “**pregnancy, childbirth, or related medical conditions.**” This bill amends Chapter 398 but does not amend Chapter 378 Part I over which the HCRC has jurisdiction against the prohibition of discriminatory practices based on sex. At the same time and without any amendment to HCRC’s empowering statutes, the bill requires that the HCRC amend its administrative rules to include “neonatal care is included as a ‘related medical condition’ wherever the phrase ‘pregnancy, childbirth, or related medical condition’ or any similar phrase is used.” Hawai‘i Administrative Rules (HAR) § 12-46-108(d), regarding leave absences available to employees who have pregnancy-related disabilities or pregnancy-related medical conditions, explicitly states in pertinent part that “**Chapter 378, HRS, does not require any employer to grant paid or unpaid child care leave of absence[...].**”

Leave granted to employees under the Family Leave Law (Chapter 398) is distinct and separate from leave granted to employees under the state’s nondiscrimination statutes (Chapter 387 Part I). In employment discrimination law, an extended leave of absence may be a type of reasonable accommodation for pregnancy or disability, however, reasonable accommodations must be tied to the *employee’s* disability or pregnancy-related medical conditions, and is not granted to care for a family member’s medical condition. In contrast, Hawai‘i’s Family Leave Law, found in Chapter 398 that this bill amends, allows an employee to take time off from work to care for a family member, including an infant child, with a serious medical condition. Complaints of violations of Chapter 378 Part I are filed with the HCRC. Complaints of violations of Chapter 398 are filed with the DLIR.

The HCRC has concerns about HCRC’s ability to enforce neonatal care obligations as required by the bill. Respectfully, the HCRC believes that amending its rules to include neonatal care is misplaced without an amendment to Chapter 378, its empowering statute, and proposes the following

changes to section 4 of the bill:

SECTION 4: Section 378-1, Hawaii Revised Statutes, definition for “Because of sex” is amended to read as follows:

"Because of sex" shall include, but is not limited to, because of pregnancy, childbirth, or related medical conditions, which includes neonatal care; and women affected by pregnancy, childbirth, or related medical conditions including neonatal care, shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other individuals not so affected but similar in their ability or inability to work.

The HCRC recognizes the importance of early bonding with newborns, the financial and societal pressure on new parents to return to work, and studies showing that the obligation of childcare disproportionately falling on women. However, reasonable accommodations under the existing statute and administrative rules relate to the pregnancy and pregnancy-related medical conditions and disabilities *of the employee*, not the employee’s infant child who may need extended medical care.

Under current statute and rules, a reasonable period of time for a leave of absence for an employee’s pregnancy-related medical condition under HAR 12-46-108 may actually exceed the number of weeks guaranteed by Chapter 398, dependent on the medical condition of the employee, job duties, and the doctor’s determination. However, nothing in the current statutes or administrative rules within the HCRC’s jurisdiction allows for modification of leave policies to care for a family member with a serious illness for an extended period of time, which is why Hawai’i’s Family Leave Laws, Chapter 398 (and at the federal level FMLA) exists to fill that gap. To expand protection and include neonatal care in our nondiscrimination laws would require an amendment to Chapter 378 Part I before changes to the administrative rules can be made.

For the reasons stated above, the HCRC supports the intent H.B. 2552, H.D. 1, with comments on the inclusion of “neonatal care” within the HCRC’s administrative rules without statutory amendment to Chapter 378 Part I.



P.O. Box 4270 Kaneohe, HI 96744
www.breastfeedinghawaii.org

TO: Senator Joy San Buenaventura, Chair, Senator Henry Aquino, Vice Chair and Committee Members of Health and Human Services

Senator Henry Aquino, Chair and Senator Sharon Moriwaki, Vice Chair and Committee Members of Labor and Technology

FROM: Patricia Bilyk, RN, MPH, MSN, IBCLC (retired)
Breastfeeding Hawaii Board Member and Former Lactation Consultant

RE: HB 2552 HD 1 Relating to Employee Benefits

DATE: Monday, March 18, 2024 3:10PM

Good Afternoon, Senator San Buenaventura and Senator Aquino, and Members of the Committees on Labor and Technology and Health and Human Services. I am Patricia Bilyk, representing Breastfeeding Hawaii and we stand in STRONG SUPPORT of HB 2552 HD1 extending paid family leave for an additional 8 weeks for employees who had a premature birth.

Breastfeeding Hawaii is a 501c3, non profit organization whose mission is to protect, support and promote breastfeeding in the State of Hawaii. We further work to educate the public, businesses and health professionals on the long-term value of breastfeeding to our society, support management of breastfeeding women and convey the importance of longer contact time in the first year of life, between mothers ,fathers and their infants.

We note in our work with families, that if the infant arrives prematurely there is even more disruption of this mother/father/infant bonding time due to possibly long hospitalizations, and continued healing of the mother post delivery. Many women who deliver prematurely have complicating conditions that need to be further addressed for up to a full year after delivery.

We feel it is important that mothers, fathers and infants be together as much as possible to provide kangaroo and skin to skin care during the early months of the infant's life. They also need to have uninterrupted time to frequently pump precious breast milk for the infant's perfect growth, development and quicker discharge from hospital. This cannot happen when the mother needs to return to work early due to a need to have a paycheck, when she is unable to and is still recovering from childbirth.

I personally have seen the need first hand for families to be together when I was a Lactation Consultant at Kapiolani Womens and Childrens Medical Center. I worked daily with families of



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premature infants whose mothers were working to maintain their milk supply, provide their precious milk, bond with their infants and recover from their early childbirth delivery.

We encourage you to pass this bill and further support these families with this change to employee benefits by extending the family leave period for an additional 8 weeks to accommodate employees who need more time to heal post delivery and provide parental care and cherished mothers milk for their infants.

Mahalo for considering our testimony.

HB-2552-HD-1

Submitted on: 3/17/2024 8:37:46 AM

Testimony for LBT on 3/18/2024 3:10:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--|---------------------------|---------------------------|
| Doris Matsunaga | Testifying for Save Medicaid Hawaii | Support | Written Testimony Only |

Comments:

Save Medicaid Hawaii supports HB2552 HD1

HB-2552-HD-1

Submitted on: 3/16/2024 8:38:49 AM

Testimony for LBT on 3/18/2024 3:10:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|-------------------|
| Todd Taniguchi | Individual | Support | Remotely Via Zoom |

Comments:

To the LBT and HHS Chairs and Vice Chairs,

LBT Chair Aquino and LBT Vice Chair Moriwaki

HHS Chair San Buanaventura and HHS Vice Chair Aquino

My wife and I are writing in strong support of this bill as parents of two children who were born prematurely and had extended hospital stays of weeks and months in the neonatal intensive care unit (NICU).

In our view, the bill is should be written to allow parents to begin leave that has three distinct periods:

- 1) Starting with the child's birth and when they begin their NICU stay
- 2) During the child's NICU stay
- 3) Leave after the child's discharge for bonding and adjustment to having a newborn home similar to that leave is available after a normal birth.

Under current leave laws, a mother is allowed 4 weeks after vaginal birth or 6 weeks after a cesarean birth for recovery. Under normal birth conditions where mother and child are both discharged at approximately the same day, this 4 week period is also an important bonding period at home.

However, if, for example, the child is in the NICU for 7 weeks, it is possible that the mother would be required to return to work BOTH prior to discharge AND, once discharged, with no bonding leave available.

Overall, as parents, having time away from work for TWO periods of time would be beneficial:

1. To support the child's development in the NICU. This a daily effort requiring hours each day and week spent at the hospital similar to that of a full time job.

2. To have a period of bonding and post-discharge adjustment. During the post-discharge period, parents are often asked to attend multiple follow-up visits that go above and beyond that required for a typical newborn. Examples include:

1. Additional follow-ups with other specialized care based on the child's condition
2. Getting eye exams to ensure vision has not been impacted by the NICU stay
3. Getting additional vaccines for RSV (respiratory syncytial virus)

While the bill has changed since it's first draft, we continue to agree with the entirety of Section 1 of the legislation. This bill would provide more robust job protection to families during a time of need. If we can make this work, families would feel less pressure to choose between their livelihood and supporting the development of their infant hospitalized in the NICU.

Please note, as amended, this bill pushes through the job protection elements of this proposal but does not offer paid leave due to the requirement of finding a funding mechanism for paid leave. Specifically, if TDI can't be implemented, please consider creating a bridge between the bill as proposed and a long-term solution of providing paid leave through an appropriate funding mechanism (direct funding of Paid Family Leave by the State or leave an option of modifying the TDI program to fund this marginal cost change. It may be feasible as it targets a relatively small group of beneficiaries likely to be in the range of hundreds or perhaps about 1500 families in a year) or approximately 10% of live births are premature in Hawaii.

Why we think this bill is important:

- **Helps parents support the long-term health of their children**
- **May help more women remain in the workforce** with job continuity instead of dropping out or burning out during this period
- **This bill recognizes the 6-8 hours of daily breastmilk expression work that ONLY a mother is able to perform in support of their child:** 6-8 hours per day, every 2-3 hours, expressing breast milk through a pump along with cleaning/sanitization/storage of the equipment and milk, for weeks on end without more than 3 hours of sleep per night. This cannot be outsourced to hospital staff or other family members.
- **Travel burden relief and job security, especially for neighbor island families or those who must drive hours from far outside of Honolulu** - Neighbor island families and those outside of Honolulu on Oahu far from Kapiolani or other NICUs especially need the added financial support and job security. Oahu is the only island in the state with NICUs and breastmilk and kangaroo care require them to be on island and at hospital daily and in person.

- **This has a financial return and lowers healthcare system burden:** Higher rates and consistency of kangaroo care and breast milk expression will lead to better health outcomes and shorter hospital stays.

Mahalo sincerely for your consideration of this bill.

Todd Taniguchi and Vivien Ong

HB-2552-HD-1

Submitted on: 3/12/2024 5:01:00 PM

Testimony for LBT on 3/18/2024 3:10:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Dawn Poiani | Individual | Support | Written Testimony Only |

Comments:

I support HB2552.

As a mother of premature twins, I can confirm that additional leave time is essential for the health and safety of premature twins. Being close and caring newborn babies is an important part and essential to them thriving. It is especially essential for premature infants that require additional support. This is a great bill towards supporting maternity and families.

HB-2552-HD-1

Submitted on: 3/14/2024 10:11:36 AM

Testimony for LBT on 3/18/2024 3:10:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Deb Nehmad | Individual | Support | Written Testimony Only |

Comments:

I stronly support this common sense approach to family leave and urge members to vote in favor.

Mahala

Deb Nehmad