LATE TESTIMONY

SB 1076

RELATING TO EMPLOYMENT PRACTICES

HAWAIIAN TELCOM

February 8, 2011

Chair Hee and members of the Senate Judiciary and Labor Committee:

Hawaiian Telcom is opposed to SB 1076 - "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

LATE TESTIMONY

First Hawaiian Bank
999 Bishop Street Honolulu Hawaii 96813

Presentation to the Senate Committee on Judiciary and Labor

Tuesday, February 08, 2011 at 10:00 a.m.

Testimony on Senate Bill 1076 Relating to Employment Practices

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

My name is Neal Okabayashi of First Hawaiian Bank. We oppose SB 1076 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 often reduced time off which can be used for both vacation and sick leave time. 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 but cannot document his sickness.

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.

If this Committee is inclined to adopt this bill, because this matter is related to an issue of collective bargaining, we suggest that the sick leave bill from last year's session be inserted as SD 1. That bill was SB 2883, SD 1, HD 2, CD 1, which was passed by the Legislature last session but vetoed by the Governor. A copy is enclosed for your convenience.

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

S.B. NO. 2883 S.D. 1 H.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 378-32, Hawaii Revised Statutes, is amended to read as follows:

"**§378-32 Unlawful suspension, discharge, or discrimination.** (a) It shall be unlawful for any employer to suspend, discharge, or discriminate against any of the employer's employees:

(1) Solely because the employer was summoned as a garnishee in a cause where the employee is the debtor or because the employee has filed a petition in proceedings for a wage earner plan under Chapter XIII of the Bankruptcy Act; [~~or~~]

(2) Solely because the employee has suffered a work injury which arose out of and in the course of the employee's employment with the employer and which is compensable under chapter 386 unless the employee is no longer capable of performing the employee's work as a result of the work injury and the employer has no other available work which the employee is capable of

performing. Any employee who is discharged because of the work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during the period thereafter until the employee secures new employment. This paragraph shall not apply to any employer in whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or reemployment of the injured employee;

(3) Because the employee testified or was subpoenaed to testify in a proceeding under this part; 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; provided that this provision shall not apply to an employee who fails or refuses to report to a laboratory for a substance abuse test pursuant to section 329B-5.5.

(b) It shall be an unlawful practice for an employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee solely because the employee legitimately uses accrued and available negotiated sick leave in accordance with the employer's attendant and negotiated sick leave policies, except for abuse of sick leave.

(c) Employers and labor organizations are not prohibited from barring or discharging from employment, withholding pay from, or demoting an employee if the employee is unable to fulfill the essential job functions or requirements of the employee's position.

(d) Subsections (b) and (c) shall only apply to employers who have:

(1) A collective bargaining agreement with their employees; and

(2) One hundred or more employees."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

Report Title:
Employment Practices; Sick Leave Benefits

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 because the employee legitimately uses accrued and available sick leave. Limited to employers with one hundred or more employees and a collective bargaining agreement. Exempts cases where an employee is unable to fulfill essential job functions. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

LATE TESTIMONY

Testimony before the Senate Committee on

Judiciary and Labor

on
S.B. 1076, Relating to Employment Practices

Tuesday, February 8, 2011
10:00 a.m.
Conference Room 016, State Capitol

By Sherri-Ann Loo, Manager
Hawaiian Electric Company

Chair Hee, Vice Chair Shimabukuro, 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 provide the power to keep the lights on for 95% of Hawaii's residents.

We respectfully oppose Senate Bill 1076.

We cannot support S.B. 1076 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 S.B. 1076.

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

International Brotherhood of Electrical Workers

LATE TESTIMONY

Edwin D. Hill
International President

Lindell K. Lee
International Secretary - Treasurer

Michael Mowrey
International Vice President

Ninth District

The Senate
Twenty-Sixth Legislature
Regular Session of 2011

Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Hearing: Tuesday, February 08, 2011
Time: 10:00 a.m.
Place: Conference Room 016

TESTIMONY OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW)

RE: SB 1076 RELATING TO EMPLOYMENT PRACTICES.

SB 1076 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.

LATE TESTIMONY

From: Alfred Lardizabal [lardizabal@local368.org]
Sent: Monday, February 07, 2011 2:51 PM
To: JDLTestimony
Subject: SB1076 Relating to Employment Practices

TESTIMONY IN SUPPORT OF SB1076

Senate Committee on Judiciary and Labor
Tuesday, February 8, 2011
Room 016, 10:00 a.m.

SB1076 Relating to Employment Practices

Senator Clayton Hee, Chair; Senator Maile S.L. Shimabukuro, Vice Chair and Members of the Committee:

The Hawaii Laborers' Union fully supports SB1076 making it an unlawful practice 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 submit this testimony.

Al Lardizabal, Director
Government Relations
Hawaii Laborers' Union

LATE TESTIMONY

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
Tuesday, February 8, 2011; 10:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1076
RELATING TO EMPLOYMENT PRACTICES

The ILWU Local 142 supports S.B. 1076, 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.

S.B. 1076 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 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.

The ILWU urges passage of S.B. 1076. Thank you for considering our testimony.

LATE TESTIMONY

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the Senate Committee on Judiciary and Labor
Tuesday, February 8, 2011
10:00 a.m.
State Capitol - Conference Room 016

RE: SENATE BILL NO. 1076 RELATING TO EMPLOYMENT PRACTICES

Chair Hee, Vice Chair Shimabukuro, 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, 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.

LATE TESTIMONY

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA
Executive Director
Tel: 808.543.0011
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Deputy Executive Director
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The Senate
The Twenty-Sixth Legislature, State of Hawaii
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association

February 8, 2011

S.B. 1076 – RELATING TO EMPLOYMENT PRACTICES

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

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

LATE TESTIMONY

NFIB
The Voice of Small Business®

Before the Senate Committee on Judiciary and Labor

DATE: February 8, 2011

TIME: 10:00 a.m.

PLACE: Conference Room 16

Re: HB 1076
Relating to Employment Practices
Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify in opposition to HB 1076.

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.

841 Bishop Street, Suite 2100, Honolulu, Hawaii 96813 (808) 447-1840

LATE TESTIMONY

SB 1076

RELATING TO EMPLOYMENT PRACTICES

HAWAIIAN TELCOM

February 8, 2011

Chair Hee and members of the Senate Judiciary and Labor Committee:

Hawaiian Telcom is opposed to SB 1076 - "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

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