



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 24, 2010

TESTIMONY to the  
HOUSE COMMITTEE ON JUDICIARY  
For Hearing on Thursday, March 25, 2010  
2:45 p.m., Conference Room 325

By

MARIE C. LADERTA  
CHIEF NEGOTIATOR

**Senate Bill No. 2883, S.D. 1, H.D. 1  
Relating to Employment Practices**

**WRITTEN TESTIMONY ONLY**

CHAIRPERSON KARAMATSU AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 2883, S.D. 1, H.D. 1, 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 sick leave.

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 Judiciary, State of Hawaii*

**Testimony to the Twenty-Fifth State Legislature, Regular Session of 2010**

**House Committee on Judiciary**

The Honorable Jon Riki Karamatsu, Chair

The Honorable Ken Ito, Vice Chair

Thursday, March 25, 2010, 2:45 p.m.

State Capitol, Conference Room 325

by

Sharen M. Tokura

Human Resources Director

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill 2883, S.D.1, H.D.1, Relating to Employment Practices

**Purpose:** 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.

**Judiciary's Position:**

The Judiciary strongly opposes the passage of Senate Bill No. 2883, S.D.1, H.D.1, Relating to Employment Practices. We believe this involves a matter that is subject to collective bargaining and should not be legislated. Further, the proposed legislation is overly prescriptive and interferes with the employer's right to effectuate appropriate employment actions and manage and direct its workforce.

While the Judiciary appreciates the Committee on Labor and Public Employment's amendments by recognizing the need that an employee must legitimately use accrued and available sick leave to be protected by the provisions of this bill, the proposed language prohibit employers from demoting or terminating an employee who utilized sick leave for a condition which resulted in medical disqualification for the employee's position. It would appear, that, based solely on the employee having legitimately utilized sick leave that the employer would have to indefinitely continue the employment of such employee who is determined to be



Senate Bill No. 2883, S.D. 1, H.D. 1, Relating to Employment Practices  
House Committee on Judiciary  
Thursday, March 25, 2010  
Page 2

medically unable to perform the duties of the position for which the employee was hired. The employer would be forced to either hire replacement employees, which may be highly improbable considering the economic condition of the state, or burden other staff with the employee's share of the work, which then in turn adversely affects public service. Moreover, this version would also prohibit the placement of such employee in a lower level position to which the employee could return to work.

We note that House Bill No. 2935, H.D.2 contains language which recognizes the employers' right to take appropriate action if an employee is unable to fulfill the essential job functions or requirements of the employee's position. This language is lacking in Senate Bill 2882, S.D.1, H.D.1 and we request that the above referenced language from House Bill No. 2935, H.D. 2 be considered for insertion if this proposed bill moves forward.

The Judiciary strongly opposes the passage of this bill, as the continued diminishment of management's rights is contrary to responsible and accountable management practice and sound public policy.

Thank you for the opportunity to provide testimony on Senate Bill No. 2883, S.D.1 H.D.1.

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 24, 2010

TESTIMONY to the  
HOUSE COMMITTEE ON JUDICIARY  
For Hearing on Thursday, March 25, 2010  
2:45 p.m., Conference Room 325

By

MARIE C. LADERTA  
DIRECTOR

**Senate Bill No. 2883, S.D. 1, H.D. 1  
Relating to Employment Practices**

**WRITTEN TESTIMONY ONLY**

CHAIRPERSON KARAMATSU AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 2883, S.D. 1, H.D. 1, 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 sick leave.

The Department of Human Resources Development is **strongly opposed** to this bill 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, this bill is unnecessary since contractual and statutory protections are already available for employees who are legitimately ill or disabled. 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. As detailed in the testimony of the Department of Labor and Industrial Relations in opposition to H.B. 2935, H.D. 3, further protections for employees are provided by the Americans with Disabilities Act and the Hawaii Employment Practices Law.

Finally, use of the term "legitimately" in the proposed subsection (b) conflicts directly with criteria set forth in the bargaining unit 01 and 10 collective bargaining agreements, which authorize the public employers to determine patterns of absences and institute disciplinary action for abuse of sick leave.

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  
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March 25, 2010

To: The Honorable Jon Riki Karamatsu, Chair  
and Members of the House Committee on Labor and Public Employment

Date: Friday, March 25, 2010  
Time: 2:45 a.m.  
Place: Conference Room 325  
State Capitol

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

**Testimony in OPPOSITION**

to

**S.B. 2883 S.D.1 - Relating to Employment Practices**

**I. DEPARTMENT POSITION**

The Department opposes this bill because the TDI Law is not an appropriate chapter to place the provisions of this measure. This provision implies that the TDI law applies to all sick leave plans, regardless of whether or not it is part of an employer's TDI plan. The measure, therefore, is too broad to be placed in Chapter 392 as the bill can be construed to affect sick leave plans not governed by the TDI Law. The department also has concerns that this measure is using the TDI law as a vehicle to enforce provisions of a CBA and whether Chapter 392 has jurisdiction over conflicts between the CBA and employment practices. The Department recommends that the measure be placed in another chapter in the H.R.S.

**II. OVERVIEW OF PROPOSED LEGISLATION**

This measure proposes to add a new section on accrued and available sick leave to the Temporary Disability Insurance (TDI) Law, Chapter 392, H.R.S. by stipulating that

whenever there is a discrepancy between an employer's policy on sick leave and the collective bargaining agreement, the terms of the collective bargaining agreement shall prevail.

### III. CURRENT LAW

#### Chapter 392, H.R.S., Temporary Disability Insurance

The Hawaii TDI Law requires all employers to provide partial "wage replacement" insurance coverage to their Hawaii employees for nonwork-related disabilities. If an employee is unable to work because of an off-the-job sickness or injury and that employee meets the eligibility requirements, the disabled employee will be paid disability benefits to partially replace the wages lost.

To provide the TDI benefits to partially replace the wage loss, an employer may adopt one of the following methods:

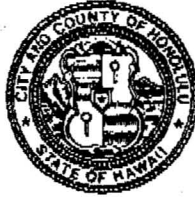
- a. By purchasing a TDI policy from an authorized insurance carrier that pays TDI benefits (generally at 58% of the employee's weekly wages) to the eligible employees;
- b. By adopting a sick leave policy that pays disability benefits (or commonly known as sick leave benefits) directly to the disabled employees; or
- c. By a collective bargaining agreement for the unionized employees that contains sick leave benefits at least as favorable as required by the TDI Law.



DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 10<sup>th</sup> Floor  
HONOLULU, HAWAII 96813

MUFI HANNEMANN  
MAYOR



NOEL T. ONO  
DIRECTOR

March 25, 2010

The Honorable Jon Riki Karamatsu, Chair  
and Members of the Committee on Judiciary  
The House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members of the Committee:

Subject: Senate Bill No. 2883 SD1, HD1  
Relating to Employment Practices

The Department of Human Resources, City & County of Honolulu, respectfully opposes S.B. 2883, SD 1, HD1 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 S.B. 2883 SD1, HD 1 if the public employer were exempt from this measure.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Noel T. Ono", is written over a printed name and title.

Noel T. Ono  
Director of Human Resources



888 Mililani Street, Suite 601  
Honolulu, Hawaii 96813-2991

Telephone: 808.543.0000  
Facsimile: 808.528.4059

[www.hgea.org](http://www.hgea.org)

The Twenty-Fifth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Judiciary

Testimony by  
Hawaii Government Employees Association  
March 25, 2010

S.B. 2883, S.D. 1, H.D. 1 – RELATING  
TO EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2883, S.D. 1, H.D. 1 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 S.B. 2883, S.D. 1, H.D. 1.

Respectfully submitted,

  
Nora A. Nomura  
Deputy Executive Director





**I**nternational  
**B**rotherhood of  
**E**lectrical  
**W**orkers

**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 Judiciary

Rep. Jon Riki Karamatsu, Chair  
Rep. Ken Ito, Vice Chair

Hearing: Thursday, March 25, 2010  
Time: 2:45 p.m.  
Place: Conference Room 325

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

**RE: SB 2883, SD1, HD1 RELATING TO EMPLOYMENT PRACTICES.**

SB 2883, SD1, HD1 would make it unlawful for certain employers to discipline an employee because their 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



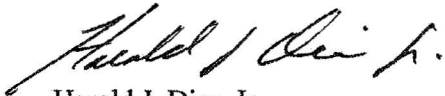
come to work because of fear of being disciplined under these type of unjust, inhumane, punitive policies.

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 SB 2883, SD1, HD1.

Thank you for the opportunity to provide testimony.



Harold J. Dias, Jr  
International Representative  
IBEW



**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

SB 2883 SD1 HD1

RELATING TO EMPLOYMENT PRACTICES

SCOT F. LONG

BUSINESS MANAGER / FINANCIAL SECRETARY

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL UNION 1357

March 25, 2010

Chair Karamatsu, and Members of the Judiciary Committee:

I am Scot Long, testifying on behalf of IBEW Local Union 1357 on SB 2883 SD1 HD1, "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.

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 SB 2883 and we 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 House of Representatives  
Committee on Judiciary

Testimony by  
Hawaii State AFL-CIO  
March 25, 2010

## S.B. 2883, SD1, HD1 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports S.B. 2883, SD1, HD1 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.

S.B. 2883, SD1, HD1 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.

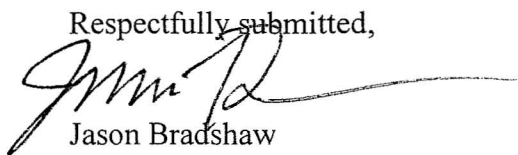
Moreover, in the case of *Auer v. Village of Westbury*, the Supreme Court, Appellate Division ruled in favor of an employee who had been suspended for thirty days for using up his sick leave entitlements. The Supreme Court, Appellate Division proclaimed “the fact that the employee used all his available 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 S.B. 2883, SD1, HD1 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 'J. Bradshaw', with a long horizontal flourish extending to the right.

Jason Bradshaw  
COPE Director





**Testimony to the House Committee on Judiciary  
Thursday, March 25, 2010; 2:45 p.m.  
Conference Room 325**

**RE: SENATE BILL NO. 2883 SD1 HD1 RELATING TO EMPLOYMENT PRACTICES**

Chair Karamatsu, Vice Chair Ito 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 Senate Bill No. 2883 SD1 HD1, 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 an unlawful practice for any employer of 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.

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.

**SB 2883 SD1 HD1**

**RELATING TO EMPLOYMENT PRACTICES**

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

**HAWAIIAN TELCOM**

**March 25, 2010**

Chair Karamatsu and members of the House Judiciary Committee:

I am providing my comments on behalf of Hawaiian Telcom on SB2883 SD 1 HD1, "RELATING TO EMPLOYMENT PRACTICES." Hawaiian Telcom is opposed to SB 2883 SD1 HD1.

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 SB 2883 SD1 HD1 and respectfully requests this measure be tabled this session.

Thank you for the opportunity to provide comments.



The Voice of Small Business®

**Before the House  
Committee on Judiciary**

DATE: Thursday, March 25, 2010

TIME: 2:45 P.M.

PLACE: Conference Room 325

**Re: SB 2883 SD1 HD1 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 SB 2883 SD1 HD1, relating to employment practices.

SB 2883 SD1 HD1 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 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.



To: House Committee on Judiciary

Hearing: March 25, 2010, 2:45 p.m.  
Conference Room 325

Re: SB 2883 SD1 HD1, relating to employment practices

From: Society for Human Resource Management - Hawaii Chapter

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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 SB 2883 SD1 HD1, relating to employment practices.

We are currently opposed to SB 2883 SD1 HD1.

SB 2883 SD1 HD1 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 SB 2883 SD1 HD1 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.

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 24, 2010

TO: THE HONORABLE REPRESENTATIVE JON RIKI KARAMATSU, CHAIR AND  
MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: S.B.2883, SD1 HD1 RELATING TO EMPLOYMENT PRACTICES.

NOTICE OF HEARING

DATE: Thursday, March 25, 2010  
TIME: 2:45 p.m.  
PLACE: Conference Room 325

Dear Chair and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms would like to make the following observation regarding S.B. 2883, SD1 HD1 Relating to Employment Practices.

The GCA believes that whenever there is any collective bargaining contract in force, the terms of the agreement should prevail. However, the bill should make clear that those terms apply to employees covered by the collective bargaining contract only. All other employees continue to be governed by any and all rules and policies adopted by the employer regarding sick leave and other employee benefits.

The GCA recommends that the bill be amended to clarify that when collectively bargained leave benefits conflict with other employer leave policies, contract provision prevail, with respect to covered employees only.

Thank you for the opportunity to comment on this bill.

Testimony before the House Committee on Judiciary

**S.B. 2883, S.D. 1, H.D. 1 Relating to Employment Practices**

**March 25, 2010**

**2:45 p.m.**

**Conference Room 325, State Capitol**

By Faye Chiogioji, Manager  
Hawaiian Electric Company

Chair Karamatsu, Vice Chair Ito, 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 S.B 2883, S.D. 1, H.D. 1.

This measure dictates 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. S.B. 2883, S.D. 1, H.D. 1 creates a “protective bubble” over all employees who use accrued and available sick leave, regardless of the circumstances, and irrespective of any past, documented improper use or abuse of such sick leave benefits. Such broad-scope protections pave the way for sick leave misuse and abuse and poor morale among conscientious co-workers.

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 S.B. 2883, S.D. 1, H.D. 1. Thank you for the opportunity to share our concerns with you.



**WRITTEN TESTIMONY ONLY (IN OPPOSITION)**

COMMITTEE ON JUDICIARY  
THE HONORABLE JON RIKI KARAMATSU, CHAIR  
THE HONORABLE KEN ITO, VICE CHAIR

**SENATE BILL NO. 2883, SENATE DRAFT 1, HOUSE DRAFT 1, scheduled for hearing on March 25, 2010**

**Testimony of Dean Kapoi,  
Vice President of Human Resources and Labor Relations,  
Young Brothers, Limited**

Chair Karamatsu, Vice Chair Ito, and Members of the House Committee on Judiciary:

Thank you for the opportunity to testify on Senate Bill No. 2883, Senate Draft 1, House Draft 1 (**SB 2883 HD1**).

**Young Brothers, Limited (*Young Brothers*) opposes SB 2883 HD1.**

By amending section 378-32 of Hawaii Revised Statutes, the bill proposes 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 sick leave.”

Young Brothers believes there are federal and state laws that already adequately protect employees from improper sick leave management practices. Adding a superfluous statutory provision will simply invite another avenue for disputes and litigation, very likely over interpretation of whether an employee “legitimately uses accrued and available sick leave.” This potential operational and financial burden on businesses comes at a time when they can least bear any drain on their strained resources.

Employers must be able to take reasonable actions against abusers of sick leave benefits without the threat of litigation. Otherwise, sick leave benefit abuse can have a demoralizing impact on other employees who must often shoulder additional work and who see unfairness in the lack of consequences for those who abuse sick leave benefits.

Thank you for this opportunity to testify.

The Twenty-Fifth Legislature  
Regular Session of 2010

HOUSE OF REPRESENTATIVES  
Committee on Judiciary  
Rep. Jon Riki Karamatsu, Chair  
Rep. Ken Ito, Vice Chair

State Capitol, Conference Room 325  
Thursday, March 25, 2010; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2883, SD1, SD1, HD1  
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 supports S.B. 2883, SD1, HD1, 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.

S.B. 2883, SD1, HD1 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 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 will become ill or injured from time to time and should be entitled to benefits to allow them to stay away from work during those periods of illness or incapacity. The law was not intended to allow employers to penalize employees for using TDI or sick leave benefits. However, over the years, employers have instituted “no-fault attendance policies” that allow employees to be disciplined or discharged for absences due to legitimate, verifiable illnesses. Such abusive employer practices should be prohibited.

Attendance policies implemented by employers in most cases are implemented unilaterally, are not subject to bargaining, and are considered “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 of which we are familiar, 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 would seem to 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.

The ILWU urges passage of S.B. 2883, SD1, HD1. Thank you for considering our testimony.



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Testimony to the House Committee on Judiciary  
Thursday, March 25, 2010 at 2:45 pm

Testimony opposing SB 2883 SD1 HD1, Relating to Employment Practices

To: The Honorable Jon Riki Karamatsu, Chair  
The Honorable Ken Ito, Vice-Chair  
Members of the Committee on Judiciary

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, which represents approximately 810,000 credit union members across the state.

We are in opposition to SB2883 SD1 HD1, 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.