

**TESTIMONY**

**HB2935 HD3**

**LATE**



PO Box 22416 Honolulu, HI 96822  
(808) 543-6054

[prideatworkhawaii@hawaiiantel.net](mailto:prideatworkhawaii@hawaiiantel.net)  
[www.hawafclcio.org/PAWHI](http://www.hawafclcio.org/PAWHI)

March 10, 2010

Hawaii State House of Representatives  
Committee on Labor and Public Employment  
Chair, Rep. Rhoads  
Vice Chair, Rep. Yamashita

Testimony in support of **H.B. 2935 HD3** – RELATING TO EMPLOYMENT PRACTICES (with reservations)

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 the original intent of HB2935, which would provide legal protections for workers who legitimately make use of sick leave provisions negotiated in their contracts. However, we are concerned that the amendments included in the current version of the bill (HD3) would unfairly limit applicability to only those employees covered by a collective bargaining agreement and to employers of 100 employees or more. We respectfully request that those clauses be removed from the bill. We are also concerned by the delayed effective date of the current draft; we feel it should be made effective immediately upon approval.

HB2935's original language would be a fair solution to a real problem which affects workers in many industries every day. Especially in these difficult times, no worker - with or without a collective bargaining agreement - should feel compelled to work when they're sick because they fear 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 originally written, it provided more than adequate flexibility for employers. It merely protects workers from abuse.

Thank you for the opportunity to testify. Please remove the amendments and support the original version of this important piece of workers' rights legislation.

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

The Twenty-Fifth Legislature  
Regular Session of 2010

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

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

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2935, HD3  
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 supports H.B. 2935, HD3, 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 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 and further provides exceptions to the prohibition if the employee is unable to fulfill the essential job functions or requirements of the employee's position.

H.B. 2935, HD3 addresses the practice among a growing number of employers to undermine sick leave provisions of collective bargaining agreement or employment policies by, in most cases, unilaterally adopting "no-fault attendance policies" which penalize employees for absence from work irrespective of the reason for the absence. Under these no-fault policies, any absence or tardiness is considered an "incident" that can progressively subject the employee to discipline and discharge, even if some or all of the absences are due to legitimate, verifiable illness.

While we clearly support the intent of the bill, we have three concerns about HD3. First, HD3 leaves out all employees whose employers have fewer than 100 employees. That could potentially be a substantial number of employers, even with the criteria that they must be unionized. Second, HD3 only prohibits barring or discharging from employment, withholding pay, and demoting an employee for use of sick leave. There is no prohibition against disciplining an employee for such use. Third, HD3 provides no guideline to determine what is "abuse of sick leave." As such, the definition is left to the discretion of the employer and subject to dispute.

We suggest that H.B. 2935, HD3, 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 further suggest that (c) and (d) under that section be deleted.

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

**HB 2935 HD3**

**RELATING TO EMPLOYMENT PRACTICES**

**JOHN KOMEIJI**

**SR. VICE PRESIDENT & GENERAL COUNSEL**

**HAWAIIAN TELCOM**

**March 11, 2010**

Chair Takamine and members of the Senate Labor Committee:

I am providing my comments on behalf of Hawaiian Telcom on HB 2935 HD 3, "RELATING TO EMPLOYMENT PRACTICES." Hawaiian Telcom is opposed to HB 2935 HD3.

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.

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 3 and respectfully requests this measure be tabled this session.

Thank you for the opportunity to provide comments.