



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

LATE TESTIMONY

February 11, 2008

To: The Honorable Alex Sonson, Chair
and Members of the House Committee on Labor and Public Employment

Date: February 12, 2008
Time: 8:50 a.m.
Place: Conference Room 309, State Capitol

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

**In Opposition
to
H.B. 2520, H.D. 1- Relating to Caregivers**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2520, H.D. 1, proposes to amend the Temporary Disability Insurance (“TDI”) Law, Chapter 392, Hawaii Revised Statutes, (“HRS”), and the Hawaii Family Leave Law, Chapter 398, HRS, to permit an eligible employee to collect up to 2 weeks of temporary disability insurance benefit payments to care for a family member with a serious health condition.

II. CURRENT LAW

TDI Law

The Disability Compensation Division (“DCD”) currently administers Chapter 392, HRS, which requires employers to provide benefits to eligible employees who are unable to work due to non-work related injuries or illnesses. Employers may adopt one of the following methods of providing TDI benefits:

1. By purchasing insurance from an authorized insurance carrier (called an insured plan).

Insured plans provide statutory benefits as required by law. Benefits are paid at 58% of an employee’s average weekly wage after a 7-consecutive day waiting

period for a maximum of 26 weeks.

2. By adopting a sick leave policy, which must be approved by DCD (called a self-insured plan).

DCD evaluates the disability benefits using the Equivalency Tables established by the Insurance Division which takes into consideration four components of the plan – waiting period for illness, waiting period for accident, duration of benefits and percentage of wage loss replaced.

Employers with self-insured plans usually use some form of salary continuation to comply with Hawaii's TDI law. Some examples of plans that have been approved are:

- a. No waiting period, benefits paid at 100% of employees' wages for accident or illness for duration of three weeks. This is the most popular self-insured plan and is a form of salary continuation (State employees have this plan).
 - b. Seven-day waiting period, benefits paid at 75% of average weekly wage for eight weeks, then benefits are reduced to 58% and continues for another eight weeks for a total of 16 weeks.
3. By a collective bargaining agreement, which provides benefits at least as favorable as required by the TDI law and approved by DCD.

Most of the collectively bargained plans combine the employees' sick leave benefits with a statutory TDI policy. For example, the employees are required to exhaust their sick leave first and thereafter, an authorized TDI carrier pays regular TDI benefits.

Most of the self-insured plans or collectively bargained agreements are better than what is required by law. Regardless, plans other than statutory must meet the equivalency provision of the TDI law and obtain approval from DCD. As shown by the above examples, benefits can range from 58% to 100% of wages, with no waiting periods to waiting periods of 7-consecutive days and for duration of three weeks to 26 weeks.

TDI benefits are provided only to eligible employees and must meet certain minimum standards for the employer's plan to be approved. To be eligible for benefits, employees must have been in Hawaii employment at least 14 weeks during each of which the employees were paid for 20 hours or more in the 52-week period preceding the onset of the employees' disability. There is no guarantee of job retention for employees who go

out on TDI.

Hawaii Family Leave Act (“HFLA”)

The Wage Standards Division (“WSD”) administers the Family Leave Law, Chapter 398, HRS, which applies to employers with 100 or more employees. Currently, the HFLA provides eligible employees up to four (4) weeks of family leave per year, which may consist of unpaid leave, paid leave, or a combination of paid and unpaid leave.

The HFLA currently provides that family leave may be used for the birth or adoption of a child or the care for the employee’s reciprocal beneficiary, child, spouse, or parent with a serious medical condition.

Moreover, under recent amendments to the HFLA, employers are (1) required to allow eligible employees to use up to ten (10) days per year of their accrued sick leave for any purposes listed in the HFLA; and (2) allow employees the sole discretion of substituting any portion of their accrued vacation, personal, or paid leave for any part of the four weeks of family leave granted under the HFLA.

III. HOUSE BILL

The Department opposes H.B. 2520, HD1, for the following reasons:

1. The Department questions the need for such a program given that the State of Hawaii already allows employees that qualify to utilize up to ten (10) days per year of their accrued sick leave for any purposes listed in the HFLA.

Additionally, employees are given the sole discretion of substituting any portion of their accrued vacation, personal, or paid leave for any part of the four weeks of family leave granted under the HFLA.

The Department notes that the existing Hawaii Family Leave Act provides generous options for employees seeking to balance work and family.

2. Employers should not be mandated to provide wage replacement benefits for employees unable to work due to family situations.

The application of TDI benefits to able employees who need to **care for family**

members with a serious health condition is contrary to the intent of the TDI law, which is to provide partial **wage replacement to employees who become disabled** due to non-work related injuries or illnesses.

3. This measure will increase the cost of doing business in Hawaii.

The use of TDI benefits other than for the disabled employees is inconsistent with the purpose of the existing TDI insurance policies underwritten by the authorized TDI carriers. The current TDI coverage rate structure is actuarially designed to align TDI premiums with actual plan utilization. If the TDI carriers are required to cover able employees' time loss to care for family members with serious medical conditions other than only those eligible and insured employees who become disabled, the TDI policy and premium rate structure must be adjusted to accommodate payment of benefits to family caregivers. The increase in premium rates would increase the burden on businesses since under TDI, the employees share of insurance premiums is limited to .5% of their wage.

4. The use of TDI benefits for family members may result in reduced or no benefits at all for eligible employees who may subsequently suffer time loss for their own disability. Not all short-term disability plans offered by employers provide only statutory benefits. The TDI benefits can range from 100% of the disabled employees' average weekly wages (AWW) from the first day of disability for three weeks to the statutory benefits of 58% of the AWW after a 7-consecutive day waiting period for a maximum of 26 weeks within any benefit year.
5. The "conformity with other laws" provision for the Family Leave Law, Chapter 398 defers conflicts between chapters to provisions under Chapter 392, the TDI Law, which may lead to inconsistencies in the administration of each law.
 - a. All employers, regardless of size, with eligible employees are subject to the Chapter 392, the TDI Law, but only employers with 100 or more employees are subject to the State Family Leave law. Thus, all employees eligible for TDI benefits would be entitled to family caregiver benefits. Inserting a family caregiver provision into the TDI law indirectly broadens the scope of Chapter 398, which currently applies to employers with 100 or more employees and to employees who have been in the employers' employ for at least six months.
 - b. A family member's "serious health condition" is not defined in the TDI law and is defined in Section 398-1. Therefore the Chapter 398 definition would

apply.

- c. Family leave can be paid or unpaid, whereas TDI is all paid leave after a waiting period, if applicable. Therefore, all employees eligible for TDI would be paid family caregiver benefits under the TDI law. Again, this indirectly broadens the scope of Chapter 398 via Chapter 392.
- d. Chapter 398, the Family Leave Law provides job protection while Chapter 392, the TDI Law does not. Therefore family caregivers would not have job protection.

Dear Chairperson Alex Sonson, Vice Chair Bob Nakasone & Committee Members,

My 80-year old mother is currently living with my husband and I and will be living with us from now on. She moved from the mainland to our home as she was unable to live by herself due to her various illnesses. I am in support of HB2520, HD1 because as the caregiver for my mother, I would definitely need financial assistance from my employer through a paid family leave if/when my mother does need care in the future.

Thank you for your consideration of this important bill.

Sincerely,

Bessie Estonactoc

LATE TESTIMONY



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME LOCAL 152, AFL-CIO
888 MILILANI STREET, SUITE 601 • HONOLULU, HAWAII 96813-2991



Randy Pereira *Executive Director*
Tel: 808 543-0011 Fax: 808 528-0922

Nora A. Nomura *Deputy Executive Director*
Tel: 808 543-0003 Fax: 808 528-0922

Derek M. Mizuno *Deputy Executive Director*
Tel: 808 543-0055 Fax: 808 523-6879

The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
February 12, 2008

LATE TESTIMONY

**H.B. 2520, H.D. 1 – RELATING TO
CAREGIVERS**

The Hawaii Government Employees Association supports the purpose and intent of H.B. 2520, H.D. 1. The purpose of this bill is to amend the Temporary Disability Insurance (TDI) law (Chapter 392, HRS) by allowing an employee to collect up to two weeks of TDI benefit payments to care for a family member who suffers a “serious health condition,” as defined in Section 398-1 HRS (family leave law).

The proposed changes to Chapter 392, HRS, maintain the existing eligibility for benefits, excluded services, waiting period, weekly benefit amount and other features. However, now, in addition to being able to collect TDI benefits if the eligible employee suffers a qualifying disability, the employee can use up to two (2) weeks of the 26 weeks of TDI benefits if the family member has a “serious health condition.” Providing wage replacement benefits are an appropriate and productive means of supporting family caregivers.

Thank you for the opportunity to present testimony in support of H.B. 2520, H.D. 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nora A. Nomura', written in a cursive style.

Nora A. Nomura
Deputy Executive Director

PAMELA J. FERGUSON-BREY

Post Office Box 22572
Honolulu, Hawaii 96823
808-265-2093

TESTIMONY ON HOUSE BILL 2520 HD1
RELATING TO CAREGIVERS

House Committee on Labor & Public Employment
Representative Alex M. Sonson, Chair
Representative Bob Nakasone, Vice Chair

LATE TESTIMONY

Tuesday, February 12, 2008; 8:50 AM
State Capitol, Conference Room 309

Good morning Chair Sonson, Vice Chair Shimabukuro, and Members of the House Committee on Labor and Public Employment. Thank you for providing me with an opportunity to testify in **support of House Bill 2520 HD1 with an amendment to permit eligible employees to receive up to four (4) weeks of temporary disability benefits.**

House Bill 2520 HD1 amends existing temporary disability insurance provisions to permit eligible employees to receive up to two (2) weeks of temporary disability insurance benefits if they are unable to work due to their need to care for a family member who has a serious health condition. I believe that workers who are also family caregivers should not have to make a choice between caring for a seriously ill family member and their job.

In 1993, the federal Family and Medical Leave Act (FMLA) was enacted by Congress to ensure that employees who needed to take time off from work to care for a seriously ill family member, a newborn, or to address their own serious health condition, did not risk losing their jobs. The FMLA provides that employees can take up to twelve (12) weeks per year of unpaid leave after the birth or adoption of a child, or if they have a serious health condition, or to care for a family member with a serious health condition.

While the FMLA ensures that caregivers do not lose their jobs or seniority in order to care for a loved one, many eligible employees simply cannot afford to take unpaid FLMA leave. According to the U.S. Department of Labor eight (8) out of ten (10), or eighty percent (80%),

of the three and one-half million (3,500,000) workers who were eligible for FMLA benefits in 2000 did not take available unpaid leave because they could not afford to do so.

California passed legislation in 2002 to address this problem. Qualified employees in California receive up to six (6) weeks of paid family leave. Qualified employees receive about fifty five percent (55%) of their salary for up six (6) weeks in order to care for a newborn child or a seriously ill relative. In June, 2007, U.S. Senators Chris Dodd and Ted Stevens introduced federal legislation to provide eight (8) weeks of paid leave to workers who take time off under the FMLA. Unfortunately, House Bill 2520 limits the financial support that a caregiver in Hawaii can receive to only two (2) weeks.

Many caregivers in Hawaii will not have the financial support they need to take time off to care for a loved one if the paid leave provision is limited to two (2) weeks. I urge the Committee to amend House bill 2520 by increasing the term of disability benefits for caregivers from two (2) to four (4) weeks.

This measure will benefit employers by reducing the cost of staff member turnover and ease the labor shortage in the Hawaii marketplace, since many caregivers must retire, or resign, in order to address their family caregiving responsibilities.

Thank you for providing me with an opportunity to speak in support of HB 2520 HD1 with amendments. No worker in Hawaii should be forced to choose between their responsibility to a seriously ill family member, and their livelihood.

The Twenty-Fourth Legislature
Regular Session of 2008

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

State Capitol, Conference Room 309
Tuesday, February 12, 2008; 8:50 a.m.

LATE TESTIMONY

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2520, HD1 RELATING TO CAREGIVERS

The ILWU Local 142 supports H.B. 2520, HD1, which amends the temporary disability insurance law to permit an eligible employee to collect up to two weeks of temporary disability insurance benefit payments to care for a family member with a qualifying disability.

Many workers in Hawaii today are called upon to be family caregivers. These individuals are forced to take time off from work (either unpaid leave or vacation) or even retire to provide care to family members who are disabled and/or elderly and need assistance with one more activities of daily living.

Allowing family caregivers to claim TDI benefits in order to provide care to family members serves multiple purposes. First, it allows for family caregivers to fulfill their obligations to family members without undue financial hardship. Second, it allows family members needing care to remain at home and not require institutionalization. Third, it promotes good will in the workplace that boosts morale and productivity and instills greater loyalty to the employer. All in all, a win-win situation.

We have, however, a couple of concerns.

One concern is how the provisions of H.B. 2520, HD1 will coordinate with Act 44 (2003 Session), which requires employers with 100 or more employees to allow 10 days of sick leave to be used for family leave purposes. Many employers, in particular those with collective bargaining agreements, offer both TDI and sick leave. Since the bill says that use of TDI will prevail if there is a conflict with another law, that may mean employees of employers with more than 100 must use TDI while on family leave rather than 10 days of sick leave.

Another concern is how to deal with multiple caregivers for the same family member. Without coordination, there is the potential for more than one caregiver to claim benefits to care for the same family member at the same time.

H.B. 2520, HD1 is a commendable attempt to address what appears to be a growing problem--that of disabled and elderly family members needing more care and workers required to make economic sacrifices to fulfill family obligations. The ILWU urges passage of H.B. 2520, HD1.

Thank you for the opportunity to share our views and concerns.

Monica Evans, MSCP, NCC, LMHC
95-223 Auhaele Loop
Mililani, HI 96789

DATE:

February 12, 2008
8:50 AM
Conference Room 309

LATE TESTIMONY

TO:

The Honorable Representative Alex M. Sonson, Chair,
The Honorable Representative Bob Nakasone, Vice-Chair
and Members of the Committee on Labor & Public Employment

FROM:

Monica Evans, MSCP, NCC, LMHC
808-625-0112
monicaevans@hawaii.rr.com

RE:

HB 2520, HC1 Relating to Caregivers

Thank you for the opportunity to provide testimony.

I am testifying in strong support of HB 2520, HD1.

This bill allows for keeping people in the workplace as well as getting people back to work because they are relieved of their caregiver responsibilities. Employers would be able to keep their most experienced workers in place. The provisions provided in this bill would provide essential support to family caregivers. It is a win win situation for everyone.

I encourage you to pass HB 2520, HD1 out of the Committee on Labor and Public Employment.

Thank you for this opportunity to testify.