



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

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

Date: Tuesday, February 8, 2011
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 574 H.D. 1 Relating to Unemployment Insurance

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 574 H.D. 1 proposes to amend section 383-7.6, Hawaii Revised Statutes (HRS), to provide unemployment insurance (UI) benefits to individuals who refuse to accept suitable work out of fear of domestic or sexual violence. This measure will allow good cause where there is a reasonable belief that the employment causes an unreasonable risk of violence to the individual, the individual's minor child or other individuals in the workplace.

II. CURRENT LAW

Currently, sections 383-7.6, 383-30(3), HRS, and Administrative Rule 12-5-55 provide good cause where there is a degree of risk involved to the individual's health, safety and morals and where domestic or sexual violence is relevant to job separations. This application of good cause also applies to the individual's immediate family including the spouse and parents of the individual.

III. HOUSE BILL

The Department supports the intent of this measure, but offers the following concerns:

In HB 547 H.D. 1, additional language was inserted in section 2 to invalidate any portion

of the bill that may violate federal regulations. The Department believes that there is no conformity issue with the existing language which establishes good cause for refusing work due to domestic or sexual violence since, in fact, our current adjudication practices are consistent with the intent of this measure.

Rather, the Department's concern is that, with passage of this bill, there may be a misconception that, once the conditions of this amendment are met with respect to the refusal of work for good cause, UI benefits will be paid automatically. Should this occur, Hawaii's adjudication practices may be investigated by the U.S. Department of Labor (USDOL) as a conformity issue with federal law based on our failure to further examine whether the able and availability (A&A) requirements under the Social Security Act (SSA) and Federal Unemployment Tax Act (FUTA) have also been met.

Sections 303(a)(2) and 303(a)(5), SSA, and sections 3304(a)(1) and 3304(a)(4), FUTA, require states to condition the payment of unemployment compensation upon a claimant being able to and available for work. At jeopardy would be the loss of certification for \$15 million in administrative funding to operate the UI program in Hawaii. The shutdown of all local UI offices would preclude jobless workers from filing UI claims. In addition, employers will lose the FUTA tax credits and be liable for the full 6.2% FUTA tax, an increase from \$56 to \$434 per employee annually.

With respect to the department's current determination process, a refusal of suitable work due to domestic or sexual violence, while non-disqualifying under section 383-30(3), HRS, would raise a potential conflict with the able and available (A&A) requirement pursuant to section 383-29(a)(3), HRS. The fact that a suitable job offer could not be accepted immediately due to domestic or sexual violence is indisputable evidence that the individual's personal circumstances preclude the individual from consideration for, not only the offer at hand but, any other potential employment opportunities. Consequently, the individual would not meet the A&A provisions and would be held ineligible for as long as the prohibitive conditions exist. Should these existing adjudication practices continue with passage of this measure, no federal conformity issues would be raised.