



HAWAI'I CIVIL RIGHTS COMMISSION

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January 27, 2012
Conference Rm. 309
10:30 a.m.

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

The Honorable Angus L.K. McKelvey
And Members of the House Committee on Economic Revitalization &
Business

From: Livia Wang, Acting Chief Counsel
Bill Hoshijo, Executive Director

Re: H.B. No. 1680

The Hawai'i Civil Rights Commission (HCRC) staff submits this memorandum to inform the Committee that the HCRC has not yet taken a position on H.B. No. 1680, because the HCRC Commissioners have not had the opportunity to review and take a position on this bill. A meeting for Commission review of bills is scheduled for February 3, 2012, at which time the Commissioners will take a position on this and a number of other bills. While the HCRC will not have a position in support or opposition to H.B. No. 1680 until that time, we offer comments and information on the proposed legislation.

H.B. No. 1680 would amend H.R.S. § 378-2 to prohibit employers and employment agencies from publishing job advertisements stating or suggesting that only applicants with current employment will be qualified and considered for a vacant job position.

H.B. No. 1680 addresses an emerging practice, where increasing numbers of employers and employment services are running job advertisements that say applicants must be currently employed to apply. Nationally, this potentially affects the more than 14 million Americans who are currently unemployed, including nearly 4.5 million who are long-term unemployed (for a year or longer).

In response, a number of states (including California, Illinois, Michigan, and New York) have considered legislation prohibiting discrimination against the unemployed, the exclusion of applicants who are not currently employed or recently unemployed. In 2011, New Jersey became the first and, thus far, only state to prohibit the practice of excluding unemployed individuals in advertisements for job vacancies. There have also been congressional bills which would prohibit discriminatory job postings or employment status being used as a criteria in hiring or advertising, and President Obama included the protection in the American Jobs Act proposal presented to Congress in September 2011.

It is interesting that H.B. No. 1680 prohibits discriminatory advertising, but not other discriminatory exclusion of unemployed applicants from employment. This limited protection is similar to that afforded by the New Jersey law, and unlike the other protected bases and prohibited practices found in H.R.S. § 378-2.

It should be noted that that H.B. No. 1680, as drafted, is technically incorrect in its Ramseyer formatting, as it does not reflect the current H.R.S. § 378-2, as amended by Act 206, effective January 1, 2012.

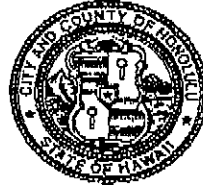
The HCRC takes its role and authority to testify and make recommendations to the legislature very seriously, and will do everything possible to assist you in your consideration of bills that affect HCRC jurisdiction and civil rights. We hope the temporary constraints we face will not cause inconvenience or difficulty for the House Committees on Labor and Public Employment and Economic Revitalization & Business. Please let us know if we can provide you any background information or answer any questions. Thank you for your understanding and patience.

DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

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NOEL T. ONO
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January 27, 2012

The Honorable Karl Rhoads Chair
and Members of the Committee on
Labor and Public Employment
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on
Economic Revitalization and Business

Dear Chairs Rhoads and McKelvey and Members:

Subject: House Bill 1680
Relating To Employment Practices

House Bill 1680 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 is concerned that House Bill 1680 could be construed to preclude promotional examinations which are regularly being conducted by the State and counties. Promotional examinations are either intradepartmental or interdepartmental in scope. In either case, the examination is limited to regular employees in the civil service of that 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.

The City respectfully requests that the House Bill 1680 be amended to clarify that this type of promotional examinations should not be considered an unlawful discriminatory practice. For example, the bill could define "publish" in Hawaii Revised Statutes Section 37B-1 as "to bring or announce to the general public."

Thank you for the opportunity to testify.

Yours truly,

A handwritten signature in cursive script, 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
Hawaii State House of Representatives
Committee on Labor & Public Employment
&
Committee on Economic Revitalization & Business

Testimony by
Hawaii State AFL-CIO
January 27, 2012

H.B. 1680 – RELATING TO
EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 1680 which prohibits any employer or employment agency from publishing a job advertisement that states or suggests that an applicant for the job must be currently employed.

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."

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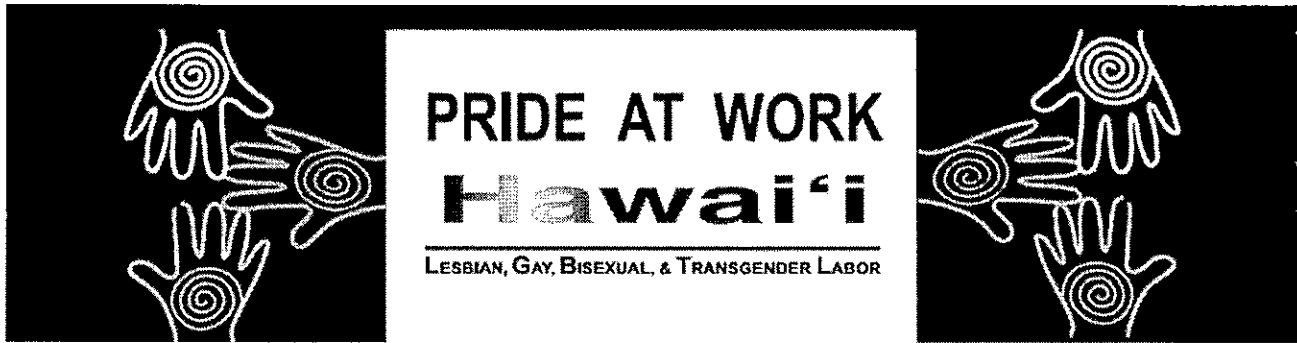
No one should be denied an opportunity to work because of economic conditions they cannot control. Most do not want to be unemployed and most are desperately seeking jobs to make ends meet. Passing H.B. 1680 will ensure everyone has an opportunity to seek employment.

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Randy Perreira', written in a cursive style.

Randy Perreira
President



January 27, 2012

House Committees on Labor and Public Employment, Economic Revitalization and Business
Chairs, Rep. Karl Rhoads and Rep. Angus McKelvey
Vice Chairs, Rep. Kyle Yamashita and Isaac Choy

Testimony in support of HB 1680

Pride At Work Hawai'i, an affiliate of the Hawai'i State AFL-CIO which works to mobilize lesbian, gay, bisexual, and transgender (LGBT) workers and their supporters for full equality and to build mutual support between the labor movement and the LGBT community, strongly supports HB 1680, which would help prohibit discrimination against the unemployed in hiring.

With local unemployment rates at over 6%, lack of employment is a stubborn reality in Hawai'i, particularly in the Lesbian, Gay, Bisexual, and Transgender (LGBT) community. For example, a 2011 study by the National Center for Transgender Equality and the National Gay and Lesbian Task Force found that across the US, transgender people are unemployed at twice the rate of the general population, with transgender people of color unemployed at up to four times the national rate.

The unemployed desperately want to reenter the workforce, yet there are incredible hurdles for them in securing employment. One of those hurdles is the perfectly legal practice of employers advertising job openings that state that unemployed applicants need not apply. It is our responsibility to end this discriminatory practice against the unemployed as they try to create better lives for themselves and to contribute to the workforce of the community.

Most of us have struggled during this long-term recession: public sector workers giving back wages and benefits while private sector workers deal with layoffs and stagnant wages. The reality is that times are different and being unemployed and long-term unemployed is rather common. HB 1680 is an opportunity for those in power to directly address a persistent problem for the unemployed, discouragement from even applying for work.

Many of the unemployed face rejection and discouragement so often that they are no longer looking for employment. We need to do what we can to support efforts to get back out there and rebuild our economy. This proposed legislation is a step towards self-sufficiency and integration back into the workforce for thousands of island residents. Again, Pride at Work Hawai'i strongly supports the passage of this important legislation.



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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment
and
Committee on Economic Revitalization and Business

Testimony by
Hawaii Government Employees Association
January 27, 2012

H.B. 1680 – RELATING TO
EMPLOYMENT PRACTICES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1680, which prohibits any employer or employment agency from publishing a job advertisement that states or suggests that an applicant for the job must be currently employed.

This year marks the third straight year that the U.S. unemployment rate remains over eight percent. While the unemployment rate is lower in Hawaii, it has remained over the 6 percent mark for nearly three straight years. According to statistics from the State Department of Labor and Industrial Relations, there were 41,900 unemployed workers in Hawaii in December 2011. Barring these brothers and sisters from seeking employment is an injustice. We urge you to pass this measure.

Thank you for the opportunity to testify in support of H.B. 1680.

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director