

ACT 328

S.B. NO. 818

A Bill for an Act Relating to Family Leave.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
FAMILY LEAVE**

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Child” means an individual who is a biological, step, adopted, or foster son or daughter of an employee.

“Director” means the director of labor and industrial relations.

“Employee” means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter.

“Employer” means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

“Employment” or “employed” means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer.

“Employment benefits” means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave,

educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

“Health care provider” means a physician as defined under section 386-1.

“Parent” means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, or a grandparent-in-law.

“Serious health condition” means an acute, traumatic, or life-threatening illness, injury, or impairment, which involves treatment or supervision by a health care provider.

§ -2 **Inapplicability.** The rights provided under this chapter shall not apply to employees of an employer with fewer than one hundred employees.

§ -3 **Family leave requirement.** (a) An employee shall be entitled to a total of four weeks of family leave during any calendar year upon the birth of a child of the employee or the adoption of a child, or to care for the employee’s child, spouse, or parent with a serious health condition.

(b) During each calendar year, the leave may be taken intermittently.

(c) Leave shall not be cumulative.

(d) If unpaid leave under this subsection conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period.

(e) Nothing in this chapter shall entitle an employee to more than a total of four weeks of leave in any twelve-month period.

§ -4 **Unpaid leave permitted; relationship to paid leave.** Pursuant to section -3, an employee shall be entitled to four weeks of family leave. The family leave shall consist of unpaid or paid leave or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid. Further, an employee or employer may elect to substitute any of the employee’s accrued paid leaves such as sick, vacation, personal, or family leave for any part of the four-week period.

§ -5 **Notice.** In any case in which the necessity for family leave is foreseeable, the employee shall provide the employer with prior notice of the expected birth or adoption or serious health condition in a manner that is reasonable and practicable.

§ -6 **Certification.** An employer may require that a claim for family leave be supported by certification of the birth of the child issued by a health care provider, the family court, or certification of the placement of the child for adoption with the employee issued by a recognized adoption agency, the attorney handling the adoption, or by the individual officially designated by the birth parent to select and approve the adoptive family.

§ -7 **Employment and benefits protection.** (a) Upon return from family leave, the employee shall be entitled to be restored by the employer to the position of employment held by the employee when the leave commenced, or restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. If, however, during a leave, the employer

experiences a layoff or workforce reduction and the employee would have lost a position had the employee not been on family leave, the employee is not entitled to reinstatement in the former or equivalent position. In such circumstances, the employee retains all rights, including seniority rights, pursuant to the good faith operation of a bona fide layoff and recall system.

(b) The taking of family leave shall not result in the loss of any employment benefit accrued before the date on which the leave commenced, except for any paid leave that may have been expended in conjunction with the family leave.

(c) Nothing in this chapter shall be construed to entitle or deny any employee to the accrual of any seniority or employment benefits during any period of leave, or any right, employment benefit, or position to which the employee would have been entitled had the employee not taken the leave.

**§ -8 Prohibited acts.** (a) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this chapter.

(b) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(c) It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

- (1) Filed any charge, or instituted or caused to be instituted any proceeding, under or related to this chapter;
- (2) Given or is about to give any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or
- (3) Testified or is about to testify in any inquiry or proceeding relating to any right provided under this chapter.

**§ -9 Enforcement and administration.** (a) The director shall have jurisdiction over those prohibited acts made unlawful by this chapter. Any individual claiming to be aggrieved may file with the director a verified complaint in writing that shall state the name and address of the employer alleged to have committed the unlawful act complained of, set forth the particulars thereof, and contain other information as may be required by the director. The attorney general, or the director upon the director's initiative, may, in like manner, make and file a complaint.

(b) A complaint may be filed on behalf of a class by the attorney general or the director, and a complaint so filed may be investigated, conciliated, heard, and litigated on a class action basis.

(c) The director shall assist employers in the training and placement of temporary help to perform the work of those employees on family leave.

(d) The director may also hire, subject to chapters 76 and 77, assistants and clerical, stenographic, and other help as may be necessary to administer and enforce this chapter.

**§ -10 Applicability.** (a) Section -3 shall set a minimum standard that is not intended to replace family leave policies that exist as of the effective date of this Act and that provide for equal or greater employment benefits than those benefits afforded under this chapter.

(b) Nothing in this chapter shall be construed to modify, eliminate, or otherwise abrogate any existing family leave policies, employment benefits, or protections that employees may have pursuant to any employment contracts or

collective bargaining agreements, to the extent that the contracts and agreements provide greater protections than those afforded under this chapter.

(c) To the extent the provisions of this chapter contradict or otherwise conflict with any contract rights or collective bargaining agreements in existence as of the date of this Act, the provisions that provide greater benefits to the employees shall control.”

SECTION 2. Chapter 79, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§79- Family leave.** All officers and employees who have been employed for not fewer than six consecutive months by the State or its political subdivisions shall be entitled to family leave of four weeks as provided under chapter .”

SECTION 3. The legislative reference bureau shall undertake a study of family leave and report its findings to the legislature twenty days prior to the convening of the regular session of 1993. The study shall include at least the following:

- (1) The fiscal impact of family leave as provided by this Act and any other provisions that may be proposed, and the concept of granting income tax credits for employers who would implement the family leave portions of this Act;
- (2) The experience of public sector employers and any other employers already granting family leave;
- (3) The respective responsibilities that would result from this Act for the director of labor and industrial relations and the director of taxation; and
- (4) Guidelines for determining when a health condition is acute, traumatic, or life-threatening.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on January 1, 1992; provided that the Act shall not apply to employees of private sector employers as defined in this Act until January 1, 1994.

(Approved July 2, 1991.)

**Note**

1. Edited pursuant to HRS §23G-16.5.