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

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The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Monday, February 28, 2011
Time: 3:30 p.m.
Place: Conference Room 308, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. No. 341, H. D. 2 Relating to Employment Practices

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 341, H.D. 2 proposes to add a new protected class of workers under the Unlawful Suspension or Discharge Law, Chapter 378-Part III, by adding a new section making it unlawful for employers and labor organizations to bar, discharge from employment, withhold pay from, or demote an employee because an employee used accrued and available sick leave provided by the employer. Allows employers to require a doctor's note when employees are absent more than three days.

This law will take effect on January 7, 2059.

II. CURRENT LAW

There is currently no provision in the law that requires employers to provide sick leave outside Temporary Disability Laws.

Chapter 378, HRS, Part III, prohibits employers from unlawfully suspending, discharging or discriminating against an employee for four things: 1) solely because the employer was summoned as a garnishee in an employee's proceedings under Chapter XIII of the Bankruptcy Act; 2) solely because the employee suffered a work injury that was compensable under the Workers Compensation Law, Chapter 386, HRS, 3) because the employee testified or was subpoenaed to testify in a proceeding under Part III, or 4) because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5.

III. HOUSE BILL

While the DLIR supports the intent of this measure, there are some concerns.

1. It is unclear how the workload of the hearings branch can handle this additional responsibility with the limited resources currently in the Division. The added burden of an additional protected area without additional personnel may cause hearings on the issue to be delayed and untimely to achieve an appropriate remedy.
2. The Department will be enforcing private agreements between employer and employee where jurisdictions may overlap with the other venues such as the NLRB, or court system. This may cause confusion in enforcement.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Finance

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Testimony by
Hawaii Government Employees Association
February 28, 2011

H.B. 341, H.D. 2 – RELATING TO
EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 341, H.D. 2 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 solely because the employee uses accrued and available sick leave.

Thank you for the opportunity to testify in support of H.B. 341, H.D. 2.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director