

SB 63

kim2 - Arline

From: Lchunhoon@aol.com
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To: WAM Testimony
Subject: Testimony of ILWU Local 142 re: SB 63,SD1



THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

COMMITTEE ON WAYS & MEANS
Sen. Donna Mercado Kim, Chair
Sen. Shan S. Tsutsui, Vice Chair

Hearing: Monday, March 2, 2009
Time: 9:30 a.m.
Place Room 211

TESTIMONY OF ILWU LOCAL 142 Re: SB 63, SD 1

Thank you for the opportunity to provide testimony regarding SB 63, SD 1. We support the bill.

The continuation of temporary total disability is a vital factor in the successful resolution of any work injury claim and an important factor in successful rehabilitation of injured workers. SB 63, SD 1 provides that temporary total disability must be commenced promptly within 30 days and cannot be terminated without appropriate safeguards such as a release from the claimant's treating physician and an order from the director of the department of labor and industrial relations. These reasonable restrictions will go far toward preventing needless economic hardship and privation for those who suffer industrial injuries.

The interest of employers will likewise be balanced and protected by the measure's provision allowing any payments that are erroneously made to be credited toward permanent partial disability. Yet another protection for the employer is that under existing law, employers may also utilize erroneously paid benefits as a future credit.

While the current version of the bill proposes that there be a working group to explore the measure, we believe it could actually be implemented in its original form without such a group.

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**Testimony to the Senate Ways and Means Committee
Monday, March 2, 2009; 9:30 a.m.
Conference Room 211**

RE: SENATE BILL 63 SD1 RELATING TO WORKERS' COMPENSATION

Chair Mercado Kim, Vice Chair Tsutsui 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"). The Chamber is strongly opposed to SB 63, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician. Finally, the bill convenes a working group.

Employers care about their employees. Many seek ways to go beyond what is required of them by providing exceptional benefits, incentives, as well as creating a positive work environment. Additionally, businesses realize that they need to enforce programs and policies that will retain employees all while managing the high costs of doing business. One of the costs is workers' compensation.

In a recent Chamber survey, members were asked to identify their top priority issues relating to business. The cost of doing business was ranked as number one and workforce development as number three. Workers' compensation, however, fell to the middle. This is greatly attributed to the manageable premiums of workers' compensation. Employers are proactively finding ways to minimize work-related injuries as well as to accelerate improvement of workers who suffer from these injuries. We do not dismiss that a handful of questionable cases may exist, however, overall, we believe employers do the right thing for their employees. This measure, however, will undermine the efforts made by employers and ultimately hurt the viability of their business, which in turn will hurt employees.

Therefore, The Chamber has concerns with the language that limits the termination of benefits only if the employee's own treating physician authorizes the return to work. While this is the case in limited situations, it is the employer's physician that often determines if the employee is capable of returning to work. An employee's own doctor will probably not authorize the return to work in any capacity if the employee prefers to stay out on disability leave regardless if the condition is qualified or not. It's important that these benefits be utilized as intended and not in such a way that benefits are activated simply because they exist.

Another concern is the employer's requirement to pay uninterrupted TTD benefits regardless if the employer disputes the right to benefits. This mandate may serve as a disincentive for an employee to return to work especially as the measure increases the weekly benefit amount to 70% of the injured employee's average weekly wages and does not penalize the employee for refusing to return to work.

This will hurt employers especially small businesses, which operate on limited resources and smaller staffs. Colleagues of the absent employee will unfairly shoulder additional responsibilities, which could have a domino effect, such as a stressful work environment, lower morale, and lost productivity. As a result, the negative consequences of this measure may hinder than promote progress.

Next, the measure does not allow the employer to file a request for hearing with the Department of Labor to terminate TTD benefits if they believe the employee is able to return to work. Instead, it only allows the employee to file a hearing. Thus, we believe this is not a fair and balanced approach.

Additionally, there is no actual loss of care. An employee who wants to continue treatment after an employer terminates TTD coverage based on the evaluation that the employee can return to work and was offered work but turned it down, can then use the prepaid health care plan that every employer provides to continue care. If it is eventually determined that workers' compensation should have provided the care, the group health insurer can seek reimbursement/subrogation from the workers' compensation carrier.

Furthermore, we do not support the working group provision because of the automatic effective date of the Act. If the working group cannot come to an agreement by a certain date, the Act goes into effect. This will serve as a disincentive for those who strongly support the language. This is not a fair and balanced approach.

In summary, SB 63 SD1, while well-intended, will have unintended consequences and possibly lead to a rise in workers' compensation insurance costs and the overall cost of doing business. Hawaii should be cultivating the soil to help our local establishments thrive, so that jobs can be saved and created. This bill will drive businesses toward a direction that we cannot afford.

Thus, The Chamber respectfully requests this measure be held. Thank you for the opportunity to testify.