



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

February 27, 2024

To: The Honorable, Kyle T. Yamashita, Chair,
The Honorable Lisa Kitagawa, Vice Chair, and
Members of the House Committee on Finance

Date: Tuesday, February 27, 2024
Time: 2:00 p.m.
Place: Conference Room 308, 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

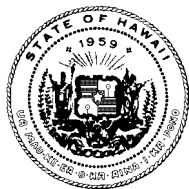
Chapter 398, HRS, requires employers with one hundred or more employees to provide eligible employees with four weeks of unpaid, job-protected leave for the birth or adoption of a child or to care for a child, spouse, reciprocal beneficiary, sibling, grandchild, or parent with a serious health condition. 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.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'ŌKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'ŌKELE

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

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'ŌKELE

February 25, 2024

TO: The Honorable Representative Kyle T. Yamashita, Chair
House Committee on Finance

FROM: Cathy Betts, Director

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

Hearing: February 27, 2024, 2:00 p.m.
Conference Room 308, 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

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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.



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

February 27, 2024

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

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.

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.

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

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director



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

Thursday, February 27, 2024

2:00pm

Conference Room 308 & Videoconference
State Capitol, 415 South Beretania Street

To: The Honorable Kyle T. Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair
Members of the House Committee on Finance

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, public accommodations, and access to state and state-funded services. 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, and yet the bill requires that the HCRC amend its 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) explicitly states in pertinent part that **“Chapter 378, HRS, does not require any employer to grant paid or unpaid child care leave of absence[...].”** In employment discrimination law, an extension of a 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 not to care for a family member.

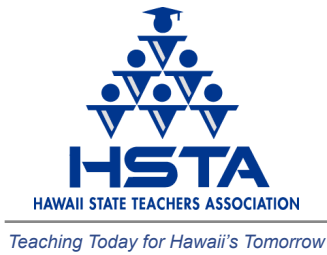
Modifications to leave policies relating to a pregnant employee’s medical condition and disability due to and resulting from pregnancy, childbirth, or related medical conditions is justification for a leave of absence, with or without pay, for a reasonable period of time, under HAR § 12-46-108(a). Therefore, a reasonable period of time for a leave of absence for a pregnancy-related medical condition may 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.

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 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.

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 without an amendment to Chapter 378. 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 without statutory amendment to Chapter 378 Part I.



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Secretary-Treasurer

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Executive Director

TESTIMONY TO THE HAWAII HOUSE COMMITTEE ON FINANCE

Item: **HB2552 HD1 - Relating to Employee Benefits**
Position: **Support**
Hearing: **February 27, 2024, 2:00 p.m., Conference Room 308**
Submitter: **Osa Tui, Jr. – President, Hawai'i State Teachers Association**

Chair Yamashita, Vice Chair Kitagawa, and members of the committee,

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: House Committee on Finance
Re: **HB 2552 HD1 – Relating to Employee Benefits**
Hawai'i State Capitol & Via Videoconference
February 27, 2024, 2:00 PM

Dear Chair Yamashita, Vice Chair Kitagawa, 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/>



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

TO: Representative Kyle Yamashita, Chair, Representative Lisa Kitagawa, Vice Chair
and Members of the Committee on Finance

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

RE: HB 2552 Relating to Employee Benefits

DATE: Tuesday, February 27, 2024 2:00PM

Good Afternoon, Chair Yamashita, Vice Chair Kitagawa and Members of the Committee on Finance. I am Patricia Bilyk, representing Breastfeeding Hawaii and we stand in **STRONG SUPPORT** of HB 2552 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 health 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 postdelivery. 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 infants life. They also need to have uninterrupted time to frequently pump precious mothers 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 both Kapiolani Womens and Childrens Medical Center and Kaiser Medical Center. I worked daily with families of premature infants whose mothers were working to maintain their



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milk supply, provide their precious milk, bond with their infants and recover from their early childbirth delivery. The need for extra paid time off is great!

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 postdelivery and provide parental care and cherished mothers milk for their infants.

Mahalo for considering our testimony.



**Rep. Kyle T. Yamashita, Chair
Rep. Lisa Kitagawa, Vice Chair
Committee on Finance**

Tuesday, February 27, 2024, at 2:00 P.M.

RE: HB 2552 Relating to Employee Benefits

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The Society of Human Resource Management (SHRM) Hawaii provides amendments for consideration for HB 2552, 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.

We appreciate and understand the intent of this bill to allow for extended paid family leave for families caring for infants requiring additional time in the hospital. Certainly, SHRM and its members understand the difficulty parents face when under these circumstances and support the legislature's efforts to address this. It is always difficult to balance the needs of employers with those of the employees.

Understanding that challenge, SHRM recommends that an amendment be added to the measure to exempt small businesses from this policy. Virtually all other leaves laws have an employee minimum and typically a minimum hour the employee must work to be eligible for such leaves in order to address these competing interests.

It is also important to note that many businesses already offer paid time off and paid leave programs as a means of attracting and retaining their workforce. Many employers, especially smaller employers, are already facing increased financial burdens from high inflation rates and the recent minimum wage increase. Additionally, all businesses are expecting increased insurance rates because of the Maui wildfires.

Hawaii employers already pay Temporary Disability Insurance (TDI) premiums based on payroll up to the allowable wage base. Expanding TDI benefits to now include family leave will not only increase administrative compliance, but, more importantly, employers will likely shoulder the burden of increases in TDI premium rates to the proposed extended coverage to family leave.

In closing, while we appreciate the Legislature indicating their intention to address this issue, we hope the legislature will consider the overall impact of this expense upon our small business community and consider providing them with an exemption. We look forward to contributing positively to the development of sound public policy and continuing to serve as a resource to the legislature on matters related to labor and employment laws.

SHRM Hawaii serves and represents nearly 600 members and employers' statewide and human resource management is a critical component to the success and survival of the many businesses that make up our local economy. HR professionals are responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses' most valuable asset: the working people of our state.

Thank you for this opportunity to provide testimony.

Rosanne Nolan
Legislative Affairs Committee Co-Chair

Erin Kogan
Legislative Affairs Committee Co-Chair

HB-2552-HD-1

Submitted on: 2/24/2024 12:22:04 AM

Testimony for FIN on 2/27/2024 2:00:00 PM

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

Comments:

Chair Yamashita and Vice Chair Kitagawa,

FIN 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).

We do provide comment that the bill is intended to allow parents leave beginning during the child's NICU stay, AND leave after discharge.

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 prior to discharge AND have no bonding leave available upon discharge.

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 its 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