



LATE TESTIMONY

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

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February 1, 2011

To: The Honorable Clayton Hee, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: Thursday, February 3, 2011

Time: 11:00 a.m.

Place: Conference Room 016, State Capitol

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

Oppose

Re: S.B. 1088 Relating to Unemployment Insurance Benefits

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 1088 proposes to amend section 383-30, Hawaii Revised Statute (HRS), by allowing benefits to an individual who is still attached to a regular employer even if that individual separates from another employer offering part-time employment.

II. CURRENT LAW

Currently, sections 383-30(1) and 383-30(2), HRS, which disqualifies individuals who quit a job without good cause or is discharged for misconduct, are applicable to all individuals receiving unemployment benefits regardless of whether that individual is on a partial, part-total or total claim status.

The fundamental purpose of the Unemployment Insurance (UI) program is to pay benefits to individuals who are unemployed through no fault of their own. Accordingly, any job separation that affects the payment of UI compensation is properly adjudicated to determine whether benefits will be allowed or denied. Where the voluntary quit is for good cause or the discharge is for no misconduct connected with work, UI benefits are allowed. Conversely, benefits are denied if the termination is without good cause or for misconduct.

III. SENATE BILL

The Department opposes this measure to automatically allow benefits to an individual who, while on partial claim status, accepts a job with another employer and is subsequently separated for potentially disqualifying reasons. The disqualification provisions must be equally applicable to all unemployed individuals claiming benefits under Chapter 383, HRS. The fact that an individual is still attached to a regular employer is irrelevant if such individual is considered unemployed under the law. According to section 383-1, HRS, an individual shall be deemed "unemployed" in any week during which the individual performs no services and no wages are payable, or in any week of less than full-time work if the wages payable are less than the individual's weekly benefit amount.

Since UI benefits are intended as temporary financial support while the jobless seek suitable re-employment, claimants often find part-time or full-time work and stop filing for UI compensation. All claimants who are receiving UI benefits have met the legal requirements to collect such payments and assume the same risks in accepting new jobs that may affect their entitlement to UI. Consequently, the same potential disqualifications are applicable to partially or totally unemployed individuals.

Employers also subject their operations to risk when hiring a new worker should he/she quit for non-compelling reasons or have willfully acted against the employer's interests. Businesses have reasonable expectations of any employees' work performance and workers are compensated to accomplish their assignments accordingly. It is of little consequence to the employer that the newly hired worker is on partial claim status or not because business operations are harmed in any situation of quit without good cause or misconduct connected with work. It is also a disincentive for employers to hire a part-time worker who is attached to a regular worker if that worker can separate from employment without any adverse consequences on his/her UI claim. As employers contribute 100% to the UI trust fund to pay benefits, additional UI payouts resulting from this measure would eventually increase their UI contributions.

The Department is willing to discuss alternatives for this measure. Below are two options that can be considered for further discussion.

Option 1:

"§383- Good cause for leaving part-time employment. (a) Good cause for voluntarily leaving part-time employment may be found where an individual has

established eligibility for partial unemployment in accordance with section 12-5-1, Administrative Rules and the following conditions contributed to the voluntary leaving:

- (1) Loss of full-time work with a regular employer made it economically unfeasible to continue part-time employment;*
 - (2) The part-time employment was outside of the individual's customary occupation and would not have been considered suitable work under section 12-5-55 (c), Administrative Rules, at the time that the individual accepted the part-time employment;*
 - (3) The employer failed to provide sufficient advance notice of a work schedule change;*
 - (4) There was a work schedule conflict with the regular full-time employer; or*
 - (5) Any other factor relevant to a determination of good cause.*
- (b) "Part time" is considered less than "full-time" as defined in section 12-5-1, Administrative Rules."*

Option 2:

*"§383- . **Disqualification for benefits; part-time employment.** Notwithstanding the disqualification provisions of section 383-30(1) and section 383-30(2), an individual who:*

- (6) is in "partial unemployment" as defined in section 383-1, Hawaii Revised Statutes and section 12-5-1, Administrative Rules; and*
 - (7) continues to have partial unemployment status pursuant to sections 383-29.6 to 383-29.9 or sections 12-5-1, 12-5-31 and 12-5-81, Administrative Rules; and*
 - (8) is concurrently employed in part-time work,*
- shall be disqualified for benefits for any week in which the individual, with respect to the part-time work only, has been discharged or suspended for misconduct connected with work, or has left work voluntarily without good cause, and for four consecutive weeks which immediately follow such week.*

(b) "Part time" is considered less than "full-time" as defined in section 12-5-1, Administrative Rules."

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 02, 2011 12:11 PM
To: JDLTestimony
Cc: william.g.kunstman@hawaii.gov
Subject: Testimony for SB1088 on 2/3/2011 11:00:00 AM
Attachments: SB1088 DLIR JDL 20110203.doc

Testimony for JDL 2/3/2011 11:00:00 AM SB1088

Conference room: 016
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Dwight Takamine
Organization: DLIR
Address:
Phone:
E-mail: william.g.kunstman@hawaii.gov
Submitted on: 2/2/2011

Comments:
Oppose with some alternative language for consideration.

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
Thursday, February 3, 2011; 11:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1088 RELATING TO UNEMPLOYMENT INSURANCE BENEFITS

The ILWU Local 142 supports S.B. 1088, which authorizes an individual who is attached to a regular employer that is not offering work to continue to be eligible to receive unemployment insurance benefits even if that individual voluntarily or involuntarily separates, with or without good cause, from part-time employment with a secondary employer.

When an employee is "attached" to a regular employer, but not offered work, applies for unemployment insurance benefits, the claim is a "partial" rather than "total" claim. Partial claimants are exempt from registration for work and job search requirements. The regular employer must provide a "weekly report of low earnings" to verify the claimant's attached status with the employer and any work offered to the claimant during the week. The claimant must be available for work offered by his regular employer but may voluntarily seek part-time or full-time work to supplement or supplant the unemployment benefit.

In many cases, partial claimants are those whose employer has no work to offer due to a planned shutdown of operations. The employer wants to consider the employee "attached" and may even provide medical and other benefits to be assured that the employee will return to the job when needed.

Under current law, if an "attached" employee obtains a secondary job and is terminated from that job, he may be disqualified for benefits derived due to the primary job. S.B. 1088 seeks to remedy what we believe to be an inequity in the current law and will prohibit disqualification of a partial claimant for separation from a secondary job. We believe this amendment of the law is fair because the prohibition will only apply to claimants who are attached to a regular employer, are receiving "partial" unemployment benefits, are exempt from job search and registration for work requirements, and are available for work offered by the regular employer.

The ILWU urges passage of S.B. 1088. Thank you for the opportunity to share our testimony on this bill.



Testimony to the Senate Committee on Judiciary and Labor

Thursday, February 3, 2011; 11:00 a.m.

Conference Room 016

LATE TESTIMONY

RE: SENATE BILL 1089 RELATING TO DISLOCATED WORKERS

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"). The Chamber does not support Senate Bill 1089, relating to Dislocated Workers.

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 authorizes the department of labor and industrial relations to exercise enforcement powers against an employer in a covered establishment. The bill amends the definition of a "covered establishment" subject to chapter 394B, HRS, relating to dislocated works, to include any business entity that employs at least one person within the previous year.

In Hawaii, small businesses are the engine for Hawaii's economy. They account for a majority of all new jobs and embody the spirit of innovation, entrepreneurship and individual initiative. They reflect all industries and a wide range of employment. Because of the significant role they play in Hawaii's economy, the challenges faced by this segment cannot be overlooked.

In the past couple of years, as a result of the downturn in the economy, small businesses have faced difficulty in obtaining financing and experienced a loss in business while facing an increase in the cost of doing business. As a result, many have been forced to shut down on short notice. Owners or management often do not have the foreseeability that they will close their doors within the timeframe that the statute requires for them to provide notice. Furthermore, because many shut down due to the lack of sudden financial resources, it will be difficult for them to pay the penalties required by the statute. This measure will have an undue harm and economic impact on small business owners.

For these reasons, The Chamber of Commerce of Hawaii respectfully requests that this measure be held.

Thank you for the opportunity to testify.

The Twenty-Sixth Legislature
Regular Session of 2011

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

State Capitol, Conference Room 016
Thursday, February 3, 2011; 11:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1089
RELATING TO DISLOCATED WORKERS**

The ILWU Local 142 supports S.B. 1089, which authorizes the Department of Labor and Industrial Relations to exercise enforcement powers against an employer in a covered establishment and amends the definition of a "covered establishment" to include any business entity that employs at least one person within the previous year.

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.

S.B. 1089 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 S.B. 1089. Thank you for the opportunity to testify on this matter.



Testimony to the Senate Committee on Judiciary and Labor

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My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber does not support Senate Bill 1088, relating to Unemployment Insurance.

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 provides that an individual shall not be disqualified for benefits in which the individual separates involuntarily or voluntarily, with or without good cause, from an employer offering part-time employment, if the individual is receiving benefits while attached to a regular employer who is not offering work, receiving partial unemployment benefits, and exempt from work search and registration for work requirements.

The Chamber particularly does not support the section that provides benefits will be paid regardless of whether the employee was separated with or without good cause or involuntarily or voluntarily even if the employee quits on his or her own terms for non-compelling reasons or have willfully acted against the employer's policies. The language does not allow an employer to dispute the payment of unemployment benefits.

The unemployment insurance trust fund is still underfunded and this measure may cause an increase in the negative balance. Also, employers contribute 100% to the fund to pay benefits, so additional payouts as a result of this measure will eventually increase the employer contributions.

For these reasons, The Chamber of Commerce of Hawaii respectfully requests that this measure be held.

Thank you for the opportunity to testify.