

Report to the 23rd Legislature
As required by House Concurrent Resolution No. 77, House Draft 2
Urging The Department of Labor and Industrial Relations to Enforce the Provisions of
Act 44, Session Laws of Hawaii 2003,
In Accordance With the Legislature's Intent

Background

This report responds to House Concurrent Resolution 77, HD 2, Regular Session 2004, requesting a report from the Department of Labor and Industrial Relations (DLIR) regarding the Hawaii Family Leave Law. The DLIR's Wage Standards Division (WSD) administers and enforces the Hawaii Family Leave Law, Chapter 398, HRS, while the DLIR's Disability Compensation Division (DCD) administers and enforces the Temporary Disability Insurance (TDI) laws.

The DLIR had a series of meetings with interested parties about the implementation of the Hawaii Family Leave Law, particularly Act 44, Session Laws of Hawaii 2003 (Act 44), which requires employers to allow employees to use up to ten days of "accrued and available" sick leave for family leave. One of the major concerns expressed in HCR 77, HD2, Regular Session 2004, is that certain self-insured employers who allow employees to use "sick leave" for family leave may end up at risk of violating their self-insured agreements for TDI.

The TDI law (Chapter 392, Hawaii Revised Statutes) allows employers to submit a plan to the DLIR that provides benefits "at least as favorable as the disability benefits provided in [Chapter 392]."¹ Once the DLIR accepts their plan, the employers are obligated to provide those benefits. In evaluating whether an employer's self-insured TDI plan is satisfactory, the DLIR measures the benefits using various criteria. Often the benefit plans submitted do not single out specific days for "sick leave" but the sick leave concept for the employee may be entangled in the overall benefits offered and still be determined to meet the equivalency provisions of the TDI law. These plans that do not articulate certain days for "sick leave", but are none-the-less acceptable plans within the current TDI guidelines for self-insured companies, are the plans that encounter conflicts when trying to comply with both the Hawaii Family Leave Law and the TDI law for self-insured employers.

Administrative Rules for Hawaii Family Leave Law

Although the Hawaii Family Leave Law was enacted in 1991, no administrative rules have ever been promulgated. In 2004, the DLIR proposed administrative rules to: (1) establish definitions used in Chapter 398, HRS; (2) clarify the applicability of the law to employers and employees; (3) clarify the new sick leave requirement as amended by Act 44; (4) establish complaint, investigation and hearings procedures; and (5) where applicable, provide consistency with the federal Family and Medical Leave Act of 1993 (FMLA). A public hearing for the proposed family leave administrative rules was held on December 9, 2004, at 9:30 a.m. in Room 314, 830 Punchbowl Street, Honolulu, Hawaii. Notice of the hearing was advertised throughout the State on Sunday, November 7, and Monday, November 8, 2004.² The Department expects to submit Administrative Rules entitled,

¹ §392-41(a)(4) and (5), Hawaii Revised Statutes.

² The Notice of Public Hearing appeared in the Sunday Honolulu Star-Bulletin on Sunday, November 7, 2004, and in the Hawaii Tribune-Herald, the West Hawaii News, The Maui News, and The Garden Isle News on Monday, November 8, 2004.

H.C.R. No. 77, H.D. 2, Regular Session 2004
Report of the Department of Labor and Industrial Relations

"The Administration and Enforcement of the Family Leave Law", for final approval to the Governor no later than January 2005.

Number of Complaints Lodged

House Concurrent Resolution No. 77, House Draft 2 also asked the DLIR to track

"the number of employers who are self-insured for temporary disability insurance who denied the use of sick leave for family leave purposes during fiscal years 2003-2004 and 2004-2005, as indicated by complaints lodged with the Department, or audits and investigations performed by the Department."³

The WSD receives and responds to inquiries including complaints about the Hawaii Family Leave Law. There has been little activity in this area. During fiscal year 2003-2004 and through November 15 of fiscal year 2004-2005, there have been three inquiries from union representatives, which involved self-insured TDI employers who denied their employees the use of sick leave for family leave purposes, but no formal complaints filed. During the same period, there were six family leave complaints filed, five on Oahu and one on Kauai. The six complaints were either dismissed or resolved after being investigated. Investigators did not find any self-insured TDI employers denied an employee sick leave for family leave purposes.

Therefore, the DLIR is unable to identify any employees who are covered by an employer's self-insured temporary disability insurance plan who have been denied the use of sick leave for family leave purposes during fiscal years 2003-2004 and through November 15 of fiscal year 2004-2005. Based on the lack of complaints filed, the audits and investigations conducted and the few inquiries from union representatives, the DLIR concludes that current compliance with the Hawaii Family Leave Law in the State of Hawaii is acceptable. The DLIR will continue to monitor this situation as part of their regular compliance activities.

³ House Concurrent Resolution No. 77, House Draft 2, Regular Session 2004.