

LINDA LINGLE  
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**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 12, 2010

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor and Public Employment

Date: Friday, March 12, 2010  
Time: 10:00 a.m.  
Place: Conference Room 309  
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.



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 10, 2010

TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR and PUBLIC EMPLOYMENT  
For Hearing on Friday, March 12, 2010  
10:00 a.m., Conference Room 309

BY

MARIE C. LADERTA  
CHIEF NEGOTIATOR

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

**(WRITTEN TESTIMONY ONLY)**

CHAIRPERSON RHOADS AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 2883 S.D.1 is to clarify that conflicts between a collective bargaining agreement and an employer's policy that concern accrued and available sick leave shall require the terms of the collective bargaining agreement to prevail.

The Office of Collective Bargaining finds this bill to be unnecessary to the extent it applies to public sector employees because Section 89-19, Hawaii Revised Statutes, already provides that Chapter 89, HRS, shall preempt all contrary rules adopted by the State, counties, or any department or agency thereof. Thus, under Section 89-19, HRS, provisions in the respective collective bargaining agreements governing sick leave benefits would trump any conflicting house rules or policies of the public employer.

Thank you for the opportunity to testify on this bill.



**Testimony to the House Committee on Labor & Public Employment  
Friday, March 12, 2010; 10:00 a.m.  
Conference Room 309**

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

Chair Rhoads, Vice Chair Yamashita 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, 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 clarifies between a collective bargaining agreement and an employer's policy that concern accrued and available sick leave shall require the terms of the collective bargaining agreement to prevail.

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.



**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**

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The House of Representatives  
Twenty-Fifth Legislature  
Regular Session of 2010

Committee on Labor & Public Employment

Rep. Karl Rhodes, Chair  
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Friday, March 12, 2010  
Time: 10:00 A.M.  
Place: Conference Room 309

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

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

SB 2883, SD1 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.

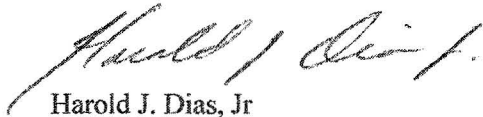
Not only is this type of bait-and-switch behavior by employers ridiculous, immoral and unethical, it also poses a great danger and safety concern to the public for the spread of infectious viruses and disease (H1N1) when workers who are legitimately ill are forced to come to work because of fear of being 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 SB 2883, SD1.

Thank you for the opportunity to provide testimony.



Harold J. Dias, Jr  
International Representative  
IBEW



Local Union 1260

## **International Brotherhood of Electrical Workers**

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**LANCE M. MIYAKE**  
Business Manager-Financial Secretary

**LOREN TAGUCHI**  
President

March 9, 2010

Representative Karl Rhoads  
Chair, Committee of Labor & Public Employment  
House of Representatives  
State of Hawaii

Dear Chairman Rhoads:

RE: S.B. No. 2883

The IBEW Local 1260 support and request that the Committee of Labor & Public Employment submits S.B. No. 2883 to the House of Representatives 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



Representative Karl Rhoads

-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,

Lance M. Miyake  
Business Manager – Financial Secretary

Attachment





HAWAIIAN ELECTRIC COMPANY, INC.

**A**TTENDANCE  
**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:

- 4<sup>th</sup> 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 himself 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.



Scot F. Long  
Business Mgr / Financial Sec.

**International Brotherhood of Electrical Workers**  
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Ted M. Furukado  
President

SB 2883

RELATING TO EMPLOYMENT PRACTICES

SCOT F. LONG

BUSINESS MANAGER / FINANCIAL SECRETARY

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL UNION 1357

March 11, 2010

Chair Karl Rhoads, and Members of the Labor and Public Employment  
Committee:

I am Scot Long, testifying on behalf of IBEW Local Union 1357 on SB 2883,  
"A BILL TO ADDRESS THE TAKING OF LEGITIMATE SICK LEAVE".  
IBEW Local Union 1357 strongly supports this bill.



Mar 10 10:05:09p

IBEW Local Union 1357

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

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The Twenty-Fifth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Labor & Public Employment

Testimony by  
Hawaii State AFL-CIO  
March 12, 2010

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

The Hawaii State AFL-CIO strongly supports S.B. 2883, SD1 which clarifies that conflicts between a collective bargaining agreement and an employer's policy that concern accrued and available sick leave shall require the terms of the collective bargaining agreement to prevail.

S.B. 2883, SD1 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.

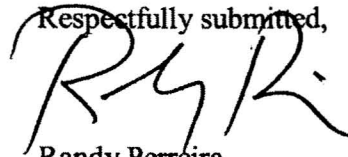
Moreover, in the case of *Auer v. Village of Westbury*, the Supreme Court, Appellate Division ruled in favor of an employee who had been suspended for thirty days for using up his sick leave entitlements. The Supreme Court, Appellate Division proclaimed "the fact that the employee used all his available 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 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,  
  
Randy Perreira  
President

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**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 10, 2010

TO: THE HONORABLE REPRESENTATIVE KARL RHOADS, CHAIR AND MEMBERS  
OF THE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

NOTICE OF HEARING

DATE: Friday, March 12, 2010  
TIME: 10:00 A.M.  
PLACE: Conference Room 309

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 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.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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**The Twenty-Fifth Legislature, State of Hawaii**  
**Hawaii State House of Representatives**

**Committee on Labor & Public Employment**

**Testimony by**  
**Hawaii Government Employees Association**  
**March 12, 2010**

**S.B. 2883, S.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 which clarifies that conflicts between a collective bargaining agreement and an employer's policy that concern accrued and available sick leave shall require the terms of the collective bargaining agreement to prevail.

Thank you for the opportunity to testify in support of S.B. 2883, S.D. 1.

Respectfully submitted,

Nora A. Nomura  
Deputy Executive Director

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Testimony In Support of  
SB2883, SD1 Relating to Employment Practices  
By Al Lardizabal, Director of government Relations  
Hawaii Laborers' Union

To the Committee on Labor and Public Employment  
March 12, 2010, 10:00 a.m.  
State Capitol  
Room 309

Chairman Karl Rhoads and Members of the Committee:

Collective bargaining is a declared national policy, encouraged by the National Labor Relations Act. The collective bargaining agreement is negotiated and is binding on both sides. Therefore, the CBA must prevail when there is a conflict between the CBA and an employer's policy that concern accrued and available sick leave.

Thank you for the opportunity to submit this testimony in support of the bill.

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**SB 2883 SD1****RELATING TO EMPLOYMENT PRACTICES****JOHN KOMEIJI  
SR. VICE PRESIDENT & GENERAL COUNSEL****HAWAIIAN TELCOM****March 12, 2010**

Chair Rhoads and members of the House Labor Committee:

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

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

LATE

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 and respectfully requests this measure be tabled this session.

Thank you for the opportunity to provide comments.