

Hawaii Prepaid Health Care Act

December 2021

What is the Hawaii Prepaid Healthcare Act?

The Hawaii Prepaid Health Care Act (HPHA) is a state law that requires *private* employers with employees in Hawaii to provide health insurance for their employees.

General Summary

- Employers must offer coverage to employees who work 4 consecutive weeks with twenty (20) or more hours per week and earn 86.67 times the current Hawaii minimum wage a month.
- Employers must contribute at least 50% of the premium for the employee's coverage, but in no case can the employee be required to contribute more than 1.5% of their wages.
- The employer must offer such employees one of a number of plans pre-approved by the Department of insurance or they must receive a certification from the state of HI that their plan meets specific coverage level requirement.
 - All **fully-insured plans** need to be pre-approved or submitted for approval by the Director of Hawaii's Department of Labor and Industrial Relations (DLIR) and the PHC Advisory Council. Some carriers have a "Hawaii" option plan that the employer can offer alongside an existing health plan already offered to employees in other parts of the country.
 - **Self-funded plans** must go through an approval process by submitting Form HC-61 along with a copy of the plan to DLIR and the PHC Advisory Council. NOTE: We have not run into many employers who choose to go through the approval process. More often we find employers will simply purchase an approved plan to offer employees who reside in Hawaii.
 - Plans that are approved are then given an **"A" or "B" status**.
 - It appears that dependent coverage and cost-sharing for dependents is not required under plans that are given an "A" status, while a plan given a "B" status must provide dependent coverage and pay at least 50% of the cost.

For whatever is offered, Hawaiian employees must actually enroll in an approved plan unless the employee meets an exemption and files Form HC-5 (Employee Notification to Employer) with the employer.

A state website summary (including FAQs) is available at: <http://labor.hawaii.gov/dcd/about-phc/>

Approved Plans

At least a portion of the plans approved as (a) or (b) can be found here:

<http://labor.hawaii.gov/dcd/files/2013/10/Approved-Health-Care-Plans.pdf>

The coverage requirements appear to apply to medical only...no dental or vision requirements.

(§393-7 Required health care benefits)

Place of Performance

[§393-4] *Place of performance. "Employment" includes an individual's entire service, performed within or both within and without this State if:*

(1) *The service is localized in this State; or*

(2) *The service is not localized in any state but some of the service is performed in this State and [:]*

(A) *The individual's base of operation, or, if there is no base of operation, the place from which such service is directed or controlled, is in the State; or*

(B) *The individual's base of operation or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State. [L 1974, c 210, pt of §1]*

Eligibility and Waiting Periods

See the following excerpt from the FAQ found here - <http://labor.hawaii.gov/dcd/frequently-asked-questions/phc/>

Who is eligible for PHC benefits?

If you work twenty hours or more per week for four consecutive weeks and earn a monthly wage of at least 86.67 times the current Hawaii minimum hourly wage (as of January 1, 2018, \$10.10 x 86.67 = \$876), you are deemed eligible. You must be provided with health insurance at the earliest enrollment date of your employer's health care contractor.

When does my health care coverage begin?

Coverage commences after you have worked four consecutive weeks, at the earliest time the health care contractor can provide coverage. Usually, it is the first of the month following the month during which you met the eligibility criteria.

§393-14: Commencement of coverage. The employer shall provide the coverage required by this chapter for any regular employee, who has been in the employer's employ for four consecutive weeks, at the earliest time thereafter at which coverage may be provided with the prepaid health care plan contractor selected pursuant to this chapter.

Nondiscrimination

Can we offer something different (more generous) to Hawaii employees? The answer isn't clear. It's possible that it could run afoul of benefit nondiscrimination rules if Hawaiian employees are highly compensated or key employees, but there may also be some additional flexibility if something different is being offered solely to comply with state coverage requirements (rather than intentionally trying to favor highly compensated individuals).

ERISA Preemption

The law was specifically excluded from the ERISA preemption rules so it applies to all employers, even those with self-funded plans.

Opt-Out Incentives

We are not aware of any guidance that would prohibit an opt-out (or cash-in-lieu of benefits) for employers trying to comply with the Hawaii offer of coverage requirements. So long as the plan offering complies with the Hawaii Prepaid Healthcare Act (i.e., approved plan offered to employees with 20 or more hours of service with the employer contributing at least 50%), the opt-out should not affect compliance with that requirement. However, employees may be required to enroll in the coverage unless they meet an exemption and provide the employer with Form HC-5.

FMLA-Protected Leave

The following FAQ appears to allow the same level of employee/employer contributions to continue during the leave (ignoring the 1.5% of wages limit) - <https://labor.hawaii.gov/dcd/frequently-asked-questions/phc/#Icannot>

If I cannot work due to a disability, is my employer required to continue my health insurance?

In the event you are disabled and unable to work, your employer is obligated to enable you to continue health care coverage by continuing the employer's share of the premium costs for three additional months following the month during which you became disabled, or for the period for which your employer has undertaken payment of your regular wages, whichever is longer. You must maintain your portion of the premium payments; otherwise, coverage may be terminated.

In addition, a representative from the state department has confirmed the employer can continue the employee contributions that were in place prior to protected leave rather than having to reduce the employee contributions to be 1.5% of wages during the employee's leave.

Non-Compliance

§393-24 Noncomplying employer held liable for employee's health care costs. Any employer who fails to provide coverage as required by this chapter shall be liable to pay for the health care costs incurred by an eligible employee during the period in which the employer failed to provide coverage.

§393-33 Penalties; injunction.

(a) If an employer fails to comply with section 393-11, 393-12, 393-13, or 393-15 the employer shall pay a penalty of not less than \$25 or of \$1 for each employee for every day during which such failure continues, whichever sum is greater. The penalty shall be assessed under rules and regulations promulgated pursuant to chapter 91 and shall be collected by the director and paid into the trust fund for premium supplementation established by section 393-41. The director may, for good cause shown, remit all or any part of the penalty.

(b) Any employer, employee, or prepaid health care plan contractor who willfully fails to comply with any other provision of this chapter or any rule or regulation thereunder may be fined not more than \$200 for each such violation.

(c) Any employer who fails to initiate compliance with the coverage requirements of section 393-11 for a period of thirty days, may be enjoined by the circuit court of the circuit in which the employer's principal place of business is located from carrying on the employer's business any place in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director.

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