

SB 2392

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

February 8, 2010

To: The Honorable Suzanne Chun Oakland, Chair
and Members of the Senate Committee on Human Services

The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: February 9, 2010
Time: 3:30 p.m.
Place: Conference Room 224, State Capitol

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

Testimony in Strong Opposition to S.B. 2392 - Relating to Family Leave Insurance

The Department strongly opposes this measure to create a family leave insurance fund administered by the DLIR, and would like to note that the Hawaii Family Leave and the Federal Family and Medical Leave Act already provide family leave job protection to many of Hawaii's workers.

Given our current economic situation, the Department cannot think of a worse time to institute a family leave insurance program. The increase costs to **both employers and employees** along with the extensive government resources it would require to implement this measure, is completely unacceptable in this economy.

This bill seeks to expand government at a time when nearly every State agency is contracting. The DLIR and its fellow executive branch departments have undergone reductions in force, and have been looking for ways to cut costs and focus on core functions. In focusing on its core functions, the DLIR has identified administering unemployment benefits and getting the unemployed back to work as its main priorities. The DLIR finds that this bill is not inline with its core functions and priorities because Family Leave Insurance is a program geared toward providing extra perks and benefits to gainfully employed individuals. Furthermore, the DLIR

S.B. 2392
February 8, 2010
Page 2

believes that it would be insensitive to the numerous unemployed in our State, if departmental resources were diverted to Family Leave.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON HUMAN SERVICES AND LABOR
ON
SENATE BILL NO. 2392

February 9, 2010

RELATING TO FAMILY LEAVE INSURANCE

Senate Bill No. 2392 creates the Family Leave Insurance Fund to be administered by the Department of Labor and Industrial Relations. Revenues for the special fund will be based on assessing one cent from each employer and employee for each hour of employment for a maximum contribution of \$2,000 per year for each employee.

As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Sections 37-52.3 and 37-52.4 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether there is a clear nexus between the benefits sought and the charges made upon the users or beneficiaries of the program and whether the fund will be self-sustaining.



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun-Oakland, Chair
Senator Les Ihara, Jr., Vice Chair

SENATE COMMITTEE ON LABOR
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Tuesday, February 9 2010
3:30 p.m.

S.B. 2392

Chair Chun-Oakland, Chair Takamine and members of the Committees, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 2392, which would create a new section in Chapter 386, Hawaii Revised Statutes, establishing a family leave insurance fund to be administered by the Director of Labor & Industrial Relations and also amends Section 386-3, Hawaii Revised Statutes to include family leave as an injury covered under Chapter 386.

Hawaii Insurers Council supports the intent of this measure to provide an employee who takes family leave with a source of income during their leave. However, this fund should not be placed under Chapter 386. Hawaii's workers' compensation law is intended to provide **injured** workers medical and indemnity benefits. Placing a family

leave insurance fund under Chapter 386 will likely muddy the waters and may interfere with the workers' compensation process.

An employee taking family leave pursuant to Chapter 398 should not be considered an injury covered under Section 386-3. It is also incongruent to have the determination of whether request for leave pursuant to Chapter 398 administered under Chapter 386.

We respectfully request that S.B. 2392 be held.

Thank you for the opportunity to testify.

TO : COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Vice Chair

COMMITTEE ON LABOR
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

FROM: Eldon L. Wegner, Ph.D.
POLICY ADVISORY BOARD FOR ELDER AFFAIRS (PABEA)

HEARING: 3:30 pm Tuesday February 9, 2010
Conference Room 224, Hawaii State Capitol

SUBJECT: SB 2392 Relating to Family Leave Insurance

POSITION: The Policy Advisory Board for Elder Affairs supports the intent of SB2392 to provide paid family leave for employed caregivers meeting certain criteria through an insurance fund administered by DLIR. However, we believe this proposal is premature without further study of various alternative funding mechanisms and without first creating a data system which would enable feasible estimates of costs.

RATIONALE:

The Policy Board for Elder Affairs has a statutory obligation to advocate on behalf of the senior citizens of Hawaii. While we advise the Executive Office on Aging, we do not speak on behalf of the Executive Office of Aging.

- § The Joint Legislative Taskforce on Aging in Place for the past two years has advocated for a paid family policy to enable employed family caregivers to balance caregiving while remaining in the labor force. PABEA supports this proposal as important to enabling family caregiving;
- § The original proposal (e.g. HB2520 in the 2008 Legislative session) proposed payment through TDI as is the policy in California and New Jersey. Although the proposal did not pass, a workgroup was created under the Joint Legislative Taskforce to develop a proposal acceptable to all stakeholders. Two bills in the 2009 session passed and were enacted into law. One was to require employers to inform employees of their existing rights to paid/unpaid family leave. A second bill recommended that the Department of Labor create a data set to capture the prevalence of leaves for family caregiving, whether paid or unpaid, as a step in enabling estimates of potential costs. Even though this was enacted into law, the Department of Labor has not moved on implementing this step.
- § We recommend that the Legislature take the next step in assuring the creation of a data set, perhaps by requesting the work by the University of Hawaii, and that further policy analysis be conducted comparing alternative funding proposals

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Family leave insurance fund

BILL NUMBER: SB 2392; HB 2258 (Identical)

INTRODUCED BY: SB by Takamine and 7 Democrats; HB by Rhoads

BRIEF SUMMARY: Adds a new section to HRS chapter 386 to establish a family leave insurance fund as a special fund to pay employee benefits for family leave taken pursuant to HRS chapter 398. The benefits received shall not exceed \$250 per week, per employee, subject to a one-week waiting period, with the benefit amount prorated for employees who work less than 40 hours per week.

Requires every employer and employee to contribute up to one cent per hour into the fund or not more than \$2,000 per year for each employee, whichever is less. The director of finance shall be the custodian of the fund with all disbursements paid by the director of finance on request by the director of labor and industrial relations.

Makes conforming amendments to HRS section 386-3.

EFFECTIVE DATE: July 1, 2010

STAFF COMMENTS: The Family and Medical Leave Act of 1993 (FMLA) requires larger employers to provide employees job-protected **unpaid** leave due to a serious health condition that makes the employee unable to perform his or her job, to care for a sick family member, or to care for a new child (by birth, adoption or foster care). On the state level, employers are required to provide up to four weeks of family leave during a calendar year which may consist of any combination of unpaid leave or paid leave.

This measure proposes to establish a state family leave insurance fund to allow employees to receive up to \$250 per week while they are on family leave. The insurance would be financed by requiring each employer (with 100 or more employees) and employee to contribute up to 1 cent per hour or \$2,000 per year per employee, whichever is less. The adoption of this measure would result in an expansion of state government to accommodate its residents while there is no similar fund on the federal level. As proposed in this measure, the initial rate to be paid into the insurance fund by employees and employers may appear to be reasonable, if the insurance fund becomes depleted or cannot meet the demands on the fund, the contribution rates will be increased to make up the necessary funds to accommodate all applicants who apply for family leave benefits.

While this proposal may appear insignificant, it is yet another cost of doing business in this state. Further, while the amount may seem insignificant now, there is no guarantee: (1) the rate will not rise in the future; and (2) the fund will not be another target for a legislative raid to address budget shortfalls. Gratuitous as the gesture may be, it is another deep black hole into which both employers and employees will be required to throw money that could be used to pay employee wages or expand the business creating new employment opportunities. Since the adoption of this measure would result in an additional financial burden on businesses and employees at a time when the economy is suffering, it is questionable whether it will slow economic recovery.

Digested 1/28/10

The Twenty-Fifth Legislature
Regular Session of 2010

THE SENATE

Committee on Human Services

Senator Suzanne Chun Oakland, Chair

Senator Les Ihara, Jr., Vice Chair

Committee on Labor

Senator Dwight Y. Takamine, Chair

Senator Brian T. Taniguchi, Vice Chair

State Capitol, Conference Room 016

Tuesday, February 9, 2010; 3:30 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2392
RELATING TO FAMILY LEAVE INSURANCE**

The ILWU Local 142 would like to share its concerns regarding S.B. 2392, which creates a family leave insurance fund to be administered by DLIR under the workers' compensation statute and amends the definition of injuries covered under the workers' compensation statute to include family leave.

The ILWU supports the intent of S.B. 2392 to create a financing mechanism to provide for paid family leave. While state and federal laws provide for family leave, many workers are unable to take advantage of the benefits because of the financial hardship to take leave without pay. Paid family leave would allow more workers to exercise the option to take care of a newborn or an elderly parent that current unpaid leave limits.

However, establishing a fund under the workers' compensation statute would appear to confuse two distinct programs. Workers' compensation law is intended to provide medical and indemnity benefits to all workers who are injured on the job. Family leave law is intended to provide for unpaid leave to care for the birth or adoption of a child or the care of seriously ill family members--and only to workers of companies with 100 or more employees. Placing a family leave fund under the workers' compensation statute will likely muddy the waters.

Furthermore, the Director of Finance will be the custodian of the fund with disbursements paid by the Director of Finance upon request of the Director of Labor and Industrial Relations. It appears that contributions into the fund will be via payroll tax, then transmitted to Finance and administered by DLIR, which will request disbursements upon application by eligible employees. A complicated system.

Finally, we are especially concerned about how monies would be paid into the fund. We are aware that California and New Jersey have laws similar to what is being proposed in S.B. 2392. In those states, contributions into the fund are, we believe, made entirely by the employee. Under S.B. 2392, contributions will be made by both the employer and the employee up to \$2,000 per year. We believe both employers and employees will balk at this additional tax, especially if it is uncertain if the fund will have sufficient monies to provide benefits to all who qualify.

H.B. 982 was passed in the 2009 legislative session, then vetoed by the Governor, with the veto overridden in special session. This law provides for a data collection system with \$10,000 in funding from the Disability Benefits Special Fund. The system would collect data online on family leave usage for purposes of establishing the need and appropriate design of a future paid family leave policy and program. We believe this law should be implemented before any consideration of a paid family leave mechanism is adopted.

Thank you for considering our comments on S.B. 2302. We applaud the intent but believe this vehicle may be premature.

chunOakland5 - Michael

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 08, 2010 9:56 AM
To: HMS Testimony
Cc: erinann815@aol.com
Subject: Testimony for SB2392 on 2/9/2010 3:30:00 PM

Testimony for HMS/LBR 2/9/2010 3:30:00 PM SB2392

Conference room: 224
Testifier position: support
Testifier will be present: No
Submitted by: erin rutherford
Organization: Individual
Address:
Phone:
E-mail: erinann815@aol.com
Submitted on: 2/8/2010

Comments:

Many other countries provide paid leave for anywhere up to 3-4 months per year. in these countries the employees have greater job satisfaction and the employer makes it a point that the employee has time to take care of whatever family needs they have. in america, we don't seem to value our employees as much and it is a shame and sad.