



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

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March 10, 2011

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

Date: Friday, March 11, 2011
Time: 11:00 a.m. – 12:00 pm
Place: Conference Room 309, State Capitol

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

Re: HCR 80/HR 72

I. OVERVIEW OF PROPOSED LEGISLATION

HCR 80/HR 72 requests the U.S. Department of Labor to examine federal laws and regulations to allow states to more readily enact unemployment compensation related laws that allow fear of domestic or sexual violence to be a valid reason for not accepting suitable work.

II. CURRENT LAW

Section 383-30(3), Hawaii Revised Statutes (HRS), provides for disqualification of unemployment insurance (UI) benefits when an individual fails, without good cause, to apply for or accept suitable work when offered. In the application of the existing statute, good cause would normally extend to individuals who refuse suitable jobs for reasons relating to domestic or sexual violence, although the final determination would consider the evidence on a case-by-case basis.

While the refusal of suitable work issue would not result in an adverse decision, an issue of “able and available” (AA) would be raised based on the reason for the refusal. Section 383-29(a)(3), HRS, specifies that individuals must be able to work and available for work to be eligible for UI benefits.

To qualify for payment of UI benefits, claimants cannot be denied under both sections 383-29 and 383-30, HRS. Consequently, even if the victim of domestic or sexual violence had good cause for not accepting an offer of suitable employment, UI benefits may not be payable if the victim's situation rendered him/her not AA.

The denial under 383-29(a)(3), HRS, is a week to week determination; thus, if a victim's personal circumstances change, ineligibility may be lifted from the week that the individual is considered AA.

III. HOUSE CONCURRENT RESOLUTION/HOUSE RESOLUTION

The Department supports the intent of the resolutions but has the following concerns and recommendations:

1. **Extent of the problem** – The department is not aware of the extent to which adverse rulings that have been issued to victims of domestic and sexual violence in refusal of suitable work cases. The department would gladly review any known cases of denial of UI benefits in these situations to validate the appropriateness of the final determination.
2. **Other State or Federal Laws** – The department's interpretation of state laws are consistent with other state and federal laws with respect to refusal of suitable work and AA. While there may be some state-by-state variations in the application of suitable work or good cause (including domestic/sexual violence) provisions in job refusal cases, the department is not aware of any state that disregards the related AA issues that arise if a victim's personal restrictions prevent him/her from seeking or accepting immediate employment.

Sections 303(a)(2) and 303(a)(5), SSA, and sections 3304(a)(1) and 3304(a)(4), FUTA, requires states to condition the payment of UI compensation upon a claimant being able and available for work. At jeopardy would be the loss of certification for \$15 million in administrative funding to operate the UI program in Hawaii. The shutdown of all local UI offices would preclude jobless workers from filing UI claims. In addition, employers would lose the FUTA tax offset credits and be liable for the full 6.2% FUTA tax, an increase from \$56 to \$434 per employee annually.

The intent of the resolutions is limited to requesting the USDOL to "examine federal laws and regulations to allow states to more readily enact unemployment compensation-related laws that will allow fear of domestic or sexual violence to

be a valid reason for not accepting suitable work.” The department recommends that the scope is expanded to include the more critical disqualifying AA issue that results from refusal of suitable work situations involving domestic/sexual abuse.

3. Recommendation for Legislative Reference Bureau (LRB) Study

The department recommends that the resolutions also include language directing the LRB to conduct a study of this complex area of UI eligibility involving victims of domestic/sexual abuse, including but not limited to: background of existing state and federal laws, proposed amendments to Chapter 383, HRS, and federal laws, collateral effect of eligibility extended to a special class of claimants on other disqualification provisions of state and federal UI laws and impact of expanded eligibility on the state UI trust fund.