



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

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March 21, 2011

To: The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the House Committee on Judiciary

Date: Tuesday, March 22, 2011
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

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

Re: S.B. No. 1076, S.D. 1, H.D. 1 Relating to Employment Practices

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 1076, S.D. 1, H.D. 1 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. Authorizes an employer to require written verification from a physician after three or more consecutive days of sick leave.

Applies only to employers who are part of a collective bargaining agreement and have 100 or more employees.

Allows discharge where employees can no longer do their job as assigned, provided all accrued and available sick leave is used by the employee.

This law will take effect July 1, 2030.

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. SENATE BILL

DLIR supports the intent of this measure, but it is unclear how the workload of the hearings branch of Wage Standards Division will be able to handle this additional responsibility with the limited resources currently in the Wage Standards Division. However, should the legislature pass this measure the Department will do its best to carry out the responsibilities required by the law.

SB 1076 SD1 HD1
RELATING TO EMPLOYMENT PRACTICES
HAWAIIAN TELCOM

March 22, 2011

Chair Keith-Agaran and members of the House Judiciary Committee:

Hawaiian Telcom is opposed to SB 1076 SD1 HD1 - "RELATING TO EMPLOYMENT PRACTICES."

Hawaiian Telcom believes that this bill is unnecessary and therefore as a matter of public policy should not be a subject for legislative action. Hawaiian Telcom already provides a very generous package of employee sick leave, disability, and family leave benefits. For example, the current collective bargaining agreement provides for up to 52-weeks of company paid employee sick leave depending on the years of service.

It is widely acknowledged that the company is one of the few or maybe the only business in Hawaii that provides up to a whole year of paid sick leave. In addition to this negotiated employee benefit, Hawaiian Telcom fully complies with the Federal Family Medical Leave Act (up to 480-hours of leave a year) and the Hawaii Family Medical Leave Act (an additional 160-hours of leave a year).

Hawaiian Telcom is not mandated by law to provide additional sick leave benefits. It is a voluntary benefit that is provided as somewhat of an "insurance policy" for employees should they become sick to ensure they have the time and financial means to fully recuperate and recover before returning back to work. It is inconceivable that the company should be expected to sanction sick leave

abuse by allowing employees unrestricted absenteeism without the means to curb highly questionable or excessive absences. Condoning unrestricted absenteeism will severely hamper Hawaiian Telcom's ability to provide the same high level of telecommunication services that its customers expect and deserve.

In addition, HRS Chapter 269 requires Hawaiian Telcom to meet certain customer and service benchmarks or face administrative fines or other penalties. The company utilizes an attendance policy that is both fair to employees while recognizing that regular scheduled work attendance is essential in order to satisfy these mandated customer service quality requirements.

If issues arise involving Hawaiian Telcom's negotiated sick leave policy, the company believes that as a matter of public policy the proper venue for resolution is through the collective bargaining process and not by other avenues. The legislature in its wisdom established the collective bargaining process to allow parties to resolve employment issues without the need to legislate every dispute that arises. This bill attempts to undermine the integrity of this well established process by legislating the optional employer-provided benefit of sick leave. Sick leave is part of a negotiated contract between employer and employee and is best resolved through the collective bargaining process.

For all of the reasons set forth above, Hawaiian Telcom opposes SB 1076 SD1 HD1 and respectfully requests this measure be tabled this session.

Thank you for the opportunity to provide comments.

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Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

March 22, 2011

TO: THE HONORABLE REPRESENTATIVE GILBERT S.C. KEITH-AGARAN,
CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: S.B. 1076, SD1 HD1, RELATING TO EMPLOYMENT PRACTICES.

AMENDED NOTICE OF HEARING

DATE: Tuesday, March 22, 2011
TIME: 2:00 PM
PLACE: Conference Room 325

Dear Chairs Keith-Agaran and Members of this Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms would like to make the following observation regarding S.B. 1076, SD1 HD1 Relating to Employment Practices.

The GCA believes that whenever there is any collective bargaining contract in force, the terms of the agreement should prevail. This bill should make clear that the provisions of Section 378-32 HRS as amended apply only to employees covered by the collective bargaining contract and not other employees such as management employees. All non-bargaining unit employees continue to be governed by any and all rules and policies adopted by the employer regarding sick leave and other employee benefits.

Thank you for the opportunity to comment on this measure.

The Twenty-Sixth Legislature
Regular Session of 2011

THE SENATE
Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

State Capitol, Conference Room 016
Monday March 21, 2011; 8:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1076, HD1
RELATING TO EMPLOYMENT SECURITY**

The ILWU Local 142 supports H.B. 1076, HD1, which earmarks 2009 special administrative transfer for payment of Unemployment Insurance administration expenses. The bill appears to be a "housekeeping" measure to allow the Unemployment Insurance (UI) Division to access funds provided to the State through the American Recovery and Reinvestment Act (ARRA) of 2009.

More than two million dollars are available for use by the UI Division for administrative expenses to provide unemployment insurance services. We believe it would be a gross oversight if the Division is not able to access this available federal money. While the number of unemployment claims appeared to be stabilizing and even declining, we do not know what the near future will bring given the recent disaster in Japan and potentially declining visitor counts from that country.

What we do know is that the Unemployment Insurance Division has done a yeoman's job of addressing the huge volume of claims that have been made since the recession hit and ultimately bankrupted the UI Trust Fund. Claims examiners have been called upon to take and investigate large numbers of claims on a daily basis, while also being expected to provide good customer service under stressful circumstances. The ARRA funds can be used by the Division for staffing not only to provide services for ongoing claims but to ramp up services if unemployment increases.

The ILWU has had extensive experience with the Unemployment Insurance Division, since the mass layoffs of the 1990s that shut down sugar plantations and pineapple companies and the partial and mass layoffs at various other companies. Throughout those difficult layoffs, the UI Division has responded by coming to jobsites to provide information to workers in rapid response sessions and to take applications. Once the claims were approved, the UI staff provided invaluable service to ensure that claimants' checks were issued and problems addressed in a timely manner.

The ILWU urges passage of H.B. 1076, HD1. Thank you for considering our testimony.



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441

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

Testimony by
Hawaii State AFL-CIO
March 22, 2011

S.B. 1076, SD1, HD1 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports S.B. 1076, SD1, HD1 which makes it unlawful for an employer or a labor organization with 100 or more employees and a collective bargaining agreement to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave; provided that the employer or labor organization may require the employee to provide written verification from a physician for three or more consecutive days of sick leave and allows employers and labor organizations to bar or discharge from employment, withhold pay from, or demote an employee if the employee is unable to fulfill essential job functions or requirements of the employee's position, provided the employee's accrued and available sick leave are used first.

S.B. 1076, SD1, HD1 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. S.B. 1076, SD1, HD1 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.

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

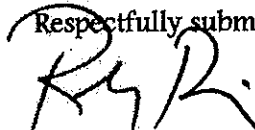
S,B, 1076, SD1, HD1
March 22, 2011
Page 2

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 S.B. 1076, SD1, HD1 with a clean date. We respectfully request the Committee to amend the bill to 'effective upon approval.'

Thank you for the opportunity to testify.

Respectfully submitted,

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

Randy Ferreira
President



**Testimony to the House Committee on Judiciary
Tuesday, March 22, 2011
2:00 p.m.
State Capitol - Conference Room 325**

**RE: SENATE BILL NO. 1076 SD1 HD1 RELATING TO EMPLOYMENT
PRACTICES**

Chair Keith-Agaran, Vice Chair Rhoads and members of the committee:

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 Senate Bill No. 1076 SD1 HD1, 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 for an employer or a labor organization with 100 or more employees and a collective bargaining agreement to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave; provided that the employer or labor organization may require the employee to provide written verification from a physician for three or more consecutive days of sick leave. Allows employers and labor organizations to bar or discharge from employment, withhold pay from, or demote an employee if the employee is unable to fulfill essential job functions or requirements of the employee's position, provided the employee's accrued and available sick leave are used first. Effective July 1, 2030. (SB1076 HD1)

While we appreciate the previous committee's amendment to exclude less than a hundred employees, the Chamber still has concerns with this measure.

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 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. Also, the passage of this measure could lead to a “slippery slope.”

Also, 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 provide testimony.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

Testimony by
Hawaii Government Employees Association
March 22, 2011

S.B. 1076, S.D.1, H.D.1 – RELATING TO
EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 1076, S.D.1, H.D.1 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 S.B. 1076, S.D.1, H.D.1.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



International
Brotherhood of
Electrical
Workers

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 JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

Hearing: Tuesday, March 22, 2011
Time: 2:00 p.m.
Place: Conference Room 325

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

RE: SB 1076, SD1, HD1 RELATING TO EMPLOYMENT PRACTICES.

SB 1076, SD1, HD1 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.

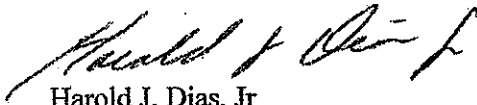
Not only is this type of bait-and-switch behavior by employers ridiculous, immoral and unethical, it also poses a great danger and safety concern to the public for the spread of infectious viruses and disease (H1N1) when workers who are legitimately ill are forced to come to work because of fear of being 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 SB 1076, SD1, HD1.

Thank you for the opportunity to provide testimony.



Harold J. Dias, Jr
International Representative
IBEW

Testimony of Glenn Ida

Representing,
The Plumbers and Fitters, Local 675
1109 Bethel St., Lower Level
Honolulu, Hi. 96813

In Strong Support of SB1076, SD1, HD1

Before the House:
Committee on Judiciary

Tuesday, Mar.22, 2011
2:00 PM, Conference Room 325

Aloha Chair Keith-Agaran, Vice-Chair Rhoads and Members,

My name is Glenn Ida; I represent the 1300 plus active members and about 600 retirees of the Plumbers and Fitters Union, Local 675.

Local 675, **Strongly Supports S.B. 1076, SD1, HD1**, which makes it unlawful for an employer or a labor organization with 100 or more employees and a collective bargaining agreement to bar or discharge from employment, withhold pay from, or demote an employee because the employee uses accrued and available sick leave; provided that the employer or labor organization may require the employee to provide written verification from a physician for three or more consecutive days of sick leave. Allows employers and labor organizations to bar or discharge from employment, withhold pay from, or demote an employee if the employee is unable to fulfill essential job functions or requirements of the employee's position, provided the employee's accrued and available sick leave are used first.

Employees should not fear discipline or the chance of losing their jobs solely because they got sick. S.B. 1076 will protect employees from being disciplined for taking legitimate sick leave.

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Employees who use their accrued sick leave benefits should be protected under the law from abuse and discipline.

The Plumbers and Fitters Local 675, Strongly Supports, SB 1076,SD1, HD1.

Thank you for this opportunity to testify.

Glenn Ida
808-295-1280

SB 1076 SD1 HD1

RELATING TO EMPLOYMENT PRACTICES

SCOT F. LONG

BUSINESS MANAGER / FINANCIAL SECRETARY

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL UNION 1357

March 22, 2011

Chair Gilbert S.C. Keith-Agaran and Members of the Judiciary Committee:

I am Scot Long, testifying on behalf of IBEW Local Union 1357 on SB 1076 SD1 HD1, "A BILL TO ADDRESS THE TAKING OF LEGITIMATE SICK LEAVE". IBEW Local Union 1357 strongly supports this bill.

IBEW Local Union 1357 represents over 800 hourly employees at Hawaiian Telcom and throughout our tenure there many of our members have been disciplined for taking legitimate, negotiated sick leave benefits. However, this is not a Hawaiian Telcom Bill, as other employers have been administering to a "2% no fault attendance policy" which is a trigger for disciplining employees for legitimate illnesses.

Now, schools require that children must stay home for a minimum of 3 days if they have any flu like symptoms and employers are telling employees not to come to work if they have a contagious illness (pink eye, H1N1, etc.). But, if employers continue to discipline employees for using their sick leave benefits for legitimate illnesses then, out of fear, employees would go to work and possibly contaminate the work environment thus creating more problems. And so this Bill would support the employers' concerns.

Employers will say that this Bill is a license for abuse and may prey on the unsophisticated. IBEW Local Union 1357 prides itself on responsible behavior and there are provisions in our Collective Bargaining Agreement, as well as recourse under Federal Regulations, to address any abuse. No, this Bill is not a license for abuse, but just the opposite. This is a Bill to restore dignity and civility in the workplace.

The same compelling reasons that this body passed SB 2883 in 2010, which was then vetoed by the Governor, are still prevalent. We humbly ask for your support of SB 1076 SD1 HD1 and we thank you for the opportunity to testify.



To: House Committee on Judiciary

Hearing: Tuesday, March 22, 2011
2:00 P.M.
Conference Room 325

Re: SB1076 SD1 HD1: Relating to Employment Practices

From: Society for Human Resource Management - Hawaii Chapter

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 SB1076 SD1 HD1, relating to employment practices.

We are opposed to SB1076 SD1 HD1 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 SB1076 SD1 HD1 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 SB1076 SD1 HD1 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.



Local Union 1260

International Brotherhood of Electrical Workers

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LANCE M. MIYAKE
Business Manager-Financial Secretary

LOREN TAGUCHI
President

March 18, 2011

Representative Gilbert S. C. Keith-Agaran
Chair, House Committee on Judiciary
The House of Representatives
State of Hawaii

Dear Chair Keith-Agaran:

RE: SB No. 1076, HD1

The IBEW Local 1260 support and request that House Committee on Judiciary S.B. No. 1076, HD1 submit 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 scheduled 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, then how does the Company schedule the sick leave.

International Brotherhood of Electrical Workers

Local 1260



Representative Gilbert S. C. Keith-Agaran -2-

March 18, 2011

The Corporate Health Administrator or Director, Corporate Health & Wellness (same person), whose qualifications has been questioned by the Local Union, has ruled on most of the AIP "Steps" that the Administrator or Director reviewed the employee did not have documentation to support the absence. The Administrator has also on numerous occasions, states that she has reviewed the documentation from employee and determined that the absence(s) does not qualify as serious, chronic, or FMLA-related. The Administrator, who has not establish 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 on the form?

The employee's record on sick leave 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, injury, 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 awhile to come back. If a pandemic outbreak occurs because of policies like the AIP, where a child who is most vulnerable may suffer or possibly die, 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 allow to hinder the Company 'in it'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 I P ATTENDANCE IMPROVEMENT PROGRAM

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:**

- 4th 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 CERTIFICATION 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 himself 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.

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 21, 2011 12:56 PM
To: JUDtestimony
Cc: Lardizabal@local368.org
Subject: Testimony for SB1076 on 3/22/2011 2:00:00 PM

Testimony for JUD 3/22/2011 2:00:00 PM SB1076

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Al Lardizabal
Organization: Hawaii Laborers' Union
Address:
Phone:
E-mail: Lardizabal@local368.org
Submitted on: 3/21/2011

Comments:
March 21, 2011

Representative Gilbert S.C. Keith-Agaran, Chair and members of the committee:

The Hawaii Laborers' Union strongly supports SB1076 SD1.

To: The Twenty-Sixth Legislature 2011, State of Hawaii
From: Hourly Employees of Hawaiian Telcom
Subject: HB 341 HD4 and SB 1076 SD1 - Relating to Employment Practices

"I place my name and signature below to signify my full support of HB341 and SB1076 currently being heard and voted upon this legislative session. Our employer, Hawaiian Telcom, has an onerous 2% attendance policy which they use to intimidate and discipline us even if our illnesses are legitimate and we use our earned sick leave benefits. This bill will help to restore dignity and civility for the employees of Hawaiian Telcom here in our workplace. We humbly ask for your support and we thank you for the opportunity to submit our testimony."

- | Print Name | Signature | Print Name | Signature |
|--------------------------|---------------------------|-------------------------------|-----------------------------|
| 1 Pua Fellezs | <i>Pua Fellezs</i> | 31 Kahanani Glover | <i>Kahanani Glover</i> |
| 2 Klencia Madarang | <i>Klencia Madarang</i> | 32 Reina Nahulu | <i>Reina Nahulu</i> |
| 3 Kevin DeVera | <i>Kevin DeVera</i> | 33 Reina Nahulu | <i>Eileen N. of. Kojima</i> |
| 4 WENDY SORAKUBO | <i>Wendy Sorakubo</i> | 34 Ashley Romualdo | <i>Ashley Romualdo</i> |
| 5 Sharon Aoki | <i>Sharon Aoki</i> | 35 Jennifer Barrett | <i>Jennifer Barrett</i> |
| 6 Rich Lane | <i>Rich Lane</i> | 36 JAMU COEN | <i>JAMU COEN</i> |
| 7 Kelle Matsumoto | <i>Kelle Matsumoto</i> | 37 Sandy Barak | <i>SANDY BARAK</i> |
| 8 Mr. Hansen | Mr. Hansen | 38 Diane Okada | <i>Diane Okada</i> |
| 9 Sabrina Dumbryue | <i>Sabrina Dumbryue</i> | 39 Stacey Napoleon | <i>Stacey Napoleon</i> |
| 10 Cheryl Solomons | <i>Cheryl Solomons</i> | 40 Pamela Akai | <i>Pamela Akai</i> |
| 11 Colette Nishimura | <i>Colette Nishimura</i> | 41 ALANE VILLAMOR | <i>Alane Villamor</i> |
| 12 DARYLYN AHUNA | <i>Darylyn Ahuna</i> | 42 June Makkawa | <i>June Makkawa</i> |
| 13 Carol Wee | Carol Wee | 43 Melissa Oppenheimer | <i>Melissa Oppenheimer</i> |
| 14 Patricia Tsurumaru | <i>Patricia Tsurumaru</i> | 44 Theresa Souza | <i>Theresa Souza</i> |
| 15 Jessielynn Aao | <i>Jessielynn Aao</i> | 45 Kauli Pooki | <i>Kauli Pooki</i> |
| 16 GEMINA KREBA | <i>Gemina Kreba</i> | 46 Penny Nakamura | <i>Penny Nakamura</i> |
| 17 Jeff Chow | <i>Jeff Chow</i> | 47 Josefa Rodrigues | <i>Josefa Rodrigues</i> |
| 18 Cferraira | <i>Cferraira</i> | 48 Jennille Correa | <i>Jennille Correa</i> |
| 19 Nancy Dela Cruz | <i>Nancy Dela Cruz</i> | 49 Ruth Kiernec | <i>Ruth Kiernec</i> |
| 20 Debra Y.K. Wang | <i>Debra Y.K. Wang</i> | 50 CENTRAL PARTNER | Central Partner |
| 21 Arden M. Borer | <i>Arden M. Borer</i> | 51 Emay Watanabe | <i>Emay Watanabe</i> |
| 22 ERNEST ATO | <i>Ernest Ato</i> | 52 Josephine Sanbei | <i>Josephine Sanbei</i> |
| 23 LEBOY WOODS | <i>Leboy Woods</i> | 53 Robert Turcotte | <i>Robert Turcotte</i> |
| 24 George Chang | <i>George Chang</i> | 54 CarrieAnn Silva | <i>CarrieAnn Silva</i> |
| 25 CHARLTON MATAMUO | <i>Charlton Matamuo</i> | 55 Romoed Mader | <i>Romoed Mader</i> |
| 26 James Byner | <i>James Byner</i> | 56 Julia Fortson | <i>Julia Fortson</i> |
| 27 David Wood | David Wood | 57 Richard Meehan | <i>Richard Meehan</i> |
| 28 Gemelath B. Meina | <i>Gemelath B. Meina</i> | 58 Bernadette Cavaco | <i>Bernadette Cavaco</i> |
| 29 David Wood | David Wood | 59 April Araque | <i>April Araque</i> |
| 30 David Wood | David Wood | 60 Karen Reed | <i>Karen Reed</i> |
| | | 61 Nadine Frost | <i>Nadine Frost</i> |
| | | 62 Marites Lakang | <i>Marites Lakang</i> |
| | | 63 Ethne Chung | <i>Ethne Chung</i> |

To: The Twenty-Sixth Legislature 2011, State of Hawaii
 From: Hourly Employees of Hawaiian Telcom
 Subject: HB 341 HD4 and SB 1076 SD1 - Relating to Employment Practices

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Print Name	Signature	Print Name	Signature
1 Mark M. Fujii	[Signature]	31 Barry Hurst	[Signature]
2 Eric Badua Fernandez	[Signature]	32 Caryn Nishimura	[Signature]
3 CINDY A. HOLONALIA CASTANEDA	[Signature]	33 Pam Kamemoto	[Signature]
4 Karen Sthamer	[Signature]	34 TROY Takahashi	[Signature]
5 Malia Brown-Tremaine	[Signature]	35 Jacyn Shishido	[Signature]
6 JANELLE SHIBATA	[Signature]	36 Helena Kw	[Signature]
7 Doreen Pohara	[Signature]	37 Rhonda M. Kenzie	[Signature]
8 April Matsuura	[Signature]	38 Dolores Labonte	[Signature]
9 Lutene Jenks	[Signature]	39 Ursula Kanao	[Signature]
10 Sharon Uvaunen	[Signature]	40 Wendy Letoto	[Signature]
11 Sarah Nakagawa	[Signature]	41 Jan Ormand	[Signature]
12 Marjean Sanbe	[Signature]	42 Doreen Lam	[Signature]
13 MARESHA CHANG	[Signature]	43 Tracy T. Arata	[Signature]
14 Libby Rivers	[Signature]	44 Kenneth Paugua	[Signature]
15 BROOKLYN BOYD	[Signature]	45 Kaitiana R. Bourke	[Signature]
16 KEVIN HIGASHI	[Signature]	46 Stanley Farrer	[Signature]
17 Stephanie Hao-Dahl	[Signature]	47 Roslyn L. Davis	[Signature]
18 JOHN E. LEVESQUE	[Signature]	48 Therisa Taylor	[Signature]
19 ALAN NAK	[Signature]	49 Sherne Motooka	[Signature]
20 JERRY RICE	[Signature]	50 Kroya James	[Signature]
21 Valeris Ramus	[Signature]	51 Eileen J. Martinez	[Signature]
22 Lisa Kaneohe	[Signature]	52 JONATHAN AYRES	[Signature]
23 [Signature]	[Signature]	53 CHERYL SAKI	[Signature]
24 Danielle Teece	[Signature]	54 DIALONA TREMAINE	[Signature]
25 PATRICIA MILLS	[Signature]	55 TAVAZI MORMAN	[Signature]
26 MARYJOKAPAHU	[Signature]	56 [Signature]	[Signature]
27 Lola L. Tanaka	[Signature]	57 REYNA ANN CORPUS	[Signature]
28 Elsie H. Balgas	[Signature]	58 SHANTELL MEDICOS	[Signature]
29 ROBIN JONES	[Signature]	59 TIANNA-SKI NELSON	[Signature]
30 FAITH NAVESCA	[Signature]	60 SHANDON CASTILLO	[Signature]

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1 Albert Makani	Albert Makani		
2 Janelle Martin	Janelle Martin		
3 Tammy Udington	Tammy Udington		
4 Stephanie Ferreira	Stephanie Ferreira		
5 Mrs. J. M. MARRAS	MARRAS J. HEMULUA		
6 MARVIN BARCADO	Marvin Barcado		
7 ROSEMARIE ALBINO	Rosemarie Albino		
8 CAMILLA M. SABATO	Camilla M. Sabato		
9 Kea Motas	Kea Motas		
10 Brandy Kimura	Brandy Kimura		
11 Abigail Lowe	Abigail Lowe		
12 KAREEM SAITI	Kareem Saiti		
13 Terrence Koto	Terrence Koto		
14 Elvise Cabadol	Elvise Cabadol		
15 Kim Anabela	Kim Anabela		
16 Kelly Tully	Kelly Tully		
17 Deborah Lum	Deborah Lum		
18 Dwayne Nakano	Dwayne Nakano		
19 Dickson T. Furai	Dickson T. Furai		
20 Yvette Barsinas	Yvette Barsinas		
21 Denise Ginoza	Denise Ginoza		
22 Yvette Avies	Yvette Avies		
23 Ferrick Kamae	Ferrick Kamae		
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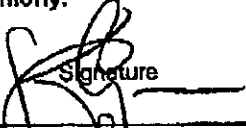

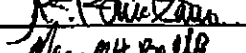
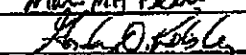
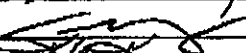


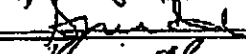

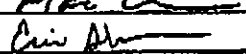
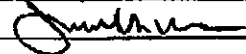
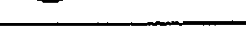
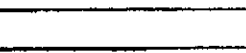
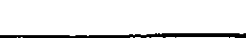
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1 Ida Macfarlane	<i>[Signature]</i>		
2 JEFFREY TORADO	<i>[Signature]</i>		32
3 Ted Faribando	<i>[Signature]</i>		33
4 Roger L. Salinas	<i>[Signature]</i>		34
5 Paul Blaber	<i>[Signature]</i>		35
6 Sharon Allrecht	<i>[Signature]</i>		36
7 GENE HIRAKI	<i>[Signature]</i>		37
8 GAIL TANNER	<i>[Signature]</i>		38
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1	KEVIN MAEMI		31	
2	Stanley Kauraloa		32	
3	KEEPT KANETANI		33	
4	MASON BELLO		34	
5	GORDON D. ROBLEY		35	
6	FRANCIS WITHAM		36	
7	KAREN KAUNAOVA		37	
8	JAKKARIN PANGER		38	
9	Dwight Matsumoto		39	
10	SHANE ISHII		40	
11	Kenji Osumi		41	
12	Marc Lewis		42	
13	Eric Anderson		43	
14	RONALD KEIJI JR		44	
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47	<i>Donna M. ...</i>	17
46	<i>Valerie Beaulieu ...</i>	16
45	<i>James M. ...</i>	15
44	<i>Harold Kendrick ...</i>	14
43	<i>Norman ...</i>	13
42	<i>Tony ...</i>	12
41	<i>John ...</i>	11
40	<i>Lori ...</i>	10
39	<i>Richard ...</i>	9
38	<i>Kevin ...</i>	8
37	<i>Ken ...</i>	7
36	<i>Christina ...</i>	6
35	<i>Nelson ...</i>	5
34	<i>Aaron ...</i>	4
33	<i>Carl ...</i>	3
32	<i>Lori ...</i>	2
	<i>McKay ...</i>	1

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Before the House Committee on Judiciary

DATE: Tuesday, March 22, 2011
TIME: 2:00 p.m.
PLACE: Conference Room 325

SB 1076 SD1 HD1: Relating to Employment Practices Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify in opposition to SB 1076 SD1 HD1.

We recognize and appreciate the efforts of legislators to address small business concerns. This measure has the potential to negatively impact the ability of business owners to manage attendance policies necessary to run a small business and add to the cost of doing business.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

Mahalo for your consideration.

Testimony for SB1076 on 3/22/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, March 22, 2011 8:23 AM

To: JUDtestimony

Cc: jkealoha@ilwulocal142.org

Attachments: 2011SB1076.rtf (7 KB)

Testimony for JUD 3/22/2011 2:00:00 PM SB1076

Conference room: 325

Testifier position: support

Testifier will be present: Yes

Submitted by: Guy Fujimura

Organization: ILWU Local 142

Address:

Phone:

E-mail: jkealoha@ilwulocal142.org

Submitted on: 3/22/2011

Comments:

The Twenty-Sixth Legislature
Regular Session of 2011

HOUSE OF REPRESENTATIVES
Committee on Judiciary
Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

State Capitol, Conference Room 325
Tuesday, March 22, 2011; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1076, SD1, HD1
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 supports S.B. 1076, SD1, HD1, which makes it unlawful for an employer or labor organization with 100 or more employees and a collective bargaining agreement to bar or discharge from employment, withhold pay from, or demote an employee solely because the employee uses accrued and available sick leave, provided that the employer or labor organization may require the employee to provide written verification from a physician for three or more consecutive days of sick leave. Allows employment action if the employee is unable to fulfill essential job functions or requirements of the employee's position, but sick leave must be used first.

S.B. 1076, SD1, HD1 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 subject the employee to progressive discipline, up to and including 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 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.

We also believe provisions of this bill should apply to all employers, not just those with 100 or more employees and a collective bargaining agreement. Employees with CBA's have certain protections built into their union contracts, like a grievance procedure and representation. Employees without CBA's are "at will" and subject to the policies imposed upon them by the employer. They, more than anyone, need protection of the law.

Despite this concern, the ILWU urges passage of S.B. 1076, SD1, HD1. Thank you for considering our testimony.

Testimony before the House Committee on Judiciary
on
S.B. 1076 SD1, HD1 - Relating to Employment Practices

Tuesday, March 22, 2011
2:00 p.m.
Conference Room 325, State Capitol

By Sherri-Ann Loo, Manager
Hawaiian Electric Company

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

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 respectfully oppose Senate Bill 1076, SD 1, HD 1.

HD 1 diminishes an employer's right to manage sick leave abuse, unfairly punishes companies with generous sick leave benefits, and is unnecessary and duplicative of current rights and laws, and may even result in preemption of state law. It also unfairly targets our utility as a company that must conform to this proposal even though we have not done anything to warrant this measure.

S.B. 1076 SD 1, HD 1 is objectionable for the following reasons:

1. Abuse of sick leave was an exception to the employee protection of sick leave usage under S.B. 1076, SD 1. House Draft 1 does not have a specific exception for such abuse but instead gives employers the right to require medical certification in cases of sick leave of three or more consecutive days. This single requirement is insufficient to guard against abuses of sick leave and undermines the right of an employer to manage abuses of sick leave.
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 384 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. There will be a negative impact to productivity should all employees be allowed to use their full balance of sick leave with restricted controls in place to prevent the misuse of the system or avenues to address excessive absenteeism by employees with "a non-chronic 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. House Draft 1 also prohibits an employer from discharging or demoting an employee until all accrued and available sick leave is exhausted even if the employee can no longer fulfill the essential job functions of the position. This is punitive to companies with generous sick leave benefits such as ours. It could also result in providing job protection longer than currently required under the Family and Medical Leave Act and Hawaii Leave Law. As such it is not only duplicative of job protection laws such as these, it can, for companies with generous sick leave policies, extend the protection beyond that currently required.
4. This bill is applicable only to employers with collective bargaining agreements and with workforces of one hundred or more employees. Collective bargaining provides its own set of remedies, including the right to grieve and challenge disciplinary action, including that related to sick leave usage. As such, this bill is unnecessary and duplicative.
5. This bill also gives the State Department of Labor and Industrial Relations the authority to find an employer in violation of state law with regard to actions taken regarding granting or denial of sick leave under policies under a collective bargaining agreement. To the extent that the Labor Management Relations Act of 1947 applies, current case law indicates that the bill may cause preemption of state law if such action requires interpretation of the meaning of the collective bargaining agreement. See *Lingle vs. Norge*, 486 U.S. 399.

We therefore ask the Committee to hold S.B. 1076, SD 1, HD 1.

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