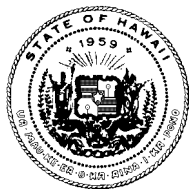


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



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

February 6, 2024

To: The Honorable Representative Mark M. Nakashima, Chair
House Committee on Consumer Protection & Commerce

FROM: Cathy Betts, Director

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

Hearing: February 8, 2024, 2:00 p.m.
Conference Room 329, 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

February 6, 2024

Page 2

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 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.



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

February 8, 2024

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jackson D. Sayama, Vice Chair, and
Members of the House Committee on Consumer Protection & Commerce

Date: Thursday, February 8, 2024
Time: 2:00 p.m.
Place: Conference Room 329, 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 (HFLL), 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

LATE

February 8, 2024

TESTIMONY TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

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. Requires the Civil Rights Commission to amend its rules to include neonatal care as a related medical condition whenever certain phrases are used.

The statistics show 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 people making the difficult choice to quit their jobs in order to provide care to their child. There is also a negative impact to businesses who must then recruit and train a new employee.

For the above reasons, we support this House Bill 2552 HD1.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

To: House Committee on Consumer Protection & Commerce
Re: **HB 2552 HD1 – Relating to Employee Benefits**
Hawai'i State Capitol & Via Videoconference
February 8, 2024, 2:00 PM

Dear Chair Nakashima, Vice Chair Sayama, 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.

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

LATE

Thursday, February 8, 2024

2:00pm

Conference Room 329 & Videoconference
State Capitol, 415 South Beretania Street

To: The Honorable Mark M. Nakashima, Chair
The Honorable Jackson D. Sayama, Vice Chair
Members of the House Committee on Consumer Protection & Commerce

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 extends, under certain conditions, the family leave period 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, amending Chapter 398, the Family Leave law. It also requires the HCRC to amend its 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 (section 368-1.5,

HRS). 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.

Hawai'i law prohibits unlawful discrimination on employment based on sex, which includes, but is not limited to, "pregnancy, childbirth, or related medical conditions," under HRS § 378-1. An employer cannot refuse to hire, discharge from employment, or penalize in the terms, conditions, and privileges of employment because the employee or applicant is pregnant. Additionally, under Hawai'i Administrative Rules (HAR) §§ 12-46-106 to 12-46-108, an employer must grant a pregnant employee or applicant "affected by disability due to and resulting from pregnancy, childbirth, or related medical conditions," a reasonable accommodation.

HAR § 12-46-106 reads in relevant part:

Employees "shall not be penalized in their terms or conditions of employment because they require time away from work on account of disability resulting from pregnancy, childbirth, or related medical conditions."

HAR § 12-46-107 reads in relevant part:

[...]

(b) It is an unlawful discriminatory practice to discharge a female from employment or to penalize her in terms, conditions, and privileges of employment because she requires time away from work for disability due to and resulting from pregnancy, childbirth, or related medical conditions.

(c) An employer shall make every reasonable accommodation to the needs of the female affected by disability due to and resulting from pregnancy, childbirth, or related medical conditions.

HAR § 12-46-108 reads in relevant part:

(a) Disability due to and resulting from pregnancy, childbirth, or related medical conditions shall be considered by the employer to be justification for a leave, with or without pay, by the female employee for a reasonable period time. "Reasonable period of time" as used in this section shall be determined by the employee's physician, with regard for the employee's physical condition and the job requirements.

These sections relate to the *employee's* medical conditions related to pregnancy as determined by the employee's doctor, and notably do not include determinations for extended leave to care for a

newborn by the infant child’s doctor. In contrast, Hawai’i’s Family Leave law found in Chapter 398—which is what this bill amends—allows for an employee to take time off to fulfill family care obligations, not only for an infant child, but also a spouse, sibling, grandchild, or parent with a serious health condition.

In employment discrimination, reasonable accommodations must be tied to the employee’s disability or pregnancy-related medical conditions. Reasonable accommodations often include modifications to leave policies and a pregnant employee’s medical condition and disability due to and resulting from pregnancy, childbirth, or related medical conditions is justification for a leave of absence, with or without pay, for a reasonable period of time, under HAR § 12-46-108(a). Therefore, a reasonable period of time for a leave of absence for a pregnancy-related medical condition may exceed the number of weeks required by Chapter 398, dependent on the medical condition of the employee, job duties, and the doctor’s determination.

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 child who may need extended medical care. This bill would create an obligation for employers to accommodate an employee for childcare obligations and not just for the pregnant employee’s medical conditions. HAR § 12-46-108(d) explicitly states in pertinent part that “Chapter 378, HRS, does not require any employer to grant paid or unpaid child care leave of absence[...].”

H.B. 2552 H.D. 1 amends HRS §§ 398-3 and 398-4, Family Leave law, which is not within the HCRC’s jurisdiction. Respectfully, the HCRC believes that amending its rules to include neonatal care is misplaced and remedies may be better provided for in another section. Employees who are pregnant,

or are experiencing pregnancy-related medical conditions and disabilities are already entitled to reasonable accommodations, including a reasonable period of time away from work, as determined by the employee's medical professional. The determination of medical conditions of employees that are related to pregnancy and childbirth should be liberally construed to effectuate the legislative intent of preventing discrimination against individuals in the workplace who experience pregnancy and childbirth. It is likely there will be overlap and individuals who have newborn infants in the neonatal care unit may also be experiencing medical conditions related to pregnancy and childbirth, including post-partum depression, post-partum anxiety, and other related medical conditions that would be covered and protected by existing law and entitled to reasonable accommodations in the workplace.

Therefore, the HCRC supports the intent H.B. 2551, H.D. 1, with comments on the inclusion of "neonatal care" within the HCRC's administrative rules.

HB-2552-HD-1

Submitted on: 2/7/2024 10:13:05 AM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Todd Taniguchi	Individual	Support	Written Testimony Only

Comments:

Dear Chair Nakashima, Vice Chair Sayama, and CPC Committee members,

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).

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:
 - o Additional follow-ups with other specialized care based on the child’s condition
 - o Getting eye exams to ensure vision has not been impacted by the NICU stay
 - o 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:

- 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. This cannot be outsourced to hospital staff or other family members.
- Travel burden relief and job security - 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: 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: 2/7/2024 12:50:45 PM

Testimony for CPC on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Aki Marceau	Individual	Support	Remotely Via Zoom

Comments:

Chair Nakashima, Vice Chair, and members of the Committee of Consumer Protection and Commerce,

My name is Aki Marceau, and I am a mother, a full time employee, and 22 weeks pregnant. I fall into the category of "advanced maternal age" making my pregnancy high risk.

I strongly support this bill. It will provide minimal human rights protections for me and many currently expecting and future parents. Without this bill, we are in fear of having to make inhumane choice of choosing our jobs and healthcare or giving our children a fighting chance at survival.

I strongly urge you to make the right decision that allows us to protect our keiki, families, and continue to serve as healthy contributors to our local economy.

Thank you for the opportunity to testify.

Aki Marceau