
A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

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

1 SECTION 1. The legislature finds that Hawaii's working
2 families are not adequately supported during times of caregiving
3 and illness. According to a 2018 report commissioned by Aloha
4 United Way, entitled "ALICE (Asset Limited, Income Constrained,
5 Employed): a Study of Financial Hardship in Hawaii", forty-two
6 per cent of families in Hawaii are living paycheck to paycheck.
7 While the federal Family and Medical Leave Act of 1993 allows
8 twelve weeks of unpaid leave to employees who have worked at a
9 business that employs fifty or more employees, the majority of
10 Hawaii's workforce cannot afford to take unpaid leave to care
11 for a new child or attend to the needs of a family member having
12 a serious health condition. Hawaii law offers a modest
13 four-weeks of unpaid leave only to employees of large employers
14 having more than one hundred employees.

15 The legislature further finds that according to the Hawaii
16 Children's Action Network, seven in ten keiki have either their
17 married parents, or their single parent, in the workforce,



1 leaving them with no full-time caregiver. Yet, mothers who have
2 paid leave are thirty-nine per cent less likely to receive
3 public assistance after the birth of a child than those without.
4 Furthermore, paid family leave is associated with a twenty per
5 cent decrease in infant mortality, greater health equity among
6 different racial and socioeconomic groups, and increases in
7 worker retention and loyalty. An actuarial analysis conducted
8 in 2016 found that the annual cost to cover sixteen weeks of
9 leave for a Hawaii worker making \$48,000 would be around
10 fifty-eight dollars, averaging out to cost about \$1.11 per week.

11 The legislature additionally finds that in 2018, only
12 seventeen per cent of workers in the United States had access to
13 paid family leave through their employers. Women, as primary
14 caregivers of infants, children, and elderly parents, are
15 disproportionately affected by the absence of paid family and
16 medical leave. According to AARP Hawaii, there are
17 approximately 157,000 unpaid family caregivers in the State.
18 Hawaii has one of the fastest growing populations over the age
19 of sixty-five in the nation; from 2020 to 2030, the percentage
20 of people aged sixty-five and over is expected to increase from
21 19.1 per cent to 22.5 per cent of the State's population.



1 Nearly one-third of those who need but do not have access to
2 family leave will need the time off to care for an ill spouse or
3 elderly parent.

4 The legislature additionally finds that the coronavirus
5 disease 2019 (COVID-19) spread globally and was declared a
6 pandemic by the World Health Organization on March 11, 2020.
7 Upon reaching Hawaii's shores, COVID-19 became a public health
8 emergency that infected thousands of people, overwhelmed
9 hospital capacities, created medical supply shortages, and
10 claimed the lives of numerous Hawaii residents. Enacting a
11 comprehensive family leave program would allow employees whose
12 family members are impacted by serious health conditions to
13 provide adequate care for their loved ones.

14 The purpose of this Act is to ensure that employees in
15 Hawaii are provided family leave insurance benefits when they
16 need to provide care for their families.

17 SECTION 2. Chapter 398, Hawaii Revised Statutes, is
18 amended by adding ten new sections to be appropriately
19 designated and to read as follows:

20 "§398-A Family leave insurance program; established. (a)
21 The department shall establish and administer a family leave



1 insurance program and pay family leave insurance benefits as
2 specified in this chapter.

3 (b) The department shall establish procedures and forms
4 for filing claims for family leave insurance benefits.

5 (c) The information collected and the files and records
6 retained regarding a covered individual pursuant to this
7 chapter, including the existence of a claim, shall be
8 confidential and shall not be open to inspection; provided that:

9 (1) An employee who applied for family leave insurance
10 benefits or that employee's representative, upon
11 presentation of an authorization signed by the
12 employee to the department, shall be allowed to review
13 any information, files, and records obtained by the
14 department;

15 (2) A public employee acting within the scope of the
16 public employee's official duties shall be permitted
17 to review the minimum necessary information, files,
18 and records to accomplish the public employee's
19 purpose for reviewing the information, files, and
20 records; and



1 (3) The department shall notify an employee's employer
2 that an employee filed a claim pursuant to this
3 chapter within days after the claim has been
4 filed.

5 **§398-B Notice to employers.** (a) An employer may require
6 a covered individual to give the employer written notice at
7 least thirty days before commencing a period of family leave.

8 (b) A covered individual may commence leave without thirty
9 days' advance notice if the leave is not foreseeable, as in
10 circumstances including but not limited to:

11 (1) An unexpected serious health condition of the employee
12 or a family member of the employee; or

13 (2) A premature birth, unexpected adoption, or unexpected
14 foster placement by or with the employee.

15 (c) If a covered individual commences leave without thirty
16 days' advance notice, as described under subsection (b), the
17 employee shall give oral notice to the employer within
18 twenty-four hours after the commencement of leave and shall
19 provide written notice of leave to the employer within three
20 days after the commencement of leave.



1 **§398-C Employment protection; retaliation prohibited.**

2 After returning to work after a period of family leave, a
3 covered individual shall be entitled to be restored to the
4 position of employment held by the employee when the leave
5 commenced, if that position still exists, without regard to
6 whether the employer filled the position with a replacement
7 worker during the period of leave. If the position held by the
8 employee at the time the leave commenced no longer exists, the
9 employee shall be entitled to be restored to any available
10 equivalent position having equivalent employment benefits, pay,
11 and other terms and conditions of employment.

12 **§398-D Family leave insurance trust fund; family leave**

13 **insurance benefits.** (a) There is established an insurance
14 trust fund to be known as the family leave insurance trust fund.
15 The family leave insurance trust fund shall be used to provide a
16 covered individual with up to sixteen weeks per calendar year of
17 paid family leave.

18 (b) The family leave insurance trust fund shall consist of
19 employer and employee contributions based on the employee's
20 average weekly wage, interest earned on moneys in the fund;
21 income earned by the fund; and dividends, refunds, rate credits,



1 and other returns received by the fund, including funds
2 collected pursuant to section 398-I. The rate of the
3 contribution shall be in accordance with the contribution rate
4 to the trust fund for disability benefits established under
5 section 392-61. The department of labor and industrial
6 relations shall collect the contributions from the employee and
7 employer, which shall be shared at one half the cost of the
8 premiums per employee.

9 (c) The family leave insurance trust fund shall be under
10 the control of and administered by the department. All sums
11 contributed or paid from any source to the family leave
12 insurance trust fund, and all assets of the fund including all
13 interest and earnings, shall be held by the department for the
14 exclusive use and benefit of the employee-beneficiaries. The
15 fund shall be used to finance benefits, administration,
16 outreach, and education or study of family leave insurance. The
17 fund shall not be subject to appropriation for any other
18 purpose.

19 **§398-E Eligibility for payment of benefits.** Family leave
20 insurance benefits shall be payable to:

21 (1) An employed covered individual; or



- 1 (2) An unemployed covered individual who:
- 2 (A) Because of birth, adoption, or placement through
- 3 foster care, is caring for a new child during the
- 4 first year after the birth, adoption, or
- 5 placement;
- 6 (B) Is caring for a family member having a serious
- 7 health condition;
- 8 (C) Is caring for a qualifying service member who is
- 9 the employee's next of kin; or
- 10 (D) Has a qualifying exigency.

11 **§398-F Report to the legislature.** The department shall
 12 submit a report to the legislature no later than twenty days
 13 prior to the convening of each regular session, beginning with
 14 the regular session of 2025, on any outreach efforts conducted
 15 pursuant to section 398-G and projected and actual program
 16 participation, including the percentage of covered individuals
 17 who received family leave insurance benefits, premium rates, and
 18 fund balances under the family leave insurance program
 19 established pursuant to this chapter.

20 **§398-G Outreach and education.** The department shall
 21 conduct a public outreach and education campaign to inform



1 employees and employers of the availability of family leave
2 insurance benefits. The department may use a portion of the
3 funds collected in a given year for the family leave insurance
4 program to pay for the public outreach and education campaign;
5 provided that the department shall use no more than _____ per
6 cent per year or \$ _____ per year, whichever is greater, for
7 the public outreach and education campaign. Outreach
8 information shall be available in English and other languages
9 spoken within the State.

10 **§398-H Coverage of self-employed.** (a) A self-employed
11 person, including a sole proprietor, partner, or joint venture
12 partner, may elect coverage under this chapter by filing a
13 notice of election in writing with the director, as required by
14 the department, as follows:

- 15 (1) For an initial period of not less than three years;
16 and
17 (2) Following the initial coverage period, not less than
18 one additional year of coverage;
19 provided that the election shall take effect on the date of
20 filing the notice.



1 (b) A self-employed person who has elected coverage
2 pursuant to subsection (a) may withdraw from coverage within
3 thirty days after the end of the initial period of coverage, or
4 at other times as the director may prescribe by rule, by filing
5 with the director a notice in writing, as required by the
6 department. The withdrawal shall take effect no sooner than
7 thirty days after filing the notice.

8 **§398-I Wage withholding.** (a) An employer may deduct and
9 withhold contributions from each employee of up to one-half of
10 the cost of providing family leave insurance premiums, and the
11 employer shall provide for the remaining cost over the amount of
12 contributions of the employer's employees.

13 (b) If there is a dispute between the employee and the
14 employer relating to the withholding of wages as contributions
15 for family leave insurance benefits, either party may file with
16 the director a petition for determination of the amount to be
17 withheld. The matter shall be determined by an officer of the
18 department. If either an employer or employee is dissatisfied
19 with the department's determination, the aggrieved party may
20 appeal the petition for redetermination pursuant to the
21 procedure under part V of chapter 392.



1 §398-J Weekly benefit amount. (a) The weekly benefit
2 amount provided under this chapter shall be calculated as
3 follows:

4 (1) If the individual's average weekly wage is fifty per
5 cent or less of the state average weekly wage, the
6 individual's weekly benefit shall be ninety per cent
7 of the individual's average weekly wage;

8 (2) If the individual's average weekly wage is more than
9 fifty per cent and less than one hundred per cent of
10 the state average weekly wage, the individual's weekly
11 benefit shall be seventy-five per cent of the
12 individual's average weekly wage; or

13 (3) If the individual's average weekly wage is one hundred
14 per cent or more of the state average weekly wage, the
15 individual's weekly benefit shall be fifty per cent of
16 the individual's average weekly wage.

17 (b) In no case shall the weekly benefit amount exceed the
18 state average weekly wage."

19 SECTION 3. Section 398-1, Hawaii Revised Statutes, is
20 amended as follows:



1 1. By adding eight new definitions to be appropriately
2 inserted and to read:

3 "Covered individual" means any person who:

4 (1) Is an employee or is currently unemployed but has been
5 an employee within the last twenty-six weeks;

6 (2) Meets the requirements set forth in section 392-25 and
7 the requirements in the rules implemented pursuant to
8 this chapter; and

9 (3) Submits an application for family leave insurance
10 benefits to the department.

11 "Family leave insurance benefits" means the benefits
12 provided pursuant to this chapter.

13 "Family member" means a child; parent; person to whom the
14 covered individual is legally married under the laws of any
15 state; biological, foster, hanai, or adopted sibling; the spouse
16 or reciprocal beneficiary of a sibling; or a reciprocal
17 beneficiary.

18 "Next of kin" means a person having the following
19 relationship to a covered individual:

20 (1) The spouse or reciprocal beneficiary;

21 (2) An adult child;



- 1 (3) Either parent;
- 2 (4) An adult sibling;
- 3 (5) A grandparent; and
- 4 (6) A guardian at the time of death.

5 "Qualifying exigency" means a circumstance arising from a
6 notice of deployment of a service member received within seven
7 days of deployment, or mandatory attendance of military events
8 or related activities by the covered individual or the covered
9 individual's family member that requires the covered individual
10 to:

- 11 (1) Provide child care or attend school activities, if due
12 directly or indirectly to the active duty call or
13 active duty status of a service member;
- 14 (2) Make financial or legal arrangements for a service
15 member's absence or as a result of the service
16 member's absence;
- 17 (3) Attend counseling provided by someone other than a
18 health care provider if the need for counseling arises
19 from the active duty call or active duty of a service
20 member; or



1 (4) Spend up to five days with a service member for each
2 instance of short-term, temporary rest and
3 recuperation leave during a period of deployment.

4 "Qualifying service member" means an individual who meets
5 specific criteria established by a program or organization to be
6 eligible for certain benefits or services related to military
7 service.

8 "Reciprocal beneficiary" has the same meaning as the term
9 "reciprocal beneficiaries" as defined in section 572C-3.

10 "Spouse" has the same meaning as defined in section
11 431:10A-116.5."

12 2. By amending the definition of "child" to read:

13 "Child" means an individual who is a biological, adopted,
14 hanai, or foster son or daughter; a stepchild; [e~~r~~] a legal ward
15 of [an-employee-] a covered individual; a child of a reciprocal
16 beneficiary; a grandchild; or a child of a covered individual
17 who stands in loco parentis."

18 3. By amending the definition of "employer" to read:

19 "Employer" means any individual or organization, including
20 the State, any of its political subdivisions, any
21 instrumentality of the State or its political subdivisions, any



1 partnership, association, trust, estate, joint stock company,
2 insurance company, or corporation, whether domestic or foreign,
3 or receiver or trustee in bankruptcy, or the legal
4 representative of a deceased person, who employs one [~~hundred~~]
5 or more employees for each working day during each of twenty or
6 more calendar weeks in the current or preceding calendar year."

7 4. By amending the definition of "parent" to read:

8 "Parent" means a biological, foster, hanai or adoptive
9 parent, a parent-in-law, a stepparent, a legal guardian, a
10 grandparent, [~~or~~] a grandparent-in-law[~~-~~], a parent or
11 grandparent of a reciprocal beneficiary, or a person who stands
12 in loco parentis for a minor child."

13 SECTION 4. Section 398-3, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) [~~An employee~~] A covered individual shall be entitled
17 to a total of [~~four~~] sixteen weeks of family leave during any
18 calendar year:

19 [~~(1) Upon the birth of a child of the employee or the~~
20 ~~adoption of a child; or~~



1 ~~(2) To care for the employee's child, spouse, reciprocal~~
2 ~~beneficiary, sibling, grandchild, or parent with a~~
3 ~~serious health condition.]~~

4 (1) To care for the covered individual's child within
5 twelve months of the child's birth, foster placement
6 with the covered individual, or placement for adoption
7 with the covered individual;

8 (2) To care for a covered individual's family member with
9 a serious health condition;

10 (3) To care for a qualifying service member who is the
11 covered individual's next of kin; or

12 (4) Due to a qualifying exigency."

13 2. By amending subsection (e) to read:

14 "(e) Nothing in this chapter shall entitle ~~[an employee]~~ a
15 covered individual to more than a total of ~~[four]~~ sixteen weeks
16 of leave in any twelve-month period."

17 SECTION 5. Section 398-4, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§398-4 [Unpaid leave permitted,] Paid family leave;**
20 **relationship to [paid leave, sick] other leave.** (a) Pursuant
21 to section 398-3, ~~[an employee]~~ a covered individual shall be



1 entitled to [~~four~~] sixteen weeks of family leave. [~~The family~~
2 ~~leave shall consist of unpaid leave, paid leave, or a~~
3 ~~combination of paid and unpaid leave. If an employer provides~~
4 ~~paid family leave for fewer than four weeks, the additional~~
5 ~~period of leave added to attain the four week total may be~~
6 ~~unpaid.] An employer who provides paid family leave beyond what
7 is required by this chapter may require that the leave run
8 concurrently with the sixteen weeks required under this chapter;
9 provided that the employer shall not require the leave to be
10 applied against accrued sick or vacation hours.~~

11 (b) Except as otherwise provided in subsection (c), [~~an~~
12 ~~employee]~~ a covered individual may elect to substitute any of
13 the [~~employee's~~] covered individual's accrued paid leaves,
14 including but not limited to vacation, personal, or family
15 leave, for any part of the [~~four week~~] sixteen-week period in
16 subsection (a).

17 (c) [~~An employer who provides sick leave for employees~~
18 ~~shall permit an employee to use the employee's accrued and~~
19 ~~available sick leave for purposes of this chapter; provided that~~
20 ~~an employee shall not use more than ten days per year for this~~
21 ~~purpose, unless an express provision of a valid collective~~



1 ~~bargaining agreement authorizes the use of more than ten days of~~
2 ~~sick leave for family leave purposes. Nothing in this section~~
3 ~~shall require an employer to diminish an employee's accrued and~~
4 ~~available sick leave below the amount required pursuant to~~
5 ~~section 392-41; provided that any sick leave in excess of the~~
6 ~~minimum statutory equivalent for temporary disability benefits~~
7 ~~as determined by the department may be used for purposes of this~~
8 ~~chapter.] No assignment, pledge, or encumbrance of any right to~~
9 ~~benefits that is or may become due or payable under this chapter~~
10 ~~shall be valid; and any right to benefits shall be exempt from~~
11 ~~levy, execution, attachment, garnishment, or any other remedy~~
12 ~~whatsoever provided for the collection of debt. No waiver of~~
13 ~~any exemption in this section shall be valid.~~

14 (d) Nothing in this chapter shall prevent a biological
15 mother who is receiving temporary disability benefits for
16 recovery from childbirth from applying for and receiving paid
17 family leave for the purpose of caregiving and bonding with her
18 child after the temporary disability time period has lapsed.
19 For family leave purposes, there shall be no waiting period for
20 benefits to begin.



1 (e) Benefits under the Family and Medical Leave Act of
2 1993 shall run concurrently with benefits under this chapter."

3 SECTION 6. Section 398-21, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Any individual claiming to be aggrieved by an alleged
6 unlawful act under this chapter, including the denial of family
7 leave insurance benefits, may file with the department a
8 verified complaint in writing."

9 SECTION 7. Section 398-23, Hawaii Revised Statutes, is
10 amended by amending subsection (d) to read as follows:

11 "(d) If the department determines after investigation that
12 this chapter has been violated~~[7]~~ by an employer, the department
13 shall inform the employer and endeavor to remedy the violation
14 by informal methods, such as conference or conciliation. If the
15 department determines that family leave insurance benefits have
16 been wrongfully withheld, the department shall order immediate
17 payment to the covered individual found to be entitled to those
18 benefits."

19 SECTION 8. Section 398-24, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) Upon appeal by a complainant or the employer, the
2 order issued by the department shall be subject to a de novo
3 review by a hearings officer appointed by the director."

4 SECTION 9. Section 398-26, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Relief under this section may include:

7 (1) The amount of any family leave insurance benefits,
8 wages, salary, employment benefits, or other
9 compensation denied or lost to the employee by reason
10 of the violation; or

11 (2) In a case in which family leave insurance benefits,
12 wages, salary, employment benefits, or other
13 compensation have not been denied or lost to the
14 employee, any actual monetary losses sustained by the
15 employee as a direct result of the violation, such as
16 the cost of providing care, up to a sum equal to four
17 weeks of wages or salary for the employee."

18 SECTION 10. Section 398-2, Hawaii Revised Statutes, is
19 repealed.



1 ~~["§398-2] Inapplicability. The rights provided under~~
2 ~~this chapter shall not apply to employees of an employer with~~
3 ~~fewer than one hundred employees."]~~

4 SECTION 11. The department of labor and industrial
5 relations shall adopt rules pursuant to chapter 91, Hawaii
6 Revised Statutes, to implement the purposes of this Act.

7 SECTION 12. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$ or so
9 much thereof as may be necessary for fiscal year 2024-2025 for
10 the purpose of administering the family leave insurance program,
11 including the oversight of payroll deductions and administrative
12 processes and payment to covered individuals.

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

15 SECTION 13. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so much
17 thereof as may be necessary for fiscal year 2024-2025 for the
18 establishment of full-time equivalent (.0 FTE) positions
19 for the establishment and operation of the family leave
20 insurance program.



1 The sum appropriated shall be expended by the department of
2 labor and industrial relations for the purposes of this Act.

3 SECTION 14. In accordance with section 9 of article VII of
4 the Hawaii State Constitution and sections 37-91 and 37-93,
5 Hawaii Revised Statutes, the legislature has determined that the
6 appropriations contained in Act 164, Regular Session of 2023,
7 and this Act will cause the state general fund expenditure
8 ceiling for fiscal year 2024-2025 to be exceeded by
9 \$ or per cent. This current declaration takes
10 into account general fund appropriations authorized for fiscal
11 year 2024-2025 in Act 164, Regular Session of 2023, and this Act
12 only. The reasons for exceeding the general fund expenditure
13 ceiling are that:

- 14 (1) The appropriations made in this Act are necessary to
15 serve the public interest; and
16 (2) The appropriations made in this Act meet the needs
17 addressed by this Act.

18 SECTION 15. In codifying the new sections added by
19 section 2 of this Act, the revisor of statutes shall substitute
20 appropriate section numbers for the letters used in designating
21 the new sections in this Act.



1 SECTION 16. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 17. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 18. This Act shall take effect on July 1, 2050.



Report Title:

DLIR; Family Leave Insurance Program; Family Leave Insurance Benefits; General Fund Expenditure Ceiling Exceeded; Appropriations

Description:

Requires the Department of Labor and Industrial Relations to establish and administer a family leave insurance program. Provides family leave insurance benefits and extends the period of family leave to 16 weeks for businesses that employ 1 or more employees who meet the hourly qualifications. Eliminates the previous threshold of 100 employees for employers to be subject to the family leave law. Declares that the appropriations exceed the state general fund expenditure ceiling for 2024-2025. Appropriates funds. Effective 7/1/2050. (SD2)

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

