



# FMLA Hawaii

## Federal vs. Hawaii Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
<b>Employers Covered</b>	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, Hawaii has laws regarding (1) family leave, (2) pregnancy disability leave and (3) domestic/sexual violence leave.</p> <p><b>Family leave:</b> Employers with 100 or more employees in at least 20 calendar weeks of the current or preceding calendar year.</p> <p><b>Pregnancy disability leave:</b> All employers.</p> <p><b>Domestic/sexual violence leave:</b> All employers.</p>
<b>Employees Eligible</b>	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p><b>Family leave:</b> Worked for the employer for at least six consecutive months.</p> <p><b>Pregnancy disability leave:</b> Female employees who are disabled due to pregnancy, childbirth or a related medical condition.</p> <p><b>Domestic/sexual violence leave:</b> Worked for the employer for at least six consecutive months and is (or has a minor child who is) a victim of domestic or sexual violence.</p>
<b>Leave Amount</b>	<p>Generally, up to a total of 12</p>	<p><b>Family leave:</b> Up to four weeks per</p>



	<p>weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p>calendar year.</p> <p><b>Pregnancy disability leave:</b> A reasonable period of time, as determined by the employee's physician, taking into account the employee's physical condition and the job requirements.</p> <p><b>Domestic/sexual violence leave:</b></p> <ul style="list-style-type: none"> <li>Up to 30 days per calendar year, if the employer has 50 or more employees; or</li> </ul> <p>Up to five days per calendar year, if the employer has less than 50 employees.</p>
<p><b>Type of Leave</b></p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> <li>Birth of employee's newborn child;</li> <li>Placement of child with employee for adoption or foster care;</li> <li>Providing care for employee's parent, child or spouse with serious health condition;</li> <li>Employee's own serious health condition;</li> <li>Any qualifying exigency when employee's spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or</li> <li>Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</li> </ul>	<p><b>Family leave:</b> Unpaid leave for the birth or adoption of a child or to care for the employee's child, sibling, spouse/reciprocal beneficiary or parent with a serious health condition.</p> <p><b>Pregnancy disability leave:</b> Unpaid leave for a disability resulting from pregnancy, childbirth or a related medical condition (but see the special note below regarding Hawaii's Temporary Disability Insurance program).</p> <p><b>Domestic/sexual violence leave:</b> Unpaid leave to:</p> <ul style="list-style-type: none"> <li>Seek medical attention;</li> <li>Obtain services from a victim services organization;</li> <li>Obtain psychological or other counseling;</li> <li>Relocate; or</li> <li>Take legal action or other action to enhance safety of affected individuals.</li> </ul>
<p><b>Serious Health Condition/Serious Injury or Illness</b></p>	<p><b>Serious Health Condition:</b> Illness, injury, impairment, or physical or mental condition involving incapacity or</p>	<p><b>Family leave:</b> A "serious health condition" means a physical or mental condition that warrants the employee's participation to provide care during the period of treatment</p>

	<p>treatment connected with inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> <li>• A health condition lasting more than three consecutive full calendar days and involving a certain level of treatment;</li> <li>• A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective;</li> <li>• Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or</li> <li>• Any incapacity related to pregnancy or for prenatal care.</li> </ul> <p><b>Serious Injury or Illness:</b></p> <p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.</p> <p>For a veteran of the Armed</p>	<p>or supervision by a health care provider, and:</p> <ul style="list-style-type: none"> <li>• Involves inpatient care in hospital, hospice or residential health care facility; or</li> </ul> <p>Requires continuing treatment or continuing supervision by health care provider.</p>
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<p><b>Health Care Provider</b></p>	<p>Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.</p>	<p><b>Family leave and domestic/sexual violence leave:</b> A "health care provider" means a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist and a podiatrist.</p>
<p><b>Intermittent Leave</b></p>	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless</p>	<p><b>Family leave:</b> Permitted</p> <p><b>Pregnancy disability leave:</b> Permitted</p> <p><b>Domestic/sexual violence leave:</b> No provision</p>

	employer agrees.	
<b>Substitution of Paid Leave</b>	Employees may elect, or employers may require, accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer's normal paid leave policies.	<p><b>Family leave:</b> Employee may substitute up to 10 days of accrued paid leave per year including, but not limited to, vacation, personal or family leave for any part of the four-week period (unless a collective bargaining agreement provides for the use of more than 10 days).</p> <p><b>Pregnancy disability leave:</b> No provision</p> <p><b>Domestic/sexual violence leave:</b> If the employee is entitled to take paid or unpaid leave pursuant to other federal, state or county law or an employment agreement, collective bargaining agreement or employment benefits program or plan which may be used for victim's leave, the employee must exhaust the other paid and unpaid leave benefits before domestic/sexual violence leave benefits may be applied. However, the combination of the other paid or unpaid leave benefits and the domestic/sexual violence leave is limited to the maximum leave amount for domestic/sexual violence leave (that is, either 30 days or five days, depending on the employer's size).</p>
<b>Reinstatement Rights</b>	Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.	<p><b>Family leave:</b> Similar to federal FMLA</p> <p><b>Pregnancy disability leave:</b> Must be reinstated to her original job or to a position of comparable status and pay.</p> <p><b>Domestic/sexual violence leave:</b> Must be restored to his or her original job or to a position of comparable status and pay.</p>
<b>Key Employee Exception to Reinstatement Rights</b>	Limited exception for salaried employees if among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met.	No provision

<p><b>Maintenance of Health Benefits During Leave</b></p>	<p>Health insurance must be continued under same conditions as prior to leave.</p>	<p><b>Family leave:</b> No provision  <b>Pregnancy disability leave:</b> No provision  <b>Domestic/sexual violence leave:</b> Employee is entitled to benefits that would be provided to similarly situated employees who were on leave for reasons other than domestic/sexual violence.</p>
<p><b>Leave Requests</b></p>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p><b>Family leave:</b> If the need for leave is foreseeable, the employee must provide prior notice in a manner that is reasonable and practicable.  <b>Pregnancy disability leave:</b> No provision  <b>Domestic/sexual violence leave:</b> Employee must provide reasonable notice to the employer unless not practicable due to imminent danger to the employee or the employee's minor child. The employer may require the employee to report not less than once per week on the status of the employee and the intention to return to work.</p>
<p><b>Certification Requirement</b></p>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p><b>Family leave:</b> Employer may require that leave be supported by written certification.  <b>Pregnancy disability leave:</b> Employer may request certification from a doctor estimating the length and dates of leave. Prior to the employee's return, the employer may request certification regarding fitness to return to work.  <b>Domestic/sexual violence leave:</b> If leave is taken for medical attention, the employer may request certification from a health care provider estimating the amount and dates of leave needed. Prior to the employee's return, the employer may request certification from a health care provider regarding fitness to return to work.          If leave is taken for non-medical reasons, the employer may request certification from</p>

		the employee or other appropriate parties that the employee/minor child is a victim of domestic/sexual violence and that leave is taken for a permitted purpose.
<b>Executive, Administrative, and Professional Employees</b>	These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.	No provision
<b>Statutes</b>	29 USC 2601	HI ST § 398-3 (family leave); HI ST § 378-72 (domestic/sexual violence leave) HI ADC § 12-46-108 (pregnancy disability leave)

**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.

### Department of Labor and Industrial Relations

Wage Standards Division  
830 Punchbowl Street, Room 340  
Honolulu, HI 96813  
PH: (808) 586-8777  
<http://hawaii.gov/labor/wsd>