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

Date: Tuesday, February 3, 2009
Time: 8:30 a.m.
Place: Conference Room 309
State Capitol

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

Re: H.B. No. 982 - Relating to Family Leave

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. No. 982 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.

II. CURRENT LAW

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

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III. HOUSE BILL

The Department cannot support H.B. 982 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.

Testimony to the House Committee on Labor & Public Employment
Tuesday, February 3, 2009
8:30 a.m.
Conference Room 309

RE: HOUSE BILL NO. 982 RELATING TO FAMILY LEAVE

Chair Rhoads, Vice Chair Yamashita, and Members of the Committee:

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, 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, so many are incentivized to voluntarily offer benefits that address care giving responsibilities. Many 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, many of which are 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.

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. Furthermore, businesses are already facing difficulty in keeping up with many of the regulations, and imposing this requirement during this 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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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House of Representatives
The Twenty-Fifth Legislature
Regular Session of 2009
Committee on Labor & Public Employment

Testimony by HGEA/AFSCME, Local 152, AFL-CIO
February 3, 2009

H.B. 982 – RELATING
TO FAMILY LEAVE

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H. B. 982 which proposes amendments to Chapter 398, HRS (Family Leave). The bill establishes a new data collection system for family leave use, and extends the applicability of the family leave law to employers with 50 or more employees and to certain less-than-full-time employees of the public sector. The proposed data collection system will ensure uniformity in application of family leave provisions; document the use of family leave; provide a basis for projecting future use; and aid in planning improvements to the existing system.

The proposed legislation will benefit our larger community by taking some action now to address the challenge of balancing work and family care-giving issues that will likely face more of Hawaii's workforce in the near future. Projections indicate that by the year 2020 more than one-fourth of Hawaii's population is expected to be aged 60 years or older, and an individual's need for personal care assistance increases with age. Thank you for the opportunity to testify in support of H.B. 982.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996

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Rep. Karl Rhoads, Chair
Rep. Kyle Yamashita, Vice-Chair
Committee on Labor and Public Employment

Glenn Ida
Representative
Tuesday, Feb. 3, 2009 8:30 AM,
Conference Room 309

Support of HB 982, Relating to Family Leave.

The Hawaii Teamsters Local 996 participated in the Joint Legislative Committee on Aging in Place. We focused our attention on the area of paid family leave for caregivers. We were trying to establish a policy change and criteria based on the State of Hawaii Caregivers Needs Assessment of 2007 but there was not enough information on the current use of Family Leave for the committee members to come to consensus regarding how we would reach our goals.

HB 982 would compile the necessary data needed to address issues concerning the increase of caregivers for our seniors since the number of those in this category will surely rise in the near future.

The Hawaii Teamsters Local 996 supports, HB 982, Relating to Family Leave.

Thank you for allowing me to testify this morning.

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The Twenty-Fifth Legislature
Regular Session of 2009

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Karl Rhoads, Chair
Re. Kyle T. Yamashita, Vice Chair

State Capitol, Conference Room 309
Tuesday, February 3, 2009; 8:30 a.m.

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

The ILWU Local 142 supports H.B. 982, 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 and to certain emergency and casual hires of the State and counties.

Hawaii's population is growing older and not always in good health. That means more and more adults will need some kind of help for caregiving--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, a working group was established 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.

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 loyalty and good will.

The only drawback to this bill is that the requirement to provide data only applies 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.

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

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TO: COMMITTEE ON LABOR & PUBLIC
EMPLOYMENT

Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

FROM: Eudice R. Schick
PABEA (Policy Advisory Board for Elder Affairs)

SUBJECT: HB 982

HEARING: Tuesday, February 3, 2009 8:30 a.m. Room 309

POSITION: Support of HB 982

I am offering testimony on behalf of PABEA, the Policy Advisory Board for Elder Affairs, which is an appointed Board tasked with advising the Executive Office on Aging (EOA). My testimony does not represent the views of the EOA but of the Board.

HB 982 explains, in depth, why we need a data collection system and also the reconciliation of the State and Federal laws on Paid Family Leave. Paid Family Leave is, and will be, a vital part of an employees ability to work, and at the same time, if need be, to take time off from their job and feel secure about doing so. As the bill states, the elder populations is growing at a rapid pace and will need care. The option of being able to stay at home verses being put in a nursing facility or care home, which we have a tremendous shortage of, is a no brainier. We must do everything that we can to help the caregivers, which by the way, there is also a great shortage of.

Your support of HB 982 is appreciated.

Eudice R. Schick, Chair PABEA Legislative Committee

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yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 31, 2009 1:52 PM
To: LABtestimony
Cc: thirr33@gmail.com
Subject: Testimony for HB982 on 2/3/2009 8:30:00 AM

Testimony for LAB 2/3/2009 8:30:00 AM HB982

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: Arvid T. Youngquist
Organization: The Mestizo Association
Address: P O Box 37542 Honolulu, HI 96837
Phone:
E-mail: thirr33@gmail.com
Submitted on: 1/31/2009

Comments:
Chair Karl Rhoads
Vice Chair Kyle Yamashita
Honorable Members of the House Labor Committee

This is a brief testimony in support of HB 982 which has impressive co-sponsors in the House.

I appreciate your attention to detail and efforts to provide clarity and comprehensive coverage of the family leave statute.

Please hang tough on this and other legislation that speak up for the "voiceless multitude". This is something that a rank and file stakeholder could get behind.

There will be some outcry from small business & other special interests, as would be justly expected, but provided due process in the hearing is rendered to all comers, I am sure that the Committee will acquit itself admirably.

Mahalo.

UNIVERSITY OF HAWAI'I AT MĀNOA

School of Social Work

**Testimony to the House Committee on Labor and Public Employment
Tuesday, February 3, 2009
Conference Room 309; 8:30am**

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

Chair Rhoads, Vice Chair Yamashita, and Members of the 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.

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.