LINDA LINGLE
GOVERNOR OF HAWAII

MARIE C. LADERTA
DIRECTOR

CINDY S. INOUYE
DEPUTY DIRECTOR

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

February 20, 2010

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Monday, February 22, 2010
1:00 p.m., Conference Room 308

BY

MARIE C. LADERTA
DIRECTOR

House Bill No. 2935, H.D. 2
Relating to Employment Practices

(WRITTEN TESTIMONY ONLY)

CHAIRPERSON OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2935, H.D. 2, 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 negotiated sick leave in accordance with an employer's attendant and negotiated sick leave policies, except for the abuse of sick leave. The bill provides exceptions for essential job functions or requirements.

The Department of Human Resources Development is **strongly opposed** to the proposed amendments to Section 378-32, HRS, to the extent it applies to public sector employees.

First, as explained in the testimony of the Office of Collective Bargaining, for the public employers, this bill involves a matter that is subject to collective bargaining and therefore should not be legislated.

Second, the bill is unnecessary since contractual and statutory protections are already available for employees who are legitimately ill or disabled and unable to perform the essential duties and responsibilities of their jobs. 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.

Third, the proposed subsection (c) itself is unnecessary and duplicative because the public employers already have the statutory obligation under Chapter 76, HRS, to ensure that employees continue to demonstrate their fitness and ability to meet all performance requirements of their positions and to transfer, demote, or discharge those who don't.

We request that the committee hold this bill. However, if the committee is inclined to move this bill forward, we recommend that the public employers be exempted from its provisions to address our above-stated concerns. Thank you for the opportunity to testify in strong opposition to this bill.

LINDA LINGLE
GOVERNOR

MARIE C LADERTA
CHIEF NEGOTIATOR

STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR
235 S. BERETANIA STREET, SUITE 1201
HONOLULU, HAWAII 96813

February 20, 2010

TESTIMONY to the
HOUSE COMMITTEE ON FINANCE
For Hearing on Monday, February 22, 2010
1:00 p.m., Conference Room 308

By

MARIE C. LADERTA
CHIEF NEGOTIATOR

House Bill No. 2935, H.D. 2
Relating to Employment Practices

WRITTEN TESTIMONY ONLY

CHAIRPERSON OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2935, H.D. 2, 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 negotiated sick leave in accordance with an employer's attendant and negotiated sick leave policies, except for the abuse of sick leave. The bill provides exceptions for essential job functions or requirements.

The Office of Collective Bargaining is **strongly opposed** to the proposed amendments to Section 378-32, HRS, to the extent it applies to public sector employees.

For the public sector employers, this bill involves a matter that is subject to collective bargaining and therefore, should not be legislated. In accordance with Chapter 89, HRS, the employers negotiate with public employee unions with respect to wages, hours, health fund contributions, and other terms and conditions of employment.

Whether the parties settle or arbitrate, the resulting collective bargaining agreements generally reflect the parties' strengths and weaknesses and relative bargaining positions. The language of the collective bargaining agreements, including provisions governing sick leave accrual, use, and discipline for abuse, is a product of this quid pro quo process. The passage of this bill will, in effect, destroy the balance of negotiations and inhibit future negotiations.

We are willing to meet informally with the committee to discuss and/or provide pertinent examples of collective bargaining agreement provisions and grievance arbitration awards which may be adversely affected by this bill.

We request that the committee hold this bill. However, if the committee is inclined to move this bill forward, we recommend that the public employers be exempted from its provisions to address our above-stated concerns.

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

The Twenty-Fifth Legislature
Regular Session of 2010

HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

State Capitol, Conference Room 308
Monday, February 22, 2010; 1:00 p.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2935, HD2 RELATING TO EMPLOYMENT PRACTICES

The ILWU Local 142 supports H.B. 2935, HD2, 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 negotiated sick leave in accordance with an employer's attendant and negotiated sick elave policies, except for abuse of sick leave, and provides an exception for essential job functions or requirements.

H.B. 2935, HD2 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 (and/or tardies) 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 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 one attendance policy that was not negotiated but ILWU members must follow, 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 take 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 may 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, HD2, Section 1, item (b) be 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."*

We also have concerns about item (c), which may be used to discriminate against an employee who is temporarily unable to perform his essential job functions or the requirements of his position.

The ILWU urges passage of H.B. 2935, HD2 with the amendment as proposed and our concerns noted. Thank you for considering our testimony.

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Randy Perreira
President

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

Testimony by
Hawaii State AFL-CIO
February 22, 2010

H.B. 2935, HD2 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 2935, HD2 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 negotiated sick leave in accordance with an employer's attendant and negotiated sick leave policies, except for abuse of sick leave.

H.B. 2935, HD2 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, HD2 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,

Randy Perreira
President

International Brotherhood of Electrical Workers

Edwin D. Hill
International President

Lindell K. Lee
International Secretary - Treasurer

Michael Mowrey
International Vice President

Ninth District

The House of Representatives
Twenty-Fifth Legislature
Regular Session of 2010

Committee on Finance

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Hearing: Monday, February 22, 2010
Time: 1:00 p.m.
Place: Conference Room 308

TESTIMONY OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW)

RE: HB 2935, HD2 RELATING TO EMPLOYMENT.

HB 2935, HD2 would make it unlawful for any employer to discipline an employee because the employee legitimately uses accrued and available sick leave benefits.

The IBEW strongly supports this measure.

Today, all too often, many of Hawaii's employers are harassing, intimidating, suspending and even terminating employees who are legitimately ill for utilizing their accrued and available sick leave benefits under the guise of a "no fault attendance policy". It is ridiculous, immoral and unethical for an employer to offer sick leave benefits to employees and then turn around and discipline employees who are sick and attempt to utilize their sick leave.

Not only is this type of bait-and-switch behavior by employers ridiculous, immoral and unethical, it also poses a great danger and safety concern to the public for the spread of infectious viruses and disease (H1N1) when workers who are legitimately ill are forced to come to work because of fear of being disciplined under these type of unjust, inhumane, punitive policies.

2500 Venture Oaks Way • Suite 250 • Sacramento, California 95833-4221 • (916) 567-0381 • FAX (916) 567-0385 • www.ibewninthdistrict.org

Please understand that nothing in this bill encourages sick leave abuse or minimizes the employer's rights to guard against abuse. The employer still would have full authority and ability to discipline, to include termination, any employee who is found abusing their sick leave benefit.

This bill is about one thing……Protecting Hawaii's legitimately ill employees from unscrupulous employers who seek to penalize them for being sick and utilizing their available benefit.

We ask for quick passage of HB 2935, HD2.

Thank you for the opportunity to provide testimony.

Harold J. Dias, Jr
International Representative
IBEW

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 22, 2010

Representative Marcus Oshiro
Chair, Committee on Finance
The House of Representatives
State of Hawaii

Dear Chair Oshiro:

IBEW Local 1260 supports and request that the Committee on Finance 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 were 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. The Administrator has also stated on numerous occasions that she has reviewed the documentation from employee(s) and determined that the absence(s) does not qualify as serious, chronic, or FMLA-related. The Administrator, who has not established 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, injury, 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 a while to come back. It would be sad if a pandemic outbreak is started because of policies like the AIP; 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 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,

Lance M. Miyake
Business Manager – Financial Secretary

Attachment

HAWAIIAN ELECTRIC COMPANY, INC.

ATTENDANCE IMPROVEMENT PROGRAM

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 themself 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.

UNITED PUBLIC WORKERS
AFSCME, LOCAL 646, AFL-CIO
Malama Pono
HAWAII

House of Representatives
The Twenty-Fifth Legislature
Regular Session of 2010

Committee on Finance
Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair

DATE: Monday, February 22, 2010
TIME: 1:00 p.m.
PLACE: Conference Room 308

TESTIMONY OF THE UNITED PUBLIC WORKERS, LOCAL 646, ON 2935, HD2, RELATING TO EMPLOYMENT PRACTICES

UPW supports the HD1 version of this measure. This issue has been before the legislature for a number of years. Although it has yet to be codified into Hawaii's statutes, today's environment demands us to take a fresh look at this bill.

The managerial no-fault attendance policy which reprimands an employee for taking legitimate sick leave, coerces, or even forces workers to come to work when they are sick. This policy flies in the face of the CDC's recommendation in response to the H1N1 epidemic: "If you get sick with flu-like symptoms this flu season, you should stay home and avoid contact with other people except to get medical care. People with influenza-like illness should remain at home until at least 24 hours after they are free of fever..." In response to this edict, Oregon's Governor issued Executive Order 09-16 which advises employees "to remain at home while exhibiting flu-like symptoms."

Will it take a serious illness or preventable death before we see the shortsightedness of the current status quo? Does our own Department of Health endorse a policy that encourages people to work when they are sick? HB 2935 is much more than righting an injustice. Delaying passage of this measure will jeopardize our workplace environments and the health of the entire community. Accordingly, we urge passage of this measure.

NFIB
The Voice of Small Business®

Before the House Committee on Judiciary

DATE: Monday, February 22, 2010

TIME: 1:00 P.M.

PLACE: Conference Room 309

Re: HB 2935 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, relating to employment practices.

HB 2935 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.

841 Bishop Street, Suite 2100, Honolulu, Hawaii 96813 (808) 447-1840

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the House Committee on Finance
Monday, February 22, 2010; 1:00 p.m.
Conference Room 308
Agenda #3

RE: HOUSE BILL NO. 2935 HD2 RELATING TO EMPLOYMENT PRACTICES

Chair Oshiro, Vice Chair Lee 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 HD2, 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.

To: House Committee on Finance

Hearing: February 22, 2010, 1:00 p.m.
Conference Room 309

Re: HB 2935, 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, relating to employment practices.

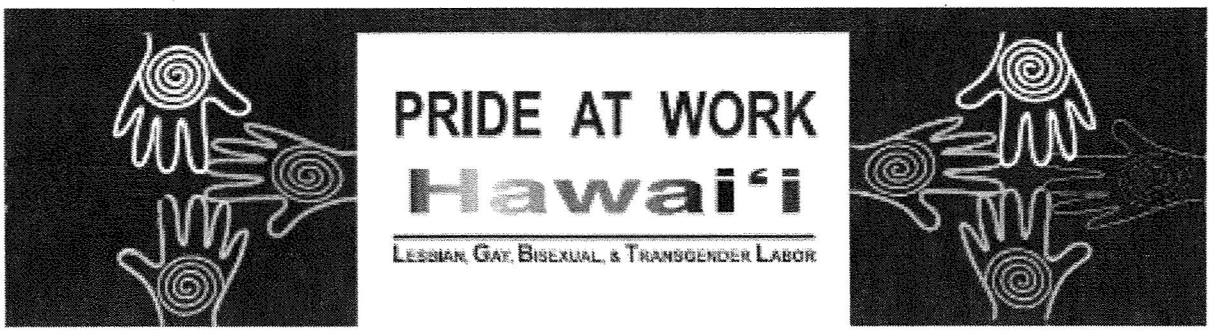
We are currently opposed to HB 2935.

HB 2935 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 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.



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February 22, 2010

Hawaii State House of Representatives
Committee on Finance
Chair, Rep. Oshiro
Vice Chair, Rep. Lee

Testimony in favor of H.B. 2935 HD2 – RELATING TO EMPLOYMENT PRACTICES

Pride At Work Hawai'i, whose mission is to advocate for full equality for lesbian, gay, bisexual, and transgender (LGBT) workers in their workplaces and their unions, supports HB2935, which would provide legal protections for workers who legitimately make use of sick leave provisions negotiated in their contracts.

HB2935 is a fair solution to a real problem which affects workers in many industries. Especially in these difficult times, no worker should feel compelled to work when they're sick out of fear of retaliation by an employer. To stop this, we believe employers should not have the right to take action against their employees who are ill and therefore make use of sick leave they have earned. This bill does not harm employers - in fact, as currently written, it provides more than adequate flexibility for employers. It merely protects workers from abuse.

Thank you for the opportunity to testify. Please support this important legislation to protect workers' rights.

Respectfully submitted,
Steve Dinion, President
Pride At Work Hawai'i

Hawaii Credit Union League
Your Partner For Success

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Testimony to the House Committee on Finance
Monday, February 22, 2010 at 1:00 p.m.

Testimony in opposition to HB 2935, Relating to Employment Practices

To: The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Vice-Chair
Members of the Committee on Finance

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 89 credit unions, representing 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.

Testimony before the House Committee on Finance

H.B. 2935, H.D. 2 Relating to Employment Practices

February 22, 2010
1:00 p.m.
Conference Room 308, State Capitol

By Faye Chiogioji, Manager
Hawaiian Electric Company

Chair Oshiro, Vice Chair Lee, 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.2.

This measure attempts to regulate 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. Negotiated sick leave is a matter subject to collective bargaining and should not be legislated. In addition, collective bargaining contracts typically have a grievance procedure in place which may culminate in binding arbitration; therefore, this bill is unnecessary.

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. 2. Thank you for the opportunity to share our concerns with you.