



**Testimony to the House Committee on Judiciary & Labor  
Monday, February 29, 2016 at 10:00 A.M.  
Conference Room 016, State Capitol**

**RE: SENATE BILL 3036 RELATING TO EMPLOYMENT**

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **strongly supports** SB 3036, which specifies that employers may take adverse employment action for reasons other than those currently protected under Hawaii's anti-discrimination law.

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.

In the past, because Hawaii is an at-will employment state, an employer could take an adverse employment action (*e.g.*, firing, demotion, refusal to hire) for *any* non-discriminatory reason. The new rule stated by the State Supreme Court in a 3-2 decision imposes far greater restriction, *i.e.*, that the adverse action must be related to the person's ability to perform the job. Justice Pollack explicitly stated that "the nondiscriminatory reason articulated by the employer for the adverse employment action must be related to the ability of the individual to perform the work in question." While most hiring's or adverse actions are based on those reasons, there are workplace related issues such as level of performance level or team performance that are factors. The court's ruling creates prohibitions for employers to act on these matters.

There are several other aspects of *Adams* that are troubling. One is that the Court stated that undisclosed hiring criterion creates an inference that the reason for not hiring an employee is discriminatory. In other words, if an employer ends up not hiring an applicant for a reason that is not stated in the job posting, the employer is on the hook for a discrimination claim.

Another troubling aspect is that the Court stated that the decision maker for a hiring decision must have personal knowledge of the issues/reasons for not hiring a candidate. This is often impractical for any employer, large or small, who rely on HR reps or office managers to conduct all the interviews, while a senior management person makes the ultimate hiring decision.

In short, *Adams* is a decision that if read broadly, could destroy decades of settled law. We ask for your support on moving this bill forward.



Thank you for the opportunity to testify.



To: Senate Committee on Judiciary & Labor

Date: Monday, February 29, 2016

Time: 10:00 A.M.

Where: Room 16, State Capitol

RE: SENATE BILL 3036, RELATING TO EMPLOYMENT

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

I am John Knorek, the Legislative Committee chair for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to **support SB 3036**, which specifies that employers may take adverse employment action for reasons other than those currently protected under Hawaii’s anti-discrimination law.

Prior to a recent Hawaii Supreme Court decision, an employer could take an adverse employment action (*e.g.*, firing, demotion, refusal to hire) for *any* non-discriminatory reason. The new rule however is that the adverse action must be *related to* the person’s ability to perform the job. Other aspects of the court’s decision have further eroded “at will” employment and create significant challenges for HR professionals. We believe that this bill is an important step toward restoring long held employment principles.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses’ most valuable asset: human capital. We truly have our employers’ and employees’ interests at heart. We mahalo the legislature for continuing to address important employment issues and request to be a part of the dialogue concerning this measure. Thank you for the opportunity to testify.

The Twenty-Eighth Legislature  
Regular Session of 2016

LATE TESTIMONY

THE SENATE

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
State Capitol, Conference Room 016  
Monday, February 29, 2016; 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 3036  
RELATING TO EMPLOYMENT**

The ILWU Local 142 **opposes** S.B. 3036, which clarifies the grounds under which an employer may take employment action without committing a discriminatory practice.

On the face of it, this proposal simply seems to clarify what employers are permitted to do—that hiring, refusing to refer, or discharging an applicant or an employee should be the legal right of an employer as long as Hawaii’s anti-discrimination law is not violated.

However, the problem lies in what is being deleted from and added to the statute. The section in question states that “Nothing in this part shall be deemed to...Prohibit or prevent an employer, employment agency, or labor organization from refusing to hire or refer or discharging any individual for reasons unrelated to sections 378-2, 378-2.3, 378-2.5, or 378-2.7.”

The current statute allows for the employment action to be taken only for reasons “relating to the ability of the individual to perform the work in question.” The statute was specific—that the employer may hire, discharge or refuse to hire only if the individual is not able to perform the work for which he/she is to be hired or was hired.

However, S.B. 3036 proposes to broaden the reasons for an employment action as long as it does not discriminate against protected classes. This will allow the employer greater latitude to take an employment action and will place the burden onto the applicant or employee to prove that a discriminatory practice was committed.

The ILWU respectfully urges that S.B. 3036 be held. Thank you for considering our views on this measure.





The Children's Alliance  
OF HAWAII, INC.

DATE: February 29, 2016

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Senator Maile S.L. Shimabukuro, Vice Chair  
And the members of the Committee on Judiciary and Labor

FROM: Lisa Dunn, Executive Vice-President and Director of Programs  
The Children's Alliance of Hawaii

RE: SB 2112, RELATING TO THE USE OF A DOG IN JUDICIAL  
PROCEEDINGS.

POSITION: Strong Support

Chair Rhoads, Vice-Chair San Buenaventura, and Members of the  
Committee on Judiciary:

Thank you for providing this opportunity to testify in strong support of SB  
2112.

The Children's Alliance of Hawaii believes that each child is resilient,  
creative, courageous and strong and deserves every opportunity to thrive  
to their fullest potential. Children who have been traumatized by sexual  
abuse need special ongoing support to help them become healthy and  
successful adults. The Children's Alliance of Hawaii is dedicated to  
providing caring support for children who have been sexually abused,  
offering hope for the future.

We offer art and recreational therapeutic groups on Saturday for children  
who have been sexually abused. We have been extremely fortunate in  
that Pono, Honolulu's Courthouse Dog, needed a bit of volunteer work  
on Saturdays and so she comes in to our office. Pono was trained by  
Assistance Dogs of Hawaii and her primary handler is Dennis Dunn with  
Victim/Witness Kokua. Pono spends time cuddling the children, being a  
listening ear, and always participating as an enthusiastic group member!  
The children get to know Pono and Pono knows and recognizes each of  
them. Some of the children we serve feel lost in the foster care system  
and came in to group feeling as if they don't really matter to anyone; but  
Pono's greetings and wagging tail can turn their day around quite  
quickly.

Pono also reassures the children that everything is alright and "normal."

A. JAMES WRISTON, JR., Esq.  
Chair

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Vice Chair & Secretary

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LORI PHILLIPS, PhD

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PATTI PETRI ROSE



They often take their cues from her. She is calm, relaxed, content and generally happy. The children then model her same attitude. We have had several children who have gotten to know Pono through our services and then are later asked testify in court. These children invariable ask if they can have Pono come with them to court. They have told us outright that it won't be so scary if Pono is there, or that they know that they can trust Pono to be honest with them no matter what. Pono provides them with the comfort and security that they crave in a world that has turned their childhoods upside down.

I have also personally been present when Pono was with a child during the sentencing of her abuser. The abused child, her sibling and her family were all nervous wrecks in the waiting area. The family was emotionally divided as the abuser was also a family member. The waiting area was tense and no one was talking or looking at one another. But then Pono entered and the children's face's lit up. They were on the floor snuggling with Pono. Family members started asking questions about the dog and soon they were reminiscing about old family and childhood pets. For a brief time they were a united family again, enjoying each other's company.

They continued to pet and play with Pono as the case was called into court. They all rose and entered the courtroom. Pono joined them. The courtroom was quiet and respectful but some of the tension was gone. Only the courtroom staff, the child, her mother, and Pono's handler were really aware of Pono's presence. Pono quietly lay between the child and Pono's handler. The child would reach her hand down to pet Pono as she became more nervous to speak at the sentencing hearing. Pono remained with the girl, her true and quiet friend.

After the hearing ended and we left the courtroom Pono happily trotted along with the group. It was a somber time as the perpetrator was sentenced to serve many, many years. But all of the family took time to stop and thank Pono for coming. They all recognized that Pono had added that special animal quality that reminds us all of our own humanity.

I could tell you other stories – other child victims and witnesses of sexual abuse, abandoned children at court proceedings, and more. They all were helped through Pono's presence. We should strive to assure that vulnerable victims can readily access Pono or other trained facility dogs. We need to work towards making that access available without bureaucratic paperwork. All vulnerable witnesses should be able to have the benefit of a dog such as Pono during judicial proceedings.

Please pass SB 2112 out of your Committee.