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DIRECTOR

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DEPUTY DIRECTOR

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

February 7, 2023

To: The Honorable Scot Z. Matayoshi, Chair,
The Honorable Andrew Takuya Garrett, Vice Chair, and
Members of the House Committee on Labor & Government Operations

Date: Tuesday, February 7, 2023

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol and Via Video Conference

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

Re: H.B. 1409 RELATING TO EMPLOYEE BENEFITS

I. OVERVIEW OF PROPOSED LEGISLATION

The DLIR **supports the amendments to Chapter 398 (Hawaii Family Leave), HRS, but opposes the amendments to Chapter 392 (Hawaii Temporary Disability Insurance Law), HRS, in this measure.** The purpose of Hawaii Family Leave Law is to provide unpaid, job-protected leave to care for others, while the purpose of Hawaii Temporary Disability Law is for employers to provide partial wage replacement insurance to their eligible workers for a non-work-related injury or sickness.

HB1409 (Sections 6-7) proposes to amend the Hawaii Family Leave Law (Chapter 398, HRS) to provide additional family leave not to exceed twelve weeks for a preterm birth of a child who is required to stay in a neonatal intensive care unit (NICU), or birth of a child who is required to stay in a NICU for more than eight weeks, provided that during the additional period of family leave, the employee provides kangaroo care or expresses breast milk for the child. "Kangaroo care" is defined in §392-3, HRS

HB1409 (Sections 2-5) proposes to amend Hawaii Temporary Disability Insurance Law (Chapter 392, HRS) to:

- Expand the Temporary Disability Insurance (TDI) definition of disability to include an employee providing kangaroo care or expressing breast milk for the employee's child in neonatal intensive care.
- Eliminate the requirement that a person works and earns a minimum amount to qualify for TDI, if the person gives birth or is providing kangaroo

care to or expressing breast milk for the employee's child in a neonatal intensive care (NICU).

- Provide an additional six weeks of TDI benefits while providing kangaroo care to or expressing breast milk for a child born before the thirty-seventh week of pregnancy who is required to stay in a NICU, or for a child required to stay in a NICU for more than eight weeks.

II. CURRENT LAW

Chapter 392, HRS, requires individuals to have worked at least 20 hours per week for 14 weeks and earned \$400 in the year before the individual's own disability to be eligible for TDI. The individual must be disabled due to a non-industrial accident or sickness, pregnancy, termination of pregnancy, or organ donation. Up to 26 weeks of benefits are payable per benefit year. The eligibility requirement and maximum duration of benefits are the same regardless of the type of disability.

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

TDI provides wage replacement for the employee's own illness or injury and not while the employee is providing care to others. The DLIR suggests that the proposed benefits may be better suited for Chapter 398 (Family Leave) instead of Chapter 392 (TDI), which is designed for the employee's own illness or injury (the department supports the intent of the changes in Sections 6 & 7 and not the changes in Sections 2 through 5).

The department notes that the TDI law allows employers to have plans that provide benefits that are "at least as favorable" as the benefits described in the statute. The DLIR uses actuarial tables to assign values to a proposed benefit schedule to determine if the benefit is "at least as favorable." This bill will increase the maximum duration of benefits payable in some situations and will require the actuarial tables to be reviewed and revised to assure the tables incorporate the change to the benefits. The DLIR will require time and funding to hire a contractor for this function.

If the measure moves forward with the TDI amendments, the DLIR notes that a change of the maximum duration of TDI benefits would require an analytical study, including an actuarial component, and an appropriation to procure in the revision of the TDI actuarial tables. The DLIR is willing to participate in assisting an actuarial in these efforts but requests the amendments of the TDI section be delayed for two

years to allow sufficient time for the actuarial study and implementation of those outcomes.

The proposed amendments to Chapter 398 delineate benefits based on the birth status of the child:

1. An employee giving birth to a preterm child who is required to stay in a NICU is entitled to an additional 8 weeks of family leave, and
2. An employee giving birth to a child that is required to stay in a NICU for more than eight weeks is also entitled to an additional 8 weeks of family leave.

No additional family leave would be available for an employee giving birth to a child that is required to stay in a NICU for any period 8 weeks or less, so an employee giving birth to a child that is required to stay in the NICU for 4 to 8 weeks would not be covered under Hawaii Family Leave Law for that period.



Date: February 3, 2023

To: House Committee on Labor and Government Operations (LGO)
Representative Scot Z Matayoshi, Chair
Representative Andrew Takuya Garrett, Vice Chair
And members of the Committee

From: Early Childhood Action Strategy

Re: Support for HB1409, Expanding temporary disability insurance coverage to include parents with newborns in the Neonatal Intensive Care Unit, in order to provide “kangaroo care” and other key supports to those newborns

Early Childhood Action Strategy (ECAS) is a statewide cross-sector collaborative designed to improve the system of care for Hawai‘i’s youngest children and their families. ECAS partners work to align priorities for children prenatal to age eight, streamline services, maximize resources, and improve programs to support our youngest keiki.

ECAS strongly supports passage of HB1409, which would expand temporary disability insurance coverage to include employees needing time away from work due to childbirth, in order to provide kangaroo care, time to express breast milk, and otherwise to provide support to a child required to stay in a neonatal intensive care unit.

in 2020, one in ten babies (or ten per cent of live births) was born preterm in the State, meaning that those births occurred before thirty-seven completed weeks of gestation.

‘Oahu has the only high-risk NICU in the State, resulting in parents from other islands being forced to relocate at significant disruption and expense for an extended period of time. Even for parents on ‘Oahu, it is nearly impossible to maintain full time employment when they are constantly caring for their babies in the NICU.

Best practice for these children in the NICU involves parental “kangaroo care”, meaning continual skin-to-skin contact, which has been found to reduce infant mortality by thirty-six per cent, lower the risk of sepsis or major infection by forty-seven per cent, and reduce the length of stay in the NICU by up to one week.

Given that the cost of an average NICU stay is between \$7,700 to \$8,500 per day in Hawai‘i, the cost of a twelve-week NICU stay could easily exceed \$650,000. Reducing a NICU stay by one week could save an average of \$57,000 per baby. By comparison, the cost of temporary disability insurance for twelve weeks for two parents is less than \$40,000.

For all of these reasons, ECAS strongly supports passage of HB1409.

Thank you for this opportunity to provide testimony **in support of HB1409**.



Hawai'i Children's Action Network Speaks! is a nonpartisan 501c4 nonprofit committed to advocating for children and their families. Our core issues are safety, health, and education.

To: House Committee on Labor & Government Operations

Re: **HB 1409 - Relating to Employee Benefits**

Hawai'i State Capitol and via videoconference

February 7, 2023, 9:00 AM

Dear Chair Matayoshi, Vice Chair Garrett, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of HB 1409, relating to employee benefits**. This bill expands the State's temporary disability insurance (TDI) coverage to employees who are unable to perform their employment duties due to a preterm birth of a child who is required to stay in a neonatal intensive care unit or birth of a child who is required to stay in a neonatal intensive care unit for more than eight weeks.

**HCAN Speaks! Board
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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 allow parents to receive additional paid time off when their infants are in the NICU, ensuring they are no longer in the impossible position of having to choose between keeping their job and spending time with their baby.

There is much research supporting the benefits of breastfeeding and kangaroo care to babies, mothers, and society. The paid leave provided by this bill would allow more parents to provide such care to their preterm infants.

While most working mothers who give birth can get partial pay through Temporary Disability Insurance (TDI) to recover from childbirth, TDI doesn't extend beyond her own recovery time, and TDI can't be used by parents who didn't give birth. This coverage simply isn't adequate for parents of seriously ill or preterm babies.

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.

While the overall cost of this bill would be limited to a small percentage of the births in our state, the benefits would be enormous for those families who would be helped by it. Please pass this bill.

Thank you,

Nicole Woo

Director of Research and Economic Policy

HB-1409

Submitted on: 2/6/2023 10:47:03 PM

Testimony for LGO on 2/7/2023 9:00:00 AM

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

Comments:

Dear Chair Matayoshi, Vice Chair Takuya Garrett and Committee members of the LGO,

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).

We agree with the entirety of Section 1 of the legislation. This bill would provide more robust job protection and financial relief 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.

Why we think this bill is important:

- It helps parents support the long-term health of their children**
- It may help more women remain in the workforce with job continuity instead of dropping out or burning out during this period**
- This bill effectively recognizes the added work that ONLY a mother is being asked 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.**
- Neighbor island families 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 daily and in person.**
- This has a financial return: 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

