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

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February 9, 2009

To: The Honorable Jerry L. Chang, Chair  
and Members of the House Committee on Higher Education

The Honorable James Kunane Tokioka, Chair  
and Members of the House Committee on Legislative Management

Date: Tuesday, February 10, 2009  
Time: 2:00 p.m.  
Place: Conference Room 309  
State Capitol

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

**Re: H.B. No. 982, H.D. 1 - Relating to Family Leave**

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.B. No. 982, H.D. 1 establishes a web-based Family Leave Database in the Hawaii Family Leave Law ("HFFL"), Chapter 398, Hawaii Revised Statutes ("HRS") administered by the Department of Labor and Industrial Relations (DLIR) with assistance from the University of Hawaii (UH) and audited and reported on by the Legislative Auditor. It requires employees to submit evidence of their submission of information into the Database as notice of their request for family leave.

This bill also widens the scope of applicability of HFFL from employers with 100 employees to employer with 50 employees. According to the facts presented in the measure the addition represents 100,000 more employees.

This Act would take effect July 1, 2009.

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## II. CURRENT LAW

There is no collection of any family leave data currently. Only employees with one hundred or more employees are eligible for HFLL.

## III. HOUSE BILL

The Department cannot support H.B. 982, H.D. 1 for the following reasons:

1. The expansion of employee entitlements in this current economic situation does not support the efforts of recovery. Companies with 50 to 100 employees within a 75 mile radius in Hawaii are already subject to FMLA. Extending the coverage of HFLL to the employees of this mid-size group will expand the family leave coverage to four weeks of care for reciprocal beneficiaries, in-laws, and grandparents, three groups of ohana not covered under the FMLA. It also allows more traditional family members to be eligible for four weeks of FMLA after only six months of work rather than the 1,250 hours in the previous twelve months required under the federal law.
2. While it is true that there is little real data about how often family leave is taken, the data that is available indicates that there is not an alarming problem as inquires regarding the HFLL to Wage Standards Division represent only 3% of almost 15,000 inquires annually.
3. This measure has an overall important purpose of using accurate data to make meaningful decisions about how to provide for future family care needs. It is difficult to agree with the gathering method that holds up another hoop for employees to jump through to obtain HFLL. This type of data collection process may deter employees from taking the family leave to have to report this sensitive information.
4. Adding this type of responsibility at time when resources are thinnest would negatively impact the ability of the Wage Standards Division to carry out their core purpose of assuring a lawful working environment by equitably administering and enforcing labor laws for which the division is responsible.

# UNIVERSITY OF HAWAI‘I AT MĀNOA

School of Social Work

**Testimony to the Joint House Committee on Higher Education and  
Legislative Management  
Tuesday, February 10, 2009  
Conference Room 309; 2:00pm**

**RE: H.B. No. 982, H.D. 1, Relating to Family Leave.**

Chairs Chang and Tokioka, and Members of the Joint Committee,

My name is Wes Lum and I am testifying in support of this measure. However, I would recommend that an entity other than the UH Center on Aging be responsible for the data collection because other departments on campus or within state government have the expertise to collect labor-related/family leave data.

I am an Assistant Specialist with the University of Hawaii Center on Aging. My testimony represents my personal opinion and does not reflect the position of the University of Hawaii nor of the Center on Aging.

This bill (1) establishes a new data collection system for family leave and (2) extends applicability of the family leave law to employers with 50 or more employees and to certain emergency and casual hires of the State and counties.

Act 243, SLH 2008, established a family leave working group to explore the provision of wage replacement benefits to employees who need to take time off from work to care for a family member with a serious health condition. This working group was a part of, and also required to report to, the Joint Legislative Committee on Aging in Place (JLCAIP). The group was created to represent constituencies who were promoting a policy of paid family leave as well as those who had expressed concern. The goal was to arrive at a consensus proposal based on careful consideration of available data and alternative funding mechanisms and which would address concerns which had been raised during the 2008 Session.

Representing the Hawaii Family Caregiver Coalition, I was elected the Chair of the working group. The working group met six times between August, 2008 – December, 2008 to explore funding mechanisms for a paid family leave program, including income tax credits, temporary disability insurance benefits, and unemployment benefits. Paid family leave legislation in California, Washington, and New Jersey were discussed, along with issues surrounding medical privacy. The working group also reviewed the needs assessment of family caregivers that was conducted in 2007 by the Joint Legislative Committee on Family Caregiving and the results of an inventory of eldercare policies and practices that currently exist in the workplace.

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The working group concluded without recommending any legislation because of the state's weak economy and a lack of consensus for wage replacement benefits; the Chamber of Commerce of Hawaii and the Lingle Administration, represented by the Department of Labor and Industrial Relations, did not believe that wage replacement benefits were necessary. The work of the group was also hindered by a lack of data needed to develop estimates of the number of likely participants in a paid leave program and the potential costs of the program.

The working group endorsed a continuum of short- and long-term concepts. This bill before you is the only concept that the JLCAIP chose to adopt for introduction in the 2009 session. The continuum consisted of three parts: (1) the creation of a data collection system that is capable of analyzing and reporting family care data for both public and private employees, (2) the establishment of an eldercare tax credit for employees, similar to tax credits for childcare, and (3) the establishment of a state-sponsored long-term care insurance program through employee payroll deductions and a tax credit for employers who purchase long-term care insurance for their employees.

This measure is the first step to build a system of wage replacement benefits for families who are balancing work and eldercare, and therefore, I support this measure and ask for your favorable consideration. Thank you for the opportunity to testify.



To: House Committee on Higher Education  
Rep. Jerry Chang, Chair

House Committee on Legislative Management  
Rep. James Kunane Tokioka, Chair

Date: February 10, 2009 - Conference Room 309 – 2:00 p.m.

**Re: HB 982, RELATING TO FAMILY LEAVE**

Chairs Chang and and Kunane and members of the committees:

My name is Jackie Boland, Associate State Director of AARP Hawaii. AARP is a membership organization of people 50 and older with nearly 160,000 members in Hawaii.

The purpose of HB 982 is twofold: 1) To extend the applicability of the family leave law to employers employing 50 or more employees (The current application is only for employers with 100 or more employees) and; 2) To create a family leave data collection for family leave at the UH Center on Aging.

We are testifying in support of the provision in HB 982 to widen the Family Leave law to employers of 50 or more employees.

We note that such a revision would conform substantially to existing Federal law which currently applies to employers with 50 or more employees albeit with a one year minimum.

The Family and Medical Leave Act, enacted in 1993 with strong support from AARP, provides an extraordinarily useful benefit for working families. It allows individuals who work for employers with 50 or more employees to take up to 12 weeks of leave to care for a newborn or ill child, parent or spouse or to care for themselves in case of illness. There is no requirement for paid leave, but employers must continue their workers' health insurance.

Family and volunteer caregivers of elders are the backbone of Hawaii's long term care system. One in four people are estimated to be providing unpaid care to elders. In Hawaii, that amounts to between 113,000 and 169,000 people giving care during a given year. The value of family caregiving in Hawaii is estimated at 1.45 billion annually.

The toll on working caregivers can be extensive: Lost time at work, reduction of work hours, leaving work early or coming in late, health effects from lifting or transporting, caregiver stress, depression, and burnout. These changes in the work schedule can affect future earnings and retirement, such as contributions to a 401K plan or the amount of one's Social Security benefit. AARP supports the creation of measures which would ease the burden of care.

Regarding the family leave data collection system, we support the intent and believe that it would helpful for planning for our aging population but as the appropriation amount is unspecified, we are concerned that in this tight budgetary year, that this budgetary appropriation not displace other more critical safety net services .

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In the event that monies become available, we would support the funding of the family leave data center. We note that according to the U.S. Census, in the next 22 years, the 65+ population in Hawaii will increase by 86% and additional research could help prepare for this aging boom. Additionally, we note that many unpaid caregivers of elders are not family members and it would be helpful to assess how many caregivers of elders are able to utilize these benefits.

Thank you for the opportunity to testify.



Representative Jerry Chang, Chair  
Representative Mark Nakashima, Vice Chair  
Committee on Higher Education

Representative James Tokioka, Chair  
Representative Blake Oshiro, Vice Chair  
Committee on Legislative Management

State Capitol, Honolulu, Hawaii 96813

HEARING      Tuesday, February 10, 2009  
                  2:00 pm  
                  Conference Room 309

**RE:    HB982, HD1, Relating to Family Leave**

Chairs Chang and Tokioka, Vice Chairs Nakashima and Oshiro, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

**RMH opposes HB982, HD1, Relating to family leave, which establishes a new data collection system for family leave and extends applicability of the family leave law to employers with 50 or more employees.**

Retail is a labor intensive industry that operates a minimum of 12 hours to the maximum of 24 hours a day, seven days a week. Turnover rates are among the highest in the business community. The discrepancies between the Family & Medical Leave Act and the Hawaii Family Leave Act already create confusion in the workplace, particularly for our smaller businesses which do not have human resources departments. Reducing the applicability of HFLA from 100 to 50 employees will impose a significant and unfair burden on these companies which are struggling to keep their doors open, staffing levels intact, and avoid layoffs.

We do concur that further study to determine the scope of the problem, i.e., the number of employees opting for family leave under HFLA and/or FMLA is prudent before adding greater onus to our employers. However, we believe that the data collection system proposed should be first limited to public employees since HFLA has been effective in the public sector for a greater amount of time and more extensive data should be available.

Thank you for your consideration and for the opportunity to comment on this measure.

President

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## Testimony of Jim Shon

**RE: HB 982 H.D. 1 RELATING TO FAMILY LEAVE**  
**Committees: Higher Education/Legislative Management**  
**February 10, 2009 2 pm Room 309**

**I support this bill.** I served on the Paid Family Leave Task Force, representing Kokua Council. Kokua Council has endorsed this bill as one of the important strategies to support Kupuna in our community.

### Summary of Rationale:

- There are not enough services for seniors. Employed family members often are called upon to take time off for family leave. Some are retiring prematurely to provide this care. The workforce is being sapped of its most experienced workers.
- We need good data on **both** public and private sector current use of family leave.
- We can do this at minimum cost to the system (\$10K), employers, and employees.
- We need to close the gap group (firms with 50-100 employees).
- State agencies should incorporate this small but important task rather than arguing against the concept.
- Those who oppose this bill seem to offer no alternatives for employees or their family members.

### Supporting Data

1. Data from the UH Center on the Family indicate many seniors need some form of assistance, and the number is growing far beyond Hawaii's ability to respond.

### General Observations re Hawaii's 60+ population:

- The 2000 census estimates approximately 250,000 seniors 60+. The non-institutionalized population is 203,000.
- Hawaii's 60+ population stats are similar to national stats, and thus national data are relevant for determining many of the costs and trends for Hawaii;
- About 75% own their own home, meaning they do not necessarily need assisted living IF services can be delivered to their homes.
- 37.5% have some disability, or 93,750 (about 30,000 between the age of 60+ and 65+ have some disability).
- Hawaii's 60+ population has a higher percentage of language barriers (11.2%) vs. the national average (4.1%)/
- Nearly 18% have no source of transportation (about 36,540). Even in households with more than one, this rate is nearly 16%.
- About 28,000 living at home have a sensory disability.
- About 40,000 cannot easily leave home (a 'go-outside-of-home disability')
- About 22,000 have a mental disability.



## General Observations re Hawaii's 65+ population:

- About 172,000 65+
  - Slightly higher % of population than national average (13.6 vs. 12.4)
  - Slightly higher % of all households (23.1 vs. 21.5)
  - Much higher % living with grandchildren under 18 years (12.3 vs. 4.4)
  - About 36% have some disability, or about 62,000.
- 
- According to a 2007 study by the Hawaii Legislative Reference Bureau, "Between 2000 and 2020, Hawaii's older adult population is projected to increase by 70%, a rate three times faster than Hawaii's total population. The population of those 85 and older is projected to increase 93%, over four times faster than Hawaii's total populations. "(*Selected Issues in Work-Family Policy; A Brief Overview, Report No.1, 2007*)
  - According to the State Data Book (Table 12.26) there are over 200,000 non federal employees that are NOT covered by the federal family leave law (Federal Family and Medical Leave Act of 1993 or FLMA), and an additional 75,000 employees not covered by state law.
  - A 1999 MET LIFE study found that among employed caregivers, 13% needed to retire early, 16% quit their job, 20% changed from full time to part time, 22% took a leave of absence, 33% worked decreased hours, and 64% took increased sick days or vacation time.
  - According to researchers at the University of Hawaii, approximately 10% of Hawaii's total workforce (800,000 +) has taken some length of family leave to care for elders.
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2. The most recent Hawaii State Plan on Aging (2007-20011) indicates large numbers of seniors and households with unmet needs. See attached charts for the City and County of Honolulu. An additional chart lists many of the issues faced by seniors who continue to live at home.
  3. During deliberations of the Family Leave Task Force, it was estimated that from 80,000 to 100,000 current employees were taking time off to address many of these unmet needs for their aging family members. Clearly, the workforce is under stress, in part, because the large number of 60+ residents are over whelming the current service delivery system.
  4. HB 982 seeks to create a data base of all employees who apply for family leave. This data base will be helpful in developing a future paid family leave program, as well as other needed services in the community.

## Summary

Support for Aging in Place is what seniors want and need most, but are least able to receive. This bill is an important component to a future that honors and respects seniors. State agencies should not be giving excuses for not collecting data, they should be stepping forward with productive solutions.

**Attachments:**

**Common Issues Faced by Kupuna living at Home**

<b>Disability or Challenge</b>
1. Lacking in Financial Literacy.
2. Vulnerable to Financial abuse.
3. Physically hard to maintain a house.
4. Physically hard to do all chores.
5. Working family cannot always help.
6. Family moves far away. Loss of supporters.
7. Neighbors are new and unknown. Isolation.
8. Eyesight restricts night activities. Isolation.
9. Hearing limits phone, parties.
10. Cannot drive anymore. Major loss of dignity.
11. Some short term memory loss.
12. Hard to keep proper diet. Impacts health.
13. Difficulty in taking meds – threat to health.
14. Few recreational opportunities. Isolation
15. Short hospital stay. 4 wk recovery. ADLs.
16. Move to Condo. Stress.
17. Condo dwellers are strangers. Isolation
18. Hurricane – no electricity, no elevators, isolated for days.
19. Spouse Dies. Grief. Isolation. Depression.
20. More memory loss, depression.
21. Falls, breaks bone. Immobility. ADLs hard.
22. Need daily assistance, observation.
23. Serious hospitalization. 2 mos. recovery at home.
24. Difficulty in preparing meals. Poor diet.
25. Early Alzheimers.

Attachment: Unmet needs for Honolulu. Hawaii State Plan on Aging (2007-20011)

**City and County of Honolulu**

<b>Programs and Services</b>	<b>Data Source and Methodology</b>	<b>Extent of Need</b>	<b>Existing Capacity</b>	<b>Informal Capacity</b>	<b>Unmet Needs</b>
<b>Access</b>					
Information & Assistance	BFRSS 2000; all adults 18+	696,421	118,474		577,947
Outreach	BFRSS 2000; all 60+ and caregivers under age 60 (14%)	245,571	35,495		210,076
Case Management	NHIS-D, 2004, MEPS 2002 Special Tabulation Diminished functional capacities which require the provision of services by formal service providers or family caregivers	50,467	6,937	38,355	5,175
Assisted Transportation	NHIS-D, MEPS 2002 Special Tabulation Physical or cognitive difficulty using regular vehicular transportation	50,467	6,477	38,355	5,635
Transportation	60+ mobility disadvantaged; 65+ nondrivers - AARP report: Aging Americans: Stranded Without Options; 21% of 60+	36,157	40,263		(4,106)
<b>Supportive Services – Community Based</b>					
Adult Day Care	NHIS – D MEPS 2002 Special Tabulation Need daytime personal care in a supervised, congregate setting	50,467	1,832		48,635
Congregate Meals	60+ Hot meals in a congregate or group setting	172,177	5,822		166,355
Health Maintenance	60+ with Disability 60+ with Chronic Conditions	66,960	25,007		41,953
Housing Assistance	65+ Low-Income 65+ Renter		2,748		(2,748)
<b>Supportive Services – In-home</b>					
Attendant Care (1)			2,197		(2,197)
Chore	NHIS 2003-2004; DHHS, CMS, MCBS 2002 Difficulty standing and performing heavy housework	45,139	547		44,592
Homemaker	NHIS 2004 Needs help of another person handling routine needs such as household chores, shopping or getting around	18,929	798		18,131

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Programs and Services	Data Source and Methodology	Extent of Need	Existing Capacity	Informal Capacity	Unmet Needs
Home Delivered Meals	NHIS-D, MEPS 2002 Special Tabulation  Hot meals delivered to frail, homebound	50,467	3,515	38,355	8,597
Nutrition Counseling	BFRSS 2003 Nutritionally at risk	111,915	32,940		78,975
Nutrition Education	60+ and caregivers under 60 Nutrition information	245,571	3,005		
Para-Professional Services					
Counseling (1)			8,736	0	(8,736)
Escort (1)			1,298	0	(1,298)
Literacy/Language		18,455	10	14,026	4,419
Personal Care	DHHS, CDC, National Center for Health Statistics, NHIS 2004	9,922	3,617	7,541	(1,236)
Respite	BFRSS 2000 Adult caregivers 18+ (14%)	97,499	1,467	74,099	21,933
<b>Legal</b>					
Legal Assistance	60+	172,177	2,790		169,387
Elder Abuse & Neglect	65+ Living Alone	22,813	705		22,108
<b>National Family Caregiver Support Services (Title III-E)</b>					
Access Assistance	BFRSS 2000 Adult caregivers 18+ (14%) Assists caregivers in obtaining access to services	97,499	3,276		94,223
Information Services	All adults 18+	696,421	6,139		690,282
Counseling	BFRSS 2000 Adult caregivers 18+ (14%)	97,499	4,380		93,119
Respite	BFRSS 2000 Adult caregiver 18+ (14%)	97,499	1,836		95,663
Supplemental Services	BFRSS 2000 Adult caregiver 18+ (14%) Services provided on a limited basis which may include home modifications, emergency response systems, and incontinence supplies	97,499	351		97,148
Support Groups	BFRSS 2000 Adult caregiver 18+ (14%)	97,499	4,528		92,971
Training	BFRSS 2000 Adult caregiver 18+ (14%)	97,499	326		97,173
<b>Multipurpose Senior Center</b>					
Recreation	60+	172,177	1,423		170,754

(1) Estimate of need not available

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HOUSE OF REPRESENTATIVES

Committee on Higher Education

Rep. Jerry L. Chang, Chair

Rep. Mark M. Nakashima, Vice Chair

Committee on Legislative Management

Rep. James Kunane Tokioka, Chair

Rep. Blake K. Oshiro, Vice Chair

State Capitol, Conference Room 309

Tuesday, February 10, 2009; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 982, HD1  
RELATING TO FAMILY LEAVE**

The ILWU Local 142 supports H.B. 982, , HD1, which establishes a new data collection system for family leave and extends applicability of the family leave law to employers with 50 or more employees.

Hawaii's population is growing older and not always in good health. That means more and more adults will need some kind of help with their care--and more and more workers will be called upon to serve in a caregiver capacity and will need to take family leave.

Hawaii law currently requires employers with 100 or more employees to provide family leave, which is four weeks of unpaid leave to care for a seriously ill family member. The leave provision is limited (four weeks), unpaid, and only for workers in large companies (100+). However, all workers may be faced with the need for family leave yet may not be able to take it because of loss of income.

A bill had been proposed last year to provide for paid family leave. Unable to agree on this concept, the bill was amended to establish a working group to discuss the issue, explore options, and report to the Legislature on a proposal. Unfortunately, the working group also could not agree.

H.B. 982 was developed as a compromise, knowing that in the current economic climate, a tax to support paid family leave would not pass. Yet even proponents of paid family leave do not have sufficient information about the magnitude of the problem or the amount of funds needed to support the benefit. H.B. 982 was proposed as a means of collecting data to determine how many workers take family leave even if it is unpaid. This data can later be extrapolated to determine how many may seek paid family leave when a law is enacted. The Department of Labor and Industrial Relations will be directed to work with the University of Hawaii Center on Aging to manage this database and analyze the data.

H.B. 982 would also amend the State family leave law to apply to employers with 50 or more employees. The data collection requirement would not be onerous for an employer of that size. The employer would be required to provide a paper form to the worker seeking unpaid family leave or access to a computer to input the data on a website. Providing unpaid family leave itself should not be particularly burdensome for employers of this size and will help to build good will and employee loyalty.

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The only drawback to this bill is that the requirement to provide data applies only to those workers who are covered by the State family leave law and will exclude employees of companies with less than 50 employees as well as certain public employees. However, we believe that the provisions of this bill will capture data from a large enough majority of Hawaii's workforce and should be very useful in developing programs to assist workers who are family caregivers.

The ILWU urges passage of H.B. 982, HD1. Thank you for considering our testimony.

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**Testimony to the House Committees on Higher Education and Legislative Management  
Tuesday, February 10, 2009  
2:00 p.m.  
Conference Room 309**

**RE: HOUSE BILL NO. 982, HD1 RELATING TO FAMILY LEAVE**

Chairs Chang and Tokioka, Vice Chairs Nakashima and Oshiro, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber does not support House Bill No. 982 HD1, relating to Family Leave in its current form.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber well recognizes the growing number of caregivers in our state. Employers understand the hardships that some employees are experiencing and care about the well-being of their employees. They realize the importance of taking care of their employees and offering benefits to retain their staff. Many voluntarily offer benefits that address care giving responsibilities. Businesses are already providing a level of flexibility for employees who are in difficult situations.

This measure extends the applicability of the family leave law to employers with 50 or more employees. Currently, the Hawaii Family Leave Act (HFLA) covers employees employed by firms with 100 or more employees who perform services for at least six consecutive months.

The Chamber has concerns with this section. Many firms that employ between 50-100 employees, such as long-time local establishments, operate on limited resources, and struggle on a daily basis to keep up with costly regulations. We ask that in these difficult economic times further costs not be imposed on Hawaii's businesses, particularly those affected by the proposed legislation. Implementing laws that will inflict further regulatory requirements will undermine efforts to keep businesses viable or even open during this volatile economic period. The bottom line goal is to save jobs and for companies to continue to provide the quality benefits to their valued employees.

From a long-term standpoint, we believe the HFLA should be consistent with the Family and Medical Leave Act (FMLA), which applies to firms that employ 50 or more who have worked

for at least 12 consecutive months. Due to the nature of the business, industries such as retail and restaurant, many of which employ 50 or more, experience high employee turnover on a regular basis. Reducing the applicability standard from 100 to 50 employees will impose a significant and unfair burden on these businesses. Furthermore, changing HFLA so that it is consistent with FMLA will lead to reduced litigation. Since HFLA was enacted, many employment cases have centered around the confusion between HFLA and FMLA. Businesses with less than 100 employees have few personnel to devote to the complexities of federal and state law overlapping rules.

Also, the measure establishes a data collection system for family leave to both public and private employees. We believe the data collection system is an appropriate start in analyzing and developing improvements to the family leave system. However, we are concerned that during this tough economic period, the state should be directing its financial resources toward mechanisms that will revitalize our economy that will help business and its employees.

If the committee decides to proceed with this proposal, we ask that the bill is amended so that it applies to the public sector first. When Hawaii enacted the Hawaii Family Leave Act in 1991 (HRS §398), the Legislature extended the law to the public sector first. The law was not applicable to the private sector until July 1, 1994. The Chamber believes that this is a step in the right direction. Imposing this requirement during a tough economic period will further undermine the employers' ability to direct their resources and attention to issues that greatly assist employees.

Thank you for the opportunity to testify.