



The Judiciary, State of Hawai'i

Testimony to the House Committee on Labor and Public Employment

Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Friday, March 20, 2015, 10:00 AM
State Capitol, Conference Room 309

By

The Honorable Barbara P. Richardson
Deputy Chief Judge
District Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1213, Senate Draft 1, Relating to Public Safety

Purpose: Allows an employer to seek a temporary restraining order and injunction against further harassment of an employee or invitee who may be harassed at the employer's premises or worksite. Effective January 7, 2059. (SD1)

Judiciary's Position:

The Judiciary takes no position on the intent of Senate Bill No. 1213, Senate Draft 1, but notes that the current language of the Bill may (1) impose unintended costs and complications for employers; and (2) create uncertainty in the application of the law.

Unintended Costs and Complications

The State of Hawaii is the largest employer in the State. Is it intended that the State of Hawaii be able to file a petition on behalf of a state employee, including against another state employee?

Under current law, a corporation can only appear in court through an attorney. Oahu Plumbing & Sheet Metal v. Kona Constr., 60 Haw. 372, 374 (1979). If an employer is incorporated, then the filing of a petition and court appearances by the corporation-employer on behalf of an employee would have to be through an attorney. The award of reasonable attorneys' fees to a



prevailing party is discretionary, so even if the employer prevails in the proceeding, the employer may not recover all of its costs.

The necessity of counsel for a corporate employer petitioning on behalf of an employee may create a conflict of interest for the attorney. While the attorney would be hired by the employer to represent the employer, it is the employee who is threatened by acts of harassment. The interests of the employer may not always coincide with those of the employee.

Existing law would permit the employee-victim to file a petition for a temporary restraining order and an injunction against harassment without hiring an attorney. Many temporary restraining order cases proceed through resolution without the involvement of an attorney. Even if the petitioner hires an attorney, there is no question under present practice that the attorney's duty of loyalty is to the petitioner.

The Bill raises other issues, and the Judiciary questions how a petitioner-employer could prove its case if the employee who is the target of the alleged harassment is unwilling to participate in the proceedings.

Uncertainty in the Application of the Law

It is uncertain what the process for intervention by an employee organization would be. The Bill states "that an employee organization that represents employees of the employer shall be allowed to intervene in a proceeding under this section." In a case in which one employee is harassed by another employee, it is unclear if an employee organization would be allowed to intervene on behalf of a respondent-employee or both parties. There is no provision for notice to an employee organization for either petitioner-employee or respondent-employee. The court is required to allow the intervention, but the Bill does not provide guidance on how to resolve a conflict between the right to intervene and a right to a hearing within 15 days. In light of the absence of any service requirement on the employee organization, there is a possibility that the employee organization does not receive notice of the temporary restraining order at the same time as the respondent. A contested hearing could go beyond the 90 day limit of the temporary restraining order.

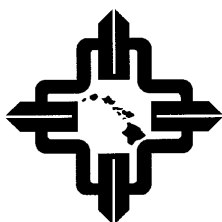
The requirement that a judge receive evidence of the employer's position with respect to a respondent-employee's continued employment is also problematic. The Bill provides: "If the defendant is a current employee of the petitioner, the judge **shall** receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant." (Emphasis added.) This evidentiary mandate may create difficulties where, as is frequently the case, pending employee disciplinary matters are confidential. Hearings in district court are open to the public, and thus confidential employment decisions may become public, in violation of other state statutes or confidentiality agreements.



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Finally, the Judiciary respectfully requests that the term “defendant” be replaced with “respondent.” Because a person seeking an injunction is denominated a “petitioner,” the enjoined party is referred to as a “respondent.” There is no “defendant” in this type of civil proceeding. Please note that SB1213 SD1 page 2, lines 19-21 should be underlined as new language.

Thank you for the opportunity to present testimony on this measure.



HAWAII HEALTH SYSTEMS

C O R P O R A T I O N

"Quality Healthcare For All"

House Committee on Labor & Public Employment

Representative Mark M. Nakashima, Chair

Representative Jarrett Keohokalole, Vice Chair

March 20, 2015
Conference Room 309
10:00 a.m.
Hawaii State Capitol

**Testimony Supporting Senate Bill 1213,
Relating To Public Safety.**

**Allows an employer to seek a temporary restraining order and injunction
against further harassment of an employee or invitee who may be harassed
in connection with a worksite.**

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony in **support** of SB 1213 that allows an employer to file for a temporary restraining order ("TRO") to prevent further harassment at a worksite.

HHSC is committed to improving efforts to maintain safe working environments for our over 4,300 employees at healthcare facilities state-wide. Of particular concern is when incidents of harassment extend to an employee at their workplace. Many times the employee is hesitant to go through the process of obtaining a TRO. This creates a risk of future harassment for the employee that may also adversely affect other employees, patients, and visitors as well. Passage of this bill would allow us to seek a TRO and an injunction to prevent further harassment of our employees and other individuals on our campuses. Thus, we would have a stronger ability to maintain a safe workplace for all.

Thank you for the opportunity to testify before this committee. We respectfully recommend the Committee's support of this measure.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 18, 2015 11:23 AM
To: LABtestimony
Cc: KarinNomura1@gmail.com
Subject: Submitted testimony for SB1213 on Mar 20, 2015 10:00AM

SB1213

Submitted on: 3/18/2015

Testimony for LAB on Mar 20, 2015 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments: The TRO already supposedly prevents the party from harassing the victim at home or work, but when they start using their friends to "tell her (the victim)" as I've mentioned previously as happening to me, then I think it should be up to the employer to protect the "victim" from further harassment as a given.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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