

DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

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February 7, 2012

The Honorable Gilbert Keith-Agaran Chair
and Members of the Committee on Judiciary
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill 1680 H.D.1
Relating To Employment Practices

House Bill 1680 H.D.1 seeks to prohibit an employer or employment agency from publishing, in print or on the Internet, any advertisement for a job vacancy which includes any provision stating or suggesting the qualifications for a job include current employment. The City and County of Honolulu offers the following comments with respect to the measure.

The City was previously concerned that House Bill 1680 could be construed to preclude promotional examinations which are regularly being conducted by the State and counties. These examinations can be either intradepartmental or interdepartmental in scope. In either case, the examination is limited to regular employees in the civil service of the particular jurisdiction. The City provides notice of these promotional opportunities on the Department of Human Resources' public website, which may arguably place these examinations within the scope of the proposed prohibition. However, as noted above, promotional examinations are never intended for the general public.

HB1680, as amended by HD 1, takes into account our concerns about the measure's applicability to our internal recruitments requiring that employees be regular employees of the respective civil service jurisdiction and/or department, and does not make an employers' internal efforts to fill a vacancy an unlawful discriminatory practice.

Thank you for the opportunity to testify.

Yours truly,

A handwritten signature in black ink, appearing to read "Noel T. Ono".

Noel T. Ono
Director



Randy Perreira
President

HAWAII STATE AFL-CIO

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

Testimony by
Hawaii State AFL-CIO
February 7, 2012

H.B. 1680, HD1 – RELATING TO
EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 1680, HD1 which prohibits any employer or employment agency from publishing a job advertisement that states that an applicant for the job must be currently employed and prohibits an employer or employment agency from refusing to hire or employ any individual solely because the individual was unemployed at the time the advertisement for the job vacancy was published.

Unfortunately, unemployment remains at an unhealthy level here at home and across the country. Thousands of Hawaii residents and millions of Americans who want to work cannot find jobs. In fact, according to the National Employment Law Project (NELP) competition for jobs is astonishingly intense, with nearly five unemployed jobseekers for each new job opening. To make matters worse, U.S. employers of all sizes, staffing agencies and online job posting firms are using recruitment and hiring policies that expressly deny employment to the unemployed. To deny a potentially hard worker a job because of the unemployment crisis we are currently in is truly tragic. Thousands of unemployed workers are qualified for an abundance of jobs, but unfortunately face a tough road ahead.

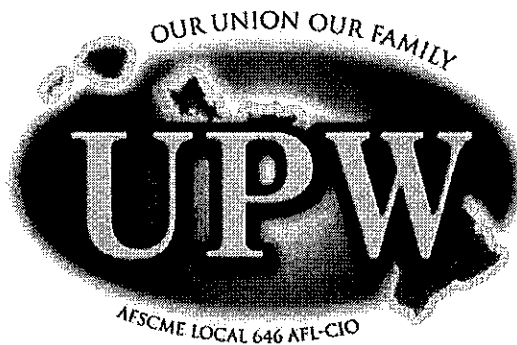
For example, Sony Ericson's newly relocated headquarters in Atlanta had posted a job announcement that specifically stated "No Unemployed Candidates Considered At All." Additionally, NELP reviewed online job postings over a four-week period and identified over a 150 ads that included exclusions based on current employment status. Many of the job postings were on prominent websites such as careerbuilder.com and monster.com. While it may not be occurring with every job posting and every business, the fact that it is has occurred and is occurring should be enough to ensure it does not happen again and the public feels it is wrong. According to a national survey conducted by Hart Research Associates, 90 percent of respondents described the refusal to consider unemployed job applicants as "very unfair."

No one should be denied an opportunity to work because of economic conditions they cannot control. Most do not want to be unemployed and most are desperately seeking jobs to make ends meet. Passing H.B. 1680, HD1 will ensure everyone has an opportunity to seek employment.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON JUDICIARY

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

DATE OF HEARING: Tuesday, February 7, 2012
TIME OF HEARING: 2:00 p.m.
PLACE OF HEARING: Conference Room 325

TESTIMONY ON HB 1680 HD1 RELATING TO EMPLOYMENT PRACTICES

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports HB 1680 HD1 that prohibits any employer or employment agency from publishing a job advertisement that states an applicant for the job must be currently employed. It also prohibits an employer or employment agency from refusing to hire or employ any individual solely because that individual was unemployed at the time the advertisement for the job was published.

This bill addresses a growing practice among employers and employment services that state applicants must be currently employed. Given the current economic climate and that unemployment numbers are still high, it is important that no one be denied the opportunity for employment because they have been unemployed through no fault of their own.

Accordingly, the UPW is in support of HB 1680 HD1.

Thank you for the opportunity to testify on this measure.



**Testimony to the House Committee on Judiciary
Tuesday, February 7, 2012 at 2:00 p.m.
Conference Room 325, State Capitol**

RE: HOUSE BILL 1680 HD1 RELATING TO EMPLOYMENT SECURITY

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

The Chamber of Commerce of Hawaii ("The Chamber") opposes HB 1680 HD1 relating to Employment Security.

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 includes two provisions to the unlawful discriminatory practice category to H.R.S. Section 378-2, by:

- Adding that it shall be an unlawful discriminatory practice, "for any employer or employment agency to refuse to hire or employ any individual solely because the individual was unemployed at the time the advertisement for the job vacancy was published."
- Prohibiting any employer or employment agency to publish or cause to be published any advertisement for a job vacancy that includes language that essentially states that the unemployed need not apply.

This measure creates a protected class that would allow individuals to sue for discrimination in hiring and if an unemployed person does not get offered a job. While an employer may be able to prevail by showing a legitimate business reason for not hiring the unemployed person, the employer would have to challenge the legal battle to do so and face substantial legal liability. The fear of a lawsuit would drive a business to pursue existing networks to fill positions.

Thus, this law will discourage hiring and hurt the workers it purports to help. It will make it harder for unemployed workers to find jobs.

Additionally, this part of the bill hinders an employer's ability to ask questions about gaps in employment or employment status during the screening and interviewing process. Employers should be able to legitimately ask why an applicant was not working during a period of time.

As for the job advertisement provision, little evidence exists that employers discriminate against the unemployed by listing that the "unemployed need not apply," therefore, we believe this provision is unnecessary. In fact, pursuing a restrictive hiring policy could be counter-productive as it may exclude a talented pool and applicants that are more flexible about wages and benefits, so it would not make business sense not to consider unemployed persons as well.

If this measure becomes law, it will have unintended consequences and impose costs on business, such as legal obligations, potential liabilities, uncertainty, and unequivocally an increase in the cost of doing business. These higher costs will discourage job creation.

For these reasons, we respectfully urge the committee to hold this measure. Thank you for this opportunity to express our views.

The Twenty-Sixth Legislature
Regular Session of 2012

HOUSE OF REPRESENTATIVES

Committee on Judiciary

Rep. Gilbert S.C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

State Capitol, Conference Room 325

Tuesday, February 7, 2012; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1680, HD1
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 supports H.B. 1680, HD1, which prohibits any employer or employment agency from publishing a job advertisement that states that an applicant for the job must be currently employed and from refusing to hire or employ any individual solely because the individual was unemployed at the time the advertisement for the job vacancy was published. .

HD1 includes a provision to prohibit the practice of excluding from consideration for hire anyone who is not employed at the time of application. Practically speaking, however, proving a violation will be difficult. Employers and employment agencies who understand the law can easily circumvent it. Their application forms or requests for resumes will provide them with information about current employment or unemployment, and with this, they can decide to hire or not--without violating any law.

Nevertheless, enacting a law sets public policy and informs employers and others about the State's intent. A law that prohibits discrimination of the unemployed will recognize the difficult economic times we are in, where large numbers of people remain unemployed, and will support the efforts of the unemployed to be considered for new jobs.

The ILWU supports H.B. 1680, HD1. Thank you for the opportunity to testify on this matter.



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 7, 2012
2:00 pm
Conference room 325

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

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1680, H.D.1

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

H.B. No. 1680, H.D.1, would amend H.R.S. §378-2 to prohibit employers and employment agencies from refusing to hire a person based on unemployment status and from publishing job advertisements stating that applicants must be currently employed to be qualified or considered for a vacant job position.

The HCRC recognizes that H.B. No. 1680, H.D.1, addresses concern over an emerging national trend, where increasing numbers of employers and employment services are running job advertisements that say applicants must be currently employed to apply. However, at this time, the HCRC opposes H.B. No. 1680, H.D.1, for the following reasons:

There is no indication that this is a problem in Hawai‘i. Absent such a showing that there is discrimination that is a social problem, there should be restraint in limiting employers’ freedom to act. If there were such a demonstration, it would change the discussion.

Conceptually, the protection established in H.B. No. 1680, H.D.1, is different from other protections in the state fair employment law, H.R.S. chapter 378, part I, that the HCRC enforces. Unlike other protected bases, employment history, including current employment, is related to qualification and legitimate bases for selection decisions (experience, work ethic, job loyalty, etc.), and it would be difficult for employers to distinguish between lawful inquiries and prohibited inquiries when probing employment history and gaps in employment history. This would create problems for employers and also proof problems for employees and the HCRC in enforcement. This in contrast to the original H.B. No. 1680 prohibition against advertising excluding the unemployed from applicant pools

There are costs associated with enactment of laws that are a mish-mash of dissimilar protections, without a conceptual framework, and putting them under the jurisdiction of the HCRC. The HCRC has lost over 25% of its general funded full time permanent enforcement staff (investigators and attorneys), while the legislature continues to add protected bases to the HCRC's enforcement jurisdiction and responsibility. It takes enforcement resources to plan and prepare to enforce new protections, especially novel ones, regardless of the number of complaints that are actually filed. Enforcement resources spent on these newly assigned responsibilities directly affect the investigation, conciliation, and prosecution of all cases involving claims of discrimination involving the race, sex, disability, etc.

For these reasons the HCRC urges the Committee on Judiciary to hold H.B. No. 1680, HD1. Thank you for your consideration.

Testimony for HB1680 on 2/7/2012 2:00:00 PM

Testimony for HB1680 on 2/7/2012 2:00:00 PM

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

Sent: Friday, February 03, 2012 2:51 PM

To: JUDtestimony

Cc: Lardizabal@local368.org

Testimony for JUD 2/7/2012 2:00:00 PM HB1680

Conference room: 325

Testifier position: Support

Testifier will be present: No

Submitted by: Al lardizabal

Organization: Hawaii Laborers' Union

E-mail: Lardizabal@local368.org

Submitted on: 2/3/2012

Comments: