

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

February 1, 2011

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor
and Public Employment
The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Economic
Revitalization and Business
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Rhoads and McKelvey and Members:

Subject: House Bill No. 527
Relating to Workers' Compensation

The City and County of Honolulu supports the intent of House Bill No. 527, which amends Chapter 386-3 (b), Hawaii Revised Statutes (HRS), to disallow workers' compensation benefits for the exacerbation of existing work-related injuries through voluntary participation in after work recreational or social activities. However, we believe the change should exclude all injuries associated with after work recreational or social activities where participation is voluntary. We have included below the preferred language for your consideration.

(2) For an injury or illness resulting from voluntary participation in any activity the major purpose of which is social or recreational, including, but not limited to, athletic events, parties and picnics, whether the employer pays some or all of the cost of such activity.

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

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kayle T. Yamashiro, Vice Chair

COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Rep. Angus L. McKelvey, Chair
Rep. Issac W. Choy, Vice Chair

Date: Tuesday, February 1, 2011
Time: 9:00 a.m. to 12:00 p.m.
Place: Conference Room 309

TESTIMONY OF ILWU LOCAL 142 RE: H.B. 527
RELATING TO WORKERS' COMPENSATION

Chairman Rhoads, Chair McKelvey, Vice Chair Yamashiro, Vice Chair Choy, Members of the Committee on Labor & Public Employment, Members of the Committee on Economic Revitalization & Business:

Thank you for the opportunity to testify regarding H.B. 527. We oppose the bill.

H.B. 527 attempts to eliminate the long-standing practice of awarding compensation to employees who are injured during company-sponsored recreational events. According to the authoritative treatise in the field, Larson on Workers' Compensation Law, such injuries are regarded as occurring within the course and scope of employment because they have a definite work-connection to employment and because the employer benefits from the improved morale and sounder interpersonal relationships developed through such recreational activities.

The bill also stipulates the additional restriction that in order to deny compensation "the attending physician had placed restrictions on the employee's physical activity for participation in such activities and the employee disregarded the restrictions." Although employees should be mindful and obey their attending physicians medical restrictions, compensation should not automatically be denied in those circumstances. An employee with restrictions might not understand the exact limitations the physician imposed or might simply have innocently disregarded or misinterpreted medical advice. Workers compensation has never been a fault based system, as the tort system is, and notions of fault have no place in determining workers' compensation coverage.

However, if the disregard of the physician's advice is truly blatant or reckless, there is already recourse for the employer, as it may argue that the employee willfully intended to injure themselves. Under Section 386-3 HRS, an employee who suffers from

a self-inflicted injury or willfully intends to injure herself or herself is denied compensation under existing law. _____ v. Kyo Ya (Employee scolded by supervisor in a staff meeting became angry and thought to hit employer, but instead hit the door to the supervisor's office and broke his hand. Held by the board that the self-inflicted injury was denied coverage.)

Based on the foregoing, we respectfully urge that H.B. 527 be held in committee.



LATE

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
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February 1, 2011

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

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

Date: Tuesday, February 1, 2011

Time: 9:00 a.m. – 12:00 p.m.

Place: Conference Room 309, State Capitol

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

Testimony in SUPPORT
of
H.B. No. 527 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

House Bill 527 proposes to amend section 386-3, HRS to disallow workers' compensation benefits for the exacerbation of injuries sustained during after work, voluntary recreational, or social activities; provided that the attending physician had placed restrictions on the employee's physical activity for participation in such activities and the employee disregarded the restrictions.

II. CURRENT LAW

The current law does not specifically address coverage of an exacerbation of an injury provided that the attending physician had placed restrictions on the employee's physical activity for participation in such activities and the employee disregarded the restrictions.

III. SENATE/HOUSE BILL

The Department of Labor and Industrial Relations supports this bill as written.

NEIL ABERCROMBIE
GOVERNOR



SUNSHINE P. W. TOPPING
INTERIM DIRECTOR

LATE

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

JANUARY 31, 2011

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
For Hearing on Tuesday, February 1, 2011
9:00 a.m., Conference Room 309

BY

SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

House Bill No. 527
Relating to Workers' Compensation

(WRITTEN TESTIMONY)

TO CHAIRPERSONS KARL RHOADS, ANGUS L. K. McKELVEY AND MEMBERS OF
THE COMMITTEES:

The purpose of H.B. No. 527, is to amend Section 386-3(b), Hawaii Revised Statutes. The amendment appears to propose that if an employee sustains an aggravation of a pre-existing, work related injury while voluntarily participating in any recreational or social activity after regular work hours, including employer sponsored events, it will be covered under Chapter 386, Hawaii Revised Statutes, unless the individual's physician placed a restriction on the participation which was disregarded by the employee.

The Department of Human Resources Development is strongly opposed to this bill for the following reasons:

1. This proposal goes far beyond the intent of the workers' compensation statute by proposing to cover claims for injuries which did not arise out of or in the course of the individual's employment.
2. Under this proposal, employers would become responsible for their employees at times and places over which they have no control.

3. If an employer was not aware that a new employee had a prior work related injury, it appears that they would be liable for injuries that aggravated that prior injury after regular work hours, at a voluntary company sponsored event if a doctor hadn't restricted participation. It isn't clear how a physician would know that his/her patient would be engaging in activities inconsistent with their condition. Further, because of HIPAA, how would the current employer even know whether or not an employee had any restrictions?

4. This bill will likely increase the cost of workers' compensation to all employers in the State as it expands the potential liability of the employer and lead to a more adversarial system in which litigation will be the rule rather than the exception.

Based on the above reasons, we strongly urge the Committees to hold this bill.



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business

State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 01, 2011
 9:00 am
 Conference Room 309

RE: HB527, Relating to Workers' Compensation

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing almost 24% of the labor force.

RMH supports HB527, which disallows workers' compensation benefits for the exacerbation of injuries sustained during after work, voluntary recreational or social activities.

We do not dispute that an injured worker should receive quality and appropriate medical care as directed by his/her physician for a workplace injury. However, it is incumbent upon the employee to maintain reasonable care for his/her own well-being and abstain from activities that could cause further harm. The employer should not be held liable for careless behavior.

It is imperative that, as the economy continues its fragile improvement, we support our employers by not increasing business costs that would hinder true recovery for our State.

The members of the Retail Merchants of Hawaii respectfully request that you pass HB527. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
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**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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January 27, 2011

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

Date: Tuesday, February 1, 2011
Time: 9:00 a.m.
Place: House Conference, Room 309, State Capitol

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

Re: H.B. No. 465 Relating to Dislocated Workers

I. OVERVIEW OF PROPOSED LEGISLATION

House Bill 465 proposes to amend the definition of a covered establishment by reducing the number of employees in the establishment from 50 or more to “any number of persons”. It also proposes to add an item (e) in Section 394-B-9 giving the Department of Labor and Industrial Relations enforcement powers to penalize employers who fail to provide the required notification to affected workers of a closing, divestiture, partial closing or relocation.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance to workers who were faced with termination due to a sudden closure or partial closing as a result of a sale, transfer, merger, bankruptcy or other business transaction by:

- A. Requiring employers with fifty (50) or more employees in the State of Hawaii to provide advance notification to the Department of Labor and Industrial Relations and to all affected employees;

- B. Requiring employers to provide Dislocated Worker Allowance (the difference between the employee's average weekly wage and the weekly unemployment compensation benefit) to affected employees who apply for and found eligible for unemployment compensation; and
- C. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation.
- D. An employer who fails to provide notice shall be subject to a civil penalty not to exceed \$500 for each day of the violation and the amount deposited in the Employment and Training Fund under section 383-128 unless the employer satisfies its liability to each affected employee within three weeks after the closing.

III. HOUSE BILL

The Department of Labor and Industrial Relations opposes this bill for the following reasons:

- A. The Department provides Rapid Response services to employers affected under the Law as well as businesses who voluntarily seek the assistance of the Department. The Department provides information, guidance and counseling on the process of filing for unemployment compensation, meeting the job search and availability of work requirements, seeking community resources, and assessing workers' abilities, skills and experiences to complement current labor market needs. A proactive approach to assist all affected parties would be more beneficial than using limited department resources to penalize employers.
- B. The current threshold for a "covered establishment" is fifty or more employees. Based on 2009 data, there are 31,056 employers in Hawaii. Of this number, 1,456 employers, or less than 5%, have fifty or more employees, and are thus potential covered establishments under the current law. By lowering the threshold to "any number of persons", all employers, including those with one employee, would be subject to the current law. Thus, even these very small employers would have the added burdens of ensuring that proper notice is provided and a dislocated worker allowance is provided to affected workers. Because small businesses often

operate on narrow profit margins and without human resource staff, these added responsibilities—administrative and financial-- will be very burdensome, making it more difficult for them to operate successfully in Hawaii.

- C. By giving the Department enforcement authority, the bill imposes a huge increase in additional responsibilities without any additional resources. This added responsibility cannot be performed with existing state resources and budget constraints preclude an increase in State funding. Federal funds cannot be used for this purpose.

The Twenty-Sixth Legislature
Regular Session of 2011

HOUSE OF REPRESENTATIVES

Committee on Labor and Public Employment

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

Committee on Economic Revitalization and Business

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

State Capitol, Conference Room 309
Tuesday, February 1, 2011; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 465
RELATING TO DISLOCATED WORKERS**

The ILWU Local 142 supports H.B. 465, which authorizes the Department of Labor and Industrial Relations to exercise enforcement powers against an employer in a covered establishment that would require the employer to adhere to, and comply with, the notification and penalty provisions of the Hawaii Dislocated Worker Act and redefines "covered establishment" to include any number of employed persons.

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.

H.B. 465 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 H.B. 465. Thank you for the opportunity to testify on this matter.

LATE



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business

State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 01, 2011
 9:00 am
 Conference Room 309

RE: **HB465, Relating to Dislocated Workers**

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing almost 24% of the labor force.

RMH strongly opposes HB465, which essentially redefines "covered establishment" to include any number of employed persons.

This bill is an infringement on the basic rights of ownership that seriously impacts the value of a business and the ability of an owner to divest, sell or transfer that business operation. It further discourages investment in Hawaii by severely restricting the options for potential new owners by dissuading any development and/or diversification possibilities. At a time when Hawaii should be encouraging new enterprise in our state to accelerate economic recovery, this bill is a giant step in the opposite direction and could have the undesirable result of more companies just closing their doors for lack of viable alternatives.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB465. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script that reads 'Carol Pregill'.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
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