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April 4, 2016

To: The Honorable Jill N. Tokuda, Chair,
The Honorable Donovan M. Dela Cruz, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Monday, April 4, 2016
Time: 2:00 p.m.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 2161 H.D. 1 S.D. 1 Relating to the Disability Compensation Division

I. OVERVIEW OF PROPOSED LEGISLATION

HB2161 HD1SD1 proposes to appropriate \$355,526 for the hiring of six positions within the Department of Labor and Industrial Relations' (department) Disability Compensation Division (DCD).

The department supports this measure, provided that its passage does not replace or adversely impact priorities indicated in the Governor's Supplemental Budget request.

The six positions in the measure are:

- One (1) Vocational Rehabilitation Specialist;
- One (1) Professional Employers Organization Specialist;
- Two (2) Disability Compensation Enforcement Specialists (one assigned to Kauai and one to Kona);
- One (1) Auditor; and
- One (1) Hearings Officer assigned to Kona.

II. CURRENT STATUS

The Division currently lacks adequate staffing to carry out its responsibilities in its Vocational Rehabilitation (VR), Professional Employer Organizations (PEO),

Enforcement, and Hearings programs.

Vocational Rehabilitation.

The Division currently administers the Workers' Compensation Vocational Rehabilitation (VR) program with only one (1) Vocational Rehab Specialist in the VR unit. The unit is responsible for: reviewing and approving all rehabilitation plans developed by rehab providers; adopt administrative rules to expedite and facilitate rehab services and establish minimum standards for those providers; certify private and public providers of rehab services; and enforce the implementation of rehab plans. The VR Specialist must review and approve/disapprove the VR plans for claimants within 20 days else the VR plans are approved by default. By law, these VR determinations can only be signed by the VR unit, and without a second Specialist in the unit, the Division will be unable to review plans and issue the time-sensitive determinations when the specialist is on leave or if the position is vacant.

Professional Employer Organizations.

The Division was tasked in 2013 with administering chapter 373L, Hawaii Revised Statutes, (Professional Employer Organizations) without staffing or funding. Without adequate resources, the division has only been able to focus on registering new and renewal applications from PEOs and not ensuring compliance with other provisions of the law like informing DoTAX of non-compliance and therefore loss of GE Tax exemptions or pursuing other PEOs that are operating without registering.

Enforcement - Investigation.

The Division does not have investigator positions on Kauai and Kona to ensure employers are providing their employees the Workers' Compensation (WC), Temporary Disability Insurance (TDI), and Prepaid Health Care (PHC) coverage mandated by law. Consequently, our Investigation Section in Honolulu has tried unsuccessfully to enforce these laws remotely by email, phone, and regular mail.

Enforcement – Audit.

The Division lacks adequate staffing to conduct the Financial and Compliance audits necessary to ensure self-insured employers are financially healthy enough to continue their self-insured program and to ensure employers are not over-withholding premium deductions from their employees. The Audit section, comprised of only one supervisor and two auditors, is responsible for enforcing the financially-related sections of the WC, TDI, and PHC laws throughout the entire State.

Hearings – Kona.

The West Hawaii (Kona) District Office is staffed with only one Hearings Officer to adjudicate WC disputes. The backlog of WC hearings in Kona is preventing timely resolution of WC cases for both claimants and employers.

III. COMMENTS ON THE HOUSE BILL

The department appreciates the opportunity to increase its DCD staff to improve its quality and timeliness of services to the public and supports this measure, provided that its passage does not replace or adversely impact priorities indicated in the Governor's Supplemental Budget request.

With the exception of the Kona Hearings Officer, DCD's priority staffing requests listed above are part of the department's Supplemental Budget request and represent the priorities of the DLIR. The department did request one Hearings Officer for Kona in the Supplemental Budget, but that request was not approved by the Department of Budget & Finance.

The estimated cost to fund the six positions follows.

Annual Salaries	\$ 317,424
Expenses & Equipment	\$ 31,602
Training	<u>\$ 6,500</u>
Total	<u>\$ 355,526</u>



**Testimony to the Senate Committee on Ways & Means
Monday, April 4, 2016 at 2:00 P.M.
Conference Room 211, State Capitol**

**RE: HOUSE BILL 2161 HD 1 SD 1 RELATING TO THE DISABILITY
COMPENSATION DIVISION**

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 2161 HD 1 SD 1, which appropriates funds for the hiring of six identified hearings officer positions and support staff within the Department of Labor and Industrial Relations' Disability Compensation Division and to provide the officers and staff with legal and medical training.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The addition of these six officer positions and support staff within the Disability Compensation Division will greatly alleviate the hearings backlog. In addition, the PEO, vocational rehab, and enforcement specialist positions will allow for a more efficient regulation of the industry, a speedier recovery for injured workers, and stronger enforcement of workers' compensation, prepaid health, and other issues.

Thank you for the opportunity to testify.

DENNIS W. S. CHANG

Attorney at Law, A Limited Liability Law Corporation

WORKER'S RIGHTS - LABOR LAW
WORKER'S COMPENSATION
SOCIAL SECURITY DISABILITY
LABOR UNION REPRESENTATION
EMPLOYEES RETIREMENT SYSTEM
BODILY INJURIES

THE SENATE
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

COMMITTEE ON WAYS AND MEANS

Senator Jill N. Tokuda, Chair

Senator Donovan M. Della Cruz, Vice Chair

From: Dennis W. S. Chang
Attorney-at-Law

DATE: Monday, April 04, 2016

TIME: 2:00 p.m.

PLACE: Conference Room 211

State Capitol

415 South Beretania Street

RE: RELATING TO THE DISABILITY COMPENSATION DIVISION

We should all aspire to have a more workable and responsive Disability Compensation Division (DCD) in the Department of Labor and Industrial Relations (DLIR) as one of the most utilized divisions by injured workers. For this reason, I **wholeheartedly support** the passage of HB 2161, HD 1, SD 1. The DCD has been decimated since at least 2009. As a labor lawyer with a heavy emphasis in handling complex litigation in the Worker's Compensation (WC) process for nearly four decades, I have witnessed the once vibrant DCD and painful changes over the years for the worse.

Recently, following a meeting with the Director Linda Chu-Takayama (Director) and Administrator JoAnn A. Vidinhar, I, as a co-chair for the Hawaii Association of Justice WC Section, and Wayne Mukadai, the prior sole chair, had the luxury of a walkthrough of the DCD. It was surreal, and a deeply shocking experience, to discuss and witness the gross comparison of the previous DCD, which I have etched in memory, and the current DCD, which is literally wiped out even with the current struggling status of rebuilding. There is an obvious lack of support help throughout the DCD as reflected in the limited storage of files and inefficient filing, lined up on floors, tables, wherever there was once open spaces. We were informed of storage rooms and offsite storage.

While the bill initially called for six hearing officers, we should remain mindful that there are moving parts throughout the WC process. We clearly need specialists and support staff. There is currently only one body on Oahu who is responsible for the entire vocational rehabilitation (VR) unit on the island of Oahu. At one time in my career, I recall that there were as many as six VR specialists monitoring various cases. Enforcement officers are also needed to conduct investigations and ensure that there are no delinquent employers, as deemed appropriate. Director Linda Chu-Takayama's previous testimony shows the current plight of the DCD.

It is unclear what is the precise agenda that the Director will be implementing. However, she should be given the required funding and latitude to correct the initial and most shameful first step that it takes nearly two months just to set up an initial claim of a work accident. The backlog of having hearings on TDI disputes is outrageous. In the past, these were rapidly addressed with hearing officers and subsequently, a specially hired hearing's officer during the early crises facing the DCD. Like other stakeholders in the WC process, though I am I sure that I will have differences with the Director, she should indisputably be given the discretion to reorganize the DCD with dearly earmarked monies for additional bodies (in addition to the budget contained in HB 1700, HD 1). This proposed bill includes officers and staff, and legal and medical training. That is the least we can give to our new leader, the newly appointed Director.

We will know soon, perhaps in the next year before the beginning of the next Legislative session of whether the Director's changes or agenda are moving in the correct direction, consistent with the DCD's mission. I only hope that she will be fair and balanced in facilitating the prompt payment of benefits to injured workers, in particular, medical treatment for a recovery and return to usual and customary duties or some form of suitable and gainful employment.

The Director should be allowed with the supported additional funding for her chosen discretionary use in the long rebuilding process. **I wholeheartedly endorse the passage**, which should be bipartisan. We can always revisit what happens next session.