
From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 02, 2011 1:33 PM
To: JDLTestimony
Cc: william.g.kunstman@hawaii.gov
Subject: Testimony for SB1475 on 3/3/2011 3:30:00 PM
Attachments: SB1475 DLIR JDL 20110303.doc; SB1475-HB1530 USDOL ltr.pdf

LATE TESTIMONY

Testimony for JDL 3/3/2011 3:30:00 PM SB1475

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Dwight Takamine
Organization: DLIR
Address:
Phone:
E-mail: william.g.kunstman@hawaii.gov
Submitted on: 3/2/2011

Comments:



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

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

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

Date: Thursday, March 3, 2011
Time: 3:30 p.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 1475 Relating to Athletic Officials

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 1475 proposes to amend section 383-7, Hawaii Revised Statutes (HRS), by excluding service performed by an individual who serves in the capacity of an athletic contest official at a publicly-exhibited contest and receives remuneration solely by way of a game fee.

II. CURRENT LAW

Currently, there is no provision under section 383-7 to exclude athletic contest officials.

III. SENATE BILL

The Department **opposes** this measure for the following reasons:

1. S.B. 1475 seeks to exclude services of athletic contest officials from coverage under state law. However, this action will raise a conformity issue under federal law. Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires all services performed by employees of state and local governments, certain nonprofit organizations and federally recognized Indian tribes must be covered by state law unless specifically exempted by federal law. There is no

such exemption under federal law.

2. If state law permits the denial of services performed for governmental entities, Indian tribes and nonprofits when these services are required to be covered, the result is, after an opportunity for a hearing, the loss of certification for tax credits for all contributory employers liable for the FUTA tax. If this happens, employers must pay the full FUTA tax of 6.2%. There is also the potential for loss of administrative funding which will result in the closure of all UI offices and workers will not be able to collect UI benefits

Attached is a letter from the USDOL about the conformity issue.

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



FEB 15 2011

Ms. Linda Uesato
Director
Department of Labor & Industrial Relations
830 Punchbowl Street
Room 321
Honolulu, Hawaii 96813

Dear Director Uesato:

We have reviewed House Bill (HB) 1530 and Senate Bill (SB) 1475 for conformity with Federal unemployment compensation (UC) law. These bills would exclude from the definition of employment, and therefore coverage under state law, certain services of athletic contest officials. As such they create an issue with the requirements of the Federal UC law. A detailed description follows.

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as a condition for employers in a state to receive credit against the federal tax, that UC be payable based on certain services. Specifically, UC must be payable based on services excepted from the federal definition of employment (1) *solely* by reason of being performed for the state and local governmental entities or federally recognized Indian tribes described in Section 3306(c)(7), FUTA, or (2) *solely* by reason of being performed for the nonprofit organizations described in Section 3306(c)(8), FUTA. (See Section 3309(a)(1), FUTA.) However, states are not required to pay UC on these services if they are excepted from employment or coverage under other provisions of federal law. These exceptions are described in paragraphs (1)-(6) and (9)-(21) of Section 3306(c), FUTA; Section 3309(b), FUTA; and Sections 3121(d)(3)(B) and (C), 3508 and 7873 of the Internal Revenue Code.

These bills would add new subsection (25) to Chapter 383-7, Hawaii Revised Statutes, to exclude from the definition of employment--

Service performed by any individual who serves in the capacity of an athletic contest official at a publicly-exhibited athletic contest as defined in section 708-881(2)(a), including any person who acts as an umpire, referee, judge, linesperson, timer, score keeper, or other similar capacity who receives remuneration solely by way of a game fee.

FUTA does not contain an exclusion from coverage for services as an athletic contest official as described. As such, Section 3304 (a)(6)(A), FUTA, requires that these services be covered if they are performed for a governmental entity, Indian tribe, or nonprofit organization.

We note that Section 3304(13), FUTA, permits athletic contest officials to be denied UC between athletic seasons under specified conditions. Hawaii could add these officials to its between seasons denial provision for athletes without creating an issue. However, the state may not exempt these services from coverage when the services are performed for governmental entities, Indian tribes, or nonprofit organizations.

While Hawaii may exclude such services from coverage if they are provided to private for-profit employers, this exclusion could affect the employers' FUTA tax liability. Employers subject to FUTA may be relieved of state contributions for services excluded from "employment" under state law. However, these employees continue to be included under the FUTA definition of "employment," and therefore, their services would be subject to the full FUTA tax of 6.2 percent.

Please contact Patrick O'Neal, your Regional Office's legislative liaison, at 415-625-7926, or by e-mail at ONeal.Pat@dol.gov should you have any questions regarding this letter.

Sincerely,



Gay M. Gilbert
Administrator
Office of Unemployment Insurance

cc: Richard C. Trigg
Regional Administrator
San Francisco

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 02, 2011 12:24 PM
To: JDLTestimony
Cc: rfitzgerald@co.hawaii.hi.us
Subject: Testimony for SB1475 on 3/3/2011 3:30:00 PM
Attachments: SB 1475 - Athletic Contest Officials - 3-1-11.tif

LATE TESTIMONY
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Testimony for JDL 3/3/2011 3:30:00 PM SB1475

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Robert A. Fitzgerald
Organization: County of Hawaii - P&R
Address:
Phone:
E-mail: rfitzgerald@co.hawaii.hi.us
Submitted on: 3/2/2011

Comments: