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March 28, 2019

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

The Hawai'i Labor Relations Board (HLRB or Board) provides the following comments **in support of HB 1532 HD 1** for your consideration.

The HLRB is a quasi-judicial agency that oversees two areas of laws in the State of Hawai'i: (1) collective bargaining and unfair labor practices under Chapters 89 and 377 of the Hawai'i Revised Statutes (HRS), and (2) contests involving citations or orders of the Director of Labor and Industrial Relations involving occupational safety and health laws set forth in Chapter 396, HRS. As an administrative agency, the HLRB is also subject to the administrative procedures set forth in HRS Chapter 91.

HRS § 91-10(a) provides in relevant part:

Except as provided in section 91-8.5, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law.

(Emphasis added.)

HRS § 377-9(c) provides in relevant part:

A full and complete record shall be kept of all proceedings had before the board and all testimony and proceedings shall be taken down by a reporter engaged for such purpose or by use of a mechanical recording device. It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

In the proceedings the board shall not be bound by technical rules of evidence. No hearsay evidence, however, shall be admitted or considered.

(Emphasis added.)

Hawai‘i Administrative Rules (HAR) § 12-42-8(g)(8) states in relevant part:

(8) Rules of evidence:

(A) In any proceeding before the board, the board shall not be bound by technical rules of evidence.

(B) All irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(C) The board shall give effect to the rules of privilege recognized by law.

The HLRB believes the two HRS statutes conflict with one another in both intent and function and that HRS § 377-9(c) currently conflicts with itself. Further, the Board believes that HRS § 377-9(c) and HAR § 12-42-8(g)(8) are also in conflict.

The Board is conscious of concerns that hearsay evidence, if allowed, could lead to less than reliable evidence being considered. However, the Board considers all evidence presented in its deliberations and assigns the evidence the proper weight, striking that which is “irrelevant, immaterial, or unduly repetitious.”

Under the Hawai‘i Rules of Evidence, HRS Chapter 626, there are a myriad of exceptions (*see* Rules 802.1, 803, and 804) that allow certain types of hearsay evidence into the record. A strict reading of HRS § 377-9(c) could find that the HLRB cannot consider any hearsay evidence—which would mean evidence that correctly can be introduced into any other court or administrative proceeding under a hearsay exception, would not be permissible in a hearing before the HLRB. The Board believes that this type of construction conflicts with HRS § 91-10(a) and conflicts with the general principles that proceedings before administrative boards are more relaxed and less “bound by the rules of technical evidence.”

We would respectfully request that the effective date be changed to allow the act to take effect upon approval so that this inconsistency can be addressed as soon as possible.

Thank you for your time and consideration of the HLRB’s comments in **support** of HB 1532 HD 1.



LATE

Testimony to the
Senate Committee on Judiciary

March 29, 2019
9:30 a.m.
State Capitol - Conference Room 016

RE: HB 1532, HD1, Relating to Administrative Procedures

Aloha Chair Rhoads, Vice Chair Wakai and members of the committee:

On behalf of the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”), we are writing in opposition to HB 1532, HD1, relating to administrative procedures. This bill allows the Hawaii Labor Relations Board (“HLRB”) to admit and consider hearsay evidence in unfair labor practices proceedings. HLRB hearings create the official record for any subsequent appeals to the courts. Allowing hearsay evidence unfairly limits examination of statements admitted into the record. We ask that you do not advance this measure.

The mission of SHRM Hawaii is to advance the Human Resource profession’s capacity to drive workplace excellence within business, education, government, and communities in the State of Hawaii. We serve our professionals through building knowledge, expanding experiences, facilitating the development of innovative ideas, and exchanging best practices for success to serve human resource (HR) professionals and advance the human resource profession.

SHRM Hawaii serves nearly 800 members statewide and provides comprehensive information and tools to human resource professionals to enable them to make informed decisions on behalf of both their organization and the employees. We believe that human resource management is a critical component to the success of every business as the HR professional is responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses’ most valuable asset: human capital. This is accomplished through a statewide effort to partner with and support our members, while still recognizing the individual needs of organizations on each island.

We look forward to contributing positively to the development of sound public policy and continuing to serve as a resource to the legislature on matters related to labor and employment laws.

Mahalo for the opportunity to testify.



HB-1532-HD-1

Submitted on: 3/25/2019 4:23:46 PM

Testimony for JDC on 3/29/2019 9:30:00 AM

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

Comments:

When I went to various agency's regarding workplace 'incidents'/issues; asked them to obtain the video & email (given a 2 yr ETA for when they would request the items) to support my claim along with other items, most of what I found was extreme abuse/harassment, was heresay. The other items were support for what I claimed. No agency accepted my case, so it ended up going no where and the company got away with it. (Went to different company's with a number of copy cat instances - nothing on the scale of, but apparently the information of what occurred was passed on...) Now while 'heresay' is and can be a difficult item (some people could be lying, but some people could also be telling the truth - just like identifying a person versus DNA to substantiate what's being claimed), feel that because there is such a delay in action, that heresay should be allowed.