

TESTIMONY

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LATE



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

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April 7, 2010

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

Date: April 8, 2010
Time: 2:45 p.m.
Place: Conference Room 224, State Capitol

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

**Testimony Offering Comments on S.R. 65 and S.C.R. 144:
Urging the Department of Labor and Industrial Relations to Meet or Exceed
Occupational Safety and Health Administration Position Benchmarks for
Workplace Safety and Health.**

I. DLIR's COMMENTS

The Department offers the following comments on the Resolutions:

The Department firmly disagrees that its current staffing of inspector positions jeopardizes its ability to fulfill HIOSH's mission in workplace safety and health. The current staffing levels must be viewed in the proper context.

The Department previously submitted testimony to the House Committee on Labor and Public Employment on H.R. 84 and H.C.R. 145, which are identical to the Senate Resolutions before the Committee today.

A. CONTEXT OF THE BENCHMARKS

The benchmark staffing level for the HIOSH compliance program was last set pursuant to an April 25, 1980 OSHA report. In a December 5, 1978 court order, the U.S. Court of Appeals for the District of Columbia directed the Secretary of Labor to define staffing levels necessary for a "fully effective program." These benchmark levels were set with input from the HIOSH program.

The OSHA report set the benchmarks for Hawaii at a level of nine (9) inspectors for both safety and health.

We are currently in discussions with OSHA regarding examining the benchmark levels. The workplace in 1980 is much different from the workplace now.

Specifically, the total number of workers' compensation cases reported in 1980 was about 47,725. The total number of workers compensation cases filed in 2008 was 24,542.

The number of recordable cases for private industry in 1980 was 29,240 with an incident rate of 11.5. Within the construction industry, the incidence rate was 30.7. In 2008, the number of recordable cases of non fatal injuries for private industry was 16,700 with an incident rate of 4.3. Notably, the injury and illness rate for construction was only 6.1.

Despite the approximate increase of about 14,000 jobs in the construction industry and about 13,000 in the accommodations industry since 1980, the latest data regarding fatal occupational rates reflects a downward trend: 30 in 2006, 23 in 2007 and 18 in 2008. Also, the total number of workers' compensation cases in the past three years reflects a downward trend. In 2007, about 26,105 cases were filed. In 2008, 24,942 cases were filed. In 2009, the most current information reflects only about 21,262 cases have been filed since December 2009.

It is in this context that we are in current discussions with OSHA regarding an examination of the benchmark levels for Hawaii.

Moreover, HIOSH has long found itself in a "catch 22" situation regarding the compliance officer benchmarks. When economic times were good, the large salary disparity between the private and the public sector frustrated efforts to fill inspector positions. At one time, the private sector was paying about twice the level of the public pay scale. Retention was an issue; the HIOSH served as a training ground for safety professionals to get their experience, only to go on to more lucrative careers in the private sector.

On the other side, when economic times are bad, as they are presently, the State's dire fiscal condition prevents us from filling inspector positions. The State's economic condition necessitates all divisions, including HIOSH, to do more with less, and focus on performing core operations with essential personnel.

Filled inspector positions were not cut in the reduction in force. Instead, other areas, including the clerical positions, were affected. Federal OSHA officials previously remarked on how HIOSH's clerical section appeared overstaffed in comparison to other States.

Notwithstanding the matters discussed above, we will continue to do our mission with less until the State's fiscal condition allows us to regain our prior staffing levels. In the meantime, we welcome all the support available from our private partners to further strengthen the HIOSH program.

It is important to note that the benchmarks concerning the Consultation and Training Branch of the HIOSH were essentially met in 2007. The functions of two (2) safety consultants, two (2) health consultants, and one (1) compliance assistance officer were met. The Consultation and Training Branch had three (3) safety consultants and two (2) health consultants; one (1) health consultant fulfilled the functions of the compliance assistance post. This staffing level was maintained until the recent reduction in force.

Given the State's fiscal crisis, all departments and divisions, including the HIOSH, must do more with less. To this end, we continue to leverage the expertise and guidance of the HIOSH Advisory Committee in seeking creative ways to promote safety in Hawaii's workplaces.

B. AMBIGUITIES AND STATISTICAL INACCURACIES

As communicated to Representative Rhoads on or about March 16, 2010, subsequent to the hearing on H.R. 84 and H.C.R. 145, the aforementioned House Resolutions contained several ambiguities and statistical inaccuracies.

Specifically, the Department conferred with the U.S. Bureau of Labor Statistics (BLS) in San Francisco, and the BLS is not aware of the "Construction Injury Law Firms report of February 11, 2010" referenced in the second page of the House Resolutions. The Department cannot confirm the alleged "over eleven thousand two hundred disabling construction injuries annually."

Moreover, the House Resolutions state that "one hundred eleven fatalities" happened in the construction industry "between 2004 and 2008."

According to the Department's Research and Statistics Division, however, between the four-year span of 2004 to 2008, there were about 6,018 construction-related fatalities nationally and 23 of those construction-related fatalities occurred in Hawaii. **Accordingly, between 2004 and 2008, less than 1 percent (0.0038) of all construction fatalities in the entire nation happened in Hawaii.**

The figures contained in the House Resolutions, however, erroneously conclude that 23 of 111 construction-related fatalities happened in Hawaii (21%).

The Senate Resolutions before this Committee are identical to H.R. 84 and H.C.R. 145, and, therefore, suffer the same infirmities.

II. OVERVIEW OF PROPOSED RESOLUTION

The substantive text of S.R. 65 and S.C.R. 144 are identical. The Resolutions urge the Department to “meet or exceed OSHA benchmark safety levels for Health Compliance Officers, Safety Compliance Officers, Safety Consultants, Health Consultants, Compliance Assistance, and other positions as required for HIOSH and the DLIR to fulfill its mission in workplace safety and health.”

III. CURRENT LAW

Through a 1980 OSHA has set the benchmark levels for compliance officers in Hawaii at nine (9) safety inspectors and nine (9) health inspectors. OSHA also set the following levels for Hawaii’s consultation and training branch: two (2) safety consultants, two (2) health consultants, and one (1) compliance assistant.

Maile Anderson
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Re: SR 100

Dear Senator Dwight Y. Takamine, Chairman, Senator Brian T. Taniguchi, Vice-Chairman and Committee Members:

I am writing in support of the above Resolution. I know people that have been in situations at their Workplace and my sympathy goes out to them. These are the people that the Civil Rights Commission does not cover.

I feel that there needs to be more public awareness in the Community regarding bullying in the workplace. Intimidation, harassment and verbal abuse is not addressed as it should be. Victims of bullying in the Workplace have gone unnoticed and have suffered a great deal for many years.

This Resolution may be too late for many people. However, it will be a help to others in the future. I thank you for allowing me to voice my concerns.

Mahalo,


Maile Anderson

April 7, 2010

The Honorable Dwight Takamine
Labor and Industrial Relations
415 S. Beretania St.
Honolulu, HI. 96813

Re: Support for SR100

Mr. Chairman and Members of the Committee:

My name is Bernardette Madiro, a concerned citizen and also a public servant, and I am in support of Senate Resolution 100 which addresses a critical problem of Abusive Work Environments. Throughout my 17 years of employment with the State of Hawaii, I have had the pleasure of working under some great supervisors. They exhibited excellent leadership and management skills, however, I have also had to endure working in an abusive work environment. The supervisor in this one unit frequently raised her voice and even went so far as to yell at any worker that did something that she did not agree with. The difficulty with such a work place was that one would never know what would "upset" this supervisor, thereby placing everyone under constant stress worrying about the next outburst and whether you would be the target of her anger.

As a public servant, the work that we do is already challenging as we try to meet the needs of our clientele. Many times we have to listen to clients yell and swear at us when there is a decision that adversely affects their livelihood (benefits). Many times we have to be an advocate, listener, consoler or just a friend to those we serve. An abusive work environment compromises the quality of service that we give to our clients because it is hard to "be there" for the clients when you are struggling with your own fears of being verbally abused or berated by your supervisor. We need stricter guidelines that prohibit any supervisor from behaviors that include, raising their voices/ yelling at employees, name calling or any other behaviors that may create a hostile work environment for all public employees. When I tried to get some resolution to my problem, I was told that "a supervisor can supervise their unit as they see fit". Public service employees are expected to maintain a high level of professionalism as we service the general public. Shouldn't supervisors also be expected to maintain a high level of professionalism as they guide and instruct the employees under them.

Thank you for this opportunity to testify in support of SR100.