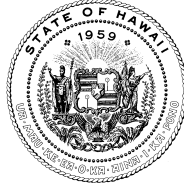


DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



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

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February 25, 2016

To: The Honorable Sylvia Luke, Chair,  
The Honorable Scott Y. Nishimoto, Vice Chair, and  
Members of the House Committee on Finance

Date: Thursday, February 25, 2016  
Time: 11:00 a.m.  
Place: Conference Room 308, State Capitol

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

**Re: H.B. No. 2363 H.D. 1 Relating to Labor**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB2363 HD1 proposes to amend sections 386-31, 386-95, 386-96, 386-123, and 386-129, Hawaii Revised Statutes (HRS), of the workers' compensation (WC) law by increasing the penalties for noncompliance with the WC law, and for late or non-filing of required reports to an unspecified amount. The proposal also allows electronic filing of employer's and physician's reports.

HB2363 HD1 also proposes to amend sections 392-5 and 392-47, HRS, of the temporary disability insurance (TDI) law by adding additional exclusions and increasing the penalties for noncompliance with the TDI law to an unspecified amount.

The fines and penalty amounts in sections 386-31, 386-96, 386-123, 386-129, and 392-47, HRS, are left unspecified.

Thank you for hearing this Administration proposal. The department strongly supports this measure and notes that the current WC penalties were last amended twenty-eight (28) years ago in 1988, while the TDI penalties have not changed since they were first established forty-seven (47) years ago in 1969.

## II. CURRENT LAW

Section 386-31(b), HRS, provides requirements for payment of WC temporary total disability (TTD) benefits and penalties for noncompliance when an injured employee is temporarily unable to work due to their work injury.

Section 386-95, HRS, provides employer's requirements for filing reports for the work injury.

Section 386-96, HRS, provides requirements for physicians, surgeons, and hospitals to file their reports for treatment of the industrial injury and penalties for noncompliance.

Section 386-123, HRS, provides penalties for noncompliance in securing coverage for employees with the WC law.

Section 386-129, HRS, provides penalties against employers for deducting any of the WC premium cost from the wages of an employee.

Section 392-5, HRS, identifies services excluded under the TDI law.

Section 392-47, HRS, provides penalties for noncompliance with the TDI law.

## III. COMMENTS ON THE HOUSE BILL

The department strongly supports this proposal for the following reasons.

- The proposed amendments to the TDI law in section 392-5, HRS, will exclude certain employers from providing TDI coverage for themselves if they perform services in certain types of entities (i.e. their own corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or sole proprietorship). These exclusions mirror the ones in the WC law and will facilitate the enforcement of the TDI compliance statutes.
- The proposed amendments to the WC law in sections 386-95 and 386-96, HRS, will allow employers and physicians to file reports electronically, and will expedite the transmission and receipt of important claims and medical information. Faster receipt of reports and documents will facilitate the resolution of disputed WC cases and provide medical and indemnity benefits more quickly to the injured employee.
- The proposed increase in WC and TDI penalties will provide a stronger incentive for employers and stakeholders in the WC and TDI industry to comply with their respective laws. The current WC penalties were last amended twenty-eight (28) years ago in 1988, while the TDI penalties have

not changed since they were first established forty-seven (47) years ago in 1969.

Considering the length of time since the penalties were last changed, the department recommends the following increase in WC fines and penalties.

- Section 386-31(b), HRS, (Failure of the employer to comply with WC TTD payments section) to increase from not more than \$2,500.00 to not more than \$5,000.00.
- Section 386-96(b)(2), HRS, (Failure of the physician to file a timely final report) to increase from \$250.00 to \$500.00.
- Section 386-96(d), HRS, (Failure of the employer to furnish medical reports) to increase from \$1,000.00 to \$5,000.00.
- Section 386-123, HRS, (Failure of the employer to secure WC coverage) to increase from a minimum penalty of not less than \$250.00 to not less than \$500.00. Also, instead of charging \$10.00 per employee per day, the department recommends an increase to \$100.00 per employee per day for each day of non-coverage.
- Section 386-129, HRS, (Employer charging the employee for WC premium costs) the maximum cap to increase from \$2,500.00 to \$5,000.00.

Similarly, the department recommends increasing the minimum penalty for noncompliance with the TDI law from \$25.00 to \$500.00 and the penalty for non-coverage from \$1.00 per employee per day to \$100.00 per employee per day for each day of non-coverage.

Testimony of Brooke Wilson  
Pacific Resource Partnership

State of Hawaii  
House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Scott Nishimoto, Vice Chair

HB 2363, HD1 – Relating to Labor  
Thursday, February 25, 2016  
11:00 A.M.  
State Capitol – Room 308

Aloha Chair Luke, Vice Chair Nishimoto and members of the Committee:

We support HB 2363, HD1 which proposes to align Hawaii's penalties with other states. The fines for not providing temporary disability insurance (TDI) coverage were last updated over 40 years ago and the fines for not providing workers' compensation (WC) coverage was last updated over 25 years ago. We believe the current fine structure needs to be updated as it is not an effective deterrent in today's market.

It is a common practice for employers, especially in the construction industry, to not provide TDI and WC insurance coverages due to the misclassification of employees as independent contractors.

Misclassified employees often are denied access to protections and benefits to which they are entitled. Employee misclassification generates substantial losses to our local and federal governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. If the fine structure is not modified, unscrupulous contractors will continue to cheat the system hurting taxpayers and undermining the economy.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on HB 2363, HD1.

#### About PRP

*Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.*



# Hawai'i Construction Alliance

P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

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February 24, 2016

The Honorable Sylvia Luke, Chair  
The Honorable Scott Y. Nishimoto, Vice Chair  
and members  
House Committee on Finance  
Hawai'i State Legislature  
Honolulu, Hawai'i 96813

## **RE: Strong Support for HB2363 HD1, Relating to Labor**

Dear Chair Luke, Vice Chair Nishimoto, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support HB2363 HD1, relating to labor**, insofar as the bill would increase penalties for:

- Failure to make correct or timely temporary total disability benefit payments or for terminating such benefits (Section 1) ;
- A physician's failure to file medical reports or for an employer's failure to provide copies of requested medical reports (Section 3);
- Not having TDI coverage (Section 4);
- Deducting premium payments from employee wages (Section 5); and
- Not having Workers' Compensation coverage (Section 7).

We also strongly support the bill insofar as it would allow for electronic reporting of injuries and other workers' compensation reports (Sections 2 and 3), as we believe this will facilitate more timely and accurate reporting by physicians and employers regarding workers' compensation claims.

We do not offer comments at this time pertaining to Section 6 of the bill, which would redefine the term "employment" in HRS §392-3.

It is far too common for employers in Hawai‘i — particularly in the construction industry — to not provide their employees with temporary disability insurance and workers’ compensation coverage. Often, this is due to employers fraudulently misclassifying workers as “independent contractors,” or willfully neglecting to provide such coverage in an attempt to cut costs and retain profits. This sort of behavior is unacceptable and actively harms Hawai‘i workers and families. The extent of this problem was made clear to the general public through a “regulatory action” undertaken by DLIR at a high-profile construction site late last year.

We firmly believe that the existing fine structure is outdated and is not an effective deterrent in today’s market. The fines for not providing temporary disability insurance coverage were last updated forty-five years ago (Act 109, 1971), and the fines for not providing workers’ compensation coverage was last updated twenty-eight years ago (Act 37, 1988). If the fine structure is not modified, unscrupulous behavior on the part of employers will continue to proliferate, not only in the construction industry, but throughout other sectors of the economy as well.

Therefore, we strongly urge your committee to pass HB2363 HD1, relating to labor.

Mahalo,

A handwritten signature in black ink, reading "Tyler Dos Santos-Tam". The signature is fluid and cursive, with the first name "Tyler" being the most prominent.

Tyler Dos Santos-Tam  
Executive Director  
Hawai‘i Construction Alliance  
[execdir@hawaiiiconstructionalliance.org](mailto:execdir@hawaiiiconstructionalliance.org)

# 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

## HOUSE OF REPRESENTATIVES THE TWENTY-EIGHTH LEGISLATURE REGULAR SESSION OF 2016

TO: COMMITTEE ON FINANCE  
The Honorable Sylvia Luke, Chair  
The Honorable Scott Y. Nishimoto, Vice Chair, and  
Members of the House Committee on Finance

FROM: Dennis W.S. Chang, Attorney-At - Law

Date: Thursday, February 25, 2016  
Time: 11:00 a.m.  
Place: Conference Room 308, State Capitol

### **Re: H.B. No. 2363, HD 1, Relating to Labor**

#### **I. Discussion.**

I reiterate my prior testimony and stress that employers or insurance carriers have made a calculated decision that ignoring the vital requirements for the statutes, the WC Law in particular, is cheaper as a way of doing business while workers have needlessly suffered by going without critical medical care and falling into economic ruin. Allowance for electronic transmission should have been allowed long ago. It is truly amazing that we can finally have a statute that is currently consistent with technological developments used by most people in the business world.

Increasing the amount of the penalties has been long overdue. Hopefully, the increase in the monetary penalties, in addition to other penalties prescribed under other parts of the statutes, will force employers or insurance carriers to fulfill their statutory duties. Workers have gone months and months without any wage loss replacement benefits, and their lives and loved ones have been destroyed. Yet, under "Section one (1)" the current monetary fine is merely \$2,500.00. I personally believe that increasing the amounts of penalties to **\$10,000.00** will serve as a better deterrent for the blatant failure to pay temporary total disability benefits (TTD). The same is true for increasing the penalties for the failure to file medical reports, the failure to provide workers with copies of requested medical records, to be a delinquent employer, and to unlawfully deduct premium payments from the wages of workers, are all appropriate.

Record keeping of all injuries is a critical component of the WC process. That alone, if stringently enforced, would reduce a substantial amount of litigation where

employers or insurance carriers maintain after the fact that there was never a work accident on the job when workers claim injuries after the original date of accident. There should incident reports and some form of first aid, records that should be kept along with witness statements. Again, I would submit that the amount should be amended to \$10,000.00, which would serve as a better deterrent to maintain and report all work accidents.

I also submit that electronic filing should be extended to the treatment plan process in the WC Law with the following language as a suggestion:

**Notwithstanding any provision contained in Chapter 386, treatment plans shall be permitted to be filed by electronic transmission.**

Certain medical providers are lured into relying on the use of facsimile, and then, when the employers and insurance carriers disagree with the requested treatment, they rely on their cottage industry of representatives, nurses, adjusters and, in particular, attorneys, as noted in the Hawaii Supreme Court case of *Puluwa vs. Oahu Construction, Ltd.* decided on November 4, 2015 to address a neuromonic device for tinnitus. The work accident was in 1995, and the HSC reversed the denial and decision makers, and ordered the aide as reasonable to the greatest extent possible. Electronic transmission will reduce some of the self-inflicted increasing costs incurred by delay upon delay.

As for the TDI Law there is no reason why small employers should be disallowed from participating in any TDI program. They too are workers. I disagree with the Director here. Many employers are workers and would need coverage or go bankrupt. The rationale given that it is consistent with the workers' compensation law is bogus. Why not allowed small employers to opt in so long as they pay? The Director is inconsistently asking small employers to participate in other programs so why single they out here? There may be a serious equal protection issue.

The foregoing discussion makes my position clear. I submit a few minor changes for a better bill. Fines should be increased even more and wholesale electronic transmission and facsimile should be allowed. The bottom line is I fully support the passage of HB No. 2363 with amendments.



The Twenty-Eighth Legislature  
Regular Session of 2016



HOUSE OF REPRESENTATIVES  
Committee on Finance  
Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
State Capitol, Conference Room 308  
Thursday, February 25, 2016; 11:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2363, HD1  
RELATING TO LABOR**

The ILWU Local 142 **supports** H.B. 2363, HD1, which excludes employers from providing TDI coverage for themselves if they perform services for their own corporation, limited liability company, limited liability partnership, partnership or sole proprietorship and increases penalties for not having TDI coverage as required. Also allows the Director to receive electronic reports of injuries and other required workers' compensation reports and increases penalties for failure to make correct or timely benefit payments, for terminating such benefits, for failure to file medical reports, for employer's failure to provide copies of requested medical reports, for not having workers' compensation coverage, and for deduction of premium payments from employee wages.

Increasing penalties for employers' failure to provide timely payments, reports, workers' compensation coverage and the like is appropriate given the fact that these penalties have remained the same for almost 30 years, despite increases in Hawaii's cost of living. Without adequate penalties, employers have acted with impunity while workers have suffered.

Allowing reports to be filed electronically just makes sense in our increasingly technological world. It is amazing that this was not allowed sooner.

Our only concern about H.B. 2363, HD1 is the specific exclusion of employers from temporary disability insurance coverage as a blanket exclusion, leaving open the potential to exclude others from coverage.

The ILWU supports H.B. 2363, HD1 with the concern noted. Thank you for allowing us to share our views and concerns.