

Resolution

No. 23-173

APPROVING FOR INCLUSION IN THE 2024
MAUI COUNTY COUNCIL LEGISLATIVE
PACKAGE A STATE BILL TO ESTABLISH PAID
FAMILY LEAVE FOR STATE AND COUNTY
EMPLOYEES

WHEREAS, the United States is the only modern country that does not offer any paid maternity, parental or home care leave among other Organization for Economic Co-operation and Development (OECD) member countries; and

WHEREAS, the Hawaii Family Leave Law offers a modest four-week unpaid leave does not adequately support working families during times of caregiving and illness; and

WHEREAS, the need for family leave in Hawaii is expected to increase as the Department of Business, Economic Development, and Tourism projects that the percentage of residents aged 65 years or older is expected to rise from 17.1 percent in 2016, to 22.6 percent in 2030; and

WHEREAS, the federal Family and Medical Leave Act of 1993 allows employees in the private sector 12 weeks of unpaid leave to care for a new child or attend to the needs of a family member with a serious health condition; and

WHEREAS, U.S. Senator Brian Schatz secured 12 weeks of paid parental leave for 2 million federal employees under the Federal Employee Paid Leave Act in 2019; and

WHEREAS, as of March 2023, 13 states, including California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington, and the District of Columbia have established paid family and medical leave laws; and

WHEREAS, enacting a comprehensive paid family leave program would allow state and county employees whose family members are

Resolution No. 23-173

impacted by serious health conditions to provide adequate care for their loved ones; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill attached as Exhibit "A," relating to the establishment of paid family leave for state and county employees, is approved for inclusion in the 2024 Maui County Council Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Mayor.

paf:jpp:23-183a

INTRODUCED BY:

A handwritten signature in black ink, consisting of a stylized 'G' followed by a cursive 'A' and 'J'.

GABE JOHNSON

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 state and
2 county employed workforce are not adequately supported during
3 times of birth, adoption, or fostering a new child and
4 caregiving a family member during illness. While the Federal
5 Employee Paid Leave Act of 2019 allows twelve weeks of paid
6 leave to federal employees, Hawaii's state and county employees
7 are not given the same opportunity and can struggle to afford to
8 take unpaid leave to care for a child or an elderly family
9 member with a serious health condition. Hawaii state and county
10 employees are currently covered by the Federal Medical Leave Act
11 and the Hawaii Family Leave Law, which allows for a leave time
12 period of twelve weeks and four weeks, respectively; however,
13 the leave is unpaid. State and county employees have the option
14 to use up accrued vacation or sick pay, the amount of which will
15 depend on time of service or prior use.

16 Seven in ten keiki have both married parents or a single
17 parent in the workforce, leaving no full-time caregiver. Women,
18 as primary caregivers of infants, children, and elderly parents,

____.B. NO. _____

1 are affected disproportionately by the unavailability of paid
2 family and medical leave. According to the Hawaii Children's
3 Action Network, paid family leave is associated with a 20 per
4 cent decrease in infant mortality.

5 Hawaii has the fastest growing population of individuals
6 over the age of sixty-five in the nation, and that number is
7 expected to grow even further by the year 2030. Of those who
8 would benefit from paid family leave, nearly one-third would
9 take those leave benefits to care for an ill spouse or elderly
10 parent. In short, most workers, at some point, will need to take
11 time off to care for an ill or aging family member, the majority
12 of which are women, but very few can afford it.

13 The legislature further finds that providing these benefits
14 to state and county employees could enhance recruitment and
15 retention of employees, fulfill the government's role as a model
16 employer, significantly impact the bonding between a newborn,
17 adopted, or new foster child and its parent, and reduce stress
18 and the negative impacts of not guaranteeing parental and family
19 paid leave to mothers and low-income and economically
20 disadvantaged employees and their children or elderly or sick
21 loved ones.

1 "Reduced leave schedule" means a leave schedule that
2 reduces the usual number of hours per workweek or hours per
3 workday of a qualified employee.

4 "Serious health condition" means an illness, injury,
5 impairment, or physical or mental condition that involves:

6 (1) Inpatient care at a hospital, hospice, or residential
7 medical care facility; or

8 (2) Continuing treatment by a health care provider.

9 "Sibling" means an individual who is a biological, adopted,
10 or foster brother or sister; or a stepbrother or stepsister of
11 an employee.

12 **§78-B Paid family leave; general requirements.** (a) A
13 qualified employee shall be entitled to a total of twelve weeks
14 of paid leave during any twelve-month period for one or more of
15 the following:

16 (1) The birth of a child of the qualified employee and in
17 order to care for the child;

18 (2) The placement of a child with the qualified employee
19 for adoption or foster care; or

20 (3) To care for the qualified employee's spouse,
21 reciprocal beneficiary, child, grandchild, parent, or
22 sibling if the spouse, reciprocal beneficiary, child,

____.B. NO. _____

1 grandchild, parent, or sibling has a serious health
2 condition.

3 (b) The entitlement to leave under subsection (a)(1) or
4 (2) shall expire at the end of the twelve-month period beginning
5 on the date of birth or placement of the child.

6 (c) Leave under subsection (a)(1), (2), and (3) may be
7 taken intermittently or on a reduced leave schedule when
8 medically necessary; provided that:

9 (1) Any hours of leave taken shall be subtracted from the
10 total amount of leave remaining available to the
11 qualified employee under subsection (a), for purposes
12 of the twelve-month period involved, on an hour-for-
13 hour basis;

14 (2) If a qualified employee requests intermittent leave or
15 leave on a reduced leave schedule that is foreseeable
16 based on planned medical treatment, the employer may
17 require the qualified employee to transfer temporarily
18 to an available alternative position offered by the
19 employing agency for which the qualified employee is
20 qualified and that:

21 (A) Has equivalent pay and benefits; and

____.B. NO. _____

1 (B) Better accommodates recurring periods of leave
2 than the regular employment position of the
3 qualified employee; and

4 (3) The qualified employee complies with subsection (j)
5 and section 78-C(a) (5).

6 (d) A qualified employee taking leave under this section
7 may elect to use one of the following types of paid leave:

8 (1) Twelve administrative workweeks of paid family leave
9 under this paragraph in connection with the birth or
10 placement involved; or

11 (2) During the twelve-month period referred to in
12 subsection (a), and in addition to the twelve
13 administrative workweeks under paragraph (1), any
14 leave accrued or accumulated by the qualified
15 employee;

16 provided that nothing in this subsection shall be construed to
17 require that a qualified employee first use all or any portion
18 of the leave described in paragraph (2) before being allowed to
19 use paid parental leave described in paragraph (1); provided
20 further that nothing in this section shall require an employer
21 to provide paid sick leave in any situation in which the
22 employer would not normally provide paid leave.

____.B. NO. _____

- 1 (e) Paid family leave taken under subsection (d) (1):
- 2 (1) Shall be payable from any appropriation or fund
- 3 available for salaries or expenses for positions
- 4 within the employing agency;
- 5 (2) Shall not be considered to be vacation leave or any
- 6 other type of leave; and
- 7 (3) If not used by the qualified employee before the end
- 8 of the twelve-month period described in subsection (a)
- 9 to which it relates, shall not accumulate for any
- 10 subsequent use.

11 Nothing in this subsection shall be construed to modify the

12 requirement that the qualified employee complete at least twelve

13 months of service as an employee, as described in the definition

14 of "qualified employee" in section 78-A, before becoming

15 eligible to take leave pursuant to this part.

16 (f) If a qualified employee fails to return from paid

17 leave provided under subsection (e) (1) after the date the leave

18 concludes, the employing agency may recover from the qualified

19 employee an amount equal to the total amount of government

20 contributions paid by the agency on behalf of the qualified

21 employee for maintaining the qualified employee's health

22 coverage during the period of the leave; provided that this

____.B. NO. _____

1 subsection shall not apply to a qualified employee who fails to
2 return from leave due to:

3 (1) The continuation, recurrence, or onset of a serious
4 health condition, including a mental health condition;
5 or

6 (2) Any other circumstance beyond the control of the
7 qualified employee.

8 (g) In any case in which the necessity for leave under
9 subsection (a) (1) or (2) is foreseeable based upon an expected
10 birth or placement, the qualified employee shall provide the
11 employer with not less than thirty days' notice before the date
12 the leave is to begin of the qualified employee's intention to
13 take leave, except that if the date of the birth or placement
14 requires leave to begin in less than thirty days, the qualified
15 employee shall provide as much notice as is practicable.

16 (h) In any case in which the necessity for leave under
17 subsection (a) (3) is foreseeable based on planned medical
18 treatment, the qualified employee:

19 (1) Shall make a reasonable effort to schedule the
20 treatment so as not to disrupt unduly the operations
21 of the employer, subject to the approval of the health

____.B. NO. _____

1 care provider of the child, spouse, parent, or sibling
2 of the qualified employee, as appropriate; and

3 (2) Shall provide the employer with not less than thirty
4 days' notice before the date the leave is to begin of
5 the qualified employee's intention to take leave,
6 except that if the date of the treatment requires
7 leave to begin in less than thirty days, the qualified
8 employee shall provide as much notice as is
9 practicable.

10 (i) The State or county may establish regulations to
11 increase the amount of leave available to an employee under
12 subsection (a) to a total of not more than 16 administrative
13 workweeks, based on the consideration of:

14 (1) The benefits provided to the State or county
15 government of increasing such leave, including
16 enhanced recruitment and retention of employees;

17 (2) The government's role as a model employer;

18 (3) The impact of increased leave on lower-income and
19 economically disadvantaged employees, the majority of
20 those affected being women;

21 (4) The benefits of parental bonding provided to the
22 child; and

____.B. NO. _____

1 (5) Such other factors as the State or county considers
2 necessary.

3 **§78-C Paid family leave; certification requirements.** (a)

4 An employing agency may require that a request for leave under
5 section 78-B(a)(3) be supported by certification issued by the
6 health care provider of the child, spouse, parent, or sibling of
7 the qualified employee. The qualified employee shall provide,
8 in a timely manner, a copy of the certification to the employing
9 agency. A certification shall be sufficient if it states:

- 10 (1) The date on which the serious health condition
11 commenced;
- 12 (2) The probable duration of the condition;
- 13 (3) The appropriate medical facts within the knowledge of
14 the health care provider regarding the condition;
- 15 (4) A statement that the qualified employee is needed to
16 care for the child, spouse, parent, or sibling, and an
17 estimate of the amount of time that the qualified
18 employee is needed to care for the child, spouse,
19 parent, or sibling; and
- 20 (5) In the case of certification for intermittent leave,
21 or leave on a reduced leave schedule, for planned
22 medical treatment, the dates on which the treatment is

____.B. NO. _____

1 expected to be given and the duration of the
2 treatment.

3 (b) In any case in which the employer has reason to doubt
4 the validity of the certification provided under subsection (a),
5 the employer may require, at the expense of the agency, that the
6 qualified employee obtain the opinion of a second health care
7 provider designated or approved by the employing agency
8 concerning any information certified under subsection (a) for
9 the leave. Any health care provider designated or approved
10 pursuant to this subsection shall not be employed on a regular
11 basis by the employing agency.

12 (c) In any case in which the second opinion described in
13 subsection (b) differs from the original certification provided
14 under subsection (a), the employing agency may require, at the
15 expense of the agency, that the qualified employee obtain the
16 opinion of a third health care provider designated or approved
17 jointly by the employing agency and the qualified employee
18 concerning the information certified under subsection (a). The
19 opinion of the third health care provider concerning the
20 information certified under subsection (a) shall be considered
21 to be final and shall be binding on the employing agency and the
22 qualified employee.

____.B. NO. _____

1 (d) The employer may require, at the expense of the
2 agency, that the qualified employee obtain subsequent
3 recertifications on a reasonable basis.

4 **§78-D Paid family leave; protection of employment and**
5 **benefits.** (a) Any qualified employee who takes leave under
6 section 78-B for the intended purpose of the leave shall be
7 entitled, upon return from the leave:

8 (1) To be restored by the employer to the position held by
9 the qualified employee when the leave commenced; or

10 (2) To be restored to an equivalent position with
11 equivalent benefits, pay, status, and other terms and
12 conditions of employment.

13 (b) The taking of leave under section 78-B shall not
14 result in the loss of any employment benefit accrued prior to
15 the date on which the leave commenced.

16 (c) Except as otherwise provided by law, nothing in
17 subsections (a) or (b) shall be construed to entitle any
18 restored qualified employee to:

19 (1) The accrual of any employment benefits during any
20 period of leave; or

21 (2) Any right, benefit, or position of employment other
22 than any right, benefit, or position to which the

____.B. NO. _____

1 qualified employee would have been entitled had the
2 qualified employee not taken the leave.

3 (d) Nothing in this section shall be construed to prohibit
4 an employing agency from requiring a qualified employee on leave
5 under this section to report periodically, but no more than
6 twice a month, to the employer on the status and intention of
7 the qualified employee to return to work.

8 **§78-E Paid family leave; prohibition of coercion.** (a) An
9 employee shall not directly or indirectly intimidate, threaten,
10 or coerce, or attempt to intimidate, threaten, or coerce, any
11 other employee for the purpose of interfering with the exercise
12 of any rights that the other employee may have under this part.

13 (b) For purposes of this section:

14 "Intimidate, threaten, or coerce" includes promising to
15 confer or conferring any benefit, such as appointment,
16 promotion, or compensation; or taking or threatening to take any
17 reprisal, such as deprivation of appointment, promotion, or
18 compensation.

19 **§78-F Paid family leave; health insurance.** A qualified
20 employee enrolled in a health benefits plan who is placed in a
21 leave status pursuant to this part shall continue to be enrolled
22 in that plan while in the leave status; provided that the

____.B. NO. _____

1 qualified employee continues to pay any required employee
2 contributions.

3 **§78-G Construction.** The benefits and protections
4 established by this part shall be in addition to any other
5 benefits or protections offered by other federal, state, or
6 county laws, including the federal Family and Medical Leave Act
7 and chapter 398. Nothing in this part shall be construed to
8 modify, eliminate, or otherwise abrogate any existing leave
9 policies, employment benefits, or protections that employees may
10 have pursuant to any other laws, employment contracts or
11 collective bargaining agreements, to the extent that the laws,
12 contracts, and agreements provide greater protections than those
13 afforded under this part.

14 **§78-H Rules.** The director shall adopt rules necessary for
15 the administration of this part.

16 **§78-I Paid family leave for state and county employees.**
17 By January 1, 2025, the State and counties shall establish a
18 paid family leave program for state and county employees."

19 SECTION 3. Chapter 78, Hawaii Revised Statutes, is amended
20 by designating sections 78-1 to section 78-65 as Part I, and
21 inserting a title before section 78-1 to read as follows:

22 "PART I. GENERAL PROVISIONS"

____.B. NO. _____

1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on July 1, 2024.

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7 INTRODUCED BY: _____

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