

Honolulu, Hawaii

March 24, 2006

RE: S.B. No. 3021
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred S.B. No. 3021, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES,"

begs leave to report as follows:

The purpose of this bill is to protect legitimately ill employees by prohibiting an employer or labor organization from discharging, withholding pay from, demoting, or otherwise disciplining an employee who uses accrued and available sick leave.

The International Brotherhood of Electrical Workers, Hawaii State AFL-CIO, Hawaii State Teachers Association, and ILWU Local 142 supported this bill. The Department of Labor and Industrial Relations, Department of Human Resources Development, National Federation of Independent Businesses in Hawaii, Hawaiian Electric Company, Inc., Meadow Gold Dairies, Hawaii Business Roundtable, Retail Merchants of Hawaii, General Contractors Association of Hawaii, Hawaii Reserves, Inc., Hawaii Hotel and Lodging Association, Shriners Hospital for Children Honolulu, Society for Human Resource Management-Hawaii Chapter, Hawaiian Telcom, Kauai Chamber of Commerce, Outrigger Hotel and Resorts, Maui Chamber of Commerce, and The Chamber of Commerce of Hawaii opposed this measure.



Programs such as the Workers' Compensation Program and Temporary Disability Insurance laws were enacted to afford certain protections for ill or injured workers. However, your Committee notes that no public policy, either via statute, rule, or regulation, exists to protect the use of sick leave for illnesses of a non-chronic and short-term nature.

While your Committee has been informed that employees have been disciplined, reprimanded, and suspended from employment for the legitimate use of sick leave, your Committee is also cognizant of the fact that abuse of sick leave also occurs. It is not the intent of this bill to protect abusers of an employer's sick leave policy, but rather to protect legitimately ill employees who use accrued and available sick leave. It is also not the intent of this measure to increase health care costs by requiring employees to be unnecessarily examined by a physician.

Accordingly, your Committee has amended this bill by:

- (1) Clarifying that the unlawful practice of barring or discharging from employment, withholding pay from, or otherwise disciplining an employee because the employee uses accrued and available sick leave applies to an employer;
- (2) Deleting the requirement that the employee validate the illness or injury in writing by an employee's physician if the illness or injury requires the use of more than one day of sick leave;
- (3) Removing language allowing an employer to require an ill or injured employee to be medically evaluated by a physician of the employee's choice from an employer's health care provider list of no fewer than three physicians for instances of use of sick leave three times over a six-month period;
- (4) Stipulating that an employer may sanction or discipline an employee found to be illegitimately using sick leave or using sick leave in a way that was in violation of the employer's sick leave policy; and
- (5) Allowing an employer to sanction or discipline an employee for using sick leave if the employer's actions were in accordance with an employer's attendance policy.



Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3021, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3021, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Labor & Public
Employment,



KIRK CALDWELL, Chair



