
A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

1 SECTION 1. Chapter 392, Hawaii Revised Statutes, is
2 amended by amending its title to read as follows:

3 "FAMILY LEAVE AND TEMPORARY DISABILITY INSURANCE"

4 SECTION 2. Section 392-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~§~~392-1~~§~~ Short title. This chapter shall be known as
7 the "Hawaii Family Leave and Temporary Disability Insurance
8 Law"."

9 SECTION 3. Section 392-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§~~392-2~~§~~ Findings and purpose. [A] The legislature
12 finds that Hawaii's working families do not receive adequate
13 caregiving support while a family member suffers from a serious
14 illness or other health condition.

15 While the federal Family and Medical Leave Act of 1993,
16 P.L. 103-3, and current state law provide for unpaid leave for
17 employees to care for a new child or attend to the needs of a



1 family member having a serious health condition, the majority of
2 Hawaii's workforce cannot afford to take unpaid leave. Only
3 seventeen per cent of workers in the United States have access
4 to paid family leave through their employers. Women, who are
5 often the primary caregivers of infants, children, and elderly
6 parents, are affected disproportionately by the unavailability
7 of paid family leave.

8 The legislature also finds that each year, a large portion
9 of the labor force of this State [annually] is disabled from
10 pursuing gainful employment by reason of nonoccupational
11 sickness or accident, and as a result, suffers serious loss of
12 income. In approximately ten per cent of [the] cases [such],
13 the worker's sickness or accident can be expected to cause a
14 disability [of] that extends for more than one [week's
15 ~~duration.~~] week. More than two-fifths of the employees in
16 private employment have either no fixed legal protection against
17 wage loss from disabling nonoccupational sickness or accident,
18 or [only] protection for only a period of one workweek or less[+
19 ~~more~~]. More than one-third of the workers covered by formal
20 sick leave plans are not protected against disability extending
21 beyond two workweeks.



1 Since the hardship for workers and their families [~~mounts~~]
2 corresponds with [~~the extension of~~] the duration of [~~the~~] a
3 family member's serious illness or the worker's disability [~~from~~
4 ~~whatever cause~~], there is a need to fill the existing gaps in
5 protection and to provide benefits to individuals in current
6 employment that will afford to them reasonable compensation for
7 wage loss caused by caring for a family member's serious health
8 condition or by disabling nonoccupational sickness or accident
9 [~~where the disability is temporary in nature and exceeds the~~
10 ~~period of~~] that results in the worker losing more than one
11 workweek. This legislation is designed not to impede the growth
12 of voluntary plans [~~which~~] that afford additional protection.

13 The purpose of this chapter is to ensure that employees in
14 Hawaii are provided with:

- 15 (1) Leave of absence to care for family members while
16 receiving reasonable compensation for wage loss; and
17 (2) Reasonable compensation for wage loss during the
18 employees' non-work-related temporary disability.

19 This chapter shall be liberally construed in the light of
20 the stated reasons for its enactment and its declared purpose."



1 SECTION 4. Section 392-3, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding six new definitions to be appropriately
4 inserted and to read:

5 "Child" means an individual's biological, adopted, step,
6 or foster son or daughter; or legal ward.

7 "Family leave" means leave of absence taken by an
8 individual in current employment for the purposes set forth in
9 section 392-21(a).

10 "Family member" means an individual's spouse, reciprocal
11 beneficiary, child, parent, sibling, grandparent, grandparent-
12 in-law, or grandchild.

13 "Parent" means an individual's biological, adoptive, step,
14 or foster father or mother; a father- or mother-in-law; or a
15 legal guardian.

16 "Serious health condition" means a physical or mental
17 condition that warrants care by another person during the period
18 of treatment or supervision by a health care provider, and:

19 (1) Involves inpatient care in a hospital, hospice, or
20 residential health care facility; or



1 (2) Requires continuing treatment or continuing
2 supervision by a health care provider.

3 "Sibling" means an individual's biological, adoptive, step,
4 or foster brother or sister."

5 2. By amending the definitions of "benefit year" and
6 "contributions" to read:

7 ""Benefit year" with respect to any individual means the
8 one-year period beginning with the first day of the first week
9 of family leave or disability with respect to which the
10 individual first files a valid claim for [~~temporary disability~~]
11 benefits[+] under this chapter. A subsequent benefit year is
12 the one-year period following a preceding benefit year,
13 beginning either with the first:

14 (1) Day of the first week of family leave or disability
15 with respect to which the individual files a
16 subsequent claim for [~~temporary disability~~]
17 benefits[+] under this chapter; or

18 (2) Workday following the expiration of the preceding
19 benefit year if a serious health condition of the
20 individual's family member or the individual's
21 disability for which [~~temporary disability~~] benefits



1 are payable during the last week of the preceding
2 benefit year continues and the individual is eligible
3 for further benefit payments.

4 "Contributions" means the amounts of money authorized by
5 this chapter to be withheld from employees' wages for the
6 payment of [~~temporary~~] family leave benefits or disability
7 benefits."

8 3. By amending the definition of "weekly benefit amount"
9 to read:

10 "\"Weekly benefit amount\" means the amount payable under
11 this chapter for a period of continuous family leave or
12 disability throughout a calendar week. If the period of family
13 leave or disability or the initial or terminal portion thereof
14 is shorter than a calendar week, the benefit amount payable for
15 that portion shall be the weekly benefit amount multiplied by a
16 factor consisting of a quotient having the number of workdays
17 lost during the portion of the week for the numerator and the
18 number of regular workdays of the employee during a calendar
19 week for the denominator."

20 SECTION 5. Section 392-6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§392-6 Individual in current employment. "Individual in
2 current employment" means:

3 (1) An individual who performed regular service in
4 employment [~~immediately or not longer than~~] within two
5 weeks prior to family leave or the onset of the
6 sickness or to the accident causing disability, and
7 who would have continued in or resumed employment
8 except for [~~such~~] the family leave or disability[-];
9 or

10 (2) An individual who performed regular service in
11 employment [~~immediately or not longer than~~] within two
12 weeks prior to becoming totally disabled from
13 performing the duties of [~~her~~] employment because of
14 pregnancy or termination of pregnancy and who would
15 have continued in or resumed [~~such~~] employment except
16 for [~~such~~] the disability."

17 SECTION 6. Chapter 392, part II, Hawaii Revised Statutes,
18 is amended by amending its title to read as follows:

19 "PART II. FAMILY LEAVE AND TEMPORARY DISABILITY BENEFITS"

20 SECTION 7. Section 392-21, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§392-21 Establishment of family leave, family leave
2 benefits, and temporary disability benefits. (a) Any
3 individual in current employment is entitled to family leave and
4 family leave benefits in the manner and amount provided in this
5 chapter:

6 (1) During the first year after birth of the individual's
7 child, adoption of a child by the individual, or
8 placement of a child with the individual through
9 foster care, to care for the new child; provided that
10 entitlement to family leave benefits shall not be
11 duplicative of disability benefits for disability
12 caused by termination of pregnancy; or
13 (2) To care for the individual's family member having a
14 serious health condition;
15 except that a private employer having fewer than two hundred
16 employees shall not be required to provide family leave and
17 family leave benefits under this chapter, but may do so on a
18 voluntary basis.

19 (b) Any individual in current employment who suffers
20 disability resulting from accident, sickness, pregnancy,
21 termination of pregnancy, or organ donation, except accident or



1 disease connected with or resulting from employment as defined
2 in section 386-3 or any other applicable workers' compensation
3 law, shall be entitled to receive temporary disability benefits
4 in the amount and manner provided in this chapter.

5 ~~[(b)]~~ (c) It is the policy of this chapter that ~~[the]~~:

6 (1) The computation and distribution of benefit payments
7 shall correspond to the greatest extent feasible, to
8 the employee's wage loss due to the employee's family
9 leave or disability; ~~[that-an]~~

10 (2) An employee shall not be entitled to family leave
11 benefits or temporary disability benefits for periods
12 ~~[of disability]~~ during which the employee would not
13 have earned wages from employment according to the
14 schedule of operations of the employee's employer~~[7]~~;
15 and ~~[that-an]~~

16 (3) An employee is entitled to benefits only for periods
17 of family leave or disability during which, but for
18 the family leave or disability, the employee would
19 have earned wages from employment.

20 This policy, however, shall not be applied to terminate the
21 benefits of an employee who is receiving benefits under this



1 chapter for family leave or a disability that commenced while
2 the employee was in current employment, nor shall it be applied
3 to deny benefits under this chapter if a period of family leave
4 or disability that commenced while the employee was in current
5 employment continues into a period during which the employee
6 would earn wages but for the family leave or disability."

7 SECTION 8. Section 392-23, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~{}~~§392-23~~{}~~ Duration of benefit payments. [~~Temporary~~]

10 (a) Family leave benefits and temporary disability benefits
11 shall be payable for any period of family leave or disability
12 following the expiration of the waiting period required in
13 section 392-24.

14 (b) The duration of benefit payments shall not exceed
15 [~~twenty-six~~]:

16 (1) Twenty-six weeks for any period of disability [~~or~~]
17 during any benefit year~~[-]~~;

18 (2) Eight weeks for any period of family leave taken
19 pursuant to section 392-21(a)(1) during the first year
20 after birth of the individual's child, adoption of a



1 child by the individual, or placement of a child with
2 the individual through foster care; and
3 (3) Eight weeks for any period of family leave taken
4 pursuant to section 392-21(a)(2) during any benefit
5 year."

6 SECTION 9. Section 392-24, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§392-24[+] **Waiting period.** No [~~temporary disability~~]
9 benefits shall be payable during the first seven consecutive
10 days of any period of family leave or disability. Consecutive
11 periods of family leave or disability due to the same or related
12 cause and not separated by an interval of more than two weeks
13 shall be considered as a single period of family leave or
14 disability."

15 SECTION 10. Section 392-26, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§392-26 **Care by physician, advanced practice registered**
18 **nurse, or equivalent required.** (a) An individual shall be
19 ineligible to receive [~~temporary disability~~] benefits with
20 respect to any period during which the family member claiming a
21 serious health condition or the individual claiming temporary



1 disability is not under the care of a person duly licensed to
2 practice medicine, surgery, dentistry, chiropractic, osteopathy,
3 or naturopathic medicine, a physician assistant, or an advanced
4 practice registered nurse, who shall certify, in the form and
5 manner specified by rule of the director, the serious health
6 condition of the family member or disability of the claimant,
7 the probable duration [~~of the disability,~~] thereof, and [~~such~~]
8 other medical facts within the person's knowledge as required by
9 rule.

10 (b) This section shall not apply to a family member or an
11 individual who, pursuant to the teachings, faith, or belief of
12 any group, depends for healing upon prayer or other spiritual
13 means [~~—In~~]; provided that in that case, the serious health
14 condition or disability, the probable duration thereof, and any
15 other pertinent facts required to be certified by regulation of
16 the director shall be certified, in the form and manner
17 specified by [~~the regulation,~~] rules prescribed by the director,
18 by a duly authorized or accredited practitioner of [~~such~~] the
19 group.

20 (c) The proof of a serious health condition or temporary
21 disability duly certified by a person licensed to practice



1 medicine, surgery, dentistry, chiropractic, osteopathy, or
2 naturopathic medicine, a physician assistant, [ø] an advanced
3 practice registered nurse, or an authorized or accredited
4 practitioner of any group that depends [~~for healing~~] upon prayer
5 or other spiritual means for healing shall be submitted by the
6 certifying person to the [disabled] employee within seven
7 working days after the date on which the family member or
8 employee was examined and found to have a serious health
9 condition or be disabled[-], as the case may be. If the
10 certifying person fails to submit the required proof within
11 seven working days, the director, upon notification by the
12 insurer, may levy a penalty of \$25 for each delinquent
13 certification where the certifying person fails to show good
14 cause for the person's failure to file on time."

15 SECTION 11. Section 392-27, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§392-27 Ineligibility in certain cases. An individual
18 shall not be eligible to receive family leave benefits or
19 temporary disability benefits:

20 (1) For any period of family leave or disability during
21 which the individual would be disqualified from



1 receiving benefits under the Hawaii employment
2 security law by reason of unemployment due to a
3 stoppage of work existing because of a labor dispute
4 for the duration of [~~sueh~~] the disqualification[~~-~~];

5 (2) If the director finds that the individual has
6 knowingly made a false statement or representation of
7 a fact or knowingly failed to disclose a material fact
8 [~~in order~~] to obtain benefits under this chapter to
9 which the individual is not otherwise entitled. The
10 ineligibility shall be for a period determined by the
11 director[~~-~~] but shall not exceed the period of family
12 leave or disability with respect to which the false
13 statement or representation was made or the
14 nondisclosure occurred[~~-~~];

15 (3) For any period of disability due to wilfully and
16 intentionally self-inflicted injury or to injury
17 sustained in the commission of a criminal offense
18 specified in title 37[~~-~~];

19 (4) For any day of family leave or disability during which
20 the employee performed work for remuneration or
21 profit, except that, if an employee returning to work



1 suffers a relapse after performing work for less than
2 a full day, the employee shall be paid benefits or be
3 given waiting period credit, provided the employee's
4 wages for the partial day's work did not equal or
5 exceed the prorated family leave benefits or
6 disability benefits to which the employee is entitled.
7 The amount of the benefit payable is derived by
8 subtracting the gross wages received for performing
9 less than a full day's work, from the prorated
10 [~~disability~~] benefits to which the employee is
11 entitled[-]; or

- 12 (5) Unless the claim for family leave benefits or
13 temporary disability benefits is filed within ninety
14 days after the commencement of the period of family
15 leave or disability or as soon thereafter as is
16 reasonably possible."

17 SECTION 12. Section 392-28, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§392-28 Duplication of benefits not permitted. No
20 [~~temporary disability~~] benefits shall be payable for any period



1 of family leave or disability for which the employee is entitled
2 to receive:

- 3 (1) Weekly benefits under the Employment Security Law or
4 similar laws of this State or of any other state or of
5 the United States, or under any family leave or
6 temporary disability benefits law of any other state
7 or of the United States except as provided in section
8 392-66 [-];
- 9 (2) Weekly disability insurance benefits under title 42
10 United States Code [~~Annotated~~ -] section[+] 423 [-];
- 11 (3) Weekly benefits for total disability under the
12 Workers' Compensation Law of this State or any other
13 state or of the United States, except benefits for
14 permanent partial or permanent total disability
15 previously incurred. If the claimant does not receive
16 benefits under [~~such~~] the workers' compensation law
17 and the claimant's entitlement to such benefits is
18 seriously disputed, the employee, if otherwise
19 eligible, shall receive temporary disability benefits
20 under this chapter, but any insurer or employer or the
21 trust fund for family leave and disability benefits



1 providing [~~sueh~~] the benefits shall be subrogated, as
 2 hereinafter provided, to the employee's right to
 3 benefits under the workers' compensation law for the
 4 period of disability for which the employee received
 5 benefits under this chapter to the extent of the
 6 benefits so received[-]; or

7 (4) Indemnity payments for wage loss under any applicable
 8 employers' liability law of this State, or of any
 9 other state or of the United States. If an employee
 10 has received benefits under this chapter for a period
 11 of family leave or disability for which the employee
 12 is entitled to [~~sueh~~] indemnity payments, any insurer
 13 or employer or the trust fund for family leave and
 14 disability benefits providing [~~sueh~~] the benefits
 15 shall be subrogated to the employee's right to [~~sueh~~]
 16 indemnity payments in the amount of the benefits paid
 17 under this chapter as hereinafter provided."

18 SECTION 13. Chapter 392, part III, Hawaii Revised
 19 Statutes, is amended by amending its title to read as follows:

20 "PART III. PROVISION FOR FAMILY LEAVE AND TEMPORARY DISABILITY
 21 INSURANCE BENEFITS"



1 SECTION 14. Section 392-41, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§392-41 Provision for payment of benefits. (a) An
4 employer or an association of employers shall secure family
5 leave benefits and temporary disability benefits for their
6 employees in one or more of the following ways:

7 (1) By insuring and keeping insured the payment of family
8 leave benefits and temporary disability benefits with
9 any stock, mutual, reciprocal or other insurer
10 authorized to transact the business of [~~disability~~]
11 insurance for family leave, temporary disability, or
12 both, in the State;

13 (2) By depositing and maintaining with the state director
14 of finance, securities, or the bond of a surety
15 company authorized to transact business in the State,
16 as are satisfactory to the director securing the
17 payment by the employer of family leave benefits and
18 temporary disability benefits according to the terms
19 of this chapter;

20 (3) Upon furnishing satisfactory proof to the director of
21 the employer's or its solvency and financial ability



1 to pay the family leave benefits and temporary
2 disability benefits herein provided, no insurance or
3 security or surety bond shall be required, and the
4 employer shall make payments directly to the
5 employer's employees, as they may become entitled to
6 receive the same under the terms and conditions of
7 this chapter;

8 (4) By a plan~~[,]~~ or agreement entitling employees to cash
9 benefits or wages during a period of family leave or
10 disability~~[, in existence on the effective date of~~
11 ~~this chapter.~~

12 ~~(A) If the employees of an employer or any class or~~
13 ~~classes of such employees are entitled to receive~~
14 ~~disability benefits under a plan or agreement~~
15 ~~which remains in effect on January 1, 1970, the~~
16 ~~employer, subject to the requirements of this~~
17 ~~section, shall be relieved of responsibility for~~
18 ~~making provision for benefit payments required~~
19 ~~under this chapter until the earliest date,~~
20 ~~determined by the director for the purposes of~~
21 ~~this chapter, upon which the employer has the~~



1 ~~right to discontinue the plan or agreement or to~~
2 ~~discontinue the employer's contributions toward~~
3 ~~the cost of the temporary disability benefits.~~
4 ~~Any plan or agreement referred to in this~~
5 ~~subparagraph may be extended, with or without~~
6 ~~modification, by agreement or collective~~
7 ~~bargaining between the employer or employers or~~
8 ~~an association of employers and an association of~~
9 ~~employees; provided the benefits under the plan~~
10 ~~or agreement, as extended or modified, are found~~
11 ~~by the director to be at least as favorable as~~
12 ~~the disability benefits required by this chapter.~~
13 ~~(B) Any other plan or agreement in existence on~~
14 ~~January 1, 1970, which the employer may, by the~~
15 ~~employer's sole act, terminate at any time, or~~
16 ~~with respect to which the employer is not~~
17 ~~obligated to continue for any period to make~~
18 ~~contributions, may be accepted by the director as~~
19 ~~satisfying the obligation to provide for the~~
20 ~~payment of benefits under this chapter if the~~
21 ~~plan or agreement provides benefits at least as~~



1 ~~favorable as the disability benefits required by~~
2 ~~this chapter and does not require contributions~~
3 ~~of any employee or of any class or classes of~~
4 ~~employees in excess of the amount authorized in~~
5 ~~section 392-43, except by agreement and provided~~
6 ~~the contribution is reasonably related to the~~
7 ~~value of the benefits as determined by the~~
8 ~~director. The director may require the employer~~
9 ~~to enter into an agreement in writing with the~~
10 ~~director that until the employer shall have filed~~
11 ~~written notice with the director of the~~
12 ~~employer's election to terminate such plan or~~
13 ~~agreement or to discontinue making necessary~~
14 ~~contributions toward the cost of providing~~
15 ~~benefits under the plan or agreement, the~~
16 ~~employer will continue to provide for the payment~~
17 ~~of the disability benefits under the plan or~~
18 ~~agreement. Any plan or agreement referred to in~~
19 ~~this subparagraph may be extended, with or~~
20 ~~without modification; provided the benefits under~~
21 ~~the plan or agreement, as extended or modified,~~



1 ~~are found by the director to be at least as~~
2 ~~favorable as the disability benefits required by~~
3 ~~this chapter]; provided that the plan or~~
4 ~~agreement is accepted by the director as~~
5 ~~satisfying the obligations to provide the payment~~
6 ~~of benefits under this chapter; or~~

7 (5) By a new plan or agreement [~~. On or after January 1,~~
8 ~~1970, a new plan or agreement]~~ with an insurer [~~may~~
9 ~~be]~~ accepted by the director as satisfying the
10 obligation to provide for the payment of benefits
11 under this chapter [~~if]~~; provided that the plan or
12 agreement [~~provides]~~;

13 (A) Provides benefits at least as favorable as the
14 leave benefits and disability benefits required
15 by this chapter [~~and does]~~;

16 (B) Does not require contributions of any employee or
17 of any class or classes of employees in excess of
18 the amount authorized in section 392-43, except
19 by agreement; and [~~provided the]~~



1 ~~falling within the definition of "sick leave" as~~
2 ~~defined in section 398-1, any amount in excess of the~~
3 ~~minimum statutory equivalent, as determined by the~~
4 ~~department, may be used for the purposes of chapter~~
5 ~~398].~~

6 (c) If any plan or agreement authorized under subsection
7 (a) (4) or (5) covers less than all of the employees of a covered
8 employer, the requirements of this chapter shall apply with
9 respect to the employer's remaining employees not covered under
10 the plan or agreement.

11 (d) As used in subsection (a) [~~(4) or~~] (5), "benefits at
12 least as favorable as the leave benefits and disability benefits
13 required by this chapter" means the family leave benefits or
14 temporary disability benefits under any plan or agreement, in
15 whole or in part, whose component parts (waiting period for
16 illness, waiting period for accident, duration of benefits, and
17 percentage of wage loss replaced) add in total to cash benefits
18 or wages that are determined by the director to be at least as
19 favorable as the leave benefits and disability benefits required
20 by this chapter. The insurance commissioner shall establish a
21 set of tables showing the relative value of different types of



1 cash benefits and wages to assist the director in determining
2 whether the cash benefits and wages under a plan are at least as
3 favorable as the family leave benefits and temporary disability
4 benefits required by this chapter.

5 (e) Any decision of the director rendered pursuant to this
6 section with respect to the amount of security required,
7 refusing to permit security to be given or refusing to accept a
8 plan or agreement as satisfying the obligation to provide for
9 the payment of benefits under this chapter shall be subject to
10 review on appeal in conformity with the provisions of this
11 chapter.

12 (f) In order to provide the coverage required by this
13 chapter for employers otherwise unable to obtain or provide
14 [such] coverage, the insurance commissioner [~~may~~], after
15 consultation with the insurers licensed to transact the business
16 of family leave and disability insurance in this State, may
17 approve a reasonable plan or plans for the equitable
18 apportionment among [such] the insurers of employer applicants
19 for [such] insurance who are in good faith entitled to but are
20 unable to procure [such] insurance through ordinary methods and,
21 when [such] a plan has been approved, all [such] insurers shall



1 subscribe thereto and participate therein; provided, however,
2 that the commissioner [~~shall not~~], for insurance issued or in
3 connection with any [~~such~~] plan or plans, shall not require or
4 allow the use of premium rates which are either inadequate or
5 excessive in relation to the benefits to be provided. Any
6 employer applying for [~~such~~] insurance or any insured under
7 [~~such~~] the plan and any insurer affected may appeal to the
8 commissioner from any ruling or decision of the manager or
9 committee designated to operate [~~such~~] the plan. All orders of
10 the commissioner in connection with any [~~such~~] plan pursuant to
11 this section shall be subject to judicial review as provided in
12 chapter 91.

13 (g) All insurers [~~shall~~], in a form prescribed by the
14 director, shall notify employer applicants who are unable to
15 procure the required insurance through ordinary methods [~~7~~] of
16 the availability of the plan described in [~~+~~] subsection [~~+~~] (f)
17 [~~above~~]."

18 SECTION 15. Section 392-42, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§392-42 **Notice of insurance.** If payment of family leave
21 benefits or disability benefits is provided for in whole or in



1 part by insurance pursuant to section 392-41(a) (1), (4), or (5),
2 the employer or insurer shall forthwith file with the director,
3 in a form prescribed by the director, a notice of the employer's
4 or insurer's insurance together with a statement of benefits
5 provided by the policy. If an employer or insurer fails to file
6 the notice of insurance within thirty days after purchase of
7 insurance, the director may levy a penalty of not more than
8 [~~\$10~~] \$50 for each delinquent notice, unless good cause for
9 failure to file can be shown by the employer or insurer."

10 SECTION 16. Section 392-43, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§392-43 Authority to withhold contributions, rate of
13 contribution, maximum weekly wage base. (a) Subject to the
14 limitation set forth in subsection (b), an employer may deduct
15 and withhold contributions [~~7~~] from each employee of up to
16 one-half the cost but not more than .5 per cent of the weekly
17 wages earned by the employee in employment, and the employer
18 shall provide for the balance of the cost of providing family
19 leave benefits and temporary disability benefits under this
20 chapter over the amount of contributions of the employer's
21 employees. Unless a different rule is prescribed by [~~regulation~~



1 ~~of~~] the director, the withholding period shall be equal to the
2 pay period of the respective employee.

3 (b) Weekly wages for the purposes of this section shall
4 not include:

5 (1) Wages earned by an employee in employment during any
6 payroll period unless, during the fifty-two weeks
7 immediately preceding [~~such~~] the payroll period, the
8 employee has earned wages of at least \$400 and has
9 been in employment for at least fourteen weeks during
10 each of which the employee has received remuneration
11 in any form for twenty or more hours; and

12 (2) Remuneration in excess of one fifty-second of the
13 average annual wage in the State as determined for the
14 preceding year pursuant to section 383-61(b)
15 multiplied by the factor 1.21, which amount the
16 director shall cause to be published annually [~~prior~~
17 ~~to~~] before the first day of January following the
18 determination.

19 (c) The contributions of the employees deducted and
20 withheld from their wages by their employer shall be held in a



1 separate fund or be paid to insurance carriers as premiums, for
2 the purpose of providing benefits required by this chapter.

3 (d) The director shall have authority to prescribe by
4 [~~regulation~~] rule the reports and information necessary to
5 determine the cost of providing [~~temporary disability~~] benefits
6 under this chapter, especially in the case of employers or
7 employer associations providing [~~such~~] the benefits by means of
8 self-insurance, and to determine the procedures for the
9 determination of [~~such~~] the cost.

10 (e) An employee from whose wages amounts greater than
11 those authorized by this chapter have been withheld by the
12 employee's employer shall be entitled to a refund or credit of
13 the excess as prescribed by [~~regulation~~] rule of the director.

14 (f) The contributions of employees deducted and withheld
15 in amounts greater than those authorized by this chapter[~~7~~]
16 shall be deposited in the trust fund for family leave and
17 disability benefits if [~~such~~] the employees are no longer with
18 the employer and cannot be located. A refund of the excess
19 shall be paid from the trust fund for family leave and
20 disability benefits to the employees when they are located, or
21 if [~~such~~] the employees remain unlocated for a period of two



1 years from the date of deposit, [~~such~~] the moneys shall become a
2 part of the trust fund.

3 (g) If an employer fails to provide coverage for the
4 employer's employees after deducting and withholding
5 contributions from the employer's employees as prescribed by
6 this chapter, the employer shall deposit [~~such~~] the
7 contributions in the [~~+~~]trust fund for family leave and
8 disability benefits[~~+~~]."

9 SECTION 17. Section 392-45, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§392-45 Subrogation rights if employee entitled to
12 workers' compensation benefits or indemnity under employers'
13 liability acts. (a) If an individual has received [~~temporary~~
14 ~~disability~~] benefits under this chapter during a period of the
15 individual's disability for which benefits for any disability
16 under the Workers' Compensation Law of this State or of any
17 other state or of the United States are subsequently awarded or
18 accepted in any agreement or compromise, the employer, the
19 association of employers, the insurer, or the trust fund for
20 family leave and disability benefits, as the case may be,
21 providing [~~such temporary disability~~] the benefits shall be



1 subrogated to the individual's right to [~~such~~] the benefits in
2 the amount of the benefits paid under this chapter.

3 In the event more than one employer or insurer have
4 subrogation rights to the employee's workers' compensation
5 benefits, [~~such~~] the benefits shall be divided proportionately
6 among the employers or insurers according to the amount of
7 benefits each employer or insurer paid under this chapter.
8 [~~Should~~] If the subrogated amount of either one or both
9 employers or insurers total less than the amount of benefits
10 that [~~such~~] the employers or insurers paid under this chapter,
11 neither the employee nor the trust fund for family leave and
12 disability benefits nor any other source shall be required to
13 make up the difference.

14 To protect its subrogation rights to benefits payable under
15 the Workers' Compensation Law of this State, the employer, the
16 association of employers, the insurer, or the trust fund for
17 family leave and disability benefits, providing [~~temporary~~
18 ~~disability~~] the benefits shall file a claim with the division of
19 workers' compensation in the department and notify the insurer
20 for workers' compensation or the employer, if self-insured, of
21 its claim and thereupon the employer, the association of



1 employers, the insurer, or the trust fund for family leave and
2 disability benefits, providing [~~temporary disability~~] the
3 benefits shall have a lien against the amounts payable as family
4 leave benefits pursuant to this chapter or benefits for
5 disability under the Workers' Compensation Law in the amount of
6 the benefits paid under this chapter during the period for which
7 benefits [~~for disability~~] under this chapter or the Workers'
8 Compensation Law have been accepted or awarded as payable. The
9 agreement or award shall include a provision setting forth the
10 existence and amount of [~~such~~] the lien.

11 (b) If an individual has received benefits under this
12 chapter during a period of family leave or disability for which
13 the individual is entitled to receive indemnity payments for
14 wage loss under any applicable employers' liability law of this
15 State or of any other state or of the United States, the
16 employer, the association of employers, the insurer, or the
17 trust fund for family leave and disability benefits, providing
18 [~~temporary disability~~] benefits shall be subrogated to the
19 individual's right to [~~such~~] the indemnity in the amount of the
20 benefits paid under this chapter and may assert its subrogation



1 rights in any manner appropriate under such acts or any rule of
2 law."

3 SECTION 18. Section 392-46, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§392-46 Subrogation rights against third parties. If any
6 individual who has received benefits under this chapter is
7 entitled to recover damages from a third person who is
8 responsible for the sickness or accident causing the serious
9 health condition of a family member or the employee's
10 disability, the employer, the association of employers, the
11 insurer, or the trust fund for family leave and disability
12 benefits, providing [~~disability~~] the benefits shall be
13 subrogated to, and have a lien upon, the rights of the
14 individual against the third party to the extent that the
15 damages include wage loss during the period of family leave or
16 disability for which [~~temporary disability~~] benefits were
17 received in the amount of [~~such~~] the benefits.

18 If the individual commences an action against [~~such~~] the
19 third party, the individual shall notify the individual's
20 employer, or the director if the individual is unemployed, of
21 the action and the court in which it is pending. The employer,



1 the association of employers, the insurer, or the trust fund for
2 family leave and disability benefits, providing family leave
3 benefits or disability benefits may join as party plaintiff or
4 claim a lien on the amount of any judgment recovered by the
5 individual in [~~such~~] the action to the extent of its subrogation
6 rights. If the individual does not commence the action within
7 nine months after the commencement of the serious health
8 condition or sickness, or the date of the accident causing the
9 family leave or disability, the employer, the association of
10 employers, the insurer, or the trust fund for family leave and
11 disability benefits, providing family leave benefits or
12 temporary disability benefits may commence [~~such~~] the action,
13 but the individual shall be entitled to join the action and be
14 entitled to any surplus over the amount to which the employers,
15 the association of employers, the insurer, or the trust fund for
16 family leave and disability benefits is subrogated."

17 SECTION 19. Section 392-48, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~+~~]**§392-48**[~~+~~] **The insurance contract.** Every policy of
20 insurance issued by an insurer of an employer pursuant to this
21 chapter [~~which~~] that covers the liability of the employer for



1 family leave, temporary disability [~~benefits~~], or both, shall
2 cover the entire liability of the employer to the employer's
3 employees covered by the policy or contract, and also shall
4 contain a provision setting forth the right of the employees to
5 enforce in their own names either by filing a separate claim or
6 by making the insurer a party to the original claim, the
7 liability of the insurer in whole or in part for the payment of
8 [~~the disability~~] benefits. Payment in whole or in part of
9 family leave benefits or disability benefits by either the
10 employer or the insurer shall, to the extent thereof, be a bar
11 to the recovery against the other of the amount so paid.

12 All insurance policies shall be approved by the insurance
13 commissioner of the State."

14 SECTION 20. Chapter 392, part IV, Hawaii Revised Statutes,
15 is amended by amending its title to read as follows:

16 "PART IV. TRUST FUND FOR FAMILY LEAVE AND DISABILITY BENEFITS"

17 SECTION 21. Section 392-61, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§392-61 Establishment of trust fund for family leave and
20 disability benefits. There is established in the treasury of
21 the State, separate and apart from all public moneys or funds of



1 the State, a trust fund for family leave and disability benefits
2 which shall be administered by the director exclusively for the
3 purposes of this chapter [~~; and for the establishment and~~
4 ~~maintenance of a family leave data collection system under~~
5 ~~section 398-9.5~~]. All contributions pursuant to this part shall
6 be paid into the fund and all benefits payable under this part
7 shall be paid from the fund. The fund shall consist of[+]:[+]

- 8 (1) All contributions collected pursuant to this part,
9 together with any interest thereon;
- 10 (2) All fines and penalties for the fund pursuant to this
11 chapter;
- 12 (3) All moneys collected by way of subrogation;
- 13 (4) Interest earned on any moneys in the fund;
- 14 (5) Any property or securities acquired through the use of
15 moneys belonging to the fund;
- 16 (6) All earnings of [~~such~~] the property and securities;
17 and
- 18 (7) All other moneys received for the fund from any
19 source."

20 SECTION 22. Section 392-65, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§392-65 ~~[Temporary disability benefits]~~ Benefits to be
2 paid from the trust fund for family leave and disability
3 benefits; recovery of [disability] benefits. ~~[Temporary]~~ Family
4 leave benefits and temporary disability benefits shall be paid
5 from the trust fund for family leave and disability benefits to
6 individuals who become disabled when unemployed and who
7 subsequently become ineligible for benefits under chapter 383.
8 Benefits shall also be paid from this fund to an employee who is
9 entitled to receive family leave benefits or temporary
10 disability benefits but cannot receive ~~[such]~~ the benefits
11 because of the bankruptcy of the employee's employer or because
12 the employee's employer is not in compliance with this chapter.
13 Benefits paid from the trust fund to ~~[such]~~ the employee may be
14 recovered from the employee's bankrupt or noncomplying employer.
15 The director shall institute administrative and legal actions,
16 as provided in section 392-47, to effect recovery of ~~[such]~~ the
17 benefits."

18 SECTION 23. Section 392-67, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§392-67 Assessments for the trust fund for family leave
21 and disability benefits. ~~[(a) Each employer shall, from~~



1 ~~July 1, 1969, to December 31, 1969, contribute to the~~
2 ~~establishment of the trust fund for disability benefits at the~~
3 ~~rate of .2 per cent of covered wages as defined in section~~
4 ~~392-43. The employer shall pay such contributions to the~~
5 ~~director for a given month on or before the thirtieth day of the~~
6 ~~next succeeding month.~~

7 (b)] When the balance of the trust fund for family leave
8 and disability benefits falls below \$500,000 as of December 31
9 of any year after 1969, a levy shall be assessed and collected
10 in the next calendar year from insurers of employers insured
11 under section 392-41 and from all other employers not insured
12 under section 392-41.

13 Each year the director shall determine the amount of the
14 levy to be paid by each insurer or employer and shall give
15 notice of the levy to each [~~such~~] insurer or employer on or
16 before May 1 of the year in which the levy is assessed. The
17 amount of the levy shall be paid on or before June 30 following
18 notification.

19 The amount of the levy against each insurer or employer
20 shall be determined as the product of the wages paid by the
21 employer multiplied by a factor which is the ratio of the amount



1 by which the balance in the [+]trust fund for family leave and
2 disability benefits[+] was less than \$500,000 on the preceding
3 December 31 to total covered wages paid by all employers. For
4 the purposes of this paragraph, "covered wages" means wages paid
5 by employers during the preceding calendar year but not
6 including wages paid to any employee in excess of the limit
7 contained in section 392-43(b)."

8 SECTION 24. Section 392-68, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§392-68 Failure to pay assessments. If an employer or
11 insurer fails to pay the assessment required by section
12 [~~392-67(a) or section 392-67(b)~~] 392-67 within thirty days after
13 the end of the month or quarter for which payment was due, the
14 director shall levy a penalty of at least \$250 but no more than
15 ten per cent of the assessment due against the employer or
16 insurer, unless the nonpayment is excused by the director after
17 a showing by the employer or insurer that the payment of the
18 assessment could not be made on the date prescribed therefor
19 owing to conditions over which the employer or insurer had no
20 control and the employer or insurer forthwith complies."



1 SECTION 25. Section 398A-3, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

3 "(e) Notwithstanding any other provision to the contrary,
4 leave provided pursuant to this section shall not be taken
5 concurrently with any leave taken pursuant to the federal Family
6 and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) or
7 [~~chapter 398.~~] family leave pursuant to chapter 392."

8 SECTION 26. Sections 392-7, 392-25, 392-42.5(a), 392-44,
9 392-44.5, 392-49, 392-51, 392-71, 392-72(b), 392-77, 392-78(d),
10 and 392-86, Hawaii Revised Statutes, are amended by substituting
11 the phrases "family leave or disability" or "family leave or
12 temporary disability", wherever the word "disability" or phrase
13 "temporary disability" appears, as the context requires.

14 SECTION 27. Sections 392-47, 392-52, 392-62, 392-63,
15 392-64, 392-65, 392-67, 392-69, 392-72(a), 392-78(d), and
16 392-92, Hawaii Revised Statutes, are amended by substituting the
17 phrase "trust fund for family leave and disability benefits"
18 wherever the phrase "trust fund for disability benefits"
19 appears, as the context requires.

20 SECTION 28. Chapter 398, Hawaii Revised Statutes, is
21 repealed.



1 SECTION 29. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$ or so
 3 much thereof as may be necessary for fiscal year 2023-2024 and
 4 the same sum or so much thereof as may be necessary for fiscal
 5 year 2024-2025 to fund the personnel and resources, including
 6 the hiring of full time equivalent (FTE) positions, to
 7 implement the Hawaii family leave program pursuant to this Act.

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

10 SECTION 30. This Act does not affect rights and duties
 11 that matured, penalties that were incurred, and proceedings that
 12 were begun before its effective date.

13 SECTION 31. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 32. This Act shall take effect on July 1, 2023;
 16 provided that sections 1 through 28 of this Act shall take
 17 effect on July 1, 2025.

18

INTRODUCED BY:



JAN 20 2023



H.B. NO. 490

Report Title:

DLIR; Paid Family Leave; Temporary Disability Insurance;
Insurance Benefits; Employer Based Insurance Program;
Appropriation

Description:

Provides employed individuals with up to 8 weeks of paid family leave during the 1st year after birth of the individual's child, adoption of a child by the individual, or placement of a child with the individual through foster care, and 8 weeks of paid family leave to care for the individual's family member having a serious health condition during any benefit year, paid through an employer-based private insurance program currently used to provide for temporary disability benefits. Specifies that private employers having fewer than 200 employees shall not be required to provide family leave and family leave benefits. Repeals chapter 398, HRS. Appropriates funds to the Department of Labor and Industrial Relations. Sections 1-28 effective 7/1/2025.

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

