



THE JUDICIARY, STATE OF HAWAII

Testimony to the House Committee on Judiciary

The Honorable Jon Riki Karamatsu, Chair

The Honorable Ken Ito, Vice Chair

Tuesday, February 9, 2010, 2:30 p.m.

State Capitol, Conference Room 325

by

Sharen M. Tokura

Human Resources Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill 2935, H.D. 1, Relating to Employment Practices

Purpose: Makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave.

Judiciary's Position:

The Judiciary strongly opposes the passage of House Bill No. 2935, H.D. 1, Relating to Employment Practices.

The proposed legislation is overly prescriptive and interferes with the employer's right to effectuate appropriate employment actions and manage and direct its workforce.

The House Committee on Labor and Public Employment amended House Bill No. 2935 by inclusion of the term "legitimately uses" to recognize that while the majority of employees utilize sick leave for the purpose intended, there are employees who misuse sick leave. The Judiciary appreciates this amendment.

However, the Judiciary still cannot support this measure without further amendment to address the employer's right to place in other positions or to terminate employees who become medically disqualified to perform the work of their respective positions. The language of this



House Bill No. 2935, H.D. 1, Relating to Employment Practices
House Committee on Judiciary
February 9, 2010
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bill mandates that the Employer retain medically disqualified employees in their current positions. In other words, the employee legitimately uses sick leave for an injury or illness which results in their being disabled from performing the work for which they were hired. This bill would prohibit the employer from assisting the employee in placement in alternative positions which may be at a lower level of pay commensurate with the work of the position. This bill also prohibits the employer from terminating the employee who can no longer perform the work and cannot be placed in another position. The employer would then continue to pay the disabled employee for work not being performed as the bill provides job protection.

Based on the foregoing, the language in House Bill No. 2935, H.D. 1, as proposed, is not acceptable and impacts the fundamental management decision-making process by interfering with the basic rights and obligations of public employers to responsibly manage operations. This bill provides unduly expansive protection affecting public service.

The Judiciary strongly opposes the passage of this bill, as the continued diminishment of management's rights is contrary to responsible and accountable management practice and sound public policy. This bill also removes the opportunity for disabled employees to accept placement in alternative positions as an employer offering such may be viewed as violating the provisions of this bill.

Thank you for the opportunity to provide testimony on House Bill No. 2935, H.D. 1.

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 8, 2010

TESTIMONY TO THE
HOUSE COMMITTEE ON JUDICIARY
For Hearing on Tuesday, February 9, 2010
2:30 p.m., Conference Room 325

BY

MARIE C. LADERTA
DIRECTOR

House Bill No. 2935, HD1
Relating to Employment Practices

(WRITTEN TESTIMONY ONLY)

CHAIRPERSON KARAMATSU AND MEMBERS THE COMMITTEE:

The purpose of H.B. No. 2935, HD1, is to make it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave.

The Department of Human Resources Development is **strongly opposed** to this bill to the extent it applies to public sector employees.

First, for the public employers, this bill involves a matter that is subject to collective bargaining and therefore should not be legislated.

Second, this bill is unnecessary since contractual and statutory protections are already available for employees who are legitimately ill or disabled. For example, public sector collective bargaining agreements provide a grievance process, which may culminate in binding arbitration, for issues pertaining to an employee's use of sick leave.

In addition, the federal Family Medical Leave Act protects employees who use available sick leave for personal illnesses.

Finally, the HD1 amendment inserting the term "legitimately" conflicts directly with criteria set forth in the bargaining unit 01 and 10 collective bargaining agreements, which authorize the public employers to determine patterns of absences and institute disciplinary action for abuse of sick leave.

Thank you for the opportunity to testify in opposition to this bill.

LINDA LINGLE
GOVERNOR



Darwin L.D. Ching
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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

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

February 8, 2010

To: The Honorable Jon Riki Karamatsu, Chair
and Members of the House Committee on Judiciary

Date: Tuesday, February 9, 2010

Time: 2:30 p.m.

Place: Conference Room 325
State Capitol

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

Re: H.B. 2935, H.D. 1 - Relating to Employment Practices

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2935 proposes to add a new protected class of workers under the Unlawful Suspension or Discharge Law, Chapter 378-Part III, by adding a new section making it unlawful for employers and labor organizations to bar, discharge from employment, withhold pay from, or demote an employee because an employee used accrued and available sick leave provided by the employer.

This Act would take effect upon approval.

II. CURRENT LAW

There is currently no provision in the law that requires employers to provide sick leave outside Temporary Disability Laws.

Chapter 378, HRS, Part III, prohibits employers from unlawfully suspending, discharging or discriminating against an employee for three things: 1) solely because the employer was summoned as a garnishee in an employee's proceedings under Chapter XIII of the Bankruptcy Act; 2) solely because the employee suffered a work injury that was

compensable under the Workers Compensation Law, Chapter 386, HRS, or 3) because the employee testified or was subpoenaed to testify in a proceeding under Part III.

III. HOUSE BILL

The Department does not support H.B.2935 for the following reasons:

1. The Department does not believe this measure will serve to improve sick leave benefits rather, it is likely to make it harder for employees to negotiate for *any* sick leave because it opens the door to new liability for employers where optional sick leave programs are in place and makes it less attractive for employers to offer sick leave at all.
2. This bill attempts to regulate the optional employer-provided benefit of sick leave. Sick leave is part of a negotiated package between employer and employee. It is the Department's contention that this bill is not needed because the problem that it is intended to address, is more appropriately handled through other avenues.
3. The Department is also concerned about the unintended consequences this bill will have. Because providing sick leave is not mandatory, this law may discourage employers from providing a sick leave policy, to avoid being involved in disputes of unlawful practices.
4. State and federal laws on disability discrimination and family leave already extend protection to individuals whose absence from work is legitimate, whether or not covered by sick leave. The provisions of the federal Family Medical Leave Act (FMLA) require that, "Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, nor can FMLA be counted under "no fault" attendance policies." In addition, the Americans with Disability Act and the Hawaii Employment Practices Law prohibit discrimination against disabled employees who require time off from work as reasonable accommodation unless such absence becomes an undue burden.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET 10TH FLOOR - HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 - FAX: (808) 768-5563 - INTERNET: www.honolulu.gov/hr

MUFI HANNEMANN
MAYOR



NOEL T. ONG
ACTING DIRECTOR

DIRECTOR'S OFFICE
FACSIMILE COVER SHEET

DATE: 02.09.10

No. of Pages 2
(including cover sheet)

TO: 586.8494

FROM: Pamela Fong for Noel Ono

SUBJECT: Testimony for House Bill No. 2935

Committee: Committee on Judiciary

Hearing Date: Tuesday, 02.09.10

Hearing Time: 2:30 pm

PHONE NO. 768-8500

FACSIMILE NO. 768-5563

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 10th Floor
HONOLULU, HAWAII 96813

MUFI HANNEMANN
MAYOR



NOEL T. ONO
ACTING DIRECTOR

February 9, 2010

The Honorable Jon Riki Karamatsu, Chair
and Members of the Committee on Judiciary
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 2935, H.D. 1
Relating to Employment Practices

The Department of Human Resources of the City & County of Honolulu **respectfully opposes** H.B. 2935, H.D. 1, which seeks to make it unlawful for an employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave.

The primary concern is that H.B. 2935, H.D. 1 legislates an issue that is a subject of collective bargaining, and interferes with the City's ability to manage its employees and available resources. The public employer and each of the exclusive representatives have negotiated sick leave into their agreements, including the accrual and legitimate use of sick leave. Several of the agreements contain specific provisions to address suspected abuse of sick leave, which could involve incidents that were initially determined to be "legitimate" use of accrued and available sick leave.

Thank you for the opportunity to testify.

Yours truly,

Handwritten signature of Noel T. Ono in black ink.

Noel T. Ono
Acting Director



Local Union 1260

International Brotherhood of Electrical Workers

2305 So. Beretania St. • Honolulu, Hawaii 96826-1494 • email: office@ibew1260.org

Telephone (808) 941-9445

Fax No. (808) 946-1260

LANCE M. MIYAKE
Business Manager-Financial Secretary

LOREN TAGUCHI
President

February 8, 2010

Representative Jon Riki Karamatsu
Chair, Judiciary Committee
The House of Representatives
State of Hawaii

Dear Chair Karamatsu:

IBEW Local 1260 supports and request that the Judiciary Committee submit H.B. No. 2935 to the House of Representatives for the enactment of this bill. The Local Union, with this testimony, will show how Hawaiian Electric Company, Inc. uses their Attendance Improvement Program (AIP) to intimidate and discipline their employees from using their sickness benefits.

The AIP is a Company policy that was not negotiated and it is only implemented on the union members of the Company. Since it only affects the union members, it is not only discriminatory but also unfair because it uses discipline to discourage use of a negotiated benefit.

Quoting the AIP, "For purpose of the AIP, 'absences' that are monitored include the following: sickness; unscheduled absences; unexcused absences; and tardiness." According to the AIP, the definition for unexcused absence is "any unscheduled absence or tardiness from the defined work scheduled where appropriate notice is not provided and/or the supervisor does not approve the absence."

The Company has encouraged employees to use the FMLA for illnesses and/or injuries, so the occurrence will not count on the AIP. The purpose and reason for FMLA was if employees did not have vacation or sick benefits, they could use FMLA to avoid being disciplined for the time away from work.

Under "Rights of Management," it states that the Company has the right to determine when an employee can take vacation or excused absence. The definition of excused absence is not defined, but assuming that sick leave with physician's note is an excused absence, then how does the Company schedule the sick leave.

The Corporate Health Administrator or Director, Corporate Health & Wellness (same person), whose qualifications has been questioned by the Local Union, has ruled on most of the AIP "Steps" that the Administrator or Director reviewed the employee, did not have documentation to support the absence. On numerous occasions, the Administrator also stated that she has reviewed the documentation from employee and determined that the absence(s) does not qualify as serious, chronic, or FMLA-related. The Administrator, who has not established

International Brotherhood of Electrical Workers

Local 1260



her qualifications to the Local Union, is actually disputing the physician's note for the absence(s). How does she determine if an absence is FMLA-related, when the employee's physician needs to fill out Section 3 on the form?

The employee's record on sick leave for their career is not considered, the employee may have an excellent attendance record; but if that employee is experiencing a "bad" time in his career regarding being ill, injured, or both, that employee will receive discipline. The attachment will show that the Company has stated to employees that they will be held to the triggers of the AIP.

The AIP policy discourages use of sick leave, and therefore there may be times when an employee will come to work sick. The Local Union has been trying to point out to the Company that prevention of pandemic outbreaks, such as H1N1, is to stay home when you feel any type of symptoms associated with influenzas or colds because even if you take a test, the results takes awhile to come back. It would be sad if a pandemic outbreak is started because of policies like the AIP; furthermore, a child who is most vulnerable to H1N1 should die because of a policy like the AIP exist would be unforgivable.

The Local Union is not against any policy for abuse of sick leave or sick benefits, but since it is a negotiated benefit in the CBA, the Local Union would like to have collective bargaining involved in establishing such policies. It is not this Local Union's intention to allow to hinder the Company in its operations, but the Company needs to establish that abuse has occurred. Please stop companies like Hawaiian Electric Company, Inc. from using policies like the AIP to circumvent sick benefits negotiated in collective bargaining agreements (CBA). Imagine what might be happening to employees who work for companies that don't have a CBA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lance M. Miyake'. The signature is fluid and cursive.

Lance M. Miyake
Business Manager – Financial Secretary

Attachment

USE OF REPRESENTATIVES
NINETY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2935

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 378-32, Hawaii Revised Statutes, is amended to read as follows:

"§378-32 Unlawful suspension, discharge, or discrimination.

a) It shall be unlawful for any employer to suspend, discharge, or discriminate against any of the employer's employees:

(1) Solely because the employer was summoned as a garnishee in a cause where the employee is the debtor or because the employee has filed a petition in proceedings for a wage earner plan under Chapter III of the Bankruptcy Act; or

(2) Solely because the employee has suffered a work injury which arose out of and in the course of the employee's employment with the employer and which is compensable under chapter 386 unless the employee is no longer capable of performing the employee's work as a result of the work injury and the employer has no other available work which the employee is capable of performing. Any employee who is discharged because of the work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during the period thereafter until the employee secures new employment. This paragraph shall not apply to any employer in whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or reemployment of the injured employee;

(3) Because the employee testified or was subpoenaed to testify in a proceeding under this part; or

(4) Because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5; provided that this provision shall not apply to an employee who fails or refuses to report to a laboratory for a substance abuse test pursuant to section 329B-5.5.

(b) It shall be an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, demote an employee because the employee uses accrued and available sick leave."

SECTION 2. This Act does not affect rights and duties that accrued, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Unemployment Practices

Description:

Makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HAWAIIAN ELECTRIC COMPANY, INC.

ATTENDANCE **I**MPROVEMENT **P**ROGRAM

Effective: April 2002

PURPOSE & OBJECTIVE

Employees are expected to maintain a reasonably healthy lifestyle as every employee's well-being contributes to a safe, efficient and productive workplace. In addition, a consistently dependable employee is critical to the health and well-being of other members of the team.

The Attendance Improvement Program (AIP) establishes definitive expectations of attendance and guidelines for fair and consistent management of attendance issues related to excessive as well as pattern absences. The purpose of the AIP is to ensure the following:

- employees report to work on time and on a regular basis;
- each job is completed as safely, effectively and efficiently as practical by those best qualified;
- disruptions to operations (resulting from unscheduled absences) are minimized;
- morale of all employees is maintained at a consistently high level; and
- the Company can compete in a competitive environment.

It is important to note that the AIP is not meant to be punitive, but rather, corrective. The objective is to establish a fair and equitable solution, sensitive to employees' ailments / needs, while modifying the behavior that is below expectations.

RIGHTS OF MANAGEMENT

The Company has the sole and exclusive right to determine when an employee can take vacation or excused absence. Supervisors are expected to appropriately approve or deny absences based on a determination of whether the absence is disruptive and / or unavoidable. An employee may be denied vacation if the absence is determined to be disruptive or the reason inadequate.

The Company recognizes that employees may have a "bad year" and, thus, administration of the AIP relies on supervisory judgment and management review as well as considering past history and patterns of absences.

MONITORING & ADMINISTRATION

Departments will manage the attendance of all its employees by:

- establishing attendance expectations for "frequency," "total hours" and "patterns";
- monitoring attendance relative to expectations; and
- taking actions as outlined in the AIP.

For purposes of the AIP, "absences" that are monitored include the following:

- sickness;
- unscheduled absences;
- unexcused absences; and
- tardiness.

Once problem attendance has been identified, the employee is placed in the AIP to help the employee better manage his / her attendance challenges by providing clear procedures and / or consequences for current and subsequent occurrences of absence.

CORRECTIVE ACTION PROCESS

The following process shall be used to promote improved attendance. Note that the timeframe for the next trigger begins on the date of the last occurrence.

STEP I: COUNSELING**Trigger for Step I:**

- 4th occurrence within a twelve-month period, OR
- 48 hours within a twelve-month period; OR
- 2 or more pattern occurrences, such as where the absence(s) coincides with a day of leave, with or without pay, within a twelve-month period.

STEP II: DOCUMENTED VERBAL WARNING**Trigger for Step II:**

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

STEP III: WRITTEN WARNING**Trigger for Step III:**

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

STEP IV: DECISION-MAKING LEAVE AND PERSONAL ACTION PLAN**Trigger for Step IV:**

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

STEP V: TERMINATION**Trigger for Step V:**

- Next occurrence within the next six-month period.

GETTING OFF THE PROGRAM

An employee who does not meet the criteria for the next trigger is removed from the AIP.

EMERGENCY LEAVES

Emergency leaves are available only for compelling, urgent or unusual circumstances. The Supervisor or Superintendent MUST approve this type of unscheduled absence and the employee must provide a legitimate reason for the urgency or lack of notice. Generally, "personal reason" is not a sufficient explanation for emergency leaves. Typical examples include, but are not limited to the following types of requests:

- Addressing the safety of the employee, the health or well-being of the employee's family, or that qualifies under the FMLA;
- Transacting business which cannot be otherwise transacted before / after scheduled workdays or on days off;
- Where the situation was beyond the employee's control and other arrangements such as the swapping of shifts / work schedules could not be arranged.

DOCTOR'S CERTIFICATE OF ILLNESS / INJURY

A doctor's certification of illness or injury preventing an employee from performing his or her job responsibilities is required in the following situations:

1. absences of 3 or more consecutive days;
2. any absence where the employee has 4 or more separate absences within a 12 month period;
3. any absence where the employee is not at home when called on by a Company representative during the period that the employee is absent from work;
4. situations which may require a supervisor to ensure the employee's state of health does not represent a danger to themselves or fellow workers, or that the supervisor must determine whether an act of deception or dishonesty might have taken place. In any case, such a demand shall not be made arbitrarily.

Failure to provide valid certification as requested shall result in non-payment of sickness benefit. All medical records obtained in accordance with this policy shall be deemed confidential and shall be maintained by the Corporate Health Administrator.

Employees with chronic or serious illnesses / injuries, as certified by the treating physician, will be reviewed on a case-by-case basis by the Corporate Health Administrator and handled accordingly.

FALSIFICATION & / OR ABUSE

Any employee found to have falsified illness reports or otherwise abused the privileges of the sickness benefit plan will be dealt with in accordance with Company policies and the Collective Bargaining Agreement.

TARDINESS

Disruptive or habitual tardiness must be addressed and officially acted upon. Tardiness will not be tolerated and will be dealt with on a case-by-case basis using frequency, duration, and its effect on operation as a means of determining corrective action necessary.

DEFINITION OF TERMS**Chronic or Serious Illnesses / Injuries**

A chronic or serious illness/injury is a life threatening or very serious condition which requires hospital care, ongoing outpatient follow-up, and is a situation where return to normal work may be detrimental to the patient's health or to other employee's health, or the patient is felt by his/her physician to be completely incapacitated to perform any of the duties of his/her job.

Decision-making Leave

The employee placed on a one (1) day paid administrative leave (not deducted from employee's leave account) and decide on returning with:

1. a decision to voluntarily resign, to be effective immediately; OR
2. a written Personal Action Plan stating:
 - the actions the employee will take to improve his/her absenteeism, and
 - that he/she understands the repercussions of the next "trigger," and
 - that he/she understands the timeframe for improvement.

Note: It is critical that the employee understand that the decision-making day is NOT a "day off." The employee is given a direct order to make a final decision while on the clock. Failure to do so ("I couldn't make up my mind" or "I decided not to decide") is insubordination – failure to follow a direct and legal order – and will result in disciplinary action, up to and including termination.

Disruption

An absence is defined as disruptive if it causes, but is not limited to, the following:

1. overtime
2. delays in normal schedule
3. delays completion of work within the expected timeframe.

Excused Absences

Excused absences are those in which appropriate notice (at least one day) is provided AND the supervisor approves the absence (e.g., vacation, excused absence with / without pay, etc).

Pattern Absences

Patterns of abuse include the following examples, but are not all-inclusive:

- unscheduled absences correlating with holidays, regular days off, and paydays
- absences which reflect a trend (i.e., Mondays and Fridays)
- frequent tardiness in reporting to work or reporting back to work during the course of the workday.

Personal Action Plan (PAP)

The Personal Action Plan is a mutual understanding between the supervisor / Company and the employee where goals, specific steps and measurements are identified to improve his / her attendance.

Trigger

A trigger is the point that initiates / prompts action. The timeframe for the next trigger begins on the date of the last occurrence.

Unexcused Absences

Unexcused absences are defined as any unscheduled absence or tardiness from the defined work schedule where appropriate notice is not provided and / or the supervisor does not approve the absence.

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INTEROFFICE CORRESPONDENCE



Hawaiian Electric Co., Inc.

September

To:

Subject: Status of Attendance Improvement

On April 1, 2002 the Company's new Attendance Improvement Program (AIP) was rolled out to our employees. The program's key elements included the following:

- Employees who are currently on departmental programs will be transitioned to the new AIP.
- Employees will be held to the "triggers" of the new AIP.

On March you were issued a Step I (equivalent to Step I of the new AIP) as a result of your excessive absenteeism record. You were also advised to immediately improve your attendance to meet specific attendance goals and requirements.

I am very pleased to confirm that because you have been absence-free for 6 months (since March) you are no longer on any special attendance improvement program (including the new AIP). You've done a very good job for these past 6 months and I would like to thank you for your great effort and results. Keep up the good work!

cc:

Industrial Relations
IBEW Local 1260



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HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

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Employee: _____
21044

RA/Employee No: _____

Date: _____

Time: _____

Date of Step I: _____

Interviewer: _____

Step II

Dates of Occurrences & Hours

Total Hours/Occurrences: _____

7/6-8/09 24 hrs.

24 Hours/1 Occurrence

Review Step I Documentation with Employee

- Placed on Step I or
- Since the last occurrence of absence on _____ has incurred 1 occurrence and 24 hours.

Employee Response

Advise Employee of Company's Expectations per Attendance Improvement Program

- We need him to maintain a reasonably healthy lifestyle so that he is able to report to work on a regular basis
- His attendance is critical to the operations of the Department
- Based on the Director, Corporate Health & Wellness's review of his absences, the documentation for his absence does not support a serious, chronic or FMLA-related occurrence.
- Therefore, Ben has met the triggers for Step II of the AIP

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

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HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

Employee: _____ RA/Employee No: _____

Date: _____ Time: _____

Date of Step I: _____ Interviewer: _____

Step II

Dates of Occurrences & Hours Total Hours/Occurrences: _____

7/6-10/09 40 hrs. 64 Hours/2 Occurrences

7/16-20/09 24 hrs.

Review Step I Documentation with Employee

- Placed on Step I on 2/2/09
- Since the last occurrence of absence or _____ hael has incurred 2 occurrences and 64 hours.

Employee Response

Advise Employee of Company's Expectations per Attendance Improvement Program

- We need him to maintain a reasonably healthy lifestyle so that he is able to report to work on a regular basis
- His attendance is critical to the operations of the Department
- Based on the Director, Corporate Health & Wellness's review, the documentation for his absences does not support serious, chronic or FMLA-related occurrences
- Therefore, Michael has met the triggers for Step II of the AIP

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

within the next six-month period, or



HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

*09 JAN 20 AM 9:28 RECE

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Employee: _____ RA/Employee No: _____

Date: _____ Time: _____

Date of Step I: _____ Hours / Occurrences: 72 hours / 2 occurrences

Interviewer: _____

Step II

List Hours/ Occurrences: 40 hrs - 9/15-19/2008 Total Hours/ Occurrences: 40 hours / 1 occurrence

Advise Employee of Company's Expectations per Attendance Improvement Program

incurred 1 occurrence totaling 40 hours over the last month.

- we need him to maintain a reasonably healthy lifestyle so that he is able to report to work on a regular basis
- his attendance is critical to the operations of the Department
- based on the Corporate Health Administrator's review of his absences, he did not have documentation to support this absence.
- he is being placed on Step II of the AIP.

Employee Response

Ask the employee if there is anything you can do to **HELP THEM** resolve the situation. (Note: It is not the intent for you to resolve their attendance problem but to help them to help themselves)

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

- 2 occurrences within the next six-month period, or
- 24 hours within the next six-month period.

RECEIVED MAY 26 2009



HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

Employee: _____ RA/Employee No: _____
Date: _____ Time: _____
Date of Step I: _____ Hours / Occurrences: 24 hrs/1 occ.
Interviewer: _____

Step II

- May 12-14, 2009 – 24 hrs.

Review Step II Documentation with Employee

_____ was supposed to have dropped off of the AIP on August 27, 2009. However, as of May 15, 2009, she incurred 1 additional occurrence totaling 24 hours. The Corporate Health Administrator has not received any documentation regarding this absence.

Employee Response

_____ informed us that she had a scheduled procedure for Friday, May 15, 2009 (which she took a vacation day for), and was trying to recover from a cold she caught in the beginning of the week. She was planning to return on Thursday, May 14, 2009, but took an extra day to make sure she was fully recovered, as she needed to be 100% healthy for her procedure.

Advise Employee of Company's Expectations per Attendance Improvement Program

Employee is aware that we are concerned about her absences.

Employee Response

_____ asked if she would need to provide a doctor's slip for all future occurrences. Upon reviewing the GIM, we found the answer to _____'s question and will be forwarding the answer via email.

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

- 2 occurrences within the next six-month period, or
- 24 hours within the next six-month period.

_____ understands that she will be placed on Step III of the AIP if she incurs 2 occurrences or 24 hours in the next six months. _____ was advised the 6 month period will begin from the last sick occurrence. She will be removed from AIP Step 2 on November 14, 2009.

Additional Comments:

cc: Manager _____ Industrial Relations _____ PHF
Supervisor's Signature: [Signature] Date: 5/19/09
Employee's Signature: [Signature] Date: May 19, 2009



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HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

Employee: _____ RA/Employee No: _____
 Date: _____ Time: _____
 Date of Step I: _____ Hours / Occurrences: 24 hrs/2 occ.
 Interviewer: _____

Step II

- April 9th and 13th, 2009 – 16 hrs.
- May 14, 2008 – 8 hrs.

Review Step II Documentation with Employee

_____ was supposed to have dropped off of the AIP on May 20, 2009. However, as of May 14, 2009, she incurred 2 additional occurrences totaling 24 hours. The Corporate Health Administrator has not received any documentation regarding this absence.

Employee Response

Advise Employee of Company's Expectations per Attendance Improvement Program

Employee is aware that we are concerned about her absences

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

- 2 occurrences within the next six-month period, or
- 24 hours within the next six-month period.

_____ understands that she will be placed on Step III of the AIP if she incurs 2 occurrences or 24 hours in the next six months. _____ was advised the 6 month period will begin from the last sick occurrence. She will be removed from AIP Step 2 on November 14, 2009.

Additional Comments:

cc: Manager _____ Relations _____ PHF _____

Supervisor's Signature: _____ Date: _____

Employee's Signature: _____ Date: _____



HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP I - COUNSELING

Employee: _____	RA/Employee No: _____
Date: <u>4/20/2004</u>	Time: _____
Period: <u>9/2/2003 thru 3/12/2004</u>	Interviewer: _____
List Hrs/Occur: <u>32 hrs. 9/2-5/2003</u>	Total Hrs/Occurrences: <u>32/1</u>
<u>32 hrs. 3/9-12/2004</u>	<u>32/1</u>

Advise Employee of Company's Expectations per Attendance Improvement Program

NAME OF EMPLOYEE incurred NO OF OCCURANCES occurrences totaling NO OF HOURS hours over the past 12 months. Advised NAME OF EMPLOYEE that:

- we need her to maintain a reasonably healthy lifestyle so that she is able to report to work on a regular basis
- her attendance is critical to the operations of the Department
- based on the Corporate Health Administrator's review of her absences, she did not have documentation to support her absences
- she is being placed on Step I of the AIP.

Employee Response

Ask the employee if there is anything you can do to **HELP THEM** resolve the situation. (Note: It is not the intent for you to resolve their attendance problem but to help them to help themselves)

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

- 2 occurrences within the next six-month period, or
- 24 hours within the next six-month period.

Additional Comments:

Advised NAME OF EMPLOYEE that 6 month period starts from the date of the last occurrence. 6 month period is from DATE OF LAST OCCURENCE to 6 MONTHS AFTER LAST OCCURANCE.

Supervisor's Signature: _____ Date: _____

_____ Date: _____

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HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

Employee: _____ RA/Employee No: _____

Date: _____ Time: _____

Date of Step I: _____ Hours/Occurrences: 56 hrs/2 occurrences

Interviewer: _____

Step II

List Hrs/Occur: 40 hrs/ 3/2-6/09 Total Hrs/Occurs: 40 hrs/1 occurrence

Advise Employee of Company's Expectations per Attendance Improvement Program

incurred 1 occurrence totaling 40 hours over the past 6 months. Advised (Robert) that:

- we need him to maintain a reasonably healthy lifestyle so that he is able to report to work on a regular basis
- his attendance is critical to the operations of the Department
- based on the Corporate Health Administrator's review of his absences, he did not have documentation to support any of his absences.
- documentation for all other dates was reviewed by the Corporate Health Administrator and does not qualify as serious, chronic or FMLA-related
- he is being placed on Step II of the AIP.

Employee Response

Ask the employee if there is anything you can do to HELP THEM resolve the situation. (Note: It is not the intent for you to resolve their attendance problem but to help them to help themselves)

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

- 2 occurrences within the next six-month period, or
- 24 hours within the next six-month period.

Additional Comments:

Advised _____ that 6 month period starts from the date of the last occurrence. 6 month period is from _____

Supervisor's Signature: _____

Date: _____

Employee's Signature: _____

Date: _____

cc: Manager



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HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

Employee: _____ RA/Employee No: _____

Date: _____ Time: _____

Date of Step I: _____ Hours / 64 Hrs / 3
Occurrences: _____

Interviewer: _____

Step II

List Hours/ 7/30/07-8/1/07 Total Hours/ 24 hrs / 1
Occurrences: _____ Occurrences: _____

Advise Employee of Company's Expectations per Attendance Improvement Program

- incurred 1 occurrence totaling 24 hours over the past 6 months. Advised _____ that:
- we need him to maintain a reasonably healthy lifestyle so that he is able to report to work on a regular basis
 - his attendance is critical to the operations of the Department
 - documentation for 7/30/07-8/1/07 absence was reviewed by the Corporate Health Administrator and does not qualify as serious, chronic or FMLA-related.
 - he is being placed on Step II of the AIP.

Employee Response

Ask the employee if there is anything you can do to HELP THEM resolve the situation. (Note: It is not the intent for you to resolve their attendance problem but to help them to help themselves)

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

- 2 occurrences within the next six-month period, or
- 24 hours within the next six-month period.

Additional Comments:

Advised _____ that 6 month period starts from the date of the last occurrence. 6 month period is from 08/01/07 to 02/01/08.

Supervisor's Signature: _____ Date: _____

Employee's Signature: _____ Date: _____

cc: Manager Industrial Relations



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HAWAIIAN ELECTRIC COMPANY, INC.
ATTENDANCE IMPROVEMENT PROGRAM
STEP II - DOCUMENTED VERBAL WARNING

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Employee: _____

RA/Employee No: _____

Date: _____

Time: _____

Date of Step I: April 4, 2008

Hours / Occurrences: 32 hrs / 4 occ.

Interviewer: _____

Step II

- August 8, 2008 = 8 hours
- September 5, 2008 = 8 hours

Review Step II Documentation with Employee

was supposed to have dropped off of the AIP on September 19, 2008. However, he has since incurred 2 additional occurrence totaling 16 hours. The Corporate Health Administrator said she has not received any documentation regarding these absences.

Employee Response

Advise Employee of Company's Expectations per Attendance Improvement Program

Employee is aware that we are concerned about his absences.

Employee Response

Inform Employee on Availability of EAP / Corporate Health Administrator

Inform Employee of the Triggers to the Next Step

- 2 occurrences within the next six-month period, or
- 24 hours within the next six-month period.

understands that he will be placed on Step III of the AIP if he incurs 2 occurrences or 24 hours within the next six months. He will be taken off of Step II on March 5, 2009.

Additional Comments:

cc: Manager

Industrial Relations

PHF

Supervisor's Signature: Jodi Carlson Date: 11/26/08

Employee's Signature: [Signature] Date: 11/26/08



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441
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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Judiciary

Testimony by
Hawaii State AFL-CIO
February 9, 2010

H.B. 2935, HD-1 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 2935, HD-1 which makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave.

H.B. 2935, HD-1 simply protects employees from being disciplined for taking legitimate sick leave. For example, Hawaiian Telcom does not exclude sick leave as part of its hours of absence according to its attendance policy dated May 2, 2005. As a result, employees who use legitimate sick leave and exceed the two percent absenteeism policy are subject to various disciplinary actions. Furthermore, the attendance policy states “when a coach determines that an employee’s absence or occurrence rate exceeds two percent (*even though legitimate*) or the absence is unexcused, the coach can refer to Hawaiian Telcom’s discipline practices concerning employee performance discussions and appropriate corrective action.” Therefore, it should be noted that Hawaiian Telcom’s attendance policy explicitly states that they in fact discipline employees for taking legitimate absences even though the collective bargaining agreement signed by Hawaiian Telcom and IBEW 1357 clearly allows employees the use of legitimate paid sick leave.

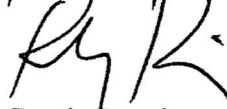
Moreover, in the case of *Auer v. Village of Westbury*, the Supreme Court, Appellate Division ruled in favor of an employee who had been suspended for thirty days for using up his sick leave entitlements. The Supreme Court, Appellate Division proclaimed “the fact that the employee used all his available sick days under the collective bargaining agreement did not alone establish that he was abusing his sick leave and, thus, did not warrant a finding of misconduct.” As a result, the Court nullified the penalty and finding of guilt and ordered the employer to repay the employee for the entire period he was suspended.

In all, employees who use entitled sick leave should be protected under law from abuse and discipline. Employees should not have to be fearful of getting sick and worried if they take off from work they could be subjected to various forms of discipline including suspension or even termination. The fact of the matter is, we all get sick and no one should be disciplined for something we cannot control. In addition, the Supreme Court, Appellate Division ruled that those who use their entitled sick leave under the collective bargaining agreement did not alone establish abuse and should not have been disciplined.

The Hawaii State AFL-CIO urges the passage of H.B. 2935, HD-1 unamended to ensure companies such as Hawaiian Telcom do not continue their disciplinary actions to those who use entitled sick leave.

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Randy Perreira', written over the typed name.

Randy Perreira
President

Testimony before the House Committee on Judiciary
H.B. 2935, H.D. 1 Relating to Employment Practices

February 9, 2010
2:30 p.m.
Conference Room 325, State Capitol

By Faye Chiogioji, Manager
Hawaiian Electric Company

Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

I am Faye Chiogioji, Manager, Workforce Staffing and Development at Hawaiian Electric Company, Inc. I represent Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (collectively "HECO") consisting of 2300 employees.

We respectfully oppose H.B. 2935, H.D.1.

This measure dictates an employer's policy regarding the use of sick leave benefits and is a disincentive for companies, like Hawaiian Electric Company, who voluntarily offer the benefit.

1. We recognize that we have a responsibility to provide reliable power and quality customer service both internally and externally, as well as have a responsibility to manage costs. To meet this level of expectation, we have established rules of conduct for all employees. These rules include an expectation of regular and punctual attendance, which is also an essential function of our jobs.
2. Our sick leave benefit makes sense for our business because utility specific skills and experience are difficult to replace. This benefit helps us to retain skilled, dedicated employees. Sick leave balances are not intended to be exhausted every year; however, for employees, it provides peace of mind should a serious illness or injury occur. Unrestricted use without adequate controls will negatively impact our operations.

Operational impacts include, but are not limited to, the following:

- Unscheduled overtime
- Delays, missed deadlines and cost overruns
- Delayed service restoration during power outages
- Dissatisfied customers
- Lowered morale among co-workers who have to carry the extra workload
- Safety concerns when employees are needed to work double shifts to cover those out on sick leave

Other business impacts include, but are not limited to, the following:

- Increased health care costs since the only measure to address misuse, abuse or excessive use is requiring physician certification
 - Increased administrative costs to manage the prescribed process and medical information.
3. The Federal Family and Medical Leave Act (FMLA) and Hawaii Family Leave Law already allow for the use of sick leave and provide job protection for qualifying absences and serious health conditions. To encourage personal responsibility and manage misuse, abuse or excessive use of sick leave benefits, employers typically apply attendance improvement programs or incentives for good attendance. It follows that the ability to take corrective action when employees abuse, misuse or excessively use such sick leave benefits, up to and including discharge of employment, should be an action vested in employers.
 4. H.B. 2935, H.D. 1 creates a “protective bubble” over all employees who use accrued and available sick leave, regardless of the circumstances, and irrespective of any past, documented improper use or abuse of such sick leave benefits. Such broad-scope protections pave the way for sick leave misuse and abuse and poor morale among conscientious co-workers.

This bill is not a solution for companies that want to provide a sick leave benefit to employees. Hawaiian Electric Company (and possibly other businesses) may have to reconsider the amount of sick leave benefit it provides or look to other paid time off alternatives.

We ask the Committee to hold H.B. 2935, H.D. 1. Thank you for the opportunity to share our concerns with you.

Testimony In Support of
HB2935HD1
Relating to Employment Practices

By Al Lardizabal, Director, Government Relations
Hawaii Laborers' Union

To the Committee on Judiciary
February 9, 2010, 2:30 p.m.
State Capitol, Rm. 325

Representative Jon Riki Karamatsu, Chairman and Members of the
Committee:

The Hawaii Laborers' Union supports the intent and purpose of
HB2935HD1 making it an unlawful practice for any employer or labor
organization to bar or discharge from employment, withhold pay from, or
demote an employee because the employee legitimately uses accrued and
available sick leave.

The unreasonable disciplining of an employee that is actually sick and uses
sick leave that he/she has accrued and is available to the employee, is a
draconian method of attempting to control employee absence. It has been
shown that employees will go the extra mile even if sick, for an employer
that is enlightened, uses positive motivation and respects deserving and loyal
employees.

Thank you for the opportunity to submit this supporting testimony.



**Testimony to the House Committee on Judiciary
Tuesday, February 9, 2010; 2:30 p.m.
Conference Room 325**

RE: HOUSE BILL NO. 1687 HD1 RELATING TO SICK LEAVE

Chair Karamatsu, Vice Chair Ito 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"). I am here to state The Chamber's opposition to House Bill No. 2935 HD1, relating to Employment Practices.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 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.

This measure makes it unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued available sick leave.

The Chamber of Commerce of Hawaii has held a longstanding position that sick leave is a benefit for employees. Businesses generally offer this benefit to employees to create a healthy work environment and to foster a positive relationship with its employees. They understand that employees will require occasional leave from work due to a legitimate sickness.

However, creating a protection of the use of sick leave may force many businesses, especially small businesses, to reduce or eliminate voluntary sick leave. The implications of this measure could lead to a rise in the cost of doing business, an unstable work environment, and potential litigation, which will ultimately impact employees.

Secondly, we believe the proposed legislation is unnecessary because present law with existing safeguards provide appropriate safety nets such as the Family Medical Leave Act (FMLA) and the Hawaii Family Leave Act (HFLA) for employees, and balances the interests of the employer and employee.

For these reasons, The Chamber of Commerce of Hawaii respectfully requests that this measure be held.

Thank you for the opportunity to testify.



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Testimony to the House Committee on Judiciary
Tuesday, February 9, 2010 at 2:30 pm

Testimony opposing HB 2935, Relating to Employment Practices

To: The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice-Chair
Members of the Committee on Judiciary

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, which represents approximately 810,000 credit union members across the state.

We are in opposition to HB 2935, Relating to Employment Practices. Our concern is that this legislation may work against the best interests of employees who do receive paid sick leave through their employers. In today's economic climate, it has become common practice to cut staffing and expenses "to the bone", thus, the survival of any business depends largely on its employees being on the job. If offering paid sick leave to their employees becomes overly burdensome to the employer, the employer might opt to do away with it altogether.

Thank you for the opportunity to testify.



Before the House Committee on Judiciary

DATE: Tuesday, February 9, 2010

TIME: 2:30 P.M.

PLACE: Conference Room 325

Re: HB 2935 HD1 Relating to Employment Practices

Testimony of Melissa Pavlicek for NFIB Hawaii

We are testifying on behalf of the National Federation of Independent Business (NFIB) in opposition to HB 2935 HD1, relating to employment practices.

HB 2935 HD1 makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave.

NFIB believes government mandates take away small employers' and employees' freedom to negotiate the benefits package that best meets their mutual needs. While we do not oppose employees' legitimate use of accrued and available sick leave, small employers must have the ability to address an employee's violation of company policies or inappropriate use of sick leave when necessary.

NFIB is the nation's largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitols, with more than 1,000 members in Hawaii and 600,000 members nationally. NFIB members are a diverse group consisting of high-tech manufacturers, retailers, farmers, professional service providers and many more.

We welcome the opportunity to engage with legislators on this and other issues during this session.



To: House Committee on Judiciary

Hearing: February 9, 2010, 2:30 p.m.
Conference Room 325

Re: HB 2935 HD1, Relating to Employment Practices

From: Society for Human Resource Management - Hawaii Chapter

The Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”) represents more than 1,300 human resource professionals in the State of Hawaii. On behalf of our members, we would like to thank the Committee for giving us an opportunity to comment on HB 2935 HD1, relating to employment practices.

We are currently opposed to HB 2935 HD1.

HB 2935 HD1 makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave.

SHRM Hawaii, like SHRM, the national organization of which it is an affiliate, believes that employers, not the government, are in the best position address workplace needs and to know the benefit preferences of their employees which may include other types of leave policies. We are concerned that HB 2935 HD1 has the potential to conflict with other leave requirements and policies on the local, state and federal levels.

HR professionals have decades of experience in designing and implementing programs that work for both employers and employees. We’re eager to share this expertise with policymakers and welcome a positive dialogue on workplace flexibility policy, rather than a mandate.

Once again, thank you for this opportunity to provide you with this input.

The Twenty-Fifth Legislature
Regular Session of 2010

HOUSE OF REPRESENTATIVES

Committee on Judiciary
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

State Capitol, Conference Room 325
Tuesday, February 9, 2010; 2:30 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2935, HD1
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 strongly supports H.B. 2935, HD1, which makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave.

H.B. 2935, HD1 addresses a practice among a growing number of employers to undermine sick leave provisions of collective bargaining agreements or employment policies by adopting "no-fault attendance policies" which penalize employees for absence from work irrespective of the reason for the absence. An employee could be absent for a legitimate illness and able to supply a valid medical certification of the illness yet be subject to disciplinary action due to the total number of absences in a specified period.

By law, employers are required to provide temporary disability insurance or, in the alternative, sick leave that meets statutory requirements. By passing the TDI statute, lawmakers recognized that workers may become ill or injured from time to time and should not be penalized for taking sick leave that is provided as a benefit by the employer. Over the years, however, employers have instituted and applied "no-fault attendance policies" to penalize even those who who are absent for legitimate, verifiable illnesses. Such abusive practices should be prohibited.

Attendance policies implemented by employers are usually implemented unilaterally, not subject to bargaining, and are "no-fault." This means any absence, regardless of the nature, will count toward disciplinary action, which is progressively severe. In the case of the attendance policy attached to this testimony, four incidents in a 12-month period will result in a verbal warning, five will merit a written warning, six will result in suspension, and seven will mean discharge. An employee could have taken sick leave for legitimate illnesses and still be subject to this progressive discipline.

We do not believe such action is consistent with the intent of the TDI law. If an employee has a cold or the flu, an employer should want the employee to stay away from work, especially if the employee's job requires contact with guests, customers, and co-workers. However, a no-fault attendance policy serves as a disincentive for employees to use their accrued and available sick leave. Thus, no-fault attendance policies and sick leave/TDI policies could be in conflict.

We can understand an employer's desire to curb abuse of sick leave. We can also understand an

employer's desire to establish a "no-fault" policy to remove subjectivity from the process in determining what is "legitimate" illness and what is not. However, we strongly believe that use of sick leave or TDI for illnesses that do not rise to the level of FMLA protection should not be used to penalize an employee.

To address the issue of progressive discipline and waiting periods generally imposed by employers, we suggest that H.B. 2935, HD1 be further amended to read: *"It shall be an unlawful practice for any employer or labor organization to bar, discipline or discharge from employment or to withhold pay, demote, or otherwise penalize an employee for use of accrued and available sick leave, including any waiting period, for a legitimate illness or injury, which may be verified by medical certification if required by the employer."*

The ILWU urges passage of H.B. 2935, HD1 with the amendment as proposed. Thank you for considering our testimony.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Judiciary

Testimony by
Hawaii Government Employees Association
February 9, 2010

H.B. 2935, H.D. 1 – RELATING TO
EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 2935, H.D. 1 which makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave.

Thank you for the opportunity to testify in support of H.B. 2935, H.D. 1.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

karamatsu1-Kenji

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 05, 2010 4:49 PM
To: JUDtestimony
Cc: mpeary1947@aol.com
Subject: Testimony for HB2935 on 2/9/2010 2:30:00 PM

Testimony for JUD 2/9/2010 2:30:00 PM HB2935

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Margaret Peary
Organization: Individual
Address:
Phone:
E-mail: mpeary1947@aol.com
Submitted on: 2/5/2010

Comments: