

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

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January 31, 2011

To: The Honorable Karl Rhoads, Chair  
The Honorable Angus L.K. McKelvey, Chair  
and Members of the House Committee on Labor & Public Employment  
and Members of the House Committee on Economic Revitalization & Business

Date: Tuesday, February 2, 2011  
Time: 9:00 a.m.  
Place: Conference Room 309, State Capitol

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

**Re: H.B. No. 341 Relating to Employment Practices**

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.B. 341, 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 solely because an employee used accrued and available sick leave provided by the employer.

This law will take effect upon approval.

**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, the following are some concerns:

1. This bill would afford limited protections provided by this Chapter against unlawful suspension or discrimination due to the heavy burden of proving that the suspension, discharge or discrimination was "solely" due to the use of sick leave. Therefore, the department suggests that the word "solely" be deleted as follows:

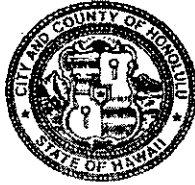
"(b) It shall be an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee [~~solely~~] because the employee uses accrued and available sick leave."

3. It is unclear how the workload of the hearings branch can handle this additional responsibility with the limited resources currently in the Division.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR



NOEL T. ONO  
DIRECTOR

February 1, 2011

The Honorable Karl Rhoads, Chair  
and Members of the Committee on Labor  
and Public Employment  
The Honorable Angus McKelvey, Chair  
and Members of the Committee on Economic  
Revitalization and Business  
The House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Rhoads and McKelvey and Members:

Subject: House Bill No. 341  
Relating to Employment Practices

The Department of Human Resources, City and County of Honolulu, **respectfully opposes** House Bill No. 341, 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.

Our primary concern is that this bill legislates on an issue that is a subject of collective bargaining. All of our collective bargaining agreements contain provisions for sick leave accrual and the legitimate use of sick leave. Additionally, this bill would interfere with the City's ability to manage its employees and available resources. The City would not oppose H.B. 341 if the public employer were to be exempt from this measure.

Based on the foregoing, we respectfully request that House Bill No. 341 be held. Thank you for the opportunity to testify.

Yours truly,

A handwritten signature in cursive script, appearing to read "Noel T. Ono".

Noel T. Ono  
Director



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**  
*Executive Director*  
Tel: 808.543.0011  
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The Twenty-Sixth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Labor & Public Employment  
and  
Committee on Economic Revitalization & Business

Testimony by  
Hawaii Government Employees Association

February 1, 2011

H.B. 341 – RELATING TO  
EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 341 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. .

Respectfully submitted,

Nora A. Nomura  
Deputy Executive Director

Testimony In Support of  
HB341  
RELATING TO EMPLOYMENT PRACTICES

By Al Lardizabal, Director of Government Relations  
Hawaii Laborers' Union

To the Committee on Labor and Public Employment, and  
Committee on Economic Revitalization & Business

Tuesday, February 1, 2011  
Room 309, 9:00 a.m.  
State Capitol

Chairs Karl Rhoads and Angus L.K. McKelvey; Vice Chairs Kyle T.  
Yamashita and Isaac W. Choy:

On behalf of Business Manager Peter Ganaban and the officers and members  
of the Hawaii Laborers' Union, we support HB341.

We believe that the employment practice to bar or discharge from  
employment, withhold pay from, or demote an employee solely because the  
employee uses accrued and available sick leave, should be considered an  
unlawful suspension, or discharge or discrimination under HRS 378-32.

Thank you for the opportunity to submit this testimony.



Randy Perreira  
President

# HAWAII STATE AFL-CIO

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The Twenty-Sixth Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Public Employment  
&  
Committee on Economic Revitalization and Business

Testimony by  
Hawaii State AFL-CIO  
February 1, 2011

## H.B. 341 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 341 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.

H.B. 341 ensures that employees will stay at home when diagnosed with a contagious illness. A perfect example of such situations was the outbreak of the H1N1 virus a few years ago, where employees affected by the virus were instructed to stay away from work for a lengthy period of time to avoid infecting co-workers. Employees should not fear discipline or the chance of losing their job solely because they got sick. H.B. 341 simply protects employees from being disciplined for taking legitimate sick leave.

Unfortunately, some employers do not exclude sick leave as part of its hours of absence. As a result, employees who use legitimate sick leave may be subject to various disciplinary actions. In one company, employees may be disciplined under company policy even though there is a collective bargaining agreement that provides for the use of legitimate sick leave. This practice is patently unfair.

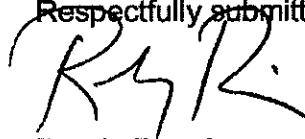
In the case of *Auer v. Village of Westbury*, the New York Supreme Court, Appellate Division ruled in favor of an employee who had been suspended for thirty days for using his sick leave. The New York Supreme Court, Appellate Division proclaimed "the fact that the employee used all his available sick days under the collective bargaining agreement did not alone establish that he was abusing his sick leave and, thus, did not warrant a finding of misconduct." As a result, the Court nullified the penalty and finding of guilt and ordered the employer to repay the employee for the entire period he was suspended.

H.B. 341  
February 1, 2011  
Page 2

Employees who use legitimate sick leave should be protected under the law from abuse and discipline. Employees should not be fearful of getting sick and worried that if they take off from work they could be subjected to various forms of discipline including suspension or even termination.

The Hawaii State AFL-CIO strongly urges the passage of H.B. 341 to ensure employers do not discipline employees who use legitimate sick leave, correcting an injustice that befalls too many workers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Perreira', written over the typed name below.

Randy Perreira  
President

The Twenty-Sixth Legislature  
Regular Session of 2011

HOUSE OF REPRESENTATIVES

Committee on Labor and Public Employment

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

Committee on Economic Revitalization and Business

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

State Capitol, Conference Room 309  
Tuesday, February 1, 2011; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 341  
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 supports H.B. 341, 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.

H.B. 341 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. Under these "no-fault" policies, any absence or tardiness is considered an "incident" that can progressively subject the employee to discipline and discharge, even if some or all of the absences are due to legitimate, verifiable illness.

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 will become ill or injured from time to time and should be entitled to benefits to allow them to stay away from work and recuperate during those periods of illness or incapacity. The law was not intended to allow employers to penalize employees for using TDI or sick leave benefits. However, over the years, with "no-fault attendance policies" in place, employees who exceed a specified threshold of total absences can ultimately be disciplined or discharged due to absence for a legitimate, verifiable illness.

Attendance policies are, in most cases, implemented unilaterally as "House Rules," are not subject to bargaining, and are considered "no-fault," although the implication is that it's always the worker's fault. This means any absence, regardless of the nature, will count toward the incident threshold. In the case of one attendance policy, 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 take 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, co-workers, or the handling of food. 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 seem to be in conflict with each other.

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.

We suggest an amendment to the bill to delete the word "solely" from the proposed language.

With this amendment, the ILWU urges passage of H.B. 341. Thank you for considering our testimony.



**I**nternational  
**B**rotherhood of  
**E**lectrical  
**W**orkers

**Edwin D. Hill**  
International President

**Lindell K. Lee**  
International Secretary - Treasurer

**Michael Mowrey**  
International Vice President

**Ninth District**

The House of Representatives  
Twenty-Sixth Legislature  
Regular Session of 2011

Committee on Labor & Public Employment

Rep. Karl Rhoads, Chair  
Rep. Kyle T. Yamashita, Vice Chair

Committee on Economic Revitalization & Business

Rep. Angus L.K. McKelvey  
Rep. Isaac W. Choy, Vice Chair

Hearing: Tuesday, February 01, 2011  
Time: 9:00 A.M.-12:00 p.m.  
Place: Conference Room 309

**TESTIMONY OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS (IBEW)**

**RE: HB 341 RELATING TO EMPLOYMENT PRACTICES.**

HB 341 would make it unlawful for any employer to discipline an employee because their employee legitimately uses accrued and available sick leave benefits.

**The IBEW strongly supports this measure.**

Today, all too often, many of Hawaii's employers are harassing, intimidating, suspending and even terminating employees who are legitimately ill for utilizing their accrued and available sick leave benefits under the guise of a "no fault attendance policy". It is ridiculous, immoral and unethical for an employer to offer sick leave benefits to

employees and then turn around and discipline employees who are sick and attempt to utilize their sick leave.

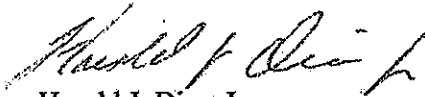
Not only is this type of bait-and-switch behavior by employers ridiculous, immoral and unethical, it also poses a great danger and safety concern to the public for the spread of infectious viruses and disease (H1N1) when workers who are legitimately ill are forced to come to work because of fear of being disciplined under these type of unjust, inhumane, punitive policies.

Please understand that nothing in this bill encourages sick leave abuse or minimizes the employer's rights to guard against abuse. The employer still would have full authority and ability to discipline, to include termination, any employee who is found abusing their sick leave benefit.

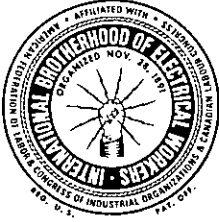
This bill is about one thing.....Protecting Hawaii's legitimately ill employees from unscrupulous employers who seek to penalize them for being sick and utilizing their available benefit.

We ask for quick passage of HB341.

Thank you for the opportunity to provide testimony.



Harold J. Dias, Jr  
International Representative  
IBEW



Local Union 1260

## **International Brotherhood of Electrical Workers**

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**LANCE M. MIYAKE**  
Business Manager-Financial Secretary

**LOREN TAGUCHI**  
President

January 27, 2011

Representative Karl Rhoads  
Chair, House Committee on Labor and Public Employment  
The House of Representatives  
State of Hawaii

Dear Chair Rhoads:

RE: HB No. 341

IBEW Local 1260 supports and request that the Committee on Labor and Public Employment submit H.B. No. 341 to the House of Representatives for the enactment of this bill. The Local Union, with this testimony, will expose how Hawaiian Electric Company, Inc. uses their Attendance Improvement Program (AIP) to intimidate and discipline their employees from using their sickness benefits.

The AIP is a Company policy that was not negotiated and it is only implemented on the union members of the Company. Since it only affects the union members, it is not only discriminatory but is unfair because it uses discipline to discourage use of a negotiated benefit.

Quoting the AIP, "For purpose of the AIP, 'absences' that are monitored include the following: sickness; unscheduled absences; unexcused absences; and tardiness." According to the AIP, the definition for unexcused absence is "any unscheduled absence or tardiness from the defined work schedule where appropriate notice is not provided and/or the supervisor does not approve the absence."

The Company has encouraged employees to use the FMLA for illnesses and/or injuries so the occurrence will not count on the AIP. The purpose and reason for FMLA was if employees did not have vacation or sick benefits, they could use FMLA to avoid being disciplined for the time away from work.

Under "Rights of Management," it states that the Company has the right to determine when an employee can take vacation or excused absence. The definition of excused absence is not clearly defined, but assuming that sick leave with physician's note is an excused absence, how does the Company schedule the sick leave?

# **International Brotherhood of Electrical Workers**

*Local 1260*



Representative Karl Rhoads

-2-

January 27, 2011

The Corporate Health Administrator or Director, Corporate Health & Wellness (same person), whose qualifications have been questioned by the Local Union, has ruled on most of the AIP "Steps" that the employee did not have documentation to support the absence. The Administrator has also, on numerous occasions, stated that she has reviewed the documentation from the employee and determined that the absence(s) does not qualify as serious, chronic, or FMLA-related. The Administrator, who has not established her qualifications to the Local Union, is actually disputing the physician's note for the absence(s). How does she determine if an absence is FMLA-related when the employee's physician needs to fill out Section 3 of the form?

The employee's sick leave record for their career is not considered. The employee may have an excellent attendance record, but if that employee is experiencing a "bad" time in his career regarding being ill, injured, or both, that employee will receive discipline. The attachment will show that the Company has stated to employees that they will be held to the triggers of the AIP.

The AIP policy discourages use of sick leave, and therefore there may be times when an employee will come to work sick. The Local Union has been trying to point out to the Company that prevention of pandemic outbreaks is to stay home when you feel any type of symptoms associated with influenzas or colds because even if you take a test, the results takes a while to come back. If a pandemic outbreak occurs because of policies like the AIP, such as a child who is most vulnerable may suffer or possibly die, that would be unforgivable.

The Local Union is not against any policy for abuse of sick leave or sick benefits, but since it is a negotiated benefit in the CBA, the Local Union would like to have collective bargaining involved in establishing such policies. It is not this Local Union's intention to hinder the Company's operations, but the Company needs to establish that abuse has occurred. Please stop companies like Hawaiian Electric Company, Inc. from using policies like the AIP to circumvent sick benefits negotiated in collective bargaining agreements (CBA). Imagine what might be happening to employees who work for companies that don't have a CBA.

Sincerely,

Lance M. Miyake  
Business Manager – Financial Secretary

Attachment



HAWAIIAN ELECTRIC COMPANY, INC.

# **A**TTENDANCE **I**MPROVEMENT **P**ROGRAM

Effective: April 2002

**PURPOSE & OBJECTIVE**

Employees are expected to maintain a reasonably healthy lifestyle as every employee's well-being contributes to a safe, efficient and productive workplace. In addition, a consistently dependable employee is critical to the health and well-being of other members of the team.

The Attendance Improvement Program (AIP) establishes definitive expectations of attendance and guidelines for fair and consistent management of attendance issues related to excessive as well as pattern absences. The purpose of the AIP is to ensure the following:

- employees report to work on time and on a regular basis;
- each job is completed as safely, effectively and efficiently as practical by those best qualified;
- disruptions to operations (resulting from unscheduled absences) are minimized;
- morale of all employees is maintained at a consistently high level; and
- the Company can compete in a competitive environment.

It is important to note that the AIP is not meant to be punitive, but rather, corrective. The objective is to establish a fair and equitable solution, sensitive to employees' ailments / needs, while modifying the behavior that is below expectations.

**RIGHTS OF MANAGEMENT**

The Company has the sole and exclusive right to determine when an employee can take vacation or excused absence. Supervisors are expected to appropriately approve or deny absences based on a determination of whether the absence is disruptive and / or unavoidable. An employee may be denied vacation if the absence is determined to be disruptive or the reason inadequate.

The Company recognizes that employees may have a "bad year" and, thus, administration of the AIP relies on supervisory judgment and management review as well as considering past history and patterns of absences.

**MONITORING & ADMINISTRATION**

Departments will manage the attendance of all its employees by:

- establishing attendance expectations for "frequency," "total hours" and "patterns";
- monitoring attendance relative to expectations; and
- taking actions as outlined in the AIP.

For purposes of the AIP, "absences" that are monitored include the following:

- sickness;
- unscheduled absences;
- unexcused absences; and
- tardiness.

Once problem attendance has been identified, the employee is placed in the AIP to help the employee better manage his / her attendance challenges by providing clear procedures and / or consequences for current and subsequent occurrences of absence.

## CORRECTIVE ACTION PROCESS

The following process shall be used to promote improved attendance. Note that the timeframe for the next trigger begins on the date of the last occurrence.

### STEP I: COUNSELING

#### Trigger for Step I:

- 4<sup>th</sup> occurrence within a twelve-month period, OR
- 48 hours within a twelve-month period; OR
- 2 or more pattern occurrences, such as where the absence(s) coincides with a day of leave, with or without pay, within a twelve-month period.

### STEP II: DOCUMENTED VERBAL WARNING

#### Trigger for Step II:

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

### STEP III: WRITTEN WARNING

#### Trigger for Step III:

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

### STEP IV: DECISION-MAKING LEAVE AND PERSONAL ACTION PLAN

#### Trigger for Step IV:

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

### STEP V: TERMINATION

#### Trigger for Step V:

- Next occurrence within the next six-month period.

## GETTING OFF THE PROGRAM

An employee who does not meet the criteria for the next trigger is removed from the AIP.

## EMERGENCY LEAVES

Emergency leaves are available only for compelling, urgent or unusual circumstances. The Supervisor or Superintendent **MUST** approve this type of unscheduled absence and the employee must provide a legitimate reason for the urgency or lack of notice. Generally, "personal reason" is not a sufficient explanation for emergency leaves. Typical examples include, but are not limited to the following types of requests:

- Addressing the safety of the employee, the health or well-being of the employee's family, or that qualifies under the FMLA;
- Transacting business which cannot be otherwise transacted before / after scheduled workdays or on days off;
- Where the situation was beyond the employee's control and other arrangements such as the swapping of shifts / work schedules could not be arranged.



**DOCTOR'S CERTIFICATE OF ILLNESS / INJURY**

A doctor's certification of illness or injury preventing an employee from performing his or her job responsibilities is required in the following situations:

1. absences of 3 or more consecutive days;
2. any absence where the employee has 4 or more separate absences within a 12 month period;
3. any absence where the employee is not at home when called on by a Company representative during the period that the employee is absent from work;
4. situations which may require a supervisor to ensure the employee's state of health does not represent a danger to themselves or fellow workers, or that the supervisor must determine whether an act of deception or dishonesty might have taken place. In any case, such a demand shall not be made arbitrarily.

Failure to provide valid certification as requested shall result in non-payment of sickness benefit. All medical records obtained in accordance with this policy shall be deemed confidential and shall be maintained by the Corporate Health Administrator.

Employees with chronic or serious illnesses / injuries, as certified by the treating physician, will be reviewed on a case-by-case basis by the Corporate Health Administrator and handled accordingly.

**FALSIFICATION & / OR ABUSE**

Any employee found to have falsified illness reports or otherwise abused the privileges of the sickness benefit plan will be dealt with in accordance with Company policies and the Collective Bargaining Agreement.

**TARDINESS**

Disruptive or habitual tardiness must be addressed and officially acted upon. Tardiness will not be tolerated and will be dealt with on a case-by-case basis using frequency, duration, and its effect on operation as a means of determining corrective action necessary.

**DEFINITION OF TERMS****Chronic or Serious Illnesses / Injuries**

A chronic or serious illness/injury is a life threatening or very serious condition which requires hospital care, ongoing outpatient follow-up, and is a situation where return to normal work may be detrimental to the patient's health or to other employee's health, or the patient is felt by his/her physician to be completely incapacitated to perform any of the duties of his/her job.

**Decision-making Leave**

The employee placed on a one (1) day paid administrative leave (not deducted from employee's leave account) and decide on returning with:

1. a decision to voluntarily resign, to be effective immediately; OR
2. a written Personal Action Plan stating:
  - the actions the employee will take to improve his/her absenteeism, and
  - that he/she understands the repercussions of the next "trigger," and
  - that he/she understands the timeframe for improvement.

*Note:* It is critical that the employee understand that the decision-making day is NOT a "day off." The employee is given a direct order to make a final decision while on the clock. Failure to do so ("I couldn't make up my mind" or "I decided not to decide") is insubordination – failure to follow a direct and legal order – and will result in disciplinary action, up to and including termination.

**Disruption**

An absence is defined as disruptive if it causes, but is not limited to, the following:

1. overtime
2. delays in normal schedule
3. delays completion of work within the expected timeframe.

**Excused Absences**

Excused absences are those in which appropriate notice (at least one day) is provided AND the supervisor approves the absence (e.g., vacation, excused absence with / without pay, etc).

**Pattern Absences**

Patterns of abuse include the following examples, but are not all-inclusive:

- unscheduled absences correlating with holidays, regular days off, and paydays
- absences which reflect a trend (i.e., Mondays and Fridays)
- frequent tardiness in reporting to work or reporting back to work during the course of the workday.

**Personal Action Plan (PAP)**

The Personal Action Plan is a mutual understanding between the supervisor / Company and the employee where goals, specific steps and measurements are identified to improve his / her attendance.

**Trigger**

A trigger is the point that initiates / prompts action. The timeframe for the next trigger begins on the date of the last occurrence.

**Unexcused Absences**

Unexcused absences are defined as any unscheduled absence or tardiness from the defined work schedule where appropriate notice is not provided and / or the supervisor does not approve the absence.

**From:** AFL-CIO Legislative Action Network <copehawaii@gmail.com>

**Subject:** Hearing Notice: HB 341 - Sick Leave

**Date:** January 27, 2011 9:06:21 AM HST

**To:** masonplaster@hotmail.com, Adam Vokac <avokac@mebaunion.org>, Al Hamai <hamaia001@hawaii.rr.com>, Al Lardizabal <lardizabal@local368.org>, Al Omo <omo\_president@iatse665.org>, Allan Los Banos <masonhawaii@yahoo.com>, Alton Watanabe <awatanab@hgea.org>, Ann Ebesuno <aebesuno@hgea.org>, Arnold Wong <iwlocal625@yahoo.com>, Brande Kahalewai <statefed@hawaflcio.org>, Brenda Ching <bching@sag.org>, Brian Lee <ibewblee@hawaii.rr.com>, Brien Matson <preslocal677@aol.com>, Cade Watanabe <cwatanabe@unitehere5.org>, Damien Kim <ibewdkim@hawaii.rr.com>, Daryl Barnett <dbarnett@ailife.com>, Dayton Nakanelua <martti@upwhawaii.org>, Donald Gentzler <dgentzler@oe3.org>, Eadie Omonaka <eadie.omonaka@ilwulocal142.org>, Gary Aycock <local627@boilermakershawaii.com>, Gerald Ako <gako@hgea.org>, Gino Soquena <esoquena@oe3.org>, Glenn Ida <glennida@gmail.com>, Guy Fujimura <gfujimura@ilwulocal142.org>, Harold Dias <harold.dias@hawaiiantel.net>, Harold Dias <harold\_dias@ibew.org>, Hawaii Building Trades <hibuildingtrades@yahoo.com>, James Wataru <jameswataru@hawaii.rr.com>, Jim Williams <jwilliams@hsta.org>, Joan Takano <jtakano@hgea.org>, Joanne Kealoha <jkealoha@ilwulocal142.org>, Joy Kobashigawa Lewis <joyklewis@gmail.com>, Kate Langthorn <klangthorn@ailife.com>, Kris Hanselman <kris@uhpa.org>, Lance Miyake <lance@ibew1260.org>, Laurie Santiago <lauries@upwhawaii.org>, Lisa Marie Akau <lmarieacow@yahoo.com>, Lorna Woo <lwoo@dc50.org>, Michael Dirksen <suphono@suphono.com>, Michael Meserve <local1218@yahoo.com>, Michele Kurihara <mkurihara@hgea.org>, Min Meng <mmeng@upwhawaii.org>, Nathaniel Kinney <info@dc50.org>, Nathaniel Kinney <nkinney@dc50.org>, Neil Dietz <ndietz@seafarers.org>, Nilda Chock <nchock@apwu.org>, Nora Nomura <nnomura@hgea.org>, Patt Gibbs <gflawyers@aol.com>, Peter Fontanilla <fontanilp001@hawaii.rr.com>, Randy Perreira <rperreir@hgea.org>, Randy Swindell <rswindell@bridgedeck.org>, Reginald Castanares <rcastanares@hilocal675.com>, Robert Lillis <llillis001@hawaii.rr.com>, Roy Takumi <roytakumi@hotmail.com>, Sam Mitchell <MitchellS019@hawaii.rr.com>, Sanford Chun <schun@hgea.org>, Scotty Long <ScotLong@ibew1357.org>, Steve Dinion <prideatworkhawaii@hawaiiantel.net>, Tad Tsuruma <tttforme@yahoo.com>, Terry Lau <terrywllau@gmail.com>, Tracy Takano <ttakano@ilwulocal142.org>, Val Ceria <vceria@hilocal675.com>, Wally Tokuda <sandyramiscal@yahoo.com>, Wayne Cahill <wcahill@cwahawaii.org>

Aloha:

HB 341, relating to employment practices will be heard by the House Committee on Labor and Public Employment and the House Committee on Economic Revitalization and Business on **Tuesday, February 1, 2011 at 9:00 a.m.** The hearing will be held in **Conference Room 309.**

**HB 341:** [http://www.capitol.hawaii.gov/session2011/bills/HB341\\_.htm](http://www.capitol.hawaii.gov/session2011/bills/HB341_.htm)

**Description:** 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.

**Agenda:** [http://www.capitol.hawaii.gov/session2011/hearingnotices/HEARING\\_LAB-ERB\\_02-01-11\\_.HTM](http://www.capitol.hawaii.gov/session2011/hearingnotices/HEARING_LAB-ERB_02-01-11_.HTM)

**Testimony must be submitted 24 hours prior to the hearing.**

**PAPER:** 24 copies (including an original) to Room 422 in the State Capitol;

**FAX:** For comments less than 5 pages in length, transmit to 586-6331 (Oahu) or 1-800-535-3859 (for Neighbor Islanders without a computer to submit testimony through e-mail or the Web); or

**E-MAIL:** For comments less than 5 pages in length, transmit to [LABTestimony@Capitol.hawaii.gov](mailto:LABTestimony@Capitol.hawaii.gov); or

**WEB:** For comments less than 4MB in size, transmit from the Web page at <http://www.capitol.hawaii.gov/emailtestimony>.

**From:** AFL-CIO Legislative Action Network <copehawaii@gmail.com>

**Subject:** Hearing Notice: HB 169 - UI Extension

**Date:** January 27, 2011 9:10:55 AM HST

**To:** masonplaster@hotmail.com, Adam Vokac <avokac@mebaunion.org>, Al Hamai <hamaia001@hawaii.rr.com>, Al Lardizabal <lardizabal@local368.org>, Al Omo <omo\_president@iatse665.org>, Allan Los Banos <masonhawaii@yahoo.com>, Alton Watanabe <awatanab@hgea.org>, Ann Ebesuno <aebesuno@hgea.org>, Arnold Wong <iwlocal625@yahoo.com>, Brande Kahalewai <statedef@hawaflcio.org>, Brenda Ching <bching@sag.org>, Brian Lee <ibewblee@hawaii.rr.com>, Brien Matson <preslocal677@aol.com>, Cade Watanabe <cwatanabe@unitehere5.org>, Damien Kim <ibewdkim@hawaii.rr.com>, Daryl Barnett <dbarnett@allife.com>, Dayton Nakanelua <martti@upwhawaii.org>, Donald Gentzler <dgentzler@oe3.org>, Eadie Omonaka <eadie.omonaka@ilwulocal142.org>, Gary Aycock <local627@boilermakershawaii.com>, Gerald Ako <gako@hgea.org>, Gino Soquena <esoquena@oe3.org>, Glenn Ida <glennida@gmail.com>, Guy Fujimura <gfujimura@ilwulocal142.org>, Harold Dias <harold.dias@hawaiiantel.net>, Harold Dias <harold\_dias@ibew.org>, Hawaii Building Trades <hibuildingtrades@yahoo.com>, James Wataru <jameswataru@hawaii.rr.com>, Jim Williams <jwilliams@hsta.org>, Joan Takano <jtakano@hgea.org>, Joanne Kealoha <jkealoha@ilwulocal142.org>, Joy Kobashigawa Lewis <joyklewis@gmail.com>, Kate Langthorn <klangthorn@allife.com>, Kris Hanselman <kris@uhpa.org>, Lance Miyake <lance@ibew1260.org>, Laurie Santiago <lauries@upwhawaii.org>, Lisa Marie Akau <lmariacow@yahoo.com>, Lorna Woo <lwoo@dc50.org>, Michael Dirksen <suphono@suphono.com>, Michael Meserve <local1218@yahoo.com>, Michele Kurihara <mkurihara@hgea.org>, Min Meng <mmeng@upwhawaii.org>, Nathaniel Kinney <info@dc50.org>, Nathaniel Kinney <nkinney@dc50.org>, Neil Dietz <ndietz@seafarers.org>, Nilda Chock <nchock@apwu.org>, Nora Nomura <nnomura@hgea.org>, Patt Gibbs <gflawyers@aol.com>, Peter Fontanilla <fontanilp001@hawaii.rr.com>, Randy Perreira <rperreir@hgea.org>, Randy Swindell <rswindell@bridgedeck.org>, Reginald Castanares <rcastanares@hilocal675.com>, Robert Lillis <lillisr001@hawaii.rr.com>, Roy Takumi <roytakumi@hotmail.com>, Sam Mitchell <MitchellS019@hawaii.rr.com>, Sanford Chun <schun@hgea.org>, Scotty Long <ScotLong@ibew1357.org>, Steve Dinion <prideatworkhawaii@hawaiiantel.net>, Tad Tsuruma <tttforme@yahoo.com>, Terry Lau <terrywtlau@gmail.com>, Tracy Takano <ttakano@ilwulocal142.org>, Val Ceria <vceria@hilocal675.com>, Wally Tokuda <sandyramiscal@yahoo.com>, Wayne Cahill <wcahill@cwahawaii.org>

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Aloha:

HB 169, relating to employment security will be heard by the House Committee on Labor and Public Employment and the House Committee on Economic Revitalization and Business on **Tuesday, February 1, 2011 at 9:00 a.m.** The hearing will be held in **Conference Room 309.**

**HB 169:** [http://www.capitol.hawaii.gov/session2011/bills/HB169\\_.htm](http://www.capitol.hawaii.gov/session2011/bills/HB169_.htm)

**Description:** Enacts the optional total unemployment rate trigger. If Hawaii's unemployment jumps to 6.5%, would receive an extended benefit period of 13 weeks or 20 weeks if Hawaii's unemployment jumps to 8%.

**Agenda:** <http://www.capitol.hawaii.gov/session2011/hearingnotices/HEARING LAB-ERB 02-01-11 .HTM>

**Testimony must be submitted 24 hours prior to the hearing.**

**PAPER:** 24 copies (including an original) to Room 422 in the State Capitol;

**FAX:** For comments less than 5 pages in length, transmit to 586-6331 (Oahu) or 1-800-535-3859 (for Neighbor Islanders without a computer to submit testimony through e-mail or the Web); or

**E-MAIL:** For comments less than 5 pages in length, transmit to [LABTestimony@Capitol.hawaii.gov](mailto:LABTestimony@Capitol.hawaii.gov); or

**WEB:** For comments less than 4MB in size, transmit from the Web page at <http://www.capitol.hawaii.gov/emailtestimony>.



**Before the House Committee on Labor & Public Employment  
and  
House Committee on Economic Revitalization & Business**

DATE: Tuesday, February 1, 2011

TIME: 9:00 A.M.

PLACE: Conference Room 309

**Re: HB 341 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 HB 341, relating to employment practices.

HB 341 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.

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.

**Testimony before the House Committees on**

**Labor & Public Employment &  
Economic Revitalization & Business**

**on**

**H.B. 341, Relating to Employment Practices**

**Tuesday, February 1, 2011**

**9:00 a.m.**

**Conference Room 309, State Capitol**

By Sherri-Ann Loo, Manager  
Hawaiian Electric Company

Chair Rhoads, Vice Chair Yamashita, Chair McKelvey, Vice Chair Choy, and Members of the Committees:

I am Sherri-Ann Loo, Manager, Human Resources Programs and Strategies 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 provide the power to keep the lights on for 95% of Hawaii's residents.

We respectfully oppose House Bill 341.

We cannot support H.B. 341 because the bill would entitle employees to use paid sick leave for absence from work, without a balance to control repeated and chronic absenteeism. Employees are expected to practice reasonable health and safety habits to avoid excessive use of sickness benefits, and maintain a high level of productivity. Pay for absences due to illness is a requirement under the Temporary Disability Insurance law. Many employers like us provide sick leave benefits over and above the statutory requirement as an additional benefit. To control the 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, up to and including discharge of employment for the misuse of sick leave should be an action vested in employers. The proposed bill could easily result in employers cutting back on sick leave benefits simply because of the need to maintain a productive workforce.

1. Regular attendance at work by all employees is important if Hawaiian Electric is to meet its obligations to the public and customers. Employers should be allowed to consider an applicant's attendance record in determining whether the candidate is able to meet the work and schedule requirements of the position.
2. All regular full-time employees of HECO have a benefit schedule of sick leave ranging from a minimum of 40 hours full pay after 6 months of service to a maximum of 480 hours full pay after 10 years of service. Employees with serious illnesses are allowed to draw upon a bank of unused sick leave. The intent of our benefit is to provide income security in the event of serious illness or injury. We hold employees

accountable to report to work regularly. There will be a negative impact to productivity should all employees be allowed to use their full balance of sick leave with no controls in place to prevent the misuse of the system or avenues to address excessive absenteeism by employees with "a nonchronic condition of a short-term nature." HECO (and possibly other companies) would have to seriously reconsider the amount of sick leave benefit it provides.

3. The Family and Medical Leave Act and Hawaii Family Leave Law allow for the use of sick leave and provide protection for the employee for specific absences and conditions.

We therefore ask the Committee to hold HB 341.

Thank you for the opportunity to share our concerns with you.

Presentation to the House Committee on Labor & Public Employment

Tuesday, February 01, 2011, at 9:00 am- 12:00 pm

Testimony on House Bill 341 Relating to Employment Practices

TO: The Honorable Karl Rhoads, Chair  
The Honorable Kyle T. Yamashita, Vice Chair  
Members of the House Committee on Labor & Public Employment

My name is Neal Okabayashi of First Hawaiian Bank. We oppose HB 341 because it hurts working people because when sick leave is treated as time off that can be misused, a company will consider reducing sick leave benefits. That hurts all workers.

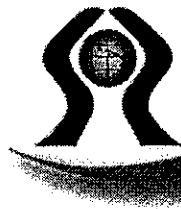
Employers provide sick leave so workers can recover from illness or injury. Many employers are quite generous with sick leave benefits. However, we do recognize there are a few workers that do abuse sick leave by using it like vacation time. The well-known Friday-Monday syndrome of workers who tend to be sick on such days to elongate the weekend is well-known. Under this bill, available sick leave time becomes more like paid time off because a worker can use sick leave even when not sick.

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 can be used for both vacation and sick leave time but is much less time off. For those with a serious health problem, that is a serious negative.

This bill does not protect the ill worker. An ill worker, especially one who is seriously ill, will be able to document the illness and use the available sick leave. This bill only protects the worker who is not sick but who wishes to take a day off.

Thus, while the concept seems fair on paper, in reality it will be bad for most workers, and unfortunately fails 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 ask that this bill be held indefinitely.





Hawaii Credit Union League

Your Partner For Success

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Testimony to the House Committee on Labor & Public Employment and  
House Committee on Economic Revitalization & Business  
Tuesday, February 1, 2011 at 9:00 a.m.

Testimony opposing HB 341: Relating to Employment Practices

To: The Honorable Karl Rhoads, Chair  
The Honorable Kyle Yamashita, Vice-Chair  
Members of the Committee on Labor & Public Employment

The Honorable Angus McKelvey, Chair  
The Honorable Isaac Choy, Vice-Chair  
Members of the Committee on Economic Revitalization & Business

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, representing 85 credit unions, and approximately 810,000 credit union members.

We are in opposition to HB 341, Relating to Employment Practices. Our concern is that this legislation may work against the best interests of employees who do receive paid sick leave through their employers. In today's economic climate, it has become common practice to cut staffing and expenses "to the bone", thus, the survival of any business depends largely on its employees being on the job. If offering paid sick leave to their employees becomes overly burdensome to the employer, the employer might opt to do away with it altogether.

Thank you for the opportunity to testify.



To: House Committee on Economic Revitalization & Business

Hearing: February 1, 2011, 9:00 a.m.  
Conference Room 309

Re: HB 341, Relating to Employment Practices

From: Society for Human Resource Management - Hawaii Chapter

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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 HB 341, relating to employment practices.

We are opposed to HB 341 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.

We are concerned HB 341 has the potential to conflict with other leave requirements and policies on the local, state and federal levels including, but not limited to the Hawaii Family Leave Law, the Family Medical Leave Act, the National Defense Authorization Act Amendments, the Americans with Disabilities Act, workers’ compensation and temporary disability insurance.

Moreover, we are concerned HB 341 will have the unintended consequence of employers seeking to implement a Paid Time Off policy rather than maintaining separate vacation and sick leave policies. Employees may lose the flexibility they currently have as employers will be more likely to impose and enforce strict requirements for use of sick leave such as requiring a doctor’s visit/note and/or that sick leave shall be used solely for the employee’s illness and not that of a family member such as a child.

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 know the benefit preferences of their employees which may include other types of leave policies. 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.



DEMOCRATIC PARTY OF HAWAII

Labor Caucus

January 30, 2011

Representative Karl Rhodes  
Hawaii State Capital  
Labor and Public Employment  
415 South Beretania Street, Room 309  
Honolulu, Hawaii 96813

Subject: H.B. No.341 Hearing February 1, 2011 Testimony in Support

To: Representative Karl Rhodes and labor and Public Employment Committee

Aloha, my name is Steve Canales. I strongly support H.B. 341; this bill will make it unlawful for an employer and labor organizations to discipline an employee who uses accrued and available sick leave.

This bill will give all employees an assurance that no disciplinary actions will be taken without spreading the virus or cold to fellow co-workers. It is the best way to keep all employees safe in the workplace.

I strongly support H.B. 341. I would like to thank the Labor and Public Employment committee for this opportunity to testify.

Sincerely,

Steve Canales  
Labor Caucus Chair  
Democratic Party of Hawaii  
1050 Ala Moana Blvd. Ste. #2660  
Honolulu, Hawaii 96814

yamashita2 ----

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 28, 2011 4:37 AM  
**To:** LABtestimony  
**Cc:** thirr33@gmail.com  
**Subject:** Testimony for HB341 on 2/1/2011 9:00:00 AM  
**Attachments:** 170px-Shoninki24\_-\_disguises.gif; Buddhist Register.jpg

Testimony for LAB/ERB 2/1/2011 9:00:00 AM HB341

Conference room: 309  
Testifier position: support  
Testifier will be present: Yes  
Submitted by: Arvid Tadao Youngquist  
Organization: The Mestizo Association (est. 1982)  
Address: 1725-F Perry Street Honolulu, Hawaii 96819  
Phone: (808) 587-2133  
E-mail: [thirr33@gmail.com](mailto:thirr33@gmail.com)  
Submitted on: 1/28/2011

**Comments:**

Chair, Labor Committee, House of Representatives, State of Hawaii Honorable Members of the Committee

I support BH 341 Relating to Employment Practices.

Good morning, my name is Arvid Youngquist. I speak on behalf of our association, The Mestizo Association, which promotes tolerance, acceptance, and understanding.

We agree with the provisions relative to prevention from dismissal solely for the use of legitimate sick leaves.

We also support the provisions that includes Labor Organizations from continuing to dismiss any of its staff for the same reasons, as well as any other reason innumarated in this very brief but very comprehensive measure.

We thank the two co-sponsors for their diligence and vigilence in ensuring that the working people of Hawaii are given the support they need to continue making a living wage.

Mahalo for this opportunity to provide written testimony.

Me Ke Aloha Pumehana,

Arvid Tadao Youngquist  
Kalihi Valley resident & voter

**House Bill 341**  
January 28 2011

**Mahalo for the opportunity to submit testimony in favor of House Bill 341.**

This Bill will protect many employees from being terminated for not only been sick but for utilizing FMLY. Currently some employers use a deceptive practice within her house rules to terminate people that do not file their FMLA paperwork, employers know and do not inform there workers to simply pick up there papers and take to there Doctors to fill out Some employers will screen there workers make them sit down in a office one on one and talk them out of taking the FMLY papers and answer questions before even giving them the FMLA papers. This sickens me corporate greed and intimidation, in some cases the employer violates the law asking many health related questions to determine what is going on with the individual.

Many of our workers in the workforce here in Hawaii are not aware of the act 44, which allows employees that have a sick benefit to take care of a family member and utilize 10 days of there sick leave!!

In many cases employers know that the employee will qualify but they are silent and also some of those employees are not aware of FMLA law that allows them to take time off to care for themselves or a qualified family member and not be disciplined.

Many individuals come to work sick or hurt this adds on risk exposing the healthy workforce to illnesses or injury. I ask you to send a strong message. Do the right thing many of our workers here in the State of Hawaii are being discriminated upon just because using sick leave.

Most employers will terminate a employee on the seventh occurrence meaning call in sick seven times in one year and you will be terminated some are even less.

Especially if the employer finds out that the employee has a catastrophic illness they want the employee off there books to lower there insurance rating they want them off the books as quick as possible.

Placing an even deeper strain on our health care system in some cases it happens over night. I work in the Non Profit Sector I see it way to often one minute the employee is the employee of the month, the next the employee is being terminated.

It's about time that the legislature step up and protect these individuals that are in our workforce. Prevent employers from discriminating upon them and terminating them for a benefit that they have.

I greatly appreciate your time consideration and empathy toward working families of the state. Be a union or nonunion this is happening all over. There are I'm sure going to be a great number of lobbyists are going to be opposed to this. Please do the right thing, I'm sure some of you know these individuals that have been terminated for just utilizing there sick leave. So please send a strong message to employers to do the right thing don't discriminate.

Any Questions please don't hesitate to contact me I live on Maui but can participate and answer questions by phone (808) 870-1506 or e-mail [westh003@hawaii.rr.com](mailto:westh003@hawaii.rr.com)

Sincerely

Stephen West

LATE



**Testimony to the House Committees on Labor & Public Employment and  
Economic Revitalization and Business  
Tuesday, February 1, 2011; 9:00 a.m.  
Conference Room 309**

**RE: HOUSE BILL NO. 341 RELATING TO EMPLOYMENT PRACTICES**

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to House Bill No. 341, relating to Employment Practices.

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 makes it unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued available sick leave.

The Chamber of Commerce of Hawaii has held a longstanding position that sick leave is a benefit for employees. 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 companies, to reduce or eliminate voluntary sick leave due to the potential abuse of this benefit that could result if the measure is passed. This will have the unintended consequence that will impact all employees. Furthermore, the implications of this measure could lead to a rise in the cost of doing business, an unstable work environment, and potential litigation.

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.