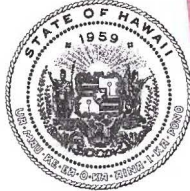


DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



support
LATE TESTIMONY

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DIRECTOR

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March 15, 2017

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Karl Rhoads, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, March 15, 2017
Time: 9:00 a.m.
Place: Conference Room 016, State Capitol

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

Re: Amended Testimony for H.B. No. 208 HD2 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend chapter 386, Hawaii Revised Statutes (HRS), by adding three new sections relating to stop-work orders to Part IV and by amending sections 386-99 and 386-123, HRS. The bill authorizes the DLIR Director to issue and serve stop-work orders to employers not in compliance with section 386-121, HRS, and establishes penalties, enforcement, and protest procedures. The measure also requires employers subject to section 386-121, HRS, to post the name of the insurer and identity of the self-insured employer's claim adjustor.

The Department supports the intent of HB208 HD2 to help ensure all employers have the required workers' compensation coverage as mandated by law and offers comments below.

II. CURRENT LAW

Section 386-99, HRS, requires the employer to post and maintain in places readily accessible to employees, information on benefit rights and claims for benefits. Section 386-123, HRS, holds the employer liable for penalties for failure to comply with section 386-121, HRS, which requires employers to secure workers' compensation coverage. Section 386-121, HRS, also allows the Director to seek an injunction against employers who do not have workers' compensation coverage.

III. COMMENTS ON THE HOUSE BILL

The Department supports the intent of HB208 HD2 to help ensure all employers have the required coverage as mandated by law. However, as drafted, the proposal has some problematic aspects relating to current statute as well as operations. The Department is concerned with the unintended legal consequences of this measure, including due process, improper issuance of stop work orders, and liquidated damages. Therefore, the Department recommends deleting sections 1 and 2 in its entirety.

Furthermore, as default businesses, especially mainland companies have no or limited assets in Hawaii it is difficult to collect penalties once issued. DLIR recommends adding language to the measure to secure a portion of the penalty through a surety bond or letter of credit. DLIR recommends adding language to section 3(b), on page 5, line 6 to by inserting after "circuit court" the following:

after filing a surety bond or letter of credit with the Director in the amount equal to 10% of the penalty amount;

To meet the intent of the measure, the Department recommends keeping the language struck out in the proposal beginning on page 5, line 20 through page 6, line 13. This existing statutory language allows the Director to enjoin the employer from carrying on business in the State. DLIR recommends reducing the existing statutory timeline of 30 days of non-compliance to 14 days in order to expedite compliance. Additionally, we would recommend clarifying where a lawsuit is filed, especially relating to out-of-state employers. DLIR offers the following amendment to the second paragraph of §386-123:

In addition, if any employer is in default under section 386-121 for a period of [~~thirty~~] fourteen days, the employer may be enjoined, by the circuit court of the circuit in which the employer's principal place of business is located[~~7~~] in the State or where the violation occurred, from carrying on the employer's business anywhere in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director.

Moreover, as a business owner may be associated with multiple companies under a different name or business type, DLIR recommends adding the following language to the measure to prevent a company from knowingly misrepresenting themselves or closes the existing business and reopening the business under another name:

Stop work orders and any penalties imposed shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership or sole proprietorship against which the stop-work order was issued.

DLIR also notes that another measure pertaining to stop-work orders (SB854) appears to have stalled in the legislative process. The Department has developed the following language for that measure for the Committee's consideration for insertion into HB208.

SECTION 1. Chapter 388, Hawaii Revised Statutes, is amended by adding three new sections to part I to be appropriately designated and to read as follows:

"§388-A Order of wage payment violation; appeal. (a) When the department, as a result of the department's own investigation, finds that a violation of this chapter or the administrative rules adopted under this chapter has been committed and not corrected, or a penalty under 388-B has not been paid, the department shall issue an order of wage payment violation to the employer involved. The order shall include any penalty assessed pursuant to section 388-10(a).

(b) The order of wage payment violation shall be final and conclusive unless within twenty days after a copy has been sent to the employer, the employer files a notice of appeal with the director in writing.

(c) A hearing on the appeal shall be held pursuant to chapter 91 by a hearings officer appointed by the director.

(d) The hearing shall be held within 30 days of the filing of the notice of appeal and a decision shall be rendered by the hearings officer within 30 days after the conclusion of the hearing, stating the findings of fact and conclusions of law.

(e) Any party may obtain judicial review of the decision issued by the hearings officer in the manner provided under chapter 91.

§388-B Remittance of penalties. Until the order of wage payment violation has become final, the director may withdraw or modify the order of wage payment violation or remit all or any part of a penalty assessed if good cause is shown; provided the employer in default complies with this chapter and the administrative rules adopted under this chapter.

§388-C Enforcement of the order of wage payment violation. The director may file in the circuit court in the jurisdiction in which the employer does business, a certified copy of the final order of wage payment violation. The court shall render a judgment in accordance with the final order of wage payment violation and notify the parties of the judgment. The judgment shall have the same effect, and all proceedings in relation to the judgment shall be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal from the judgment."

SECTION 2. Section 388-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"§388-10 Penalties. (a) Civil. Any employer who fails to pay wages in accordance with this chapter without equitable justification or violates this chapter or the administrative rules adopted under this chapter shall be liable ~~[to the employee, in addition to the wages legally proven to be due to the employee, for a sum equal to the amount of unpaid wages and interest at a rate of six per cent per year from the date that the wages were due.]~~ :

- (1) To the employee for a sum equal to the amount of unpaid wages and interest at a rate of six per cent per year from the date that the wages were due; and
- (2) For a penalty of not less than \$500 or \$100 for each violation, whichever is greater. The penalty shall be paid into the general fund."

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

HB 208, HD2 – Relating to Labor
Wednesday, March 15, 2017
9:00 A.M.
State Capitol – Room 016

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

In an effort to ensure a level playing field for employers who do follow the workers' compensation law in the State of Hawaii, the Pacific Resource Partnership **strongly supports HB 208, HD2 with amendments.**

In response to the Department of Labor and Industrial Relation's (DLIR) most recent testimony, Pacific Resource Partnership **recommends a proposed SD1 to HB 208 with the following amendments:**

With regards to DLIR's proposed amendments to Chapter 386, Hawaii Revised Statutes:

- Pacific Resource Partnership is okay with DLIR's recommendation to delete section 1, on the condition that it is replaced with a provision that will penalize an employer for failure to observe a stop-work order. We recommend the following language: "the director or director's designee may apply to the appropriate court for injunctive or any other relief the court deems appropriate, including a fine of not less than \$1,000 per day against an employer for each day that it conducts business operations that are in violation of a stop-work order issued pursuant to this section." There needs to be some type of penalty against an employer who fails to observe a stop-work order.
- PRP agrees with DLIR's recommendation to delete section 2 in its entirety, which is the posting requirement.
- PRP agrees with DLIR's recommendation to add language to section 3(b), on page 5, line 6 by inserting after "circuit court" the following: **"after filing a surety bond or letter of credit with the Director in the amount equal to 10% of the penalty amount;"**



(Continued From Page 1)

- PRP agrees with DLIR's recommendation to keep the language struck out in the proposal beginning on page 5, line 20 through page 6, line 13, which would allow the Director to enjoin the employer from carrying on business in the State. PRP further supports DLIR's recommendation to reduce the existing statutory timeline of 30 days of non-compliance to 14 days in order to expedite compliance. We also support the department's recommendation clarifying where the lawsuit is filed.
- PRP agrees with DLIR's recommend language to prevent a company from knowingly misrepresenting themselves or closes the existing business and reopening the business under another name: **"Stop work orders and any penalties imposed shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership or sole proprietorship against which the stop-work order was issued."**
- In addition to DLIR's proposed amendments, PRP recommends filling in the blanks with specific timeframes from section 3(b), on page 4, line 18 through line 19; and section 3(b), on page 5, line 2 as follows: **"An employer may protest a stop-work order by making and filing with the director a written request for a hearing within 10 business days after service of the stop-work order. The hearing shall be held within 21 business days from the date of filing the request. The director shall notify the employer of the time and place of the hearing by mail. At the conclusion of the hearing, the stop-work order shall be affirmed or dismissed, and within 7 business days after the hearing, the director shall issue a written decision to all parties by registered or certified mail. "**

With regards to proposed amendments to Chapter 388, Hawaii Revised Statutes, PRP defers to recommended language provided by the department.

Thank you for this opportunity to testify.

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.

BIA-HAWAII

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LATE TESTIMONY

Testimony to the Senate Committee on Judiciary and Labor **Wednesday, March 15, 2017** **9:00 am** **Conference Room 016**

RE: HB 208 HD2 – Relating to Labor

Chair Agaran, Vice-Chair Rhoads, and members of the committee:

My name is Gladys Quinto Marrone, CEO of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is in support of the intent of HB 208 HD2, Relating to Labor.

This bill would authorize the Director of Labor and Industrial Relations or the Director's designee to issue and serve on an employer a stop-work order prohibiting the use of employee labor by the employer until the employer complies with the provisions of section 386-121 (workers' compensation rules).

BIA-Hawaii is in agreement with the amendments suggested by the Pacific Resource Partnership (PRP).

We appreciate the opportunity to support the intent of HB 208 HD2.