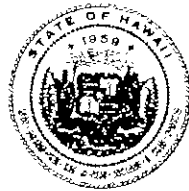


TESTIMONY

HB2935 HD3



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

March 9, 2010

TESTIMONY to the
SENATE COMMITTEE ON LABOR
For Hearing on Thursday, March 11, 2010
3:10 p.m., Conference Room 224

By

MARIE C. LADERTA
CHIEF NEGOTIATOR

House Bill No. 2935, H.D. 3
Relating to Employment Practices

WRITTEN TESTIMONY ONLY

CHAIRPERSON TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2935, H.D. 3, is to make it an unlawful practice for an employer or labor organization who has a collective bargaining agreement with its employees and who has 100 or more employees, 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 to the prohibition if the employee is unable to perform the essential job functions or requirements of the employee's position.

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.

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

March 9, 2010

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Thursday, March 11, 2010
3:10 p.m., Conference Room 224

BY

MARIE C. LADERTA
DIRECTOR

House Bill No. 2935, H.D. 3
Relating to Employment Practices

(WRITTEN TESTIMONY ONLY)

CHAIRPERSON TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2935, H.D. 3, is to make it an unlawful practice for an employer or labor organization who has a collective bargaining agreement with its employees and who has 100 or more employees, 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 to the prohibition if the employee is unable to fulfill the essential job functions or requirements of the employee's position.

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, including the suspected abuse of this important benefit. In addition, the federal Family Medical Leave Act protects employees who use available sick leave for personal illnesses. As detailed in the testimony of the Department of Labor and Industrial Relations on H.D. 2, further protections are provided by the Americans with Disabilities Act and the Hawaii Employment Practices Law.

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



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
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

March 10, 2010

To: The Honorable Dwight Y. Takamine, Chair
and Members of the Senate Committee on Labor

Date: Thursday, March 11, 2010
Time: 3:10 p.m.
Place: Conference Room 224
State Capitol

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

Re: H.B. 2935, H.D. 3 - Relating to Employment Practices

I. DLIR's OPPOSITION TO H.B. 2935, H.D. 3

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.
5. Paragraph (c) is in conflict with the other wage and payment laws, i.e. an employer cannot withhold pay.

II. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2935, HD 3, 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 July 1, 2020.

III. CURRENT LAW

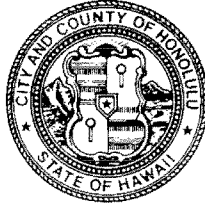
There is currently no provision in the law that requires employers to provide sick leave outside Temporary Disability Laws.

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.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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

MUFI HANNEMANN
MAYOR



NOEL T. ONO
DIRECTOR

March 11, 2010

The Honorable Dwight Takamine, Chair
and Members of the Committee on Labor
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Takamine and Members of the Committee:

Subject: House Bill No. 2935 HD3
Relating to Employment Practices

The Department of Human Resources, City & County of Honolulu, **respectfully opposes** H.B. 2935 HD3, 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 uses accrued and available sick leave.

The primary concern is that this measure 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. The City would not oppose H.B. 2935 HD3 if the public employer were exempt from this measure.

We thank you for giving us the opportunity to testify on this matter.

Yours Truly,


Noel T. Ono
Director



International Brotherhood of Electrical Workers

Edwin D. Hill
International President

Lindell K. Lee
International Secretary - Treasurer

Michael Mowrey
International Vice President

Ninth District

The Senate
Twenty-Fifth Legislature
Regular Session of 2010

Committee on Labor

Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Hearing: Thursday, March 11, 2010
Time: 3:10 p.m.
Place: Conference Room 224

**TESTIMONY OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS (IBEW)**

RE: HB 2935, HD3 RELATING TO EMPLOYMENT PRACTICES.

HB 2935, HD3 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.

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, HD3.

Thank you for the opportunity to provide testimony.



Harold J. Dias, Jr

International Representative

IBEW

**Testimony to the Senate Committee on Labor
Thursday, March 11, 2010; 3:10 p.m.
Conference Room 224**

**RE: HOUSE BILL NO. 2935 HD3 RELATING TO EMPLOYMENT
PRACTICES**

Chair Takamine, Vice Chair Taniguchi 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 HD3**, 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 that is the product of collective bargaining with the duly elected representative of its employees. .

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. Some employers and their union counterparts have negotiated sick leave programs that specify the actions that may be taken as a result of excessive use of accrued but available sick leave. We believe such terms are best left to the parties' collective bargaining agreements and not state law.

We also 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.



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441

Fax: (808) 593-2149

The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii State AFL-CIO
March 11, 2010

H.B. 2935, HD3 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 2935, HD3 which makes it an unlawful practice for an employer or labor organization who has a collective bargaining agreement with its employees and who have 100 or more employees, to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave in accordance with the employer's attendant and negotiated sick leave policies, except for the abuse of sick leave.

H.B. 2935, HD3 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.

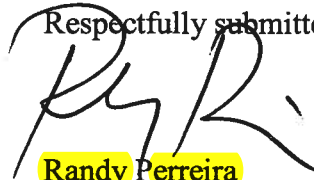
In all, employees who use entitled sick leave should be protected under law from abuse and discipline. Employees should not have to be fearful of getting sick and worried if they take off from work they could be subjected to various forms of discipline including suspension or even termination. The fact 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, HD3 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', is written over the typed name and title.

Randy Perreira
President

Testimony before the Senate Committee on Labor

H.B. 2935, H.D. 3 Relating to Employment Practices

March 11, 2010

3:10 p.m.

Conference Room 224, State Capitol

**By Faye Chiogioji, Manager
Hawaiian Electric Company**

Chair Takamine, Vice Chair Taniguchi, 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.3.

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



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

March 9, 2010

LOREN TAGUCHI

President

Senator Dwight Takamine
Chair, Committee on Labor
The Senate
State of Hawaii

RE: **H.B. No. 2935**

Dear Chair Takamine:

The **IBEW Local 1260 support** and request that the Committee on Labor submits H.B. No. 2935 to the Senate 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.

International Brotherhood of Electrical Workers

Local 1260



Senator Dwight Takamine

-2-

March 9, 2010

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,

A handwritten signature in black ink, appearing to read "Lance M. Miyake".

Lance M. Miyake
Business Manager – Financial Secretary

Attachment



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.



KAUAI
Chamber
of
Commerce

March 9, 2010

FAX: 1-800-586-6659 – State Senate Committee on Labor

Honorable Members of the Hawaii State Senate Committee on Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair Takamine, Vice Chair Taniguchi and Members of the Committee:
RE: HB 2935 HD3 Relating to Employment Practices

On behalf of the Kauai Chamber of Commerce which comprises of 410 members from over 200 industry sectors and over 650 member representatives, I am writing to express the **Chamber's opposition of HB2935 HD3**. We concur with the Chamber of Commerce of Hawaii's opposition and continue to have a longstanding position that sick leave is a benefit. Furthermore, this proposed legislation is unnecessary because current law has existing safeguards that provide appropriate safety nets such as the Family Medical Leave Act (FMLA) and the Hawaii FMLA for employees. These also balance the interests of both the employer and the employee.


At this critical time when Hawaii's businesses, and especially small Businesses are challenged with their very own survival, anything you can do to support business will be greatly appreciated. While the Kauai Chamber of Commerce is only one voice of many voices on Kauai, including the 12 member Kauai Business Council of the nearly 4000+ Kauai businesses, we strongly believe that this is a critical time for government at both the Executive and Legislative levels to have vision, leadership and courage to help our islands' struggling people, businesses and overall economy.

We know that leadership, vision and courage are taking place at the Capitol as exemplified by the recent fast-track of the Unemployment Insurance bill. Mahalo for that support as about 87% of our membership is comprised of small businesses who employ thousands of Kauai residents in our workforce, contribute to our economy, and, our overall quality of life that we enjoy throughout Kauai and Hawaii.

We again join our statewide counterparts to ask for your support to have our collective voices heard, especially, about our opposition to House Bill 2935 HD3 and other bills of importance to business survival in Hawaii. Mahalo Nui Loa for your support..

Aloha.

Sincerely yours,


Randall Francisco
President/CEO



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
Gentry Pacific Design Center, Suite 215A * 560 N. Nimitz Highway, #50 * Honolulu, Hawaii 96817
(808) 524-2249 - FAX (808) 524-6893

OLAN MORIWAKI
resident
bricklayers & Ceramic Tile Setters
Local 1 & Plasterers/Cement Masons
Local 630

JOSEPH O'DONNELL
Vice President
Iron Workers Local 625

DAVID T.K. KIM
Financial Secretary
International Brotherhood of
Electrical Workers Local 1186

JOE TOLENTINO
Secretary
Sheet Metal Workers I.A. Local 293

COLIN K. AHLO
Agent At Arms
Spot, Linolium, & Soft Tile
Local 1296

GERALD CASTANARES
Vice President
Painters & Filers Local 675

ADDEUS TOMBI
Vice President
General Contractors Local 126

JOHN BAZEMORE
Vice President
Wall, Tapers, & Finishers
Local 1944

JOHN TACGERE
Vice President
Architectural Metal &
Ironworkers Local 1944

JOHN AYCOCK
Vice President
Ironworkers, Ironship Builders
Local 627

JOHN KIRNEY
Vice President
Iron Council 50
Painters & Allied Trades Local 1791

JOHN SOQUENA
Vice President
Civil Engineering Local 3

JOHN FULP
Vice President
International Assoc. of Heat & Frost
Workers & Allied Workers Local 132

JOHN KOZUMA
Vice President
Teamsters & Allied
Trades Local 996

JOHN GANABAN
Vice President
Teamsters' International Union of
North America Local 368

JOHN CHONG
Vice President
Painters, Waterproofers & Allied
Trades United Union of Roofers
Local 121

March 10, 2010

Honorable Senator Dwight Y. Takamine, Chair
Honorable Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee on Labor
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **IN SUPPORT OF HB 2935**
RELATING TO EMPLOYMENT PRACTICES.
Hearing: Thurs., March 11, 2010, 3:10 p.m., Room 224

Dear Chair Takamine, Vice Chair Taniguchi, and the Senate Committee on Labor:

For the Record my name is **Buzz Hong the Executive Director** for the Hawaii Building & Construction Trades Council, AFL-CIO. Our Council is comprised of 16-construction unions and a membership of 26,000 statewide.

The Council **SUPPORTS the passage of HB 2935** that protects the qualified rights of organized workers who legitimately use their sick leave from adverse action by employers, including termination.

Thank you for the opportunity to submit this testimony in support of **HB 2935.**

Sincerely,

William "Buzz" Hong
Executive Director

WBH/hm



Before the Senate Committee on Labor

DATE: Thursday, March 11, 2010

TIME: 3:10 P.M.

PLACE: Conference Room 224

Re: HB 2935 HD3 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 HD3, relating to employment practices.

HB 2935 HD3 makes it an unlawful practice for any employer or labor organization who has a collective bargaining agreement with its employees and who have 100 or more employees, to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave in accordance with the employer's attendant and negotiated sick leave policies.

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.



International Brotherhood of Electrical Workers

Telephone Local Union 1357
2305 S. Beretania Street #206 • Honolulu, Hawaii 96826
Telephone (808) 941-7761 • Fax (808) 944-4239



Scot F. Long
Business Mgr. / Financial Sec.

Ted M. Furukado
President

HB 2935

RELATING TO EMPLOYMENT PRACTICES

SCOT F. LONG

BUSINESS MANAGER / FINANCIAL SECRETARY

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL UNION 1357

March 11, 2010

Chair Takamine and Members of the Labor Committee:

I am Scot Long, testifying on behalf of IBEW Local Union 1357 on HB 2935, "A BILL TO ADDRESS THE TAKING OF LEGITIMATE SICK LEAVE". **IBEW Local Union 1357 strongly supports this bill.**

IBEW Local Union 1357 represents over 800 hourly employees at Hawaiian Telcom and throughout our tenure there we have had many of our members disciplined for taking legitimate, negotiated sick leave benefits.

However, this is not a Hawaiian Telcom Bill, as other employers have been administering to a "2% no fault attendance policy" which is a trigger for disciplining employees for legitimate illnesses.

Now, schools require that children must stay home for a minimum of 3 days if they have any flu like symptoms and employers are telling employees not to come to work if they have a contagious illness (pink eye, H1N1, etc.). But, if employers continue to discipline employees for using their sick leave benefits for legitimate illnesses then, out of fear, employees would go to work and possibly contaminate the work environment thus creating more problems. And so this Bill would support the employers' concerns.

Employers will say that this Bill is a license for abuse and may prey on the unsophisticated. IBEW Local Union 1357 prides itself on responsible behavior and there are provisions in our Collective Bargaining Agreement, as well as recourse under Federal Regulations, to address any abuse. No, this Bill is not a license for abuse, but just the opposite. This is a Bill to restore dignity and civility in the workplace.

We humbly ask for your support of HB 2935 and we thank you for the opportunity to testify.

STARWOOD
HOTELS & RESORTS WORLDWIDE, INC.

March 11, 2010

To: Honorable Dwight Y. Takamine
Senate Committee on Labor

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

RE: **HB2935 HD3 – Relating to Employment Practices - Oppose**
LBR Committee – Conference Room 224, March 11, 2010, 3:10 PM

Aloha Chair Takamine, Vice Chair Taniguchi and Members of the Committee:

Thank you for the opportunity to share our views on HB2935 HD3 – 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. The 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.





To: Senate Committee on Labor

Hearing: Thursday, March 11, 2010
3:10 P.M.
Conference Room 224

Re: HB 2935 HD3, 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 HD3, relating to employment practices.

We are currently opposed to HB 2935 HD3.

HB 2935 HD3 makes it an unlawful practice for any employer or labor organization who has a collective bargaining agreement with its employees and who have 100 or more employees, to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave in accordance with the employer’s attendant and negotiated sick leave policies.

SHRM Hawaii, like SHRM, the national organization of which it is an affiliate, believes that employers, not the government, are in the best position to 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 HD3 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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA
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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii Government Employees Association
March 11, 2010

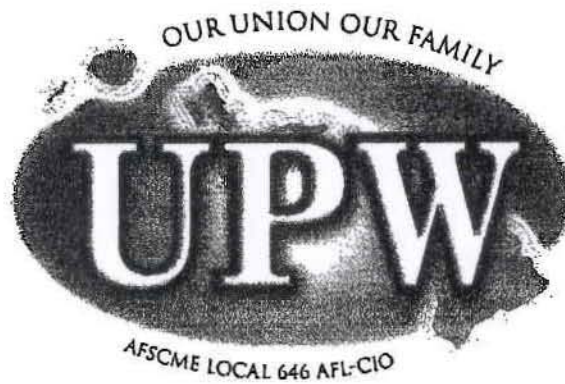
**H.B. 2935, H.D. 3 – RELATING
TO EMPLOYMENT PRACTICES**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports H.B. 2935, H.D. 3, which makes it an unlawful practice for any employer or labor organization who has a collective bargaining agreement with its employees and who have 100 or more employees to bar or discharge from employment, withhold pay, 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. 3.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



The Senate
The Twenty-Fifth Legislature
Regular Session of 2010

Committee on Labor
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

DATE: Thursday, March 11, 2010
TIME: 3:10 p.m.
PLACE: Conference Room 224

**TESTIMONY OF THE UNITED PUBLIC WORKERS, LOCAL 646, ON HB 2935,
HD3, RELATING TO EMPLOYMENT PRACTICES.**

This measure makes it an unlawful practice for an employer or labor organization who has a collective bargaining agreement with its employees and who has 100 or more employees, to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave in accordance with the employer's attendant and negotiated sick leave policies, except for the abuse of sick leave; provides exceptions to the prohibition if the employee is unable to fulfill the essential job functions or requirements of the employee's position.

The United Public Workers, Local 646, supports this measure.

We strongly oppose current managerial policies that coerce employees to come to work when they are sick. It is not only unjust to reprimand workers for legitimately utilizing their sick leave but is also extremely dangerous public health policy.

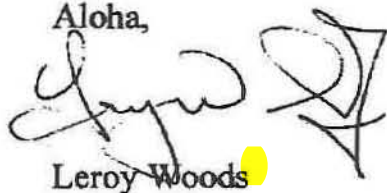
Although supporting this measure, our preference is for the language in SB 2338, SD1. Thank you for the opportunity to testify.

HB 2935

Dear Senator Takamine,

My name is Leroy woods and I have worked almost 4 years at Hawaiian Telcom and I am in strong support for SB# 2883. Myself and many other employees have been disciplined for taking legitimate sick leave. SB#2883 would provide the much needed relief as I work with my physician on getting better. I apologize for not testifying in person and thank you for your support of the Bill.

Aloha,

A handwritten signature in black ink, appearing to read 'Leroy Woods', followed by a stylized graphic element consisting of several overlapping lines forming a triangular or arrow-like shape.

Leroy Woods

HB 2935

Dear Senator Takamine,

My name is **Tammy Ludington** and I rise in **support** of SB#2883. I have worked for Hawaiian Telcom for 13 years as a Residential Sales Support Representative in their Call Center. The unfortunate part is that I have been disciplined for taking legitimate sick leave, even when I provided the company with a Doctor's note advising them of my illness.

I ask for your support of SB#2883 to help provide relief from harassment and discipline for being legitimately ill, especially at a time when having the flu can cause death.

Mahalo for your support,

A handwritten signature in black ink, appearing to read 'Tammy Ludington', written in a cursive style.

Tammy Ludington