

Title:	State Family Leave	
Purpose:	To provide procedures for consistent application and implementation of the State Family Leave Law.	
Issued by:	Labor Relations and Training	Date: February 15, 2005
References:	Hawaii Revised Statutes (HRS), Chapter 398, Family Leave	

I. PURPOSE

The purpose of these procedures is to implement the State Family Leave Law (SFL), which took effect January 1, 1991 and amended by Act 154, SLH 1995, Act 253, SLH 2000 and Act 44, SLH 2003.

II. DEFINITIONS

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

“Employee” means a person who performs services for hire for not fewer than six consecutive months for the employer.

“Employer” means the City and County of Honolulu.

“Health care provider” means a physician as defined under HRS §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.

“Reciprocal beneficiary” means two adults who are parties to a valid reciprocal beneficiary relationship and meet the requisites for a valid reciprocal beneficiary relationship as follows:

- (1) each of the parties is at least 18 years old;
- (2) neither of the parties is married nor a party to another reciprocal beneficiary relationship;
- (3) the parties are legally prohibited from marrying one another under HRS §572;
- (4) consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) each of the parties sign a declaration of reciprocal beneficiary relationship as provided in HRS §572C-5.

“Serious health condition” means a physical or mental condition that warrants the participation of the employee to provide care during the period of treatment or supervision by a health care provider, and:

- (1) Involves inpatient care in a hospital, hospice, or residential health care facility; or
- (2) Requires continuing treatment or continuing supervision by a health care provider.

III. EMPLOYEE ELIGIBILITY AND ENTITLEMENT

- A. The SFL provides that employees are entitled to a total of four weeks of family leave during any calendar year for the following reasons:
 - 1. The birth of a child of the employee or the adoption of a child.
 - 2. To care for the employee's child, spouse, or reciprocal beneficiary, or parent with a serious health condition.
- B. An employee who has worked at least six (6) consecutive months for the employer is eligible for SFL.
- C. Full-time employees shall be entitled to four (4) weeks or an equivalent of 160 hours of SFL.
- D. When an employee is eligible under the Family and Medical Leave Law (FMLA), under FMLA it shall run concurrently with the SFL whenever possible.

IV. GENERAL PROCEDURES

- A. Procedural requirements for the application, documentation, and reporting of SFL leave:
 - 1. Departments shall be responsible for the documentation and record keeping of family leave taken by their employees to assure provisions of the law and applicable collective bargaining agreements are appropriately administered. Family leave shall be monitored and administered on a calendar year (January – December) basis by each department.
 - 2. Employees shall complete the Family Leave Application (HR-LRT 2) and submit it to their immediate supervisor.
 - 3. Employees shall indicate whether the duration or dates of family leave is for leave of absence without pay and/or whether all or any part of the four-week period is to be charged to vacation or sick leave on Form HR-LRT 2 and attach the appropriate leave forms (i.e. Form DF-88 Application for Leave of Absence). Departments shall inform the employee at the time the employee gives notice of SFL, that SFL shall run concurrently with the Federal Family and Medical Leave Act (FMLA). Upon exhaustion of the entitlement under SFL, the employee may apply the balance of the entitlement of FMLA of eight weeks.
 - 4. An employee's request for family leave for the birth of a child of the employee shall be supported by certification of the birth of the child or expected date of birth issued by the health care provider.
 - 5. An employee's request for family leave for the adoption of a child shall be supported by certification of the expected date of birth issued by 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 the individual officially designated by the birth parent to select and approve the

adoptive family, by the health care provider or the individual requiring care.

6. An employee's request for family leave to care for a child, spouse or reciprocal beneficiary, or parent who has a serious health condition shall submit the Certification of Health Care Provider (Form HR-LRT 8) for the individual requiring care.
 7. An employee shall provide the department with prior notice of the expected birth or adoption or serious health condition in the manner determined by the department that is reasonable and practicable.
- B. Substitution of paid leave: Family leave shall consist of unpaid or paid leave or a combination of both. Any employee or employer may elect to substitute any of the employee's accumulated paid leaves (vacation and/or sick) for any part of the four-week family leave period. The minimum amount of paid leave that an employee may elect to substitute shall be no less than one (1) hour.
- C. Family Leave may be taken intermittently for a total of four weeks during any calendar year.
- D. Employees shall be covered by the following employment and benefits protection:
1. An employee returning to work after family leave shall be restored to the position of employment last 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.
 2. An employee is not entitled to reinstatement in the former or equivalent position if during the leave period, the employer experienced a layoff or work force reduction and the employee would have lost a position had the employee not been on family leave. The employee retains all rights, including seniority rights pursuant to layoff procedures, if layoff procedures are applicable to such employees.
 3. An employee shall not lose any employment benefit accrued before the date of leave commencement nor shall the employee be entitled to any employment benefits that the employee would not have been entitled had the employee not taken the leave.

V. PROHIBITED ACTS

- A. It is unlawful for any department to interfere with, restrain, discharge or discriminate against any individual for opposing any practice or deny the exercise or the attempt to exercise any right provided for under the law.
- B. It is unlawful for any person to discharge or 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 the law;

2. Given or is about to give any information in connection to any right as provided in the law; or
 3. Testified or is about to testify in any inquiry or proceeding relating to any right as provided in the law.
- VI.** If there is a conflict between this guideline and an applicable collective bargaining agreement, the provisions of the applicable collective bargaining agreement shall prevail.