

JAN 15 2025

A BILL FOR AN ACT

RELATING TO EMPLOYEE BENEFITS.

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

1 SECTION 1. The legislature finds that in 2023, one in ten
2 babies (or ten per cent of live births) was born preterm in the
3 State, meaning that those births occurred before thirty-seven
4 completed weeks of gestation. The legislature also finds that
5 approximately 1.4 per cent of live births in the State are "very
6 preterm", denoting that the babies were born before thirty-two
7 completed weeks of gestation.

8 The legislature further finds that these preterm and very
9 preterm babies spend weeks or months in neonatal intensive care
10 units (NICU), requiring their parents to also spend weeks or
11 months at the NICU in support of their babies' care. Research
12 shows that parental "kangaroo care", meaning continual skin-to-
13 skin contact, can reduce infant mortality, lower risk of sepsis
14 or major infection, and reduce the length of stay in the
15 neonatal intensive care unit (NICU). Additional benefits
16 include better neurological development of the baby, reduced
17 depression for the mother, and a significant increase in the



1 likelihood of exclusive breastfeeding after discharge, which
2 itself has well-known and unique benefits for child health and
3 development. For babies in the NICU, it is vitally important
4 that mothers continually express breast milk for them, which
5 requires up to an hour of pumping every few hours throughout the
6 day and night.

7 The legislature also finds that Oahu has the only high-risk
8 NICU in the State, resulting in parents from other islands being
9 forced to relocate at significant disruption and expense for an
10 extended period of time. Even for parents on Oahu, it is nearly
11 impossible to maintain full time employment when they are
12 constantly caring for their babies in the NICU. Added to this
13 time, expense, and stress, parents caring for their NICU child
14 may not necessarily qualify for financial assistance through
15 temporary disability insurance or protection from job loss under
16 the federal Family and Medical Leave Act. When parents do
17 qualify, they often use a large proportion of their family leave
18 while their baby is in the NICU, and often feel financial
19 pressure to return to work when their babies are still very
20 young, which deprives both the babies and parents of early
21 bonding that is an important factor in child development and



1 long-term outcomes. Some parents return to work while their
2 babies are still in the NICU to preserve and use their family
3 leave upon their babies' discharge. Furthermore, many parents
4 are advised not to enroll their babies in childcare upon
5 discharge from the NICU due to concerns of infection, which
6 further interferes with their planned return to work.

7 The legislature additionally finds that according to the
8 State Health Planning and Development Agency's 2020 Health Care
9 Utilization Report, the cost of an average NICU stay is between
10 \$7,700 to \$8,500 per day in Hawai'i. Thus, the cost of a twelve-
11 week NICU stay could easily exceed \$650,000.

12 Accordingly, the purpose of this Act is to:

13 (1) Expand the State's temporary disability insurance
14 coverage to, and exempt from temporary disability
15 benefit eligibility requirements that are employment-
16 related, employees who are unable to perform their
17 employment duties due to the employee giving birth to
18 a child or providing kangaroo care to, or expressing
19 breast milk for, the employee's child who is required
20 to stay in a neonatal intensive care unit; and



1 (2) Extend, under certain conditions, the temporary
2 disability benefit payment period and family leave
3 period for employees who are unable to perform their
4 employment duties due to:

5 (A) Preterm birth of a child who is required to stay
6 in a neonatal intensive care unit; or

7 (B) Birth of a child who is required to stay in a
8 neonatal intensive care unit for more than eight
9 weeks.

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

12 1. By adding a new definition to be appropriately inserted
13 and to read:

14 "Kangaroo care" means a technique of newborn care where
15 the baby is kept chest-to-chest and skin-to-skin with a parent."

16 2. By amending the definition of "disability" to read:

17 "Disability" means total inability of an employee to
18 perform the duties of the employee's employment caused by
19 [sickness₇]:



- 1 (1) Sickness, pregnancy, termination of pregnancy, organ
2 donation, or accident other than a work injury as
3 ~~[defined]~~ specified in section 386-3~~[7]~~;
- 4 (2) The employee's giving birth to a child; or
- 5 (3) The employee's provision of kangaroo care to, or
6 expression of breast milk for, the employee's child
7 who is required to stay in a neonatal intensive care
8 unit."

9 SECTION 3. Section 392-21, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Any individual in current employment who suffers
12 disability resulting from ~~[accident,~~]:

- 13 (1) Accident, sickness, pregnancy, termination of
14 pregnancy, or organ donation, except accident or
15 disease connected with or resulting from employment as
16 ~~[defined]~~ specified in section 386-3 or any other
17 applicable workers' compensation law~~[7]~~;
- 18 (2) Giving birth to a child; or
- 19 (3) Providing kangaroo care to, or expressing breast milk
20 for, the individual's child who is required to stay in
21 a neonatal intensive care unit,



1 shall be entitled to receive temporary disability benefits in
2 the amount and manner provided in this chapter."

3 SECTION 4. Section 392-23, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~§~~§392-23~~§~~] **Duration of benefit payments.** (a)

6 Temporary disability benefits shall be payable for any period of
7 disability following the expiration of the waiting period
8 required in section 392-24.

9 (b) The duration of benefit payments shall not exceed
10 twenty-six weeks for any period of disability or during any
11 benefit year~~[-]~~; provided that any employee who suffers from
12 disability resulting from a pregnancy involving:

13 (1) Preterm birth of a child who is required to stay in a
14 neonatal intensive care unit; or

15 (2) Birth of a child who is required to stay in a neonatal
16 intensive care unit for more than eight weeks,

17 shall be entitled to benefit payments for an additional period
18 not to exceed six weeks while the child is in a neonatal
19 intensive care unit or after the child is discharged from the
20 unit; provided further that during the additional period of
21 benefit payment, the employee provides kangaroo care to, or



1 expresses breast milk for, the child, which requires the
2 employee to continually be in close physical proximity to the
3 child.

4 (c) As used in this section, "preterm birth" means a live
5 birth of a child that occurs before thirty-seven completed weeks
6 of gestation."

7 SECTION 5. Section 392-25, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§392-25 Eligibility for benefits[-]; exemption.** An
10 individual is eligible to receive temporary disability benefits
11 if the individual has been in employment for at least fourteen
12 weeks during each of which the individual has received
13 remuneration in any form for twenty or more hours and earned
14 wages of at least \$400, during the fifty-two weeks immediately
15 preceding the first day of disability[-]; provided that an
16 individual who is disabled due to giving birth to a child or
17 providing kangaroo care to, or expressing breast milk for, the
18 individual's child who is required to stay in a neonatal
19 intensive care unit shall not be required to fulfill these
20 eligibility requirements."



1 SECTION 6. Section 398-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§398-3 Family leave requirement.** (a) An employee shall
4 be entitled to a total of four weeks of family leave during any
5 calendar year:

6 (1) Upon the birth of a child of the employee or the
7 adoption of a child; or

8 (2) To care for the employee's child, spouse, reciprocal
9 beneficiary, sibling, grandchild, or parent with a
10 serious health condition[+];

11 provided that any employee who suffers from total inability to
12 perform the duties of the employee's employment resulting from a
13 preterm birth of a child who is required to stay in a neonatal
14 intensive care unit, or birth of a child who is required to stay
15 in a neonatal intensive care unit for more than eight weeks,
16 shall be entitled to additional family leave not to exceed
17 twelve weeks while the child is in a neonatal intensive care
18 unit or after the child is discharged from the neonatal
19 intensive care unit; provided further that during the additional
20 period of family leave, the employee provides kangaroo care to,
21 or expresses breast milk for, the child, which requires the



1 employee to continually be in close physical proximity to the
2 child.

3 (b) [~~During each calendar year, the leave~~] Leave pursuant
4 to this section may be taken intermittently[~~-~~] during each
5 calendar year.

6 (c) Leave pursuant to this section shall not be
7 cumulative[~~-~~] from one calendar to another.

8 (d) If unpaid leave under this chapter conflicts with the
9 un-reduced compensation requirement for exempt employees under
10 the federal Fair Labor Standards Act, an employer may require
11 the employee to make up for the leave taken within the same pay
12 period.

13 (e) Nothing in this chapter shall entitle an employee to
14 more than a total of four weeks of leave in any twelve-month
15 period[~~-~~]; provided that any employee who suffers from total
16 inability to perform the duties of the employee's employment
17 resulting from a preterm birth of a child who is required to
18 stay in a neonatal intensive care unit or birth of a child who
19 is required to stay in a neonatal intensive care unit for more
20 than eight weeks shall be entitled to additional family leave
21 not to exceed twelve weeks while the child is in a neonatal



1 intensive care unit or after the child is discharged from the
2 neonatal intensive care unit; provided further that during the
3 additional period of family leave, the employee provides
4 kangaroo care to, or expresses breast milk for, the child, which
5 requires the employee to continually be in close physical
6 proximity to the child.

7 (f) For purposes of this section, "kangaroo care" has the
8 same meaning as defined in section 392-3."

9 SECTION 7. Section 398-4, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) [~~Pursuant to section 398-3, an employee shall be~~
12 ~~entitled to four weeks of family leave. The family leave shall]~~
13 Nothing in this chapter shall be construed to require an
14 employer to provide its employees with paid family leave. If an
15 employer provides its employees with paid family leave, family
16 leave taken by an employee pursuant to section 398-3 may consist
17 of unpaid leave, paid leave, or a combination of paid and unpaid
18 leave. If an employer provides paid family leave for fewer than
19 [four weeks,] the family leave period to which an employee is
20 entitled pursuant to section 398-3, [the additional period of
21 leave added leave to attain the four-week total] leave taken by



1 the employee beyond the period of paid family leave provided by
2 the employer may be unpaid.

3 (b) Except as otherwise provided in subsection (c), an
4 employee may elect to substitute any part of family leave to
5 which the employee is entitled pursuant to section 398-3, with
6 any of the employee's accrued paid leaves, including [~~but not~~
7 ~~limited to~~] vacation, personal[~~7~~] leave, or family leave [~~for~~
8 ~~any part of the four-week period in subsection (a)~~]."

9 SECTION 8. The department of health shall amend its
10 administrative rules to ensure that neonatal care is included as
11 a "related medical condition" wherever the phrase "pregnancy,
12 childbirth, or related medical condition" is used.

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 10. This Act shall take effect upon its approval.

16

INTRODUCED BY: *Karl Rhoads*



Report Title:

DOH; TDI; Eligibility Criteria Exemption; Family Leave; Pregnancy; Childbirth; Preterm Birth; NICU; Kangaroo Care; Breast Milk Expression

Description:

Expands the State's temporary disability insurance coverage to, and exempts from TDI benefit eligibility requirements that are employment-related, employees who are unable to perform their employment duties due to the employee's childbirth or provision of kangaroo care to, or expression of breast milk for, the employee's child who is required to stay in a neonatal intensive care unit. Extends under certain conditions the temporary disability benefit payment period and family leave period for employees who are unable to perform their employment duties due to a preterm birth of a child who is required to stay in a neonatal intensive care unit (NICU) or birth of a child who is required to stay in a NICU for more than eight weeks. Defines "kangaroo care" and "preterm birth". Requires the Department of Health to amend its rules to include neonatal care as related condition where the phrase "pregnancy, childbirth, or other related condition" is used.

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