



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 25, 2008

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: Tuesday, February 26, 2008

Time: 4:30 p.m.

Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in Opposition
to
H.B. 2479, H.D. 1 – Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2479, HD 1, proposes to amend Section 386-25, Hawaii Revised Statutes (“HRS”), to allow injured employees to receive vocational rehabilitation (“VR”) if the employee may have or have suffered permanent disability or is unable to return to their regular job, and the employer has not made an offer of suitable work.

II. CURRENT LAW

Under Section 386-25, HRS, if an employee may have or have suffered permanent disability and is unable to return to his or her regular job but can be vocationally rehabilitated, the employee is eligible for VR services to be paid by the employer. The injured employee selects his or her own certified provider of rehabilitation services without employer involvement. The self-insured employer or insurance carrier pays for VR services and may challenge the employee's right to vocational rehabilitation services. The injured employee is also entitled to collect temporary total disability (“TTD”) payments from the employer while enrolled in a VR program.

III. HOUSE BILL

Vocational rehabilitation services are intended for those injured employees who may have or have become permanently disabled and are unable to return to their regular job as a

result of their work injury. This proposal may allow an injured worker who has not suffered any work related permanent disability to receive VR benefits, to include TTD during the period the injured worker is in a VR plan. In addition, this proposal may require the employer to pay VR benefits when an employee is unable to return to work due to a non-work related condition. This may result in higher VR costs and a corresponding increase in workers' compensation premiums for employers.

LINDA LINGLE
GOVERNOR



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STATE OF HAWAII
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February 26, 2008

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Tuesday, February 26, 2008
4:30 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 2479, H.D. 1
Relating to Workers' Compensation

TO CHAIR MARCUS R. OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2479, H.D. 1, is to amend Section 386-25(b), Hawaii Revised Statutes, to expand eligibility for vocational rehabilitation to employees who are deemed unable to return to their regular jobs and are not offered work at the pre-injury earnings level.

The Department of Human Resources Development takes its responsibility seriously to assist employees, within the Executive Branch of government, in their efforts to return to work if they are no longer able to do the job that they were hired to do. In order to accomplish this goal, we established the Return to Work Priority Program, in 1992, which provides a process that identifies suitable gainful employment for our injured work force in order for us to retain our most valuable assets.

The Department of Human Resources Development opposes this bill as it isn't clear from the language as currently written that being unable to return to their regular jobs has to be as a result of a work related injury. The amendment might also be inconsistent with our administrative rules, policies and procedures, and collective bargaining agreements which govern salary changes when moving from one position to another. Finally, this bill, if it becomes law, might have an unintended consequence for an injured employee, who might otherwise be placed in a suitable position, but won't be because the salary isn't nearly the same as his pre-injury earnings.

Respectfully submitted,

A handwritten signature in cursive script that reads "Marie C. Laderta".

MARIE C. LADERTA

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Date: Tuesday, February 26, 2008

Time: 4:30 p.m.

Place: Conference Room 308, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2479, HD 1, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2479, HD 1. We support the apparent intention of this bill to expand opportunities for vocational rehabilitation, but suggest it should be refined and simplified.

As previously drafted, HB 2479 permitted employees to participate in vocational rehabilitation if they have or may have a permanent suffered permanent disability, or "have otherwise been deemed unable to return to their regular jobs after they have achieved maximum medical improvement, where the employer has made no offer of suitable work that would restore the earnings capacity as nearly as possible to the level that the employee was earning at the time of the injury."

HB 2479, HD 1 has now been amended so that the attainment of "maximum medical improvement" has been deleted. The current draft now recognizes that vocational rehabilitation can be useful in returning an employee to light or modified work even *before* an employee has attained maximum medical improvement. The bill now prudently recognizes that waiting for "maximum medical improvement" can thwart the overall call for speedy rehabilitation.

Second, the bill should be amended to protect workers from employers who do not make bonafide offers of suitable work, but simply offer temporary employment to end the payment of temporary total disability with the intent of later terminating the employees' employment. While it is certainly desirable to encourage employers to return their injured employees to work, HB2479, HD 1, should require that the "offer of suitable work" be bonafide and permanent. Otherwise, illusory temporary offers will prevent an employee from receiving needed vocational rehabilitation. As a practice, the Vocational Rehabilitation Branch of the Department of Labor and Industrial Relations now requires that an employee be receiving temporary total disability as precondition for enrolling in vocational rehabilitation. If an unscrupulous employer wished to avoid its obligation to furnish VR, it would temporarily employ an injured worker, then eliminate the position due to some imagined business necessity. Because the injured worker had returned to work, temporary total disability would no longer be paid, and the vocational rehabilitation unit would deny the employee entry into vocational rehabilitation programs.

HB 2479, HD 1 has adopted one vital modification we proposed. We support the passage of HB 2479, HD 1, but suggest become an even more effective instrument of true vocational rehabilitation by requiring that offers of suitable of work made by employers be bonafide and permanent.