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March 21, 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: Tuesday, March 21, 2017
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol

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

Re: H.B. No. 4 HD1 Relating to Health

I. OVERVIEW OF PROPOSED LEGISLATION

HB4 HD1 adds paid sick leave through a new chapter to the Hawaii Revised Statutes (HRS), by requiring employers subject the Fair Labor Standards Act to provide a maximum of 40 hours of paid leave to be used for the service worker's personal illness, caring for a sick child or spouse, or due to the closure of a business by a public official. The measure provides one (1) hour of paid sick leave per 40 hours worked, but exempts employers who already provide 40 hours of sick leave, pay employees an unspecified amount more than minimum wage, or employ less than an unspecified number of employees.

DLIR appreciates the intent of the measure, but has serious concerns regarding the measure as drafted and offers amendments for the Committee's consideration.

II. CURRENT LAW

In Hawaii, the law does not require paid vacation and sick leave. Under §388-7(3), HRS, The Payment of Wages and Other Compensation Law, employers that provide vacation and sick leave benefits are required to make their policies available to employees in writing or through a notice posted in a place accessible to the employees. The employer's policy determines the criteria to earn and use these benefits.

The Hawaii Family Leave Law (chapter 398, HRS) provides four weeks of protected

leave, not necessarily paid, for employees of employers with 100 or more employees, on the birth or adoption of a child or to care for a family member who is seriously ill. Unlike the federal Family and Medical Leave Act (FMLA), the Hawaii Family Leave Law does not allow an employee under §398-3, HRS, to take leave for their own serious health condition

The online FAQs for the Hawaii Family Leave Law are attached, which include sections on the interrelationship of Hawaii Family Leave Law, the FMLA, and Hawaii's Temporary Disability insurance Law.

The Hawaii Temporary Disability Insurance (TDI) Law, chapter 392, HRS, provides wage replacement benefits to an eligible employee who is unable to work due to the employee's own nonindustrial illness or injury. Some employers use sick leave as part or all of this TDI benefit. TDI is the only paid leave currently required under Hawaii law.

III. COMMENTS ON THE HOUSE BILL

DLIR notes that, as drafted, the measure has several problematic aspects and offers suggestions to address these concerns.

First, the definition of "employer" under the Fair Labor Standards Act (FLSA) is very broad including private and public employers. The definition generally includes employers with an annual gross income of at least \$500,000 or employers involved in inter-state commerce, which includes the federal and State government employees. Therefore, DLIR recommends adopting the definition of "employer" from §388-1, HRS, which was modeled after the FLSA definition of employer.

Secondly, the measure, as drafted, would allow some employees to use both TDI and the proposed paid sick leave at the same time. To avoid issues concerning "double dipping" of leave benefits DLIR offers the following amendment:

"Sick leave required by this chapter is not payable for the period the employee is entitled to temporary total disability or temporary partial disability benefits under chapter 386 or temporary disability insurance benefits under chapter 392."

Thirdly, DLIR recommends clarifying the relationship of the proposed paid sick leave and other benefits provided under various laws. This would entail a provision that excludes benefits under the Employee Retirement Income Security Act of 1974 and other labor laws like TDI, Workers' Compensation and Family Leave laws.

Fourthly, the Department also has concerns about the posting requirement in this measure and suggests striking the posting requirement, but retaining the individualized notice.

Finally, the measure does not include a provision for enforcement, so DLIR recommends inserting a provision for an employee remedy through a private right of action.

DLIR has attached the latest employer by size of firm (Dec. 2015) for consideration regarding the employer size that is currently blanked out in the measure.

Temporary Disability Insurance Law Nexus.

The following is an extended discussion about the relationship between TDI and the proposed sick or paid leave measures that the Legislature has deliberated on in the recent past. Under chapter 392, HRS, employers may provide TDI coverage in several ways:

1. Procure insurance to fund the statutory TDI plan, or
2. Obtain approval from the Department for a self-insured plan, or
3. A combination of the two above.

The exact benefits of TDI plans vary depending on the plan procured by an employer and are subject to review and approval by the Department. Therefore, the exact impact of the measure is difficult to specify with broad strokes. Moreover, the method of providing TDI insurance coverage in tandem with the size of the employer creates a situation wherein the nexus between TDI coverage and this proposal is different for different employers. For example:

- If the employer uses the statutory insurance to fund a TDI plan (26 weeks of benefits @58% of weekly wage subject to a maximum weekly benefit after a 1 week waiting period) then the bill would possibly require an employer to set up and maintain a separate sick leave plan to account for and use the 40 hours for sick leave.
- If the employer is totally self-insured for TDI then leave in excess of 15 days from the first day can be utilized for the leave contemplated by this bill. However, by definition TDI sick leave applies only to medical conditions of the employee and does not extend to children, parents, etc.
- If the employer uses a combination of statutory insurance and self-insurance then it is difficult for DLIR to ascertain the impact and the department would need to individually scrutinize the sick leave plans submitted for approval to the Department in the proposal in conjunction with the employer's TDI coverage.

TDI plans can include the use of sick leave. However, the requirements (eligibility, benefit amount, benefit duration, reasons for leave, etc.) for TDI are different from those of chapter 388, HRS. Due to these differences, DLIR believes that employers may find it difficult to craft and administer a sick leave plan that complies with all of the requirements of both chapters, and the Department may also have issues in approving the sick leave plan to meet both statutory mandates. However, the language suggested above regarding the relationship of the leave to other leaves and the language to prevent "double dipping" addresses this issue.

REPORTING UNITS AND EMPLOYMENT BY SIZE OF FIRM

-Excluding Government- (Based on December 2015 Employment)

		TOTAL	0-4	5-9	10-19	20-49	50-99	100-249	250-499	500-999	1000+
STATEWIDE	- Reporting Units	37,847	21,572	6,695	4,570	3,104	1,155	509	164	58	20
	Employment	528,289	33,947	44,476	61,918	93,925	80,236	75,599	55,372	38,593	44,223
HONOLULU	- Reporting Units	25,340	14,444	4,319	3,047	2,136	850	373	109	44	18
	Employment	379,458	22,475	28,753	41,473	64,753	59,243	55,528	36,388	28,957	41,888
HAWAII	- Reporting Units	4,878	2,769	944	596	376	120	48	21	*4	
	Employment	56,254	4,565	6,173	8,042	11,156	8,443	7,139	7,256	*3,480	
MAUI	- Reporting Units	5,299	3,041	992	640	401	128	59	29	*9	
	Employment	66,130	4,762	6,672	8,557	12,148	8,685	8,518	10,173	*6,615	
KAUAI	- Reporting Units	2,330	1,318	440	287	191	57	29	5	3	
	Employment	26,447	2,145	2,878	3,846	5,868	3,865	4,414	1,555	1,876	
NATURAL RESOURCES AND MINING	- Reporting Units	474	228	93	69	63	7	11	3		
	Employment	6,876	397	591	956	1,840	517	1,494	1,081		
CONSTRUCTION	- Reporting Units	3,578	2,094	642	432	281	70	50	6	3	
	Employment	37,610	2,985	4,301	5,708	8,345	4,793	7,554	1,991	1,933	
MANUFACTURING	- Reporting Units	938	427	203	140	107	33	23	5		
	Employment	14,264	769	1,351	1,923	3,110	2,276	3,402	1,433		

REPORTING UNITS AND EMPLOYMENT BY SIZE OF FIRM

-Excluding Government- (Based on December 2015 Employment)

		TOTAL	0-4	5-9	10-19	20-49	50-99	100-249	250-499	500-999	1000+
WHOLESALE TRADE	- Reporting Units	2,114	1,314	369	208	159	49	*15			
	Employment	18,138	2,095	2,456	2,813	4,750	3,368	*2,656			
RETAIL TRADE	- Reporting Units	4,394	1,846	1,100	710	405	206	92	31	*4	
	Employment	73,914	3,677	7,377	9,573	12,644	14,342	13,169	10,229	*2,903	
TRANSPORTATION AND UTILITIES	- Reporting Units	1,099	484	184	162	162	57	25	16	*9	
	Employment	31,533	759	1,207	2,254	4,877	3,964	3,971	4,882	*9,619	
INFORMATION	- Reporting Units	785	542	77	70	64	20	7	*5		
	Employment	9,694	534	507	990	1,999	1,460	1,083	*3,121		
FINANCE AND INSURANCE	- Reporting Units	1,663	1,033	344	176	66	24	15	*5		
	Employment	15,609	1,705	2,258	2,303	2,008	1,681	2,259	*3,395		
REAL ESTATE AND RENTAL AND LEASING	- Reporting Units	1,954	1,388	305	147	71	34	*9			
	Employment	12,031	2,335	2,000	1,970	2,035	2,249	*1,442			
PROFESSIONAL AND TECHNICAL SERVICES	- Reporting Units	4,693	3,577	552	321	168	56	16	*3		
	Employment	24,836	4,724	3,655	4,353	4,934	3,835	2,049	*1,286		
MANAGEMENT OF COMPANIES AND ENTERPRISES	- Reporting Units	467	264	56	61	49	18	14	*5		
	Employment	8,553	362	381	851	1,508	1,291	2,153	*2,007		
ADMINISTRATIVE & SUPPORT & WASTE MANAGEMENT & REMEDIATION SERVICES	- Reporting Units	2,495	1,574	341	257	156	93	44	22	5	3
	Employment	51,171	2,189	2,229	3,428	4,946	6,502	7,239	7,249	2,774	14,615
EDUCATIONAL SERVICES	- Reporting Units	701	400	97	91	64	25	15	6	*3	
	Employment	13,199	559	652	1,230	2,096	1,785	2,102	2,250	*2,525	

REPORTING UNITS AND EMPLOYMENT BY SIZE OF FIRM

-Excluding Government- (Based on December 2015 Employment)

		TOTAL	0-4	5-9	10-19	20-49	50-99	100-249	250-499	500-999	1000+
HEALTH CARE AND SOCIAL ASSISTANCE	- Reporting Units	3,859	1,980	903	500	278	101	58	24	9	6
	Employment	68,382	3,821	5,960	6,715	8,448	7,101	8,983	7,898	6,224	13,232
ARTS, ENTERTAINMENT AND RECREATION	- Reporting Units	623	324	90	76	72	36	20	*5		
	Employment	11,807	414	586	988	2,253	2,390	2,905	*2,271		
ACCOMODATIONS AND FOOD SERVICES	- Reporting Units	3,823	1,098	699	827	776	291	75	32	20	5
	Employment	104,932	1,994	4,792	11,543	23,356	20,318	10,524	12,168	13,465	6,772
OTHER SERVICES, EXCEPT PUBLIC ADMINISTRATION	- Reporting Units	3,833	2,646	639	323	163	35	22	*5		
	Employment	25,519	4,412	4,168	4,320	4,776	2,364	3,237	*2,242		
UNCLASSIFIED	- Reporting Units	354	*354								
	Employment	221	*221								

* Data from larger classes were combined to prevent the disclosure of confidential information.

NOTE: Multi-establishment employers are counted for each worksite reported, except for the construction industry, which reports separately only for major projects. Some worksites are further distributed by industrial classification.



[Home \(http://labor.hawaii.gov/wsd/\)](http://labor.hawaii.gov/wsd/) » Hawaii Family Leave

HAWAII FAMILY LEAVE

Frequently Asked Questions on the Hawaii Family Leave Law (HFLL) Chapter 398, Hawaii Revised Statutes

Guide to Acronyms

DLIR – Department of Labor and Industrial Relations

FMLA – Family and Medical Leave Act (Federal law)

HFLL – Hawaii Family Leave Law (State law)

TDI – Temporary Disability Insurance

SECTIONS:

1. Coverage
2. Benefits/Entitlement
3. Relationship to Federal Family and Medical Leave Act (FMLA)
4. Family Leave Questions Relating to the Temporary Disability Insurance Law (TDI)

Coverage

1. Q: How does an employer count employees in order to determine coverage under the HFLL?

A: The law applies to an employer who employs **one hundred or more** employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

- The employee count to determine “one hundred or more” includes all workers or employees on the payroll who work within the State of Hawaii, including:
 - (1) Employees at all locations of an employer within the State of Hawaii;
 - (2) All employees maintained on the payroll, including part-time, temporary or intermittent employees, regardless of their months of service or eligibility for the employer’s benefit plan;
 - (3) Employees on paid or unpaid leaves of absence, including family leave or disciplinary suspension.
- The count does not include:
 - (1) Employees who are laid off, whether temporarily, indefinite or long-term; or
 - (2) Employees at mainland or international locations who do not work in the State of Hawaii.
- Employers include any individual or organization, including any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company,

insurance company, domestic or foreign corporation, receiver or trustee in a bankruptcy, or the legal representative of a deceased person.

2. Q: What employees are eligible for HFLL?

A: An employee is a person who performs services for at least six consecutive months for wages under any contract of hire, written or oral, expressed or implied, with an employer, including a full-time, part-time, temporary, casual, on-call or intermittent worker. Unlike the federal FMLA, there is no requirement in the HFLL that an employee work a minimum number of hours within the six-month period.

Consecutive employment means continuous employment with no break in service, such as by resignation, termination or layoff. Paid periods of leave or authorized unpaid leaves of absence are not considered breaks in service.

[Back to the top](#)

Benefits/Entitlement

3. Q: Can an employer require an employee to designate a portion or all of the family leave period to be paid using the employee's vacation even if the employee wanted to use their sick leave?

A: It is the employee who may elect to substitute any of the employee's accrued paid leaves, including but not limited to vacation, personal, or family leave for any part of the four-week period of family leave. The employer cannot require an employee to use a specific leave for family leave purposes unless required by policy (see answers to questions 11 & 12).

4. Q: Is an employer who does not provide sick leave now required to have a sick leave policy?

A: HFLL does not require employers to create a sick leave plan if they do not currently provide sick leave to employees. Further, if an employer does not provide paid sick leave to certain employees, such as on-call or part-time workers, the employer is not required to extend paid sick leave to those employees.

5. Q: If an employer's sick leave plan provides less than 10 days of paid benefits, is the employer required to add additional sick leave days for employees to use for family leave purposes?

A: No. Only the amount of sick leave benefits that are accrued and available for employees to use for their own sickness must be allowed to be used for paid family leave.

6. Q: If an employee is eligible under the HFLL (six months of employment), but not under TDI or the employer's sick leave plan, are paid family leave benefits required?

A: If the employee has no accrued and available sick leave, and the employer provides no other paid leave, such as vacation, then the family leave would be unpaid leave.

7. Q: If an employee uses all of his/her sick leave for his/her own disability, must an employer later provide additional days for him/her to use for family leave purposes?

A: No. There is no requirement to provide more sick leave than what the employee is entitled to under the employer's sick leave plan.

8. Q: If the employee uses up all of his/her sick leave for family leave purposes, and then the employee later becomes sick, must the employer provide additional sick days for the employee's illness?

A: No, unless the employer has an "equivalent sick leave plan" under the TDI Law.

9. Q: If an employer's sick leave plan allows an employee to receive paid sick leave benefits for the employee's own illness without a doctor's certificate, can the employer require medical certification for the employee to use paid sick leave for family leave purposes?

A: Yes, the HFLL allows employers to require certification from the employee for the employee's request for family leave to care for a family member with serious health condition.

10. Q: If the employer's sick leave policy includes an unpaid waiting period before sick leave benefits are payable for an employee's illness, can the employer use the same waiting period for sick leave benefits to be payable for family leave purposes?

A: If the employer's policy or collective bargaining agreement provides for a waiting period, HFLL does not alter this arrangement.

11. Q: If an employer's sick leave policy provides that employees must exhaust any accrued vacation before using their sick leave, would this practice be allowed for an employee taking family leave?

A: If this is the employer's sick leave policy, HFLL does not alter this arrangement.
See #12 also.

12. Q: An employer's family leave policy requires that an employee first exhaust his/her vacation before using accrued and available sick leave for family leave. However, the employer's sick leave policy does not require an employee to exhaust his/her vacation or other paid leave before using sick leave for his/her own illness. Is this employer practice allowed?

A: No. HFLL specifies that an employer must permit an employee to use up to 10 days of accrued and available sick leave for family leave purposes. If the employer's policy has no similar requirement for the use of sick leave for the employee's own illness, the sick leave is considered "accrued and available", and the employer must permit the employee to use the sick leave for family leave. The HFLL also provides that, except for the ten days provided at the election of the employee, the employee may substitute other paid leaves, such as vacation, for any part of the four-week period of family leave.

13. Q: If a company has a paid time-off plan (PTO), which can be used for any purpose including sick leave, and which must be used before an extended sick leave bank becomes available, what is the employer obligated to provide to the employee?

A: If the PTO can be used for any purpose, it would fall within the definition of sick leave under HFLL, and the employer would be required to permit an employee to use up to 10 days of PTO for family leave. The employer's requirement to use PTO before an extended sick leave bank becomes available would not be a violation of the HFLL.

14. Q: If a collective bargaining agreement states that sick leave is to be used only for the employee's own illness, does HFLL supersede the agreement?

A: In general, HFLL will prevail.

15. Q: Is paid sick leave under HFLL available to an employee for the birth of the employee's child who does not have a serious health condition?

A: Yes. The new law specifies that the use of accrued and available sick leave is "for family leave purposes," which includes the birth or adoption of a child.

16. Q: If an employee does not request paid sick leave for family leave, does an employer have to notify the employee of the right to use sick leave for family leave?

A: DLIR believes that an employer who provides paid sick leave should notify its employees of their right to use up to 10 days of sick leave for family leave so that employees are aware of that option.

[Back to the top](#)

Relationship to Federal Family and Medical Leave Act (FMLA)

17. Q: Can a parent take family leave to care for a child over the age of 18 with a serious health condition?

A: Yes. Employees may take family leave to care for a child of any age, not just a minor.

18. Q: Does the HFLL allow for intermittent leave?

A: Yes, HFLL [Section 398-3(b), HRS] allows family leave to be taken intermittently, including for birth or adoption.

19. Q: If a husband and wife work for the same employer, are both permitted to use accrued and available sick leave for the same family leave purpose at the same time?

A: Yes. Unlike the FMLA, the HFLL does not restrict either a husband or wife from using family leave, and does not require that they share the four-week period of family leave. HFLL further requires an employer who provides sick leave for employees to permit any qualifying employee,

including husbands and wives, to use their own accrued and available sick leave for family leave purposes.

20. Q: If an employee uses 10 days of accrued and available sick leave under the HFLL to care for a grandparent-in-law with a serious health condition, is the employee entitled to an additional 12 weeks of FMLA for the serious health condition of a spouse?

A: For interpretation of the FMLA, we recommend contacting the USDOL, Wage and Hour Division at (808) 541-1361 or at <http://www.dol.gov/dol/compliance/comp-fmla.htm> (<http://www.dol.gov/dol/compliance/comp-fmla.htm>) . Because the definition of “parent” under the Hawaii law may be broader than under the FMLA, the family leave taken for a grandparent-in-law may not offset the 12-week FMLA entitlement (similar response for grandparents, parents-in-law, and reciprocal beneficiaries who may not be eligible under FMLA).

To view a handy comparison chart on the HFLL and FMLA, see [Family Leave Comparison Chart](http://labor.hawaii.gov/wsd/files/2013/10/Family-Leave-Comparison-Chart-rev-10-29-2013.pdf) (<http://labor.hawaii.gov/wsd/files/2013/10/Family-Leave-Comparison-Chart-rev-10-29-2013.pdf>)

[Back to the top](#)

Family Leave Questions Relating to the Temporary Disability Insurance Law (TDI)

21. Q: The employer currently provides TDI coverage for employees through an authorized TDI carrier. Additionally, the employer provides sick leave benefits to these employees. Are the sick leave benefits subject to HFLL?

A: Yes, the employer must permit an employee to use the employee’s accrued and available sick leave benefits for the purposes of the Hawaii Family Leave Law, not to exceed 10 days, if the sick leave amount is above the TDI requirement.

22. Q: The employer has an approved self-insured TDI plan that provides increasing benefits based on years of service. Benefits range from three weeks to a maximum of 26 weeks of benefits, based on the number of years that the employee worked. Can the employee use these benefits under HFLL?

A: No . Employers who are self-insured must pay TDI benefits to a disabled employee in accordance with the actual plan that was filed and approved by DLIR. HFLL does not provide that an employer diminish an employee’s accrued and available sick leave below the amount required under its TDI plan.

23. Q: The employer has an approved self-insured TDI plan that provides benefits at 100% for three weeks (15 days) with no waiting period per benefit year. For each year of service this employer gives their employees 15 days of sick leave. However, only 5 days can be carried over to the next year to a maximum accumulation of 35 days. Can the employees use these sick leave benefits under HFLL?

A: Yes, any accrued and available sick leave benefits in excess of the 15 days that are provided in the employer’s approved TDI self-insured plan can be used for family leave purposes, not to

exceed 10 days unless the employer's plan provides for greater benefits.

24. Q: The employer's TDI plan provides for a combined sick leave and statutory TDI policy that provides benefits through an authorized TDI carrier upon exhaustion of the employee's sick leave benefits. The employer has filed this TDI plan with the DLIR and received approval of this partially self-insured plan. Can the employee utilize his/her sick leave benefits for his/her family members?

A: No, the employer filed and received approval for the employer's combined self-insured and insured statutory TDI policy. Thus, the benefits provided are used to comply with the TDI law and are not available for family leave purposes.

25. Q: An employer only has an approved self-insured plan that provides statutory TDI benefits. Can an employee apply for family leave utilizing the statutory TDI benefits?

A: No, benefits under a statutory TDI plan can only be used for the employee's own illness.

26. Q: The employer and union have entered into a collectively bargained agreement whereby an employee must exhaust sick leave benefits before statutory TDI benefits commences with an authorized TDI carrier. However, no union agreement was filed with DLIR. Only a statutory TDI policy is filed with DLIR covering all employees. Can the union employee file under HFLL?

A: In general, the employee should be able to use his/her accrued and available sick leave because DLIR files reflect that employer is covered under a statutory TDI policy.

27. Q: The employer and union have entered into a collectively bargained agreement whereby the agreement states that an employee is entitled to statutory TDI benefits upon exhaustion of sick leave benefits. The agreement does not specify the number of sick leave days to which an employee is entitled. Agreements were filed and approved by DLIR. Can the union employee use his/her sick leave benefits for family leave under HFLL?

A: In general, the employee can utilize accrued and available sick leave benefits for family leave purposes since this employee is entitled to statutory TDI benefits.

[Back to the top](#)

The foregoing information is provided for reference purposes only, by the Hawaii Department of Labor and Industrial Relations, Wage Standards Division. A determination on the applicability of the statute to a particular situation will be based on the actual facts of the case.

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STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
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MARCH 20, 2017

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on TUESDAY, MARCH 21, 2017
9:30 a.m., Conference Room 016

By

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 4, HD1
Relating to Health

CHAIRPERSON KIETH-AGARAN, VICE-CHAIR RHOADS AND MEMBERS OF THE
SENATE COMMITTEE ON JUDICIARY AND LABOR:

Thank you for the opportunity to provide testimony on H.B. No. 4 HD1.

H.B. No. 4 HD1 requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

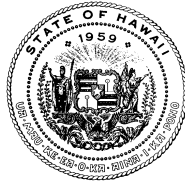
The Department of Human Resources Development respectfully **OPPOSES** H.B. 4 HD1 to the extent that it applies to public sector employees.

Most public sector employees are already afforded generous vacation and sick leave benefits which can be utilized for the purposes of caring for themselves or a family member who is ill or needs medical care. It is therefore unnecessary to include public employees within the scope of this bill.

H.B. 4 HD1 also appears to be in conflict with existing law. Act 253, SLH 2000,

removed routine human resource policy and management matters from civil service laws and included the enactment of HRS Section 78-23. That section specifically provides that employees “shall be eligible for vacation leave, sick leave, and other leaves of absence, with or without pay, as negotiated under chapter 89 or adjusted under chapter 89C, as applicable.” H.B. 4 HD1 accordingly attempts to legislate in an area that is required by statute to be a mandatory subject of negotiation.

Given the foregoing, we recommend that H.B. 4 HD1 be held or amended to expressly exclude public employees from its coverage.



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**Testimony COMMENTING on H.B. 4, H.D. 1
RELATING TO HEALTH**

SENATOR GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: March 21, 2017

Room Number: 016

1 **Fiscal Implications:** None to the Department of Health. The Department of Health defers to
2 the Department of Labor and Industrial Relations for fiscal impact.

3 **Department Testimony:** This measure seeks to require employers to provide employees a
4 minimum amount of paid sick leave that can be used to care for themselves or a family member
5 who is ill or needs medical care. Approximately 36% of private industry workers in the United
6 States do not have paid sick leave. This deficiency is much greater among those employed in
7 low-wage jobs. Of particular concern for Hawaii's tourism industry and public's health, 69% of
8 accommodation and food service workers lack paid sick leave.

9 The Department agrees with the legislature's findings as outlined in this bill. Employees who
10 work sick, risk spreading illness to co-workers, customers, and those on public transportation.
11 Parents who lack paid leave are more likely to send an ill child to school, risking the health of
12 their child's classmates and teachers. Employees without paid sick leave are 1.5 times more
13 likely to work while sick, and parents without paid sick leave are twice as likely to send a sick
14 child to school or daycare. Assuring every person working in the state is provided paid sick
15 leave would contribute toward improving the health of all in our community, residents and
16 visitors alike. Thank you for this opportunity to testify

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR
NOEL T. ONO
ASSISTANT DIRECTOR

March 21, 2017

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair
and Members of the Committee on Judiciary and Labor
The Senate
State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

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

**SUBJECT: House Bill No. 4, HD1
Relating to Health**

House Bill 4 HD1 requires employers to provide a minimum amount of paid sick leave to employees, including time for family care. The City and County of Honolulu, Department of Human Resources, respectfully opposes this bill to the extent that it creates ambiguity as to whether it applies to public sector employees.

The City is concerned that HB 4 HD1 involves a matter that is subject to collective bargaining, and therefore, should not be legislated. Public sector employees are already entitled to generous leave provisions which have been negotiated into the respective collective bargaining agreements. Our employees are given 21 days of sick leave and 21 days of vacation per year, which may be used for purposes described in this bill. In addition, City employees are sufficiently covered by Federal and State laws which afford them time off to care for themselves and their family members.

For public sector employees, the entire subject of sick leave should remain exclusively a subject of collective bargaining. The City respectfully requests that HB 4 be further amended to explicitly exclude public sector employees.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo".

Carolee C. Kubo
Director

cc: Mayor's Office



**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, March 21, 2017 at 9:30 A.M.
Conference Room 016, State Capitol**

RE: HOUSE BILL 4 HD1 RELATING TO HEALTH

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

The Chamber of Commerce Hawaii ("The Chamber") **strongly opposes** HB 4 HD1, which requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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.

We appreciate the work the House Labor committee put into this draft. However, we cannot support the bill. The Chamber does not believe that this benefit should be mandated by legislation. Employers already have to deal with many mandated benefits for employees, which have steadily increased the employer's burden as well as the cost of doing business in Hawaii. Keep in mind that Hawaii is the only state that mandates employers of all sizes to provide healthcare coverage of which over 90% of the cost is paid for by the employer.

Those employers who do provide sick leave do so, so that the employees can recover from a health illness or injury. Many employers are quite generous with sick leave benefits. We believe that this bill may cause problems for both employers and employees in existing leave systems.

We also have a concern with 2(a) in Section 2 of the bill that sets the threshold of when an employee is eligible for the benefit. It states:

All employees who work in the State for more than six hundred eighty hours in a year shall have the right to paid sick leave as provided in this chapter.

As we read it, we are unsure how this will be regulated or how employers will know when an employee, who may be working more than one job, will know and be able to verify that this threshold has been met.



Chamber of Commerce HAWAII

The Voice of Business

While most workers utilize their sick leave only when ill, there is a percentage of workers who abuse this benefit. CareerBuilder.com reported that 1 in 4 workers consider sick leave to be vacation time. This bill would make it very difficult for employers to manage their employees and the benefits provided.

We respectfully ask that this bill be held in committee. Thank you for the opportunity to testify.



To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Jaime Arreola, General Manager

Hearing: March 21, 2017

RE: **HB 4 HD1 – In Opposition**
Relating to Mandatory Paid Sick Leave

We are opposed to the proposed additional mandate of paid sick leave.

1. The Hawaii Department of Labor has concerns about this bill and its overlap with existing legislation, and so do we. The state already requires us to pay sick leave, it is called Temporary Disability Insurance (TDI) and eligible employees can receive payment for up to 26 weeks a year.

In addition, we have Hawaii Family Leave to care for family members and Victims Protection Leave for victims of domestic and sexual violence. If you want to expand the benefits of paid sick leave, modify the existing TDI legislation.
2. The additional administrative burden on us as an employer would be enormous. We are already tracking employee hours weekly for the Prepaid Health Care Act and for Temporary Disability Insurance. This additional accrual system is unlike the other tracking currently being done.
3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!



To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Noah Yamada, General Manager

Hearing: March 21, 2017

RE: **HB 4 HD1 – In Opposition**
Relating to Mandatory Paid Sick Leave

We are opposed to the proposed additional mandate of paid sick leave.

1. The Hawaii Department of Labor has concerns about this bill and its overlap with existing legislation, and so do we. The state already requires us to pay sick leave, it is called Temporary Disability Insurance (TDI) and eligible employees can receive payment for up to 26 weeks a year.

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2. The additional administrative burden on us as an employer would be enormous. We are already tracking employee hours weekly for the Prepaid Health Care Act and for Temporary Disability Insurance. This additional accrual system is unlike the other tracking currently being done.
3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!

To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Greg Ames, General Manager

Hearing: March 21, 2017

RE: **HB 4 HD1 – In Opposition**
Relating to Mandatory Paid Sick Leave

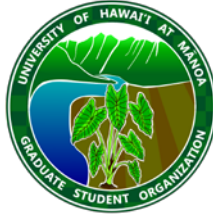
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In addition, we have Hawaii Family Leave to care for family members and Victims Protection Leave for victims of domestic and sexual violence. If you want to expand the benefits of paid sick leave, modify the existing TDI legislation.
2. The additional administrative burden on us as an employer would be enormous. We are already tracking employee hours weekly for the Prepaid Health Care Act and for Temporary Disability Insurance. This additional accrual system is unlike the other tracking currently being done.
3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!



Date: March 21, 2017

Graduate Student Organization at the University of Hawai'i at Mānoa

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

Re: Support for HB4, Relating to Health

Thank you for the opportunity to provide testimony. The Graduate Student Organization (GSO) at the University of Hawai'i at Mānoa writes in **support** of HB 4, Relating to Health. The GSO represents approximately 4,700 graduate students at the University of Hawai'i at Mānoa.

Our members compose a substantial portion of the local economy, and the vast majority of our members make wages and benefits far below the cost of living in Hawai'i. In addition to low-paying graduate assistantships, many are working extra to pay for the rapidly rising costs of basic goods and necessities. These jobs, including graduate assistantships, are commonly bereft of any benefits, including paid sick leave.

Paid sick leave is a basic building block of economic security. Studies show that workplaces benefit when their workers have access to paid sick days.¹ When sick workers can stay home, the spread of disease slows and workplaces are both healthier and more productive. Plus, workers recover faster from illness and have an opportunity to obtain timely medical care, which enables them to get back to work sooner and holds down overall healthcare costs. In fact, studies show that it is costlier to businesses to *not* have a paid sick leave policy. Yet, a substantial portion of local workers Hawai'i do not have access to paid sick days.

The access to financial security in the event of sickness is a human right. Sick leave policies enacted in other cities and states, as well as other countries, have been extremely successful and are strongly supported by workers and local businesses. Giving all workers in Hawai'i paid sick leave is a sensible policy that will benefit workers, businesses, community health, and the local economy.

1. [United States Department of Labor. "Get The Facts On Paid Sick Time." October 2015.](#)

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB4 on Mar 21, 2017 09:30AM
Date: Monday, March 20, 2017 1:05:05 PM

HB4

Submitted on: 3/20/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Sheryl Nojima	Gray Hong Nojima & Assoc., Inc.	Oppose	No

Comments: I did not receive confirmation when I submitted online this morning, so I am trying again. Sheryl Nojima (808)521-0306

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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03/19/17

To: COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair, Senator Karl Rhoads, Vice Chair

Senator Mike Gabbard, Senator Donna Mercado Kim, Senator Laura H. Thielen

Subject: Testimony In Opposition to HB 4, HD1

While Gyotaku is committed to providing a living wage and time off for our employee's health and family related issues, we strongly opposed mandatory sick leave pay for all employees of all business.

- The restaurant industry is dealing with the ever increasing labor cost from the scheduled increases in the minimum wage with a small tip credit.
- Hawaii employers are required to provide the highest level of Health Care Benefits in the nation to all employees working 19 or more hours per week.
- The cost to restaurant businesses would be a significant financial and administrative burden.
- The food service industry is a very low margin business and business failures due to low profitability are common place.

With all due respect, we recommend that this bill not be passed.

Sincerely,

Thomas H Jones

President & CO-Owner

REI Food Service, LLC d.b.a. Gyotaku Japanese Restaurants



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Comments of Hawai'i Appleseed Center for Law and Economic Justice
Pertaining to HB 4, HD1 Relating to Health
Senate Committee on Judiciary and Labor
Scheduled for hearing Tuesday, March 21, 2017, 9:30 AM, Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Rhoads, and members of the Committee on Judiciary and Labor:

Thank you for the opportunity to provide comments on **HB 4, HD 1**, which would require employers to provide a minimum amount of paid sick leave to employees. While Hawai'i Appleseed supported the original HB 4, the modifications made in HD 1 significantly weakens the potential effectiveness of the bill.

For example, employees do not appear to have a path for recourse in the event that they weren't given the paid sick leave that they earned. This stems from the bill language giving employers the discretion to decide how they will allow their employees to take this leave. Without adequate definitions and parameters, the implementation of this law would be murky and very difficult to enforce.

The exemption for employers who pay their employees significantly above the minimum wage also is cause for concern. In effect, this provision would place large swaths of the working population outside the mandate of this bill. That would seriously weaken the expected beneficial effects of a paid sick leave law, especially those that protect consumers from contagious illnesses that are spread by service workers who, without paid sick leave, have no choice but to work while sick.

Another example is the revised definition of "family member" in HD 1, which does not match the definition found in the Hawai'i Family Leave Law. It seems prudent to provide consistency in definitions in different areas of state law whenever possible.

Adding Hawai'i to the growing list of states and jurisdictions that provides its workers with a guarantee of paid sick days would be the right thing to do for our low-wage workers, their families, our state's economy, and our broader community. Thank you for your consideration of these comments.

Hawai'i Appleseed Center for Law and Economic Justice Hawaii Appleseed is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.



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TO: COMMITTEE ON JUDICIARY & LABOR

Senator Gilbert Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: Tuesday, March 21, 2017

TIME: 9:30 a.m.

PLACE: Conference Room 016

RE: HB4, HD1 (Sick Leave)

Position: Oppose

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

Our member employers understand that employees will require occasional leave from work due to a legitimate sickness or other reasons, and generally accommodate and work with them.

This bill's approach will hinder an employer's flexibility in providing sick leave and will result in additional costs, both directly and indirectly. Full time employees already receive traditionally paid sick leave as an earned benefit. Mandating it for part time and hourly employees would greatly increase costs to employers. For many businesses, this could mean that they would no longer be able to afford to employ as many people and would be forced to eliminate jobs.

Small businesses are especially vulnerable to any increase in costs, especially those that operate on low margins. Passage of this measure may also force many small employers to offset higher costs through lower wages to their employees, fewer work hours and pay raises, decreased discretionary benefits, or increased costs for consumers. Even worse, for those companies on the "tipping point," any increase may force them to close.

At a time when the State is placing an emphasis on jobs and the economy, this measure and any other mandate that creates additional perceived or real costs, will undermine those efforts, hinder economic progress and entrepreneurial activity, and deter business investment in our State.

In light of this, we respectfully request that this measure be held. Thank you for the opportunity to testify.

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FCH Enterprise / Zippys
Conrad Nonaka
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Y. Hata
James Baloalao
SWS- Red Bull
Naomi Azama
HMAA
Len Delekta
Image Apparel Hawaii
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To: Sen. Gilbert S C Keith-Agaran, Chair
 Sen. Karl, Vice Rhoads, Vice Chair
 Members of the Committee on Judiciary and Labor

From: Victor Lim, Hawaii Restaurant Association

Subj: HB4 HD 1 Paid Sick Leave

Date: March 17, 2017

The Hawaii Restaurant Association representing about 3,500 restaurants of all sizes here in Hawaii stand opposed to HB4 HD1 that will require Paid Sick Leave for businesses.

Our industry has faced tremendous cost increases these past few years from the mandated wage increases coming from the minimum wage schedule along with the huge increases from our prepaid medical insurance that we provide our employees where most of the costs are shouldered by the employer. We are juggling between absorbing these costs and passing some to the consumer and dealing with menu price resistance.

Many of our members are very concerned about survival in an industry with an exceptionally high failure rate.

For all of the above reasons, we urge you not to pass this bill out of your committee. Thank you for allowing us this opportunity to share our concerns.

Aloha.



Randy Perreira
President

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Telephone: (808) 597-1441

Fax: (808) 593-2149

The Twenty-Ninth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
March 21, 2017

H.B. 4, H.D. 1 – RELATING TO HEALTH

The Hawaii State AFL-CIO strongly supports H.B. 4, H.D. 1 which requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

Many union members working in Hawaii are fortunate to have access to paid sick days. Even a number of employers that do not have a collective bargaining agreement offer generous paid sick days to their employees and we commend them for providing such benefits. Regrettably, not all workers are provided access to paid sick days. In fact, according to the National Partnership for Women and Families, over 170,000 Hawaii workers or nearly 43 percent of the state's private-sector workforce are not able to take paid sick days when they are ill or when their children are ill. As a result, countless employees attend work sick as many of the 170,000 workers are low-wage service sector workers living paycheck to paycheck. This however can be changed for the better.

Supporting H.B. 4, H.D. 1 will provide workers who need it the most with a few paid sick days a year. Children who are sick will finally be able to stay at home and recover and sick employees will finally have the opportunity to regain their health allowing them to return to work at full productivity. And most importantly, the spread of illness will be greatly reduced among co-workers, school children and the general public. Hawaii will become a healthier state, a more productive state and of course a state that recognizes the impact of how contagious the flu or other diseases can be to Hawaii residents. A small number of paid sick days a year can go a long way to improving the quality of life for many.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
MARILYN LEE
AMY MONK
LISA ELLEN SMITH

Executive Director
CATHY BETTS

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Visit us at:
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/hscsw/

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

March 20, 2017

Comments regarding HB 4, HD1, Relating to Labor

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

From: Cathy Betts, Executive Director,
Hawaii State Commission on the Status of Women

Re: Comments Regarding HB 4, HD1, Relating to Health

Thank you for this opportunity to provide comments regarding HB 4, HD1, which would mandate employers provide a minimum of sick leave for their employees. While the Commission supported the original HB4, the language found in HD1 causes concern.

First, the revised definition of “family member” is not consistent with the current definition of “family member” under the Hawaii Family Leave Law, which may cause confusion and inconsistency in application.

Second, allowing employers to decide the manner in which they allow paid sick leave is too broad, ill defined, and will be difficult to enforce. Some employers with ill intentions may use this broad language to cause unnecessary burden or delay to employees wishing to use their earned sick leave under the law. Without knowing the parameters for what is legal and not legal, it will be difficult for employers, employees, and the state to determine whether employers are truly abiding the law.

Third, allowing an exemption for an employer who pays a certain amount above the minimum wage, while novel in concept, does not further the underlying cause of a sick leave policy in the first place. Employee health, community health, and public health are important to all of Hawaii’s residents. An employee getting paid a little over the minimum wage will still have the same basic needs for paid sick leave alike any other employee in the state.

Having a paid sick leave policy increases worker loyalty, decreases turnover and ensures a healthy workforce. Ensuring a minimum amount of paid sick leave for all workers, regardless of how much they make an hour or the size of their employer, is sound public policy that benefits the community and the workplace.

Thank you for allowing the Commission to provide comments regarding HB 4, HD1.



To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Orrin Cross, General Manager

Hearing: March 21, 2017

RE: **HB 4 HD1 – In Opposition**
Relating to Mandatory Paid Sick Leave

We are opposed to the proposed additional mandate of paid sick leave.

1. The Hawaii Department of Labor has concerns about this bill and its overlap with existing legislation, and so do we. The state already requires us to pay sick leave, it is called Temporary Disability Insurance (TDI) and eligible employees can receive payment for up to 26 weeks a year.

In addition, we have Hawaii Family Leave to care for family members and Victims Protection Leave for victims of domestic and sexual violence. If you want to expand the benefits of paid sick leave, modify the existing TDI legislation.
2. The additional administrative burden on us as an employer would be enormous. We are already tracking employee hours weekly for the Prepaid Health Care Act and for Temporary Disability Insurance. This additional accrual system is unlike the other tracking currently being done.
3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!



To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Keli'i Gouveia

Hearing: March 21, 2017

RE: **HB 4 HD1 - In Opposition**
Relating to Mandatory Paid Sick Leave

We are opposed to the proposed additional mandate of paid sick leave.

1. The Hawaii Department of Labor has concerns about this bill and its overlap with existing legislation, and so do we. The state already requires us to pay sick leave, it is called Temporary Disability Insurance (TDI) and eligible employees can receive payment for up to 26 weeks a year.

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3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!

IBEW1260

‘A‘OHE HANA NUI KE ALU ‘IA

March 21, 2017

The Twenty-Ninth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

HB4 - RELATING TO HEALTH

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

The International Brotherhood of Electrical Workers Local Union 1260, AFL-CIO (IBEW1260), represents more than 3500 members, has advocated for all workers in the State of Hawaii for over 75 years and respectfully offers the following testimony in **STRONG SUPPORT** of House Bill 4 (HB4).

While our members are fortunate enough to be covered by a collective bargaining agreement providing in many cases generous amounts of paid sick leave, many of Hawaii's workers, over forty percent, are not afforded the same benefit. As a result, these workers are required to choose between providing for their families and working while sick or enduring a loss of income to recuperate.

Support of HB4 will allow these workers, many of whom are low-income earners, the ability to stay at home and recover without loss of income. Additionally, children of working families who are ill will be able to remain home being cared for by their parents. IBEW1260 encourages this committee to support HB4 as paid sick days will improve the quality of life for many families ultimately leading to a healthier Hawaii.

Mahalo for the opportunity to testify on this issue.

Respectfully,



Michael M. Brittain
Asst. Business Manager
IBEW1260 / AFL-CIO

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [c](#)
Subject: Submitted testimony for HB4 on Mar 21, 2017 09:30AM
Date: Saturday, March 18, 2017 5:10:56 PM

HB4

Submitted on: 3/18/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dirk Koeppenkastrop	IL Gelato Hawaii	Comments Only	Yes

Comments: My name is Dirk Koeppenkastrop and I am the founder and owner of IL Gelato Hawaii. I am a graduate from the University of Hawaii and as there are no higher-level jobs as a chemist my wife and I started a small business here in Honolulu six years ago. We make all natural high quality gelato (ice cream) here in Hawaii and sell wholesale to restaurants and operate two retail locations. We have approximately 45 employees and most of them part time. We have plans to grow and to expand our business so that we soon will have over 50 employees. The proposed Bill HB4 will highly impact our payroll cost. The proposed bill in addition to increasing minimum wages will challenge the existence of our gelato business. In our gelato factory and stores we offer entry-level jobs to unskilled workers. If wages and associated payroll cost -introduced through mandatory paid sick leave - will increase, we will have a problem to stay in business. We cannot pass additional cost to our customers. A scoop of ice cream at our store is \$3.75 and already considered to be too expensive for local families. We get a lot of comments via social media and Yelp reviews that we are too expensive. Our food costs in Hawaii are the highest of the nation. Our rents are the highest of the nation. Energy and insurance cost are higher than anywhere else. It is very very difficult to operate a business in Hawaii!!! We cannot increase our scoop prices, as we would loose our local customers. If payroll costs continues to increase so substantially we need to close our business, which would challenge our existence and we could no longer offer employment. We strongly oppose to proceed with proposed bill HB4. Sincerely, Dirk Koeppenkastrop, Ph.D.

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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The Twenty-Ninth Legislature
Regular Session or 2017

THE STATE SENATE

Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

State Capitol, Conference Room 016

Tuesday, March 21, 2017; 9:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 4 H.D. 1
RELATING TO HEALTH**

The ILWU Local 142 strongly supports H.B. 4 H.D. 1, which requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

H.B. 4 H.D. 1 provides that all employees who work in the State for more than six hundred eighty hours in a year shall have the right to accrue sick leave. Sick leave would accrue at the rate of one hour of paid leave for every forty hours worked. A cap is also provided so that no employee would accrue more than forty hours of paid sick leave in a calendar year.

Providing paid leave for a worker's own illness or disability is a humane employment practice that fosters loyalty and productivity among employees for their employers. The current law mandating Temporary Disability Insurance (TDI) is a means of providing paid leave for workers to address their own illnesses, but TDI starts only after a week of illness. TDI also pays 58% of wages for a maximum 26 weeks.

We are concerned that some employers who now offer good sick leave policies may terminate those policies and instead offer TDI and the limited benefit provided in H.B. 4 H.D. 1. The law should not allow employers to opt for the cheaper alternative. Further, H.B. 4 H.D. 1 should not jeopardize the Temporary Disability Insurance law, which has been in effect for more than 40 years and has served us well. Some safeguards may need to be considered.

The ILWU urges passage of H.B. 4 H.D. 1, with additional language to address the TDI concern. Thank you for the opportunity to share our views on this matter.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB4 on Mar 21, 2017 09:30AM*
Date: Friday, March 17, 2017 11:40:46 AM

HB4

Submitted on: 3/17/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Swindell	IOMM&P	Support	No

Comments:

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Kalaheo Café and Coffee Co. Inc.
2-2560 Kaunualii Highway
Kalaheo, Kauai, Hawaii 96741

To: Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair
Members of the Committee on Finance

From: John Ferguson, Kalaheo Coffee Co. & Café

Subj: HB4 HD 1 Paid Sick Leave

Date: March 20, 2017

We are a family owned restaurant on the island of Kauai. We have been in business since 1994. We stand opposed to HB4 HD1 that will require Paid Sick Leave for businesses.

We not only offer the mandated medical coverage to our qualified employees with dental and vision riders, we also offer vacation pay to our full time employees.

Our industry has faced tremendous cost increases these past few years from the mandated wage increases coming from the minimum wage schedule along with the huge increases from our prepaid medical insurance that we provide our employees where most of the costs are shouldered by the employer.

Each year we struggle to give our employees increases in their hourly wages. We don't need any additional costs incurred to operate our business.

For all of the above reasons, we urge you not to pass this bill out of your committee.

Aloha.



To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Derek Kessler, General Manager

Hearing: March 21, 2017

RE: **HB 4 HD1 – In Opposition**
Relating to Mandatory Paid Sick Leave

We are opposed to the proposed additional mandate of paid sick leave.

1. The Hawaii Department of Labor has concerns about this bill and its overlap with existing legislation, and so do we. The state already requires us to pay sick leave, it is called Temporary Disability Insurance (TDI) and eligible employees can receive payment for up to 26 weeks a year.

In addition, we have Hawaii Family Leave to care for family members and Victims Protection Leave for victims of domestic and sexual violence. If you want to expand the benefits of paid sick leave, modify the existing TDI legislation.
2. The additional administrative burden on us as an employer would be enormous. We are already tracking employee hours weekly for the Prepaid Health Care Act and for Temporary Disability Insurance. This additional accrual system is unlike the other tracking currently being done.
3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!



To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Chris Almeroth, General Manager

Hearing: March 21, 2017

RE: **HB 4 HD1 – In Opposition**
Relating to Mandatory Paid Sick Leave

We are opposed to the proposed additional mandate of paid sick leave.

1. The Hawaii Department of Labor has concerns about this bill and its overlap with existing legislation, and so do we. The state already requires us to pay sick leave, it is called Temporary Disability Insurance (TDI) and eligible employees can receive payment for up to 26 weeks a year.

In addition, we have Hawaii Family Leave to care for family members and Victims Protection Leave for victims of domestic and sexual violence. If you want to expand the benefits of paid sick leave, modify the existing TDI legislation.
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3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!

From: [Juno Chung](#)
To: [JDLTestimony](#)
Subject: HB4 HD1
Date: Monday, March 20, 2017 10:16:20 AM

To whom it may concern,

I am the owner of Koa Pancake House and Koa Cafe and I am against the bill HB4 HD 1. Being in the restaurant business, it is already difficult enough to make it in a industry with small margins. Along with the minimum wage going up every year, business owners will be forced to just pass on the cost over to the customers. I understand the hearing is tomorrow on March 21, 2017 but I hope you may reconsider this bill, as it will not only hurt my business but many other family business here on Oahu.

Aloha,
Juno Chung
Owner
Koa Pancake House / Koa Cafe

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To: Senator Keith-Agaran, Chair
Senator Roads, Vice Chair
Committee on Judiciary and Labor

From: Jason Doney, General Manager
jason@leilanis.com

Hearing: March 21, 2017

RE: **HB 4 HD1 – In Opposition**
Relating to Mandatory Paid Sick Leave

We are opposed to the proposed additional mandate of paid sick leave.

1. The Hawaii Department of Labor has concerns about this bill and its overlap with existing legislation, and so do we. The state already requires us to pay sick leave, it is called Temporary Disability Insurance (TDI) and eligible employees can receive payment for up to 26 weeks a year.

In addition, we have Hawaii Family Leave to care for family members and Victims Protection Leave for victims of domestic and sexual violence. If you want to expand the benefits of paid sick leave, modify the existing TDI legislation.
2. The additional administrative burden on us as an employer would be enormous. We are already tracking employee hours weekly for the Prepaid Health Care Act and for Temporary Disability Insurance. This additional accrual system is unlike the other tracking currently being done.
3. Employers should be given the opportunity to provide benefits as they choose to remain attractive to their employees. The flexible hours and lifestyle we provide allow employees many scheduling opportunities that other industries do not. Work with Hawaii employers to strengthen the economy and improve opportunities. Please do not add additional challenges.

For these reasons, we are in opposition to HB 4.

Thank you for your time. Mahalo!

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB4 on Mar 21, 2017 09:30AM*
Date: Friday, March 17, 2017 2:20:10 PM

HB4

Submitted on: 3/17/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

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MAUI

CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 016
TUESDAY, MARCH 21, 2017 AT 9:30 A.M.**

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

**TESTIMONY IN OPPOSITION TO HB 4 TO REQUIRE
EMPLOYERS TO PROVIDE PAID SICK LEAVE**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce representing approximately 600 businesses and 16,000 employees on Maui. I am writing share our opposition to HB 4.

As a representative of businesses on Maui, we believe imposing a law requiring employers to provide paid sick leave to employees would be an extreme burden upon our local businesses. The law would allow for any employee working more than eighty hours in one year to accrue paid sick leave based on their hours worked. The bill would allow for employees to accrue up to 7 days of sick leave and to be able to rollover the unused sick leave each year as long as it does not go over 56 hours. Many businesses cannot afford to have an employee away from work for 7 full days without significant notice. Also many local businesses do not have the resources to keep up with the amount of paid sick leave an employee has accrued or used . Unlike the state, businesses are not allowed to carry unfunded benefits programs and continue to operate as though they are solvent. Heaping mandates such as this on businesses when they cannot afford it could bankrupt them. For businesses to provide that much paid sick leave to essentially all of their employees is extremely costly, unpredictable, and requires additional services or work for the upkeep. We cannot place this burden on our local businesses.

We appreciate the opportunity to testify on this matter and therefore ask that this bill be deferred.

Mahalo for your consideration of our testimony and we hope you will support a deferral.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

HB4 HD1

RELATING TO HEALTH

COMMITTEE ON JUDICIARY AND LABOR

Tuesday, March 21, 2017, 9:30am

Conference Room 016

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

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 175 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA **opposes HB4 HD1**, which requires employers to provide a minimum amount of paid sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

MHLA does not believe that this benefit should be mandated by legislation. Employers already manage numerous mandated benefits for employees, which have steadily increased the employer's burden as well as the cost of doing business in Hawaii.

Additionally, most employees are already afforded generous vacation and sick leave benefits which can be utilized for the purposes of caring for themselves or a family member who is ill or needs medical care. This bill would allow workers to utilize sick leave that are beyond the employee's health, as well as creating an opportunity for potential misuse and abuse of this benefit.

For these reasons, we are in opposition of HB4 HD1.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB4 on Mar 21, 2017 09:30AM
Date: Saturday, March 18, 2017 7:51:05 AM

HB4

Submitted on: 3/18/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	No

Comments: I strongly support HB4.

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MOTION PICTURE ASSOCIATION OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006

**STATEMENT IN SUPPORT OF HAWAII
HOUSE BILL 4
OPPOSE UNLESS AMENDED
MARCH 21, 2017**

The Motion Picture Association of America, Inc. (MPAA) submits this written testimony opposing HB 4, unless amended. MPAA members include the leading producers and distributors of television programs and motion pictures worldwide. In addition to CBS, which as you are well aware produces the locally based Hawaii 5-0 television series, MPAA members include Disney, Fox, Paramount, NBC Universal, Sony Pictures and Warner Bros.

MPAA proposes amending HB 4 to include a provision stating that where the employers and employees are subject to a collective bargaining contract, the sick leave requirement may be waived by the parties. This allows employers and employees, in the limited circumstances where the terms and conditions of employment are governed by a collective bargaining contract, to address the issue of sick leave in a manner that best meets the needs of the parties. The amendment provides that such waiver must be set forth in the contract in clear and unambiguous language.

The collective bargaining relationship in the motion picture and television industry has existed for more than 60 years. Over many decades, the parties have addressed many issues regarding wages, hours and terms and conditions of employment.

It is well established that the wages, terms and conditions of employment within motion picture and television production exceed average wages, terms and conditions. The parties, through a mature collective bargaining process, discuss and resolve wages, terms and conditions, which

are then memorialized in multiple collective bargaining agreements with various unions, including the International Alliance of Theatrical and Stage Employees, the International Brotherhood of Teamsters, SAG-AFTRA, and the Directors Guild of America. This bill should permit the parties to resolve the issue of paid sick leave between themselves, at the bargaining table.

For these reasons, MPAA respectfully urges the inclusion of an amendment authorizing parties subject to a collective bargaining contract to waive the provisions of mandated sick leave.

Thank you for your consideration.

March, 2017

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB4 on Mar 21, 2017 09:30AM
Date: Monday, March 20, 2017 11:43:36 AM

HB4

Submitted on: 3/20/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dave Erdman	PacRim Marketing Group, Inc. . PRTech, LLC.	Oppose	No

Comments: We are a small, successful business, less than 50 employees, members of the RMH, small business person on the year (Dave Erdman) We oppose and find that other approaches to wellness work best. We provide a bank of Paid Time Off (PTO) which is a combination of holidays, sick time, and vacation days. We find that this allows for employees control of their time off with planning. Usually if someone is really sick you will get those that call in BUT having a PTO bank will prevent the last minute calls saying they are sick when really they just want the day off. We also provide Extended Sick Time (EST) which provides for extended sick leave for those out for 5 days or more. When someone is really sick they are able to use accrued EST hours. The combination of PTO and EST is highly recommended. We find that we don't have a lot of people with patterns of calling in sick. We don't have to require sick notes from doctors due to PTO time being used and for EST there is always a doctor involved so a note is usually common to advise of the required time off. Employees can use PTO time for anything. If they are healthy individuals they can use hours that may otherwise have been sick time hours for vacation or holidays. Thank you, Dave Erdman

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From: [Anthony Lenzer](#)
To: [JDLTestimony](#)
Subject: Comments on HB 4 HD 1 and HB 213 HD 1
Date: Friday, March 17, 2017 12:27:37 PM

To: [Committee on Judiciary and Labor](#)
From: Anthony Lenzer, PhD
Re: [Comments on HB 4 HD 1 and HB 213 HD 1](#)
Hearing: Tuesday, March 21, 2017, 9:30 a.m.
Conference Room 016, State Capitol

Chair Keith-Agaran and Committee Members:

On behalf of the Policy Advisory Board for Elder Affairs (PABEA) I am writing to offer comments on HB 4 HD 1, as well as HB 213 HD 1, both related to Family Leave. PABEA is an advisory body to the Executive Office on Aging (EOA) re issues related to aging, and serves as an advocate for Hawaii's Kupuna and their families. PABEA's views do not necessarily reflect those of the EOA.

We strongly support enactment of a Hawaii Paid Family Leave law, but have concerns about these measures as written. HB 4 HD 1 only requires employers to provide a minimum amount of paid sick leave, an amount related to the number of hours worked. We support a law which allows twelve weeks of paid leave. HB 213 HD 1 extends the scope of Hawaii's current law to allow unpaid time off to care for a sibling, or upon the death of a family member. While we have no objections to these changes, **we recommend that the Committee consider the stronger and more comprehensive policy described in HB1362.**

It is time for Hawaii to pass a strong Family Leave Insurance policy. Employees need subsidized time off of work to care for a newborn, newly adopted or foster child, or an ill family member. Paid Family Leave guarantees that employees can cover basic costs of living, and also provide care to family members when they need it most.

Four other states (California, New Jersey, Rhode Island, and New York) have passed laws that provide employees with paid family leave for parenting and caregiving for family members. A 10 year study of the California law found increased employee loyalty, a healthier workforce, longer breastfeeding rates, lower rates of postpartum depression, and more gender equity in child care and caregiving. Businesses report little negative consequences after the law was enacted, and laws such as this do not impose additional financial burdens on the State.

Under federal and state law, the only leave allowed to families with a newborn child or unexpected caregiving responsibilities is unpaid leave. Hawai'i has no paid family leave, unless an employer willingly provides it.

Ideally, Legislative Proposals for Paid Family Leave Should Include:

- Universal paid family leave--- all employees pay in, and all employees can take out.

- A broad definition of family to encompass Hawaii's cultural views of the term "family."
- Wage replacement program for caregivers. More progressive wage replacement for lower income workers is preferred, in order for low income workers to actually be able to utilize the leave.
- A cap on wage replacement so higher income workers do not exhaust the fund.
- At least 12 weeks. Biological mothers should not be foreclosed from also using TDI.

Thank you for the opportunity to testify on this important subject.

SanHi Government Strategies

Gary M. Slovin
Mihoko E. Ito
R. Brian Tsujimura

a limited liability law partnership
c/o Ashford & Wriston • 999 Bishop Street, Suite 1400
Honolulu, Hawaii 96813
(808) 539-0400
governmentaffairs@awlaw.com

gslovin@awlaw.com
mito@awlaw.com
rtsujimura@awlaw.com

DATE: March 20, 2017

TO: Senator Gilbert S.C. Keith-Agaran
Chair, Committee on Judiciary and Labor
Submitted Via Capitol Website

RE: **H.B. 4, H.D.1 – Relating to Health**
Hearing Date: Tuesday, March 21, 2017 at 9:30 a.m.
Conference Room: 016

Dear Chair Keith-Agaran and Members of the Committee on Judiciary and Labor:

We submit this testimony on behalf of PVT Land Company, who operates the construction and demolition landfill in Nanakuli on Oahu.

PVT is **opposed** to H.B.4, HD1, which would require all employers to provide a mandatory minimum amount of paid sick leave for employees to care for themselves or a family member.

As a small business, we already make significant efforts to take care of our employees and ensure that they have sufficient benefits and incentives packages, including sick leave. This bill creates a new employer mandate to provide sick leave benefits. It will have significant impact on small businesses like ours which already struggle to manage the high costs of doing business in Hawaii. Employers are already required to comply with existing mandates including Temporary Disability Insurance and health insurance. Currently, employers have the flexibility to provide sick leave to their employees – we believe this flexibility allows us to provide an adequate sick leave policy without being mandated to do so.

For the above reasons, we oppose this measure and ask that it be held. Thank you for the opportunity to submit this testimony.

Gary M. Slovin
Mihoko E. Ito
R. Brian Tsujimura
C. Mike Kido
Tiffany N. Yajima
Matthew W. Tsujimura



3610 Waialae Ave
Honolulu, HI 96816
P: (808) 592-4200
E: tyamaki@rmhawaii.org

**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
March 21, 2017
Re: HB 4 HD1 RELATING TO HEALTH**

Good morning Chair Keith-Agaran and members of the Senate Committee on Judiciary and Labor. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

The Retail Merchants of Hawaii strongly opposes HB 4 HD1 Relating to Health. This bill would require employers to provide a minimum amount of sick leave to employees to be used to care for themselves or a family member who is ill or needs medical care.

Many business already have a paid sick leave policy in place, the duration of which, effective date of application and other specifics vary depending on the needs of the business and employer's resources. Employers are already mandated to provide Health Care Insurance. HB 4 HD1 would add another costly benefit to the list. It is important to note that in addition to the "sick leave" compensation the employer pays to the individual taking sick leave, the employer must likely has to pay the same compensation to another employee "filling in" for this individual.

Policy makers should be focusing in on eliminating obstacles to business growth, job creation and economic stability and not adding additional costs that employers cannot afford.

We respectfully ask that you hold this measure. Mahalo again for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB4 on Mar 21, 2017 09:30AM*
Date: Friday, March 17, 2017 6:00:28 PM

HB4

Submitted on: 3/17/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Mizusawa	Individual	Support	No

Comments:

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To: COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair, Senator Karl Rhoads, Vice Chair
Senator Mike Gabbard, Senator Donna Mercado Kim, Senator Laura H. Thielen

From: Michael Miller, Tiki's Grill & Bar
Subj: Tiki's HB 4, HD1 Requiring Certain Employers to Provide Sick Leave
Date: March 17, 2017

Thank you for the opportunity to provide testimony. We, at Tiki's Grill & Bar, hereby oppose HB 4, HD1.

We are a locally owned and operated restaurant in our 15th year of business. Our owners and myself are all graduates of the University of Hawai'i at Manoa and are very active in our community.

With Hawaii's low unemployment rate, employees have the opportunity to work at other establishments around town. We do offer paid time off as a competitive edge, as opposed to some other employers that may not be able to afford this. Our employees enjoy discounts, company events and company-sponsored activities outside of work. These are benefits we choose to pay in order to keep our good employees and remain competitive. Competitive benefits ensure that our employees are proud to continue to provide excellent service at a popular destination location in Waikiki for both locals and visitors.

We understand that employees will require occasional leave from work due to a legitimate sickness or other reasons, and we generally accommodate and work with them. If we do not, they may leave us to find another job.

We urge you to reconsider the notion of revenue per employee vs. size of company as a measure to impose certain rules. Different companies and industries have different cost structures.

Restaurants are not known for their high profit margins and longevity in the industry, so while employee size is one measure success, it is a much less significant measure than other variables in regards to profitability and the ability to sustain increased costs. We have already absorbed a minimum wage increase as well as are continually competing on price with other "industries " that also feed people, like grocery stores, food trucks, food courts.

We urge you not pass this bill out of committee, and say "Mahalo" for considering our point of view while making laws and rules that affect the state.

Mahalo,
Michael Miller / Director of Operations
michaelm@tikisgrill.com

Paid Sick Leave (House Version) – HB 4 HD1

Testimony in Opposition from:

Jeffrey K. Kalani
President / CEO
Yogi Kwong Engineers & YK Drilling
677 Ala Moana Blvd. Suite 710
Honolulu, Hawaii 96813
(808) 942-0001
jeff@yogkwong.com

As the President and CEO of two small local Hawaii businesses (Yogi Kwong Engineers and YK Drilling) I, Jeffrey K, Kalani oppose HB 4 HD1 for the following reasons:

Increased Costs Would be Bad for Hawaii's Economy

Hawaii has consistently been ranked as one of the worst states in the entire country to do business by publications and organizations such as Forbes, CNBC, Business Insider, Chief Executive, and the Small Business and Entrepreneurship Council. Two significant reasons for why our state ranks so poorly in these studies has been the (1) high costs of doing business and (2) the regulatory climate in Hawaii. Clearly, at a time when Hawaii's economy is trying to avoid another devastating recession, it would be ill-advised to add further costs and regulations for Hawaii businesses.

Businesses in Hawaii are already trying cope with significant increases to the state's minimum wage in recent years. Specifically, the minimum wage has increased from \$7.25 in 2014 to what will be \$10.10 per hour on January 1, 2018. This represents a 39.3% increase to the minimum wage in just four short years. In addition, as the only state in the nation with the Prepaid Health Care Act, employers are already spending thousands of dollars per year per employee for medical insurance – and this cost continues to increase as the price of medical insurance continues to rise.

Paid sick leave mandates would undoubtedly be another cost item because employers would be forced to pay employees for time that is not spent working. At this juncture, adding another cost item for Hawaii businesses while we are still in the middle of a significant minimum wage hike and increased health care costs would be severely detrimental for companies that are struggling to operate in Hawaii.

Employers will Pay Double for Labor

In line with increased costs, this bill would require many employers to pay double wages in situations where an employee takes time off from work and the company needs to find coverage for that individual. Specifically, for certain occupations, employees can take time off from work without finding coverage (e.g. exempt employees). In other jobs, however, companies need to find replacement workers when a worker cannot come to work. For example, employers in the retail and food service industries need to find replacements for employees who miss a scheduled shift. If paid sick leave is mandated in those instances, the company would need to pay one set of wages for the worker who is on sick leave and a second set of wages for the worker who is replacing the absent employee, which effectively means that the company will pay double for that particular shift.

One-Size-Fits-All Policies Don't Work

Without a doubt, no two businesses are exactly alike. The operational needs of different businesses both within and across various industries vary greatly. For instance, leave policies that may work for one company will not necessarily work for another. Therefore, most companies have different leave policies from another, and those policies have been developed, tweaked, and revised over time to meet the operational needs of the workforce. In addition, most companies in Hawaii already provide sick leave in one form or another – whether it be through a sick leave plan, TDI, or PTO. For those companies, a law that legally mandates how sick leave should be provided by employers and used by employees simply does not make sense, especially if the same law needs to be applied by all companies. Other the other hand, some companies are simply not able to provide sick leave for one reason or another, and this bill will surely have a detrimental impact on their operations.

Loss of Employee Benefits & Reduction in Wages

Most employers have spent years refining their entire benefits packages, which includes all forms of leave, as well as vacation days, pay, retirement, and other benefits. If employers are required to provide employees with a benefit that is not already part of the company's budget, that employer will have to make up the costs somehow, most likely by reducing other benefits or cost items. Employers do not have an unlimited amount of resources. Therefore, when companies need to pay for an additional new cost item, they will also have to take something away in order to find ways to cover the

additional costs. For instance, many employers already provide time off for employees in the form of Paid Time-Off (“PTO”) policies. PTO policies are preferable for employees for a number of reasons, but mainly because such leave can be taken for just about ANY reason. If employers are forced to provide paid sick leave in addition to PTO, the natural response would be to eliminate the corresponding amount of leave that is currently available under the PTO policy. This unintended consequence would actually be detrimental to employees, because they will be provided with a benefit that is less desirable. In addition, pay increases or bonuses may also be eliminated or decreased if employers are required to find cost-cutting areas due to the increased cost of legally mandated sick leave.

Higher Costs for Goods and Services

Another way businesses may try to adjust their expenses for the increased costs due to legally mandated paid sick leave would be to increase the costs of their goods and services for consumers. Many companies, however, cannot raise their prices anymore because they may end up losing some customers in the process if they become “priced out of the market.”

Impact on Job Growth / Job Reduction

With added costs, employers will look to reduce their overhead in several ways. One method may be to reduce their employee count in order to run a leaner operation. Unfortunately, companies may not be able to avoid running their operations with a leaner workforce if the cost per employee continues to rise.

Employees Already Get Legally Mandated Paid Leave

For situations where an employee is physically unable to work due to an illness or injury, Hawaii law also provides wage replacement benefits in the form of workers’ Compensation and TDI. Under the current system, employers are the ones who pay for the insurance premiums for workers’ compensation and TDI.

Bill Would Allow for Double Dipping

As drafted, the HB 4 HD1 would allow employees to double-dip their benefits by collecting paid sick leave from their employer while also collecting either workers’ compensation or TDI benefits at the same time.

No Employer Oversight & Potential for Abuse

The bill does not require employees to provide their employer with any form of proof or certification that they are indeed sick or need to care for a family member with a medical condition. Rather, they just need to inform their employer that they will be taking leave. No particular notice is even required. This could lead to severe abuse by employees, and employers would have no way to verify if leave taken under this measure was ever legitimate. Additionally, although this bill provides that employees must exercise “good faith” and “reasonable efforts” when notifying their employer of the need for paid sick leave, the language of the bill does not provide any recourse for when an employee does not comply with these requirements. This could also lead to severe abuse by employees.

Section 2 of the Bill is Confusing

The bill provides that only employees who work more than 680 hours in a year would be eligible for paid sick leave. The bill does not, however, explain how this is to be calculated or even whether it is to be estimated at the beginning of the year or is triggered only after an employee has worked for 680 hours within the year.

Confidentiality Provision Seems Out of Place

Finally, it seems odd to include Section 5, which requires confidentiality and nondisclosure of medical information, when such information need not even be provided by an employee who is taking sick leave. Therefore, it is unlikely that an employee would provide their employers with a doctor’s note if they are not required to do so.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB4 on Mar 21, 2017 09:30AM*
Date: Monday, March 20, 2017 7:34:33 AM

HB4

Submitted on: 3/20/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Andrew Chun	Individual	Oppose	No

Comments:

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From: [Barbie Dofa](#)
To: [JDL Testimony](#)
Subject: Testimony Not in Support of HB 4 HD 1 Hearing - Tuesday, March 21, 2017 at 9:30 a.m. HB 4 HD 1
Date: Friday, March 17, 2017 4:04:21 PM

Aloha to the Senate Judiciary and Labor "JDL" Committee,

Thank you for taking the time to see why I do not support moving forward with HB 4 HD 1 which has to do with paid sick leave. Napili Kai has voluntary benefit programs in place such as paid vacation, paid Personal Time Off, paid Personal Holidays, Paid Birthday Holiday in addition to eight paid holidays throughout the year, as do many other similarly situated businesses. If mandatory paid sick leave is passed we will no doubt need to make changes to the other paid time off benefits that we offer. These other paid time off benefits allow for flexibility as to how employees would like to use their time off, in addition there are already programs in place such as TDI that provide income replacement for many employees.

Here are some specifics as to why I am not in support of HB 4 HD 1:

Hawaii has consistently been ranked as one of the worst states in the entire country to do business by publications and organizations such as Forbes, CNBC, Business Insider, Chief Executive, and the Small Business and Entrepreneurship Council. Two significant reasons for why our state ranks so poorly in these studies has been the (1) high costs of doing business and (2) the regulatory climate in Hawaii. Clearly, at a time when Hawaii's economy is trying to avoid another devastating recession, it would be ill-advised to add further costs and regulations for Hawaii businesses.

Therefore, we must oppose HB 4 HD1 for the following reasons:

Increased Costs Would be Bad for Hawaii's Economy

Businesses in Hawaii are already trying cope with significant increases to the state's minimum wage in recent years. Specifically, the minimum wage has increased from \$7.25 in 2014 to what will be \$10.10 per hour on January 1, 2018. This represents a 39.3% increase to the minimum wage in just four short years. In addition, as the only state in the nation with the Prepaid Health Care Act, employers are already spending thousands of dollars per year per employee for medical insurance – and this cost continues to increase as the price of medical insurance continues to rise.

Paid sick leave mandates would undoubtedly be another cost item because employers would be forced to pay employees for time that is not spent working. At this juncture, adding another cost item for Hawaii businesses while we are still in the middle of a significant minimum wage hike and increased health care costs would be severely detrimental for companies that are struggling to operate in Hawaii.

Employers will Pay Double for Labor

In line with increased costs, this bill would require many employers to pay double wages in situations where an employee takes time off from work and the company needs to find coverage for that individual.

Specifically, for certain occupations, employees can take time off from work without finding coverage (e.g. exempt employees). In other jobs, however, companies need to find replacement workers when a worker cannot come to work. For example, employers in the retail and food service industries need to find replacements for employees who miss a scheduled shift. If paid sick leave is

mandated in those instances, the company would need to pay one set of wages for the worker who is on sick leave and a second set of wages for the worker who is replacing the absent employee, which effectively means that the company will pay double for that particular shift.

One-Size-Fits-All Policies Don't Work

Without a doubt, no two businesses are exactly alike. The operational needs of different businesses both within and across various industries vary greatly. For instance, leave policies that may work for one company will not necessarily work for another. Therefore, most companies have different leave policies from another, and those policies have been developed, tweaked, and revised over time to meet the operational needs of the workforce.

In addition, most companies in Hawaii already provide sick leave in one form or another – whether it be through a sick leave plan, TDI, or PTO. For those companies, a law that legally mandates how sick leave should be provided by employers and used by employees simply does not make sense, especially if the same law needs to be applied by all companies. On the other hand, some companies are simply not able to provide sick leave for one reason or another, and this bill will surely have a detrimental impact on their operations.

Loss of Employee Benefits & Reduction in Wages

Most employers have spent years refining their entire benefits packages, which includes all forms of leave, as well as vacation days, pay, retirement, and other benefits.

If employers are required to provide employees with a benefit that is not already part of the company's budget, that employer will have to make up the costs somehow, most likely by reducing other benefits or cost items. Employers do not have an unlimited amount of resources. Therefore, when companies need to pay for an additional new cost item, they will also have to take something away in order to find ways to cover the additional costs.

For instance, many employers already provide time off for employees in the form of Paid Time-Off ("PTO") policies. PTO policies are preferable for employees for a number of reasons, but mainly because such leave can be taken for just about ANY reason. If employers are forced to provide paid sick leave in addition to PTO, the natural response would be to eliminate the corresponding amount of leave that is currently available under the PTO policy. This unintended consequence would actually be detrimental to employees, because they will be provided with a benefit that is less desirable.

In addition, pay increases or bonuses may also be eliminated or decreased if employers are required to find cost-cutting areas due to the increased cost of legally mandated sick leave.

Higher Costs for Goods and Services

Another way businesses may try to adjust their expenses for the increased costs due to legally mandated paid sick leave would be to increase the costs of their goods and services for consumers. Many companies, however, cannot raise their prices anymore because they may end up losing some customers in the process if they become "priced out of the market."

Impact on Job Growth / Job Reduction

With added costs, employers will look to reduce their overhead in several ways. One method may be to reduce their employee count in order to run a leaner operation. Unfortunately, companies may not be able to avoid running their operations with a leaner workforce if the cost per employee continues to rise.

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If you have any questions for me on this subject please contact me.

Me Ka Ha'aha'a (With Sincerity),
Barbara

Barbara Dofa, SPHR, SHRM-SCP
Director of Human Resources

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB4 on Mar 21, 2017 09:30AM
Date: Monday, March 20, 2017 12:13:17 PM

HB4

Submitted on: 3/20/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Marion McHenry	Individual	Support	No

Comments: I strongly support this bill. Paid sick leave made a huge difference for me when my children were young and I was a single mother.

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Cc:
Subject: Submitted testimony for HB4 on Mar 21, 2017 09:30AM
Date: Monday, March 20, 2017 11:48:22 AM

HB4

Submitted on: 3/20/2017

Testimony for JDL on Mar 21, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Tristan D Holmes	Individual	Support	No

Comments: Paid sick leave is vital for all salaried workers to ensure the continued health of themselves and their families and increase the overall productiveness of the community.

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