

TESTIMONY

SB 2883

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

February 1, 2010

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Tuesday, February 2, 2010
3:00 p.m., Conference Room 224

BY

MARIE C. LADERTA
DIRECTOR

**Senate Bill No. 2883
Relating to Employment Practices**

(WRITTEN TESTIMONY ONLY)

CHAIRPERSON TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 2883, 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 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, for the public employers, this bill involves a matter that is subject to collective bargaining and therefore should not be legislated. The current sick leave benefits agreed to between the public employers and the public employee unions were never intended to condone misuse by allowing an employee unrestricted absenteeism with the protection of never being held accountable for questionable or excessive absences.

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.

Thank you for the opportunity to testify in opposition to this bill.

Respectfully submitted,


FOR MARIE C. LADERTA

ERD



The Judiciary, State of Hawaii

**Testimony to the Twenty-Fifth State Legislature, Regular Session of 2010
Senate Committee on Labor**

The Honorable Dwight Y. Takamine, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Tuesday, February 2, 2010, 3:00 p.m.
State Capitol, Conference Room 224

by

Sharen M. Tokura
Human Resources Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill 2883, 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 uses accrued and available sick leave.

Judiciary's Position:

The Judiciary strongly opposes the passage of Senate Bill No. 2883 relating to Employment Practices.

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 majority of employees utilize sick leave for the purpose that it was intended, i.e., to recover from illness or injury, there are a few employees who misuse sick leave. Senate Bill No. 2883, in its proposed form, would prohibit employers from taking appropriate action against this latter group of individuals. For example, it appears that the proposed language would prohibit an employer from taking



Senate Bill No. 2883, Relating to Employment Practices
Senate Committee on Labor
Tuesday, February 2, 2010
Page 2

employment action against an employee who called in sick and was later discovered surfing during the hours claimed to be disabled.

Senate Bill No. 2883, in its proposed form, also appears to prohibit an employer 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 utilized sick leave, that the employer would have to indefinitely continue the employment of such employee who is determined to be 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, Senate Bill No. 2883 would also prohibit the placement of such employee in a lower level position to which the employee could return to work.

Further, the Public Employer and at least one Public Employee Union have negotiated provisions for addressing misuse of sick leave, which include disciplinary actions for abuse of sick leave, up to and including discharge. Senate Bill No. 2883, in its proposed form, is in conflict with provisions negotiated under Chapter 89, HRS, and provides undue protection of employees who utilize sick leave for unintended purposes.

Based on the foregoing, the language in SB 2883, as proposed, is not acceptable and impacts the fundamental management decision-making process by interfering with the basic rights and obligations of public employers to responsibly manage operations. This bill provides unduly expansive protection to employees who misuse sick leave.

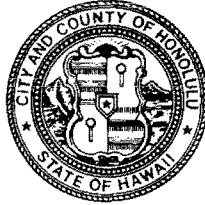
The Judiciary strongly opposes the passage of this bill, as the continued diminishment of management's rights is contrary to responsible and accountable management practice and sound public policy.

Thank you for the opportunity to provide testimony on Senate Bill No. 2883.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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

MUFI HANNEMANN
MAYOR



NOEL T. ONO
ACTING DIRECTOR

February 1, 2010

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

Dear Chair Takamine and Members:

Subject: Senate Bill No. 2883
Relating to Employment Practices

The Department of Human Resources of the City & County of Honolulu **respectfully opposes S.B. 2883**, 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 S.B. 2883 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.

Thank you for the opportunity to testify.

Yours truly,

A handwritten signature in black ink, appearing to read "Noel T. Ono".

Noel T. Ono
Acting Director



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI

President
Bricklayers & Ceramic Tile Setters
Local 1 & Plasterers/Cement
Masons Local 830

February 1, 2010

JOSEPH O'DONNELL

Vice President
Iron Workers Local 626

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

DAMEN T. K. KIM

Financial Secretary
International Brotherhood of
Electrical Workers Local 1186

ARTHUR TOLENTINO

Treasurer
Sheet Metal Workers I.A. Local 293

RE: **IN SUPPORT OF SB 2883**
Relating to Employment Practices.
Hearing: Tues., Feb. 2, 2010, 3:00 p.m., Room 224

REGINALD CASTANARES

Trustee
Plumbers & Fitters Local 675

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

THADDEUS TOMEI

Elevator Constructors Local 126

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

MALCOLM K. AHLG

Carpet, Linoleum, & Soft Tile
Local 1296

The Council SUPPORTS the passage of SB 2883 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 uses accrued and available sick leave.

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers
Local 1944

Thank you for the opportunity to submit this testimony in support of **SB 2883**.

RICHARD TAGGERE

Glaziers, Architectural Metal &
Glassworkers Local Union 1889

Sincerely,

RONAN KOZUMA

Hawaii Teamsters & Allied
Workers Local 996

W. Hong
William "Buzz" Hong
Executive Director

GARY AYCOCK

Boilermakers, Ironship Builders
Local 627

LYNN KINNEY

District Council 50
Painters & Allied Trades
Local 1791

KALANI MAHOE

Operating Engineers Local 3

PETER GANABAN

Laborers' International Union of North
America Local 368

DOUGLAS FULP

International Association of
Heat & Frost Insulators
& Allied Workers Local 132

 **COPY**



Testimony to the Senate Committee on Labor
Conference Room 224, State Capitol
Tuesday, February 2; 3:00 p.m.

RE: SENATE BILL NO. 2883, RELATING TO EMPLOYMENT PRACTICES

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

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii. On behalf of the Chamber, **I am here to state The Chamber's opposition to Senate Bill No. 2883.**

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 prohibits employers from suspending, discharging, or discriminating against an employee for taking sick leave.

The Chamber of Commerce of Hawaii has held a longstanding position that sick leave is a benefit for employees, not an entitlement. 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.

However, creating a protection of the use of sick leave may force many businesses, especially small businesses, to reduce or eliminate voluntary sick leave. The implications of this measure could lead to a rise in the cost of doing business, an unstable work environment, and potential litigation, which will ultimately impact employees.

Secondly, we 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.

Testimony In Support of
SB2883 RELATING TO EMPLOYMENT PRACTICES

By

Al Lardizabal,
Government Relations Director
Hawaii Laborers Union

To the Senate Committee on Labor

Honorable Dwight Takamine, Chair, Senate Committee on Labor; Honorable Brian Taniguchi, Vice Chair and Members of the Committee:

The Hawaii Laborers' Union fully supports the intent and purpose of SB2883 making it unlawful 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.

Thank you for the opportunity to submit this testimony.



Neal K. Okabayashi
Vice President & Attorney

Presentation to the Senate Committee on Labor

Monday, February 2, 2010, at 3:00 pm., Room 224

Testimony for SB 2883 Relating to Employment Practices

TO: The Honorable Dwight Takamine, Chair
The Honorable Brian Taniguchi, Vice Chair
Members of the Senate Committee on Labor

My name is Neal Okabayashi of First Hawaiian Bank. We oppose SB2883 because it hurts working people because when sick leave is treated as vacation time, a company must consider reducing sick leave benefits.

Under this bill, sick leave time is a vacation day which may be taken as a matter of right regardless of the health of the worker. Sick leave should be used when an employee is sick but not for other reasons. CareerBuilder.com reported that 1 in 4 workers consider sick leave to be vacation time. This bill would make sick leave vacation time which means that companies would be forced to reduce sick leave time or switch to a PTO system which often reduces both vacation and sick leave time. For those with a serious health problem, that is a negative.

This bill does not protect the ill worker. A worker who is ill or seriously ill will be able to document the illness and use available sick leave.

What this bill does is protect the worker who is not ill and wants to use sick leave as vacation time. It protects workers who abuse a company's sick leave; for example, the Friday-Monday sick leave syndrome.

What it unfortunately does is fail to protect the vast majority of hard working employees who benefit from a sick leave policy that can be used when genuinely ill. Thus, the goal of this bill, while it seems to be well-intended, has the opposite effect and thus, we submit that this bill should be held indefinitely.

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
Tuesday, February 2, 2010; 3:00 p.m.

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

The ILWU Local 142 strongly supports S.B. 2883, 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 uses accrued and available sick leave.

S.B. 2883 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 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 may become ill or injured from time to time and should not be penalized for taking sick leave that is provided as a benefit by the employer. Over the years, however, employers have used “no-fault attendance policies” to penalize even those who who are absent for legitimate, verifiable illnesses. Such abusive practices should be prohibited.

Attendance policies implemented by employers are usually not subject to bargaining and are “no-fault.” This means any absence, regardless of the nature, will count toward disciplinary action, which is progressively severe. In the case of the attendance policy attached to this testimony, 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 have taken 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.

To address the issue of progressive discipline and waiting periods generally imposed by employers, we suggest that S.B. 2883 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.”*

The ILWU urges passage of S.B. 2883 with the amendment proposed. Thank you for considering our testimony.

Testimony before the Senate Committee on Labor
S.B. No. 2883, Relating to Employment Practices

February 2, 2010
3:00 p.m.
Conference Room 224, State Capitol

By Faye Chiogioji, Manager
Hawaiian Electric Company

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

I am Faye Chiogioji, Manager, Workforce Staffing and Development at Hawaiian Electric Company, Inc. I represent Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (collectively "HECO") consisting of 2300 employees.

We respectfully oppose Senate Bill 2883.

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. SB2883 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 Senate Bill 2883. Thank you for the opportunity to share our concerns with you.



George M. Waialeale

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Honolulu, Hawaii 96816

Cell: (808) 383-0436

Email: geedubbyou@aol.com

February 2, 2010

The Twenty-Fifth Legislature

Regular Session 2010

State of Hawaii

The Senate

Committee on Labor

SB 2883 Relating to Employment Practices

SB 2883 makes it and 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.

As a former employee of Hawaiian Telcom for 39 years and former Business Manager of IBEW Local Union 1357 which represents the union members of Hawaiian Telcom I support passage of **HB 2935.**

In the last decade the telephone company has ramped up its administrative policy of a 2% guide line for sick leave. This means if you used more than 42 hours sick leave (2080hrs. x 2%= 41.6 hours) in a year there is a great possibility that you will receive a reprimand, suspension or be subject to termination.

This is with the company agreeing that employee's with more that six months of employment will have four weeks of sick leave (80 hours) after a three day waiting period and the sick leave will progressively expanded with longer employment.

I believe with the passage of SB 2883 it will bring fairness to sick leave disability.

Your passage of this bill would be greatly appreciated.

George M. Waialeale



Before the Senate Committee on Labor

DATE: Tuesday, February 2, 2010

TIME: 3:00 P.M.

PLACE: Conference Room 224

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

SB 2883 makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay, 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 nation's largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitols, with more than 1,000 members in Hawaii and 600,000 members nationally. NFIB members are a diverse group consisting of high-tech manufacturers, retailers, farmers, professional service providers and many more.

We welcome the opportunity to engage with legislators on this and other issues during this session.



To: Senate Committee on Labor

Hearing: February 2, 2010, 3:00 p.m.
Conference Room 224

Re: SB 2883, relating to employment practices

From: Society for Human Resource Management - Hawaii Chapter

The Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”) represents more than 1,300 human resource professionals in the State of Hawaii. On behalf of our members, we would like to thank the Committee for giving us an opportunity to comment on SB 2883, relating to employment practices.

We are currently opposed to SB 2883.

SB 2883 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 to address workplace needs and to know the benefit preferences of their employees which may include other types of leave policies. We are concerned that SB 2883 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.