

SB2487
TESTIMONY

**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, February 14, 2012; 9:30 a.m.
Conference Room 016**

RE: SENATE BILL NO. 2487 RELATING TO WORKPLACE PRACTICES

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to Senate Bill 2487, relating to Workplace Practices.

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 makes abusive conduct against an employee in the workplace a violation of occupational safety and health law and creates a private cause of action against coworkers and employers. Although the Chamber understands the intent of the bill, the Chamber believes that employers already place an emphasis on what they can do for their employees to create a positive work environment. Many employers are constantly seeking ways to provide benefits and security to retain employees, including the prevention and intolerance of an abusive work environment.

The language in the bill poses some concerns. For example, "Subjection of an employee by the employee's employer to an abusive work environment" is too broad and indefinite a concept to realistically or fairly impose on businesses. As a result, this bill interferes with a business' ability to operate.

If this bill passes, employers will be exposed to liability for conduct it did not know of or could not reasonably prevent. The description of what is abusive conduct that is actionable is so broad and fact dependent that any claim may require a jury trial to resolve. The expansive definition focuses on what a "reasonable person" would find abusive and that opens the door to uncontrolled litigation and cost. We also object to the language that states: "A single act normally may constitute abusive conduct if the act is especially severe and egregious; provided that the severity, nature, and frequency of any conduct objected to shall be considered in determining whether acts constitute abusive conduct." Finally, the line between someone who is a qualified victim of workplace bullying and a disgruntled employee can be difficult to differentiate.

Existing federal and state laws already provide remedies to employees who have been harmed in the workplace, such as workers' compensation laws and discriminatory employment practices under § 378, Hawaii Revised Statutes.

In light of the above, the Chamber respectfully requests that the measure be held. Thank you for the opportunity to testify.

**TESTIMONY OF JENNIE WOLFE
IN SUPPORT OF SB2487**

**To: Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair**

SB 2487, Relating to Workplace Practices

I have been with the State of Hawaii, Department of Transportation (DOT), Airports Division, Personnel Office for 22 plus years. I was a victim of workplace harassment. Even though the Department of Transportation has a policy on workplace violence and zero tolerance, there is no law compelling them to abide by their own policy.

Verbal harassment and bullying is probably more prevalent in places of employment than physical violence. Most employees suffer in silence for fear of retaliation and job loss.

In 2008, I and 3 other employees filed workplace violence complaints against our supervisor because of several incidents of verbal harassment. Three of us filed a Temporary Restraining Order against this supervisor because we feared for our safety and were not certain if management would take any action. We were granted a Mutual Injunction Against Harassment by the Court in lieu of the Temporary Restraining Order. The Mutual Injunction Against Harassment was good for a period of three years. During the first two years of the Mutual Injunction, the supervisor was placed in another location within the Airports Division.

During a two year period, we were constantly harassed by management and the supervisor. A break in at the Personnel Office, attempted damage to personal property, malicious note sent to the Attorney General's Office and frivolous incident reports filed against us were some of the incidents of harassment. We wrote to numerous Senators and Legislators in the Federal and State level, the Governor, and the Department of Labor and Industrial Relations for help. The Department of Labor and Industrial Relations told us that we were not in a protected category so they basically could not help us.

In April of 2010, we were told the supervisor would be returned to duty in the Personnel Office. We had two choices, stay and work for this supervisor or transfer out of personnel. The list of vacant positions they gave to all 5 members of the personnel office were either lateral transfers or demotions. My co-worker and I opted to go out on sick leave and we filed for worker's compensation. There were no positions for us to transfer to and the only positions available were demotions with a substantial pay cut. DOT very cleverly declared that this was a voluntary transfer. If the transfer is involuntary, then we would have retained our present pay. In essence we were being punished.

April 2010, we sought the help of an attorney and filed in Circuit Court a complaint against the Department of Transportation and the supervisor. In November 2011, we agreed to settle the case. Our attorney's opinion was that judges may not have ruled in our favor under the present law.

Even though our story has ended through this settlement, this bill will help future victims of workplace violence, be it physical or mental. This bill will protect every employee and give them hope that they no longer have to fear management retaliation and suffer in silence at the hands of the bully.

I respectfully ask the members of this committee to pass this long overdue bill that will help all employees and not just the ones who are in a protected class.

Testimony of Donna Jinbo
P.O. Box 893145
Mililani, HI 96789

February 14, 2012

To: Senate Committee on Judiciary and Labor
Honorable Clayton Hee, Chair
Honorable Maile Shimabukuro, Vice Chair
Honorable Members of the State Committee on Judicial and Labor

I am testifying in support for Senate Bill 2487 Relating to Workplace Practices

I have been with the State of Hawaii, Department of Transportation, Airports Division for over 25 years as a personnel clerk, in the Personnel Section.

There are many instances of bullying and abusive behavior in our workplaces. Many are never brought to light as the victims are afraid of retaliation or have no faith that their management will do anything about the bully. They often find other employment rather than go through the emotional hassle of standing up for their rights. So the employers lose good employees and the productivity suffers and the remaining employees worry about being the next target of the bully.

I was a victim of ongoing workplace harassment(which is suppose to be covered under the workplace violence policy). The Department has a policy on workplace violence and zero tolerance.

The harassment was done by the supervisor of my work section, at the Airports Division.

The harassment was frequently directed at me, often at co-workers within my sight and hearing which led to a hostile work environment. Numerous incidents by various employees were reported to the upper management. The problem wasn't addressed. The verbal intimidation got to be so distressing that during one episode the sheriff's office was called and as a result two co-workers and I sought relief through the courts by applying for a temporary restraining order. The order was approved as a mutual injunction for 3 years. In that three year period, we were subjected to repeated harassment and retaliation.

Lacking any relief, we sought help from many different sources. The Department of Labor & Industrial Relations, Ombudsman's office, individual Senators and Representatives(state and federal), Worker's Compensation, Office of Information Practices, and our labor union, all to no avail.

During my experience, it came to light that I am not in a legally protected category. All the rules, regulations and laws do not pertain to me (Under the OSHA law, those protected are categories of race, color, national origin, age, gender, marital status and religion). It seems that management interprets that to mean it's ok for one employee to bully another as long as the real reason is covert and/or it can't be proven and they have no legal obligation to address the problem.

The excuses I heard for not dealing with it were:

- No law has been broken.
- Policy is not law.
- It not against the law to be tactless.

These bullies are aware of the categories and very careful to not comment on protected categories. Sometimes there is no reason, the person is just a bully and as long as there is no physical injury, they can use their position to intimidate any subordinate. Every person/office contacted, commented that it was only mental/psychological, that nothing physical happened. In my opinion this was a cop-out, to the person under attack, the abuse is quite devastating, at the time it happens and later, into the future.

Workplace policy can be and is frequently changed, altered or totally ignored at the whim of the management.

The problem that my co-workers and I faced has essentially been resolved, but this bill (if it becomes law) will help future generations of workers(your family: children, grandchildren; friends and neighbors). I believe that this bill will be instrumental in protecting all workers, equally, as a basic human right.

I urge your favorable action to approve Senate Bill 2487.

Donna Jinbo

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: carolwaynes@hotmail.com
Subject: Testimony for SB2487 on 2/14/2012 9:30:00 AM
Date: Sunday, February 12, 2012 3:03:15 PM

Testimony for JDL 2/14/2012 9:30:00 AM SB2487

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Carol Tashiro
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Comments:

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: jan.m.murakami@hawaii.gov
Subject: Testimony for SB2487 on 2/14/2012 9:30:00 AM
Date: Friday, February 10, 2012 3:12:48 PM

Testimony for JDL 2/14/2012 9:30:00 AM SB2487

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Jan Murakami
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Comments: