

STARWOOD

HOTELS & RESORTS WORLDWIDE, INC.

LATE TESTIMONY

February 22, 2010

To: Honorable Marcus Oshiro, Chair
House Committee on Finance

Fr: Keith Vieira
Senior Vice President of Operations,
Starwood Hotels & Resorts, Hawaii & French Polynesia

RE: **HB2935 HD2 – Relating to Employment Practices**
FIN Committee – February 22, 2010, Conference Room 308, 1PM

Aloha Chair Oshiro and members of the Committee:

My name is Keith Vieira, Senior Vice President of Operations for Starwood Hotels & Resorts-Hawaii & French Polynesia.

Thank you for the opportunity to speak on HB2935 HD2 – Relating to Employment Practices. If passed, this bill would 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 abuse of sick leave. As well provides exceptions for essential job functions or requirements.

We support the rights of workers and diligently work to foster a nurturing environment for our employees. However, we do have concerns that this bill may inadvertently set a bad precedent. Sick leave has long been a benefit for employees. Along with vacation or personal leave, businesses generally offer this benefit to employees to create a healthy work environment and to foster a positive relationship with its employees. This passage of this bill would have the opposite effect and may cause many businesses to reduce or eliminate voluntary sick leave and would be a negative impact to employees.

Additionally, we believe the federal Family Medical Leave Act (FMLA) and the Hawaii Family Leave Act (HFLA) for employees provides appropriate safeguards and a safety net for employees to take additional leave to care for loved ones.

For these reasons, we respectfully request that you do not pass this bill. Thank you for the opportunity to share our views on this matter.



LATE TESTIMONY

HB 2935 HD2

RELATING TO EMPLOYMENT PRACTICES

**JOHN KOMEIJI
SR. VICE PRESIDENT & GENERAL COUNSEL**

HAWAIIAN TELCOM

February 22, 2010

Chair Oshiro and members of the House Finance Committee:

I am providing my comments on behalf of Hawaiian Telcom on HB 2935 HD 2, "RELATING TO EMPLOYMENT PRACTICES." Hawaiian Telcom is opposed to HB 2935 HD2.

Hawaiian Telcom believes that this bill is unnecessary and therefore should not be a subject for legislative action. For the record, Hawaiian Telcom has very generous short-term disability benefits and a Family Medical Care leave policy for our employees. Our company also has an Attendance Policy that is fair to employees while balancing the need to meet regulated customer service quality standards as set forth by the Public Utilities Commission. Regular scheduled employee attendance at work is critical for Hawaiian Telcom to continue to meet or exceed these product and service obligations.

In a previous hearing I incorrectly stated that our company does not discipline employees for sick leave absenteeism. Please accept my apology for this unintended error. In order to provide you with a correct record, we are researching the matter to clear up any unintentional misstatements.

Our company does provide for up to 52 weeks of paid benefits based on an employee's service with the company. In addition to this very generous

benefit, Hawaiian Telcom fully complies with the Federal Family Medical Leave Act that provides employees up to 480 hours a year to be off work for personal disability or to care for a family member as well as the Hawaii Family Medical Leave which provides an additional 160 hours of time off to care for a disabled family member.

The generous sick pay provisions provided by Hawaiian Telcom were intended to provide income protection for employees with a serious health condition as somewhat of an "insurance policy" to ensure employees have time to recuperate before returning to work. It was never intended to sanction abuse by allowing employees unrestricted absenteeism with the protection of never being held accountable for questionable or excessive absences. Condoning such abuse would severely hamper our ability to service our customers.

Hawaiian Telcom opposes HB 2935 HD 2 and respectfully requests this measure be tabled this session.

Thank you for the opportunity to provide comments.

LINDA LINGLE
GOVERNOR



Darwin L.D. Ching
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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LATE TESTIMONY

February 22, 2010

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Judiciary

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

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

Re: H.B. 2935, H.D. 2 - Relating to Employment Practices

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2935, HD 2, 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 December 21, 2058.

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, H.D. 2 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.
5. Finally, the Department would like to point out that the language inserted in page 3, starting from line 7, would allow an employer and labor organizations to be "withholding pay from" an employee if the employee is unable to fulfill the essential job functions or requirements of the employee's position. This language would be in direct opposition to existing wage laws administered by the Department, which requires payment of all wages owed.



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 Finance**

**Testimony by
Hawaii Government Employees Association
February 22, 2010**

LATE TESTIMONY

**H.B. 2935, H.D. 2 – 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. 2 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. 2.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

