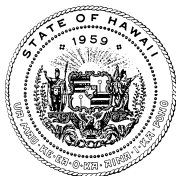


# **TESTIMONY**

**SB 692**



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

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February 9, 2010

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

Date: Tuesday, February 9, 2010  
Time: 3:00 p.m.  
Place: Conference Room 224, State Capitol

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

**Testimony in OPPOSITION**

to

**S.B. 692 – Relating to Worker’s Rights**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

Senate Bill 692 proposes to amend two different laws relating to employees:

1. Section 1 adds a new section to Chapter 388, HRS, Payment of Wages and Other Compensation that requires private employers to ensure that any employee who is vested in the employers' pension plan, to be eligible to apply and receive pension benefits if they suffer a "disability", regardless of age, as defined in section 392-3, HRS.

Chapter 392-3, Hawaii Temporary Disability Insurance Law, defines "disability" as a "total inability of an employee to perform the duties of the employee's employment caused by sickness, pregnancy, termination of pregnancy, or accident other than a work injury as defined in section 386-3."

2. Section 2 amends the Hawaii Workers' Compensation law, Section 386-89, Hawaii Revised Statutes ("HRS"), to allow the Director of the Department of Labor and Industrial Relations ("Department") to re-open workers' compensation cases that have been settled due to fraud, exertion of undue influence, disability or the mental incompetence of the employee.

## II. CURRENT LAW

### **Chapter 388, HRS - Payment of Wages and Other Compensation**

Chapter 388, HRS, regulates the payment of wages to employees of private employers. The law requires that the payment of wages be on regular paydays at least twice each month and within seven days after the end of a pay period, and requires prompt payment of wages to workers separated from employment. Employers who violate this Chapter are subject to civil or criminal penalties.

The Department does not have jurisdiction to regulate pension plans offered by private or public employers. Private and public pension plans are regulated by federal law (Employee Retirement Income Security Act (ERISA)).

### **Chapter 386, HRS - Hawaii Workers' Compensation Law**

Currently, section 386-89, HRS, allows the Director to reopen a claim within his jurisdiction, or a settlement, at any time on the director's own motion or upon application from any party to re-open a case due to fraud. This section also allows the director to re-open any case if there is substantial evidence that a change or mistake was made in the determination of facts related to the physical condition of the injured employee.

The Director, however, cannot reopen a claim or a settlement once it has been appealed by either party to the Hawaii Labor and Industrial Relations Appeals Board ("LIRAB") or the State Supreme Court.

## III. HOUSE BILL

The Department opposes S.B. 692 pertaining to Chapter 388 for the following reasons:

### **Chapter 388, HRS - Payment of Wages and Other Compensation**

1. The Department has no statutory authority to regulate the pension plans of private or public employers. We have concerns regarding the placement of this proposal within Chapter 388, HRS, which dictates the payment of wages, as the Department does not regulate pension plans and has no expertise in these matters.

2. Further, section 1 of this bill allows employees vested under an employer's pension plan to be eligible for payment under the employer's pension plan under Chapter 388, upon suffering a disability as defined under the Temporary Disability Insurance ("TDI") Law. Disabilities covered under this proposal would therefore be limited as TDI only covers injuries and illnesses that happen away from work.

The Department opposes S.B. 692 pertaining to Chapter 386 for the following reasons:

**Chapter 386, HRS - Hawaii Workers' Compensation Law**

1. The Department already has the jurisdiction to re-open a claim or settlement due to fraud. Currently, many controverted issues are resolved through agreement and settlement which the Department reviews to ensure that it is fair to the injured worker. As a settlement must be signed by the Director, the settlement is considered a decision of the Director and subject to re-opening if the settlement was entered into fraudulently, involuntarily or illegally by any party.

This proposal may discourage parties from utilizing the non-adversarial settlement process to resolve workers' compensation claims if the settlement will always be eligible for reopening. Without a settlement, hearings and formal decisions will increase resulting in delays in the adjudication and resolution of controverted issues. These delays will impede the injured workers' return to work, delay the provision of medical benefits, and interfere with awarding and payment of indemnity benefits to injured workers. These delays will further result in higher workers' compensation costs and higher workers' compensation premiums for the employers.

2. The Department is also opposed to this proposal because the term "undue influence" is not defined. This definition is essential to determine whether a settlement can be reopened due to exertion of "undue influence".

The Department also has concerns about backdating this proposal to July 1, 1997, twelve and a half years ago. By using this effective date, this bill has the potential of unsettling "thousands of cases" which in turn will lead to higher costs.

The Department opposes Senate Bill 692 for the reasons cited above.

LINDA LINGLE  
GOVERNOR OF HAWAII



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CINDY S. INOUE  
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February 8, 2010

TESTIMONY TO THE  
SENATE COMMITTEE ON LABOR  
For Hearing on Tuesday, February 9, 2010  
3:00 p.m., Conference Room 224

BY

**MARIE C. LADERTA, DIRECTOR**

**Senate Bill No. 0692  
Relating to Workers' Rights**

**(WRITTEN TESTIMONY)**

TO CHAIRPERSON DWIGHT Y. TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 0692 is to permit director of labor and industrial relations to reopen workers' compensation cases after settlement if settlement was obtained by exerting undue influence over any party or as a result of the disability or mental incompetence of the employee.

**The Department of Human Resources Development is strongly opposed to this bill.**

Amending Section 386-89 (b), Hawaii Revised Statutes, so that it applies to disability claims arising on or after July 1, 1997, would be prejudicial as it would be penalizing a party by essentially setting aside an agreement and creating new rights and obligations which didn't exist at the time of settlement. The party being prejudiced would not have had an opportunity to protect themselves by requiring that a claimant have counsel or requesting that a hearing be scheduled so that the Director could confirm that there was no undue influence or that a party was not taking advantage of the individual's disability or mental incompetence. Furthermore, parties might be prejudiced because memories, witnesses, or files may no longer be available due to the passage of time.

This bill would likely increase costs for all parties by feeling that they have to retain attorneys to protect themselves against a future liability which was not contemplated at the time of settlement. It would also result in far more Disability Compensation Division hearings as employers and insurance carriers would be reluctant to enter into settlement agreements if they could be set aside at a later date.

Thank you for the opportunity to provide testimony on this bill.

TWENTY-FOURTH LEGISLATURE

REGULAR SESSION OF 2007

~~XXXXXXXXXX~~

Feb. 8 2010 692

TESTIMONY OF MS. SHIRLEY PICO ON BEHALF OF S.B. ~~1052~~ 692

I am just one of the "disabled" addressed by this extremely important bill. I worked for Kapiolani Women's and Children's hospital for more than 19 years. I was terminated from their employee a mere six weeks prior to my 40<sup>th</sup> birthday, when I would have been eligible to receive my accumulated retirement pension. I won't get into the details as to why they let me go after giving my all to this institution, but suffice it to say that after five worker's compensation claims for both physical and mental health concerns, termination was their response.

As a result of my termination, I lost my home; was unable to properly provide for my children's appropriate education and welfare; was declared "disabled" by the Social Security Administration; was forced into bankruptcy; and, was forced to seek psychiatric care, which involved the prescription of medications for nearly five years. This was followed by being seen on a biweekly basis since 2000 by a psychologist to help me cope with all of the stressors I have encountered as a result of the termination of my employment.

Had I been allowed to receive my hard-earned and merited pension at the time of my declared disability, rather than being coldly and summarily terminated, as was the case, I would not have lost my home; could have at least provided some amount of support to my children; and would not have had to declare bankruptcy or be forced to undergo ten years of psychological disability.

Please seriously consider my plight, as well as those others just like me, as you debate SB1052 and hopefully, see your way to passing this much needed legislation.

692 SP

Respectfully,

*Shirley Pico Pico*  
Shirley Pico Pico