

EMPLOYMENT LAW SUMMARY

Hawaii: Employee Leave Laws - Overview



Employers have some flexibility when it comes to establishing or negotiating employee leave policies. Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages. However, Hawaii employers must provide leave in certain circumstances to comply with state law.

However, federal laws such as the Family and Medical Leave Act (FMLA) require covered employers to provide employees with leave in certain situations.

In addition to federal leave laws, Hawaii has state laws on:

- Jury duty leave;
- Military leave;
- Pregnancy disability leave;
- Domestic violence or sexual assault leave;
- Family leave; and
- Organ, bone marrow or stem cell donor leave.

(Federal laws not discussed in this document, such as the Family and Medical Leave Act, may also impose leave requirements on employers.)

This Employment Law Summary provides a high-level overview of Hawaii's employee leave laws.

STATE RESOURCES

Hawaii Department of Labor and Industrial Relations: <http://labor.hawaii.gov/>

FAQs: The Wage Standards Division has published these [answers](#) to frequently asked questions on family leave.

Poster: Employers can use these model [posters](#) to satisfy their posting requirements.

Overview of Employee Leave Laws

TYPE OF LEAVE	REQUIREMENTS
Jury Duty Leave	An employer cannot discharge, threaten or coerce an employee who responds to a jury summons, serves as a juror or attends court for prospective jury service.

TYPE OF LEAVE	REQUIREMENTS
<p>Military Leave</p>	<p>Under Hawaii law, National Guard members are provided with unlimited unpaid leave for National Guard service, and reemployment to their original positions or positions of like seniority, status and pay. If members are no longer qualified due to disabilities sustained during service, employers must offer other positions that are closest to the seniority, status and pay of the employees' original positions.</p> <p>Employees may not be discharged without cause within one year of reemployment. Employees may not be discriminated against due to their National Guard obligations.</p>
<p>Pregnancy Disability Leave</p>	<p>All employers must provide a reasonable period of leave to female employees who are disabled due to pregnancy, childbirth or a related medical condition. Leave may be paid or unpaid at the employer's discretion. A "reasonable period" of leave is determined by the employee's physician, based on the employee's job requirements and physical condition. An employer may request certification from a doctor estimating the length of leave and the estimated start and end dates of leave.</p> <p>An employee must be reinstated to her original position or to a position of similar status and pay, without the loss of accumulated service credits and privileges. An employer may request medical certification releasing the employee back to work</p>
<p>Domestic or Sexual Violence Leave</p>	<p>All employers must provide eligible employees with unpaid leave due to domestic or sexual violence, in order to:</p> <ul style="list-style-type: none"> • Seek medical attention; • Obtain services from a victim services organization; • Obtain psychological or other counseling; • Relocate; or • Take legal action or other action to enhance the safety of affected individuals. <p>In addition, the employer must reinstate the employee upon return from leave. To be eligible, an employee must have been employed for at least six consecutive months and must be (or have a minor child who is) a victim of domestic or sexual violence.</p> <p>Employers with 50 or more employees must provide eligible employees up to 30 days of leave per calendar year. Employers with fewer than 50 employees must provide eligible employees up to five days per calendar year.</p> <p>If the employee is entitled to take paid or unpaid leave under any other law, agreement or program that may be used for victim's leave, the employee must exhaust the other paid and unpaid leave benefits before domestic or sexual violence leave is applied. However, the combination of the other paid or unpaid leave and the domestic or sexual violence leave is limited to the maximum leave amount for domestic or sexual violence leave (30 days or five days, depending on the employer's size). In addition, an employee is entitled to the same benefits or continuation of benefits that would be provided to similarly situated employees who were on leave for reasons other than domestic or sexual violence. An employee must provide reasonable notice to the employer unless it is not practicable due to imminent danger to the employee or the employee's minor child. An employer may require the employee to report at least once per week on the employee's status and intention to return to work. Employers may request certification for employees' need for domestic or sexual violence leave.</p>

TYPE OF LEAVE	REQUIREMENTS
<p>Family Leave</p>	<p>An employer with 100 or more employees in at least 20 calendar weeks of the current or preceding year must provide an eligible employee with up to four weeks of unpaid family leave per calendar year for the birth or adoption of a child or to care for the employee’s child; grandchild; sibling (biological, adopted, foster or step); spouse/reciprocal beneficiary; biological, foster, or adoptive parent; parent-in-law; stepparent; legal guardian; grandparent or grandparent-in-law with a serious health condition. To be eligible, an employee must have been employed for at least six consecutive months. “Serious health condition” means a physical or mental condition that warrants the employee’s participation to provide care during the period of treatment or supervision by a health care provider, and requires inpatient care or continuing treatment. An employee may substitute up to 10 days of accrued paid leave for any part of the four-week period (unless a collective bargaining agreement allows use of more than 10 days). Employee notice and certification requirements and reinstatement rights apply.</p>
<p>Organ, Bone Marrow or Stem Cell Donor Leave</p>	<p>Employers must permit employees who have worked for them for one year to take a leave of absence of:</p> <ul style="list-style-type: none"> • Seven days per year to serve as a bone marrow or peripheral blood stem cell donor; and • 30 days per year to serve as an organ donor. <p>Employers may require employees to take three days of earned but unused sick leave, vacation, or paid or unpaid time off for bone marrow or peripheral blood stem cell donation, and two weeks of such time for organ donation. Written verification requirements apply. The employer must continue the employee’s group health benefits as if leave had not been taken. Leave does not run concurrently with FMLA leave. Public employees are entitled to annual paid leave of seven days for bone marrow donation, and 30 days for organ donation.</p>

SPECIAL NOTE: The Hawaii Temporary Disability Insurance (TDI) program requires employers to provide partial “wage replacement” insurance coverage to their eligible employees for non-work-related sickness or injury, including pregnancy. The employer’s plan determines the weekly benefit amount, the payment period and any applicable waiting period. At a minimum, the employer’s plan must provide that an eligible employee is entitled to disability benefits from the eighth day of disability for a maximum of 26 weeks at 58 percent of the employee’s average weekly wages, up to the maximum weekly benefit amount. This maximum benefit amount changes annually. The [State of Hawaii Disability Compensation Division](#) provides more information.

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