

**SB 782**

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To: The Honorable Suzanne Chun Oakland, Chair  
and Members of the Senate Committee on Human Services

Date: February 10, 2009

Time: 2:15 p.m.

Place: Conference Room 016, State Capitol

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

Testimony in Support  
of  
**S.B. 782 - Relating to Employment Security**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. 782 proposes to add a new section to Chapter 383, HRS, to provide for eligibility of unemployment benefits for domestic or sexual violence victims. This measure will allow unemployment benefits to an individual who is separated voluntarily or involuntarily from employment due to circumstances resulting from the individual or the individual's minor child being a victim of domestic or sexual violence. The bill also provides for good cause to refuse work due to an unreasonable risk of violence and considers an individual able and available for work by registering for work.

S.B. 782 also proposes to amend section 383-65(b) by relieving the employer of charges for benefits paid to individuals who are discharged due to circumstances resulting from domestic or sexual violence or due to actions or absences from work taken by the individual leading to a discharge.

## II. CURRENT LAW

Currently, section 383-30(1) and (2) disqualifies an individual who quits without good cause or is discharged for misconduct.

Under administrative rule section 12-5-47(c)(7), Chapter 5, Title 12, good cause for leaving employment may be found where there is "evidence that the individual was a victim of domestic or sexual violence, including any circumstance which causes a reasonable person to believe that other available alternatives, such as a leave of absence, a transfer of jobs, or an alternate work schedule, would not be sufficient to guarantee the safety of the individual and that separation from employment was necessary to address the resulting physical and psychological effects, to seek or reside in an emergency shelter, or to avoid future domestic or sexual violence. Such evidence includes police records, court records, statements from the individual, a volunteer of a victim services organization, the individual's attorney or advocate, a member of the clergy, medical or other professional from whom the individual has sought assistance related to the domestic or sexual violence, or other corroborating evidence. As used in this subsection, "domestic or sexual violence" includes domestic abuse, sexual assault, or stalking."

Section 383-65(b) does not currently contain any specific provision for non-charging an employer for terminations involving domestic or sexual violence, which may be considered for reasons other than misconduct connected with work. Benefit payments attributed to any discharge for no misconduct are chargeable to the employer. Where an individual leaves work voluntarily for personal good cause not attributable to the employer, an employer is non-charged for the benefits paid under section 383-65(b)(1).

## III. SENATE BILL

The Department supports the intent of this measure to ensure safety and economic security to victims of domestic and sexual violence as evidenced by our administrative rule that was promulgated in 2006.

However, the Department raises the following concerns:

1. Section 383-29(a)(2) and (3), HRS, in separate provisions, require that an unemployed individual must be registered for work and be able/available for work (AA) to be eligible for UI benefits. The single exception for AA is in medical waiver situations in which the claimant becomes incapacitated while on active UI status. Being registered for work or being exempted from active search for work do not automatically satisfy all AA requirements under the law.

The U.S. Department of Labor has consistently interpreted federal provisions governing the UI program as requiring that state UI laws contain tests, applied equally to all individuals, to assure that all claimants are in continued attachment

to the labor force, including making weekly job contacts and being ready, willing and able to accept immediate suitable employment. Should the victim of domestic or sexual violence be unable to work due to the “need to take care of the physical, psychological, legal and other effects of the domestic or sexual violence,” then eligibility for UI benefits would be highly questionable.

Failure to meet federally established guidelines relating to AA may raise a conformity issue. If the state law is in violation, certification of the FUTA tax offset credit would be denied and administrative grants to operate the UI program would be withheld, forcing the closing of all UI offices.

2. With respect to the non-charging of benefits paid in discharge of individuals due to circumstances relating to individuals who are victims of domestic or sexual violence, the Department does not feel a change to the current law is warranted. Section 383-65, HRS, permits non-charging in circumstances where the employer has no control over an employee’s resignation or where the employee acted in willful disregard of an employer’s interests. Extending non-charging of benefits to discharge for no misconduct situations would open the floodgates to every other termination situation, including lay offs due to lack of work, to the point of erosion of the experience rating system. Where the USDOL finds that employer rates are not based on a pooled fund system in which employers are rated on the basis of their experience with unemployment or other factors bearing a direct relation to unemployment risk, all subject employers would be in jeopardy of losing their FUTA tax offset credit. As a result, businesses would be assessed higher federal taxes.

The Department emphasizes that benefits are already allowed to victims of domestic and sexual violence and we currently consider personal reasons for separation without disqualification such as those advanced by this bill. While the department is not in agreement with some of the provisions, we support the purpose of this measure and are willing to work with this Committee to draft suitable language that will be mutually agreeable to all parties involved.