



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

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January 27, 2011

To: The Honorable Karl Rhoads, Chair  
and Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 1, 2011  
Time: 9:00 a.m.  
Place: House Conference, Room 309, State Capitol

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

**Re: H.B. No. 465 Relating to Dislocated Workers**

**I. OVERVIEW OF PROPOSED LEGISLATION**

House Bill 465 proposes to amend the definition of a covered establishment by reducing the number of employees in the establishment from 50 or more to “any number of persons”. It also proposes to add an item (e) in Section 394-B-9 giving the Department of Labor and Industrial Relations enforcement powers to penalize employers who fail to provide the required notification to affected workers of a closing, divestiture, partial closing or relocation.

**II. CURRENT LAW**

Chapter 394B, HRS, provides employment and training assistance to workers who were faced with termination due to a sudden closure or partial closing as a result of a sale, transfer, merger, bankruptcy or other business transaction by:

- A. Requiring employers with fifty (50) or more employees in the State of Hawaii to provide advance notification to the Department of Labor and Industrial Relations and to all affected employees;

- B. Requiring employers to provide Dislocated Worker Allowance (the difference between the employee's average weekly wage and the weekly unemployment compensation benefit) to affected employees who apply for and found eligible for unemployment compensation; and
- C. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation.
- D. An employer who fails to provide notice shall be subject to a civil penalty not to exceed \$500 for each day of the violation and the amount deposited in the Employment and Training Fund under section 383-128 unless the employer satisfies its liability to each affected employee within three weeks after the closing.

### **III. HOUSE BILL**

The Department of Labor and Industrial Relations opposes this bill for the following reasons:

- A. The Department provides Rapid Response services to employers affected under the Law as well as businesses who voluntarily seek the assistance of the Department. The Department provides information, guidance and counseling on the process of filing for unemployment compensation, meeting the job search and availability of work requirements, seeking community resources, and assessing workers' abilities, skills and experiences to complement current labor market needs. A proactive approach to assist all affected parties would be more beneficial than using limited department resources to penalize employers.
- B. The current threshold for a "covered establishment" is fifty or more employees. Based on 2009 data, there are 31,056 employers in Hawaii. Of this number, 1,456 employers, or less than 5%, have fifty or more employees, and are thus potential covered establishments under the current law. By lowering the threshold to "any number of persons", all employers, including those with one employee, would be subject to the current law. Thus, even these very small employers would have the added burdens of ensuring that proper notice is provided and a dislocated worker allowance is provided to affected workers. Because small businesses often

operate on narrow profit margins and without human resource staff, these added responsibilities—administrative and financial-- will be very burdensome, making it more difficult for them to operate successfully in Hawaii.

- C. By giving the Department enforcement authority, the bill imposes a huge increase in additional responsibilities without any additional resources. This added responsibility cannot be performed with existing state resources and budget constraints preclude an increase in State funding. Federal funds cannot be used for this purpose.

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. 465  
RELATING TO DISLOCATED WORKERS**

The ILWU Local 142 supports H.B. 465, which authorizes the Department of Labor and Industrial Relations to exercise enforcement powers against an employer in a covered establishment that would require the employer to adhere to, and comply with, the notification and penalty provisions of the Hawaii Dislocated Worker Act and redefines "covered establishment" to include any number of employed persons.

The 2007 Legislature amended the Dislocated Worker Act to include penalties against an employer for failure to provide notice in the event of a closure, divestiture, partial closing or relocation of a business. However, to enforce the penalties, an aggrieved worker must file a claim in court, subjecting the worker to expense and delays that ultimately serve as a disincentive to seeking compliance and the penalties.

H.B. 465 will authorize the Department of Labor and Industrial Relations to enforce the penalties section of the Dislocated Worker Act. While the Department's resources may have been diminished due to budget cuts, it still has far more resources at its disposal than a dislocated worker who has lost his job and may not know what lies ahead for him in the future.

The ILWU urges passage of H.B. 465. Thank you for the opportunity to testify on this matter.

LATE



Representative Karl Rhoads, Chair  
Representative Kyle Yamashita, Vice Chair  
Committee on Labor & Public Employment

Representative Angus McKelvey, Chair  
Representative Isaac Choy, Vice Chair  
Committee on Economic Revitalization & Business

State Capitol, Honolulu, Hawaii 96813

HEARING      Tuesday, February 01, 2011  
                  9:00 am  
                  Conference Room 309

**RE:    HB465, Relating to Dislocated Workers**

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

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing almost 24% of the labor force.

**RMH strongly opposes HB465**, which essentially redefines "covered establishment" to include any number of employed persons.

This bill is an infringement on the basic rights of ownership that seriously impacts the value of a business and the ability of an owner to divest, sell or transfer that business operation. It further discourages investment in Hawaii by severely restricting the options for potential new owners by dissuading any development and/or diversification possibilities. At a time when Hawaii should be encouraging new enterprise in our state to accelerate economic recovery, this bill is a giant step in the opposite direction and could have the undesirable result of more companies just closing their doors for lack of viable alternatives.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB465. Thank you for your consideration and for the opportunity to comment on this measure.

  
Carol Pregill, President

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