

DAVID Y. IGE  
GOVERNOR



RYKER WADA  
DIRECTOR

JASON MINAMI  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

February 4, 2019

**TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

For Hearing on February 7, 2019  
9:30 a.m., Conference Room 309

BY

RYKER WADA  
DIRECTOR

**House Bill No. 389**  
**RELATING TO WORKERS' COMPENSATION**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON JOHANSON, VICE CHAIR ELI, AND MEMBERS OF THE  
COMMITTEE:

Thank you for the opportunity to provide **comments** on H.B. 389

H.B. 389 proposes to amend HRS, §386-79(a), to require persons performing an independent medical exam or permanent impairment rating exam for a workers' compensation work injury examine the employee within 30 calendar days upon receipt of notice. Provides that the employee be provided a copy of the exam within 30 calendar days. Make the report invalid if the time requirements are not met.

Pursuant to HRS, §26-5, the Department of Human Resources Development, is responsible for the planning and administration of the State's self-insured and centralized workers' compensation program for all employees of the Executive branch and agencies, the public charter schools, the Hawaii Public Housing Authority, and the Legislature.

As a self-insured employer our perspective is that the thirty (30) calendar day deadline are both impractical and unrealistic. It normally takes several months from the time an appointment is made until the examination is completed due to the limited number of physicians available and/or willing to conduct these examinations and the number of injured workers Statewide who need to be examined. In addition, it regularly takes more than thirty (30) calendar days for the examining physician to perform their due diligence and to issue a report because of the voluminous records, examination findings, and opinions that need to be reviewed, evaluated, and incorporated into the report. This is because workers' compensation cases that require an IME/PPD medical examination are often the most complex and convoluted claims.

Moreover, invalidating a report simply because it misses an arbitrary thirty (30) calendar day deadline does not in and of itself negate the validity of the findings, does nothing to advance the claim; and could actually result in unintended consequences. For example, if a late IME examination report concludes that an initially-denied claim is actually compensable, an employer can argue that it cannot accept the claim because the report is invalid. An employer could make the same argument if a late PPD report awards the employee a higher impairment rating. In either of these scenarios, a decision of a more favorable outcome for the injured employee could be invalidated by this bill and lead to further delays, costs, and/or legal disputes that would all prove to be detrimental to the best interests of the parties.

Thank you for the opportunity to testify.

The Thirtieth Legislature  
Regular Session of 2019

THE HOUSE

Committee on Labor and Public Employment  
Representative Aaron Ling Johanson, Chair  
Representative Stacelynn K.M. Eli, Vice Chair  
State Capitol, Conference Room 309  
Thursday, February 7, 2019; 9:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 389  
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 **supports** H.B. 389, which requires persons performing an independent medical exam or permanent impairment rating exam for a workers' compensation work injury examine the employee within 30 calendar days upon receipt of notice, provides that the employee be provided a copy of the exam within 30 calendar days and makes the report invalid if the time requirements are not met.

Workers unfortunately from time to time get injured on the job and most want to be able to get diagnosed and treated as soon as possible to allow them to return to work and get covered for the injuries sustained on the job. This bill simply ensures the process is done within a reasonable timeframe.

The ILWU Local 142 urges the passage of H.B. 389. Thank you for the opportunity to offer testimony on this measure.

**TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

**H.B. 389**

**Relating to Workers' Compensation**

Thursday, February 7, 2019  
9:30 a.m., Agenda Item #9  
State Capitol, Conference Room 309

Marleen Silva  
Manager, Workers' Compensation  
Hawaiian Electric Company, Inc.

Chair Johanson, Vice Chair Eli, and Members of the Committee,

My name is Marleen Silva and I am testifying on behalf of Hawaiian Electric Company Inc. and its subsidiary utilities Maui Electric Company, Limited and Hawai'i Electric Light Company, Inc. (collectively "the Hawaiian Electric Companies") in strong opposition to H.B. 389, Relating to Workers' Compensation.

This proposed bill requires that independent medical examinations (IME's) and permanent impairment rating examinations for workers' compensation claims be performed by physicians within thirty (30) calendar days of the person's receipt of the notice of the selection or appointment. A copy of the report must be reported no later than thirty (30) calendar days after the date of the examination. If the deadlines are not met, the report is deemed "invalid" and not permitted to be relied upon.

While we appreciate the intent to expedite the process, we feel the deadline proposed for the physician / examiner to perform the IME or PPD examination and complete their report for distribution, is unrealistic and unfair. Injured employees must



first provide a list of their records before subpoenas can be executed. Subpoenaed records may not be delivered all at once and the volumes of records may vary in size and complexity. All records will need to be reviewed, along with current records, prior to the examination. The examination itself may also vary in length based on the extent and complexity of injuries.

We think it is only fair to give the independent physician / examiner a reasonable length of time to provide a thorough and accurate review of the facts before presenting their report and findings to all parties. The bill is silent regarding what would be done if there is no qualified physician available to perform the examination.

Accordingly, the Hawaiian Electric Companies opposes H.B. 389. Thank you for this opportunity to submit testimony.



**Testimony to the House Committee on Labor  
Thursday, February 7, 2018 at 9:30 A.M.  
Conference Room 309, State Capitol**

**RE: HOUSE BILL 389 RELATING TO WORKERS' COMPENSATION**

Chair Johanson, Vice Chair Eli and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") opposes HB 389, which requires persons performing an independent medical exam or permanent impairment rating exam for a worker's compensation work injury examine the employee within 30 days upon receipt of notice. Provides that the employee be provided a copy of the exam within 30 calendar days. Makes the report invalid if the time requirements are not met.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This bill seeks to place restrictions on ordered IME's including when the IME must take place, when the IME report must be received and broadens the section to include permanent impairment rating evaluations. It is unclear what problem with ordered IMEs this bill seeks to remedy; however, the proposed changes to Section 386-79, Hawaii Revised Statutes create several additional problems for injured workers, employers and IME physicians.

Many of these provisions are unworkable because of marketplace conditions outside the control of the employer and employee. Most IMEs cannot be scheduled within 30 days. Some reasons are of the IME physician's availability in their specialty, overall dearth of IME physicians, claimant schedule, and transportation issues. Furthermore, the bill does not appear to comprehend the process involved when an ordered IME is pursued. An ordered IME is scheduled when an injured worker fails to show up for normally scheduled IME. When an ordered IME is granted, a date, time, and IME physician has already been scheduled. The requirements in the bill would make it unworkable for the employer to try and anticipate when the appointment would be set and try and time it to somehow comply with the 30-day receipt from the IME physician's office.

The sanctions in the bill will lengthen the time to determine compensability and or medical or disability benefits that may be due and to resolve claims. Both delays are harmful to employer and employee with no benefit to either. If an IME cannot be done within the timeframe, the law cannot



# Chamber of Commerce HAWAII

*The Voice of Business*

preclude an employer from their due process rights. If compensability is forced upon the employer, there will surely be appellate challenges which add unnecessary costs and delays to the system. If the IME or report is late, the process will need to start all over, adding unnecessary costs and delays to the process, and quite possibly harming injured workers where the report finds in their favor. Regardless of the findings, they are invalidated by this bill.

Finally, if a permanent impairment rating examination also falls under these stringent time constraints, a similar result will follow. This harms both employer and employee by delaying settlement of the claim. Due to the harmful unintended consequences of this bill, we ask that it be held.

Thank you for the opportunity to testify.

## TESTIMONY OF LINDA O'REILLY

---

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
Representative Aaron Ling Johanson, Chair  
Representative Stacelynn K. M. Eli, Vice Chair

Thursday, February 7, 2019  
9:30 a.m.

### **HB 389**

Chair Johanson, Vice Chair Eli, and members of the Committee on Labor & Public Employment, my name is Linda O'Reilly, Assistant Vice President of Claims . Workersq Compensation of First Insurance Company of Hawaii. I am testifying today on behalf of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. This bill seeks to place restrictions on ordered IMEs including when the IME must take place, when the IME report must be received and broadens the section to include permanent impairment rating evaluations. It is unclear what problem with ordered IMEs this bill seeks to remedy; however, the proposed changes to Section 386-79, Hawaii Revised Statutes create several additional problems for injured workers, employers and IME physicians.

Many of these provisions are unworkable because of marketplace conditions outside the control of the employer and employee. Most IMEs cannot be scheduled within 30 days. Some reasons are of the IME physician's availability in their specialty, overall dearth of IME physicians, claimant schedule, and transportation issues. Furthermore, the bill does not appear to comprehend the process involved when an ordered IME is pursued. An



ordered IME is scheduled when an injured worker fails to show up for normally scheduled IME. When an ordered IME is granted, a date, time, and IME physician has already been scheduled. The requirements in the bill would make it unworkable for the employer to try and anticipate when the appointment would be set and try and time it to somehow comply with the 30-day receipt from the IME physician's office.

The sanctions in the bill will lengthen the time to determine compensability and or medical or disability benefits that may be due and to resolve claims. Both delays are harmful to employer and employee with no benefit to either. If an IME cannot be done within the timeframe, the law cannot preclude an employer from their due process rights. If compensability is forced upon the employer, there will surely be appellate challenges which add unnecessary costs and delays to the system. If the IME or report is late, the process will need to start all over, adding unnecessary costs and delays to the process, and quite possibly harming injured workers where the report finds in their favor. Regardless of the findings, they are invalidated by this bill.

Finally, if a permanent impairment rating examination also falls under these stringent time constraints, a similar result will follow. This harms both employer and employee by delaying settlement of the claim. Due to the harmful unintended consequences of this bill, we ask that it be held.

Thank you for the opportunity to testify.

DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321

HONOLULU, HAWAII 96813

[www.labor.hawaii.gov](http://www.labor.hawaii.gov)

Phone: (808) 586-8844 / Fax: (808) 586-9099

Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

February 7, 2019

To: The Honorable Aaron Ling Johanson, Chair,  
The Honorable Stacelynn K.M. Eli, Vice Chair, and  
Members of the House Committee on Labor and Public Employment

Date: Thursday, February 7, 2019

Time: 9:30 a.m.

Place: Conference Room 309, State Capitol

From: Scott T. Murakami, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 389 RELATING TO WORKERS' COMPENSATION**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB389 proposes to amend section 386-79, Hawaii Revised Statutes (HRS), to include that a person performing the independent medical examination or permanent impairment rating examination pursuant to this section shall examine the employee within thirty calendar days of notice of selection. The employee shall be provided with a copy of the report within 30 calendar days after the examination date. If time requirements are not met, the report shall not be valid, and the employer will not be permitted to rely upon it.

This measure eliminates the sunset date of June 30, 2019 set in Act 172 (SLH, 2017) making permanent the allowance for a chaperone during the examination and for the approval of the physician or surgeon to record the medical examination.

DLIR opposes the measure and has serious concerns about the possible unintended consequences, including due process concerns.

**II. CURRENT LAW**

§386-79 "Medical examination by employer's physician." specifies that the employee, when ordered by the director, shall submit to the examination by a qualified physician or surgeon designated and paid for by the employer. If an employee refuses to attend the examination, or obstructs in any way the examination, the employee's rights to

benefits are suspended for the period during which the refusal or obstruction continues.

§386-21(b), HRS, provides that “the director may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available.”

§386-96 “Reports of physicians, surgeons, and hospitals.” specifies that within fifteen days after being requested by the employee or employee’s representative, the employer shall furnish to the employee or the employee’s representative copies of all medical reports relating to the injury at the expense of the employer.

### **III. COMMENTS ON THE HOUSE BILL**

DLIR supports the attendance of chaperones in an Independent Medical Examination (IME), but opposes establishing time frames for examinations as it could lead to further delays in the claims process and unintentional consequences. The Department believes that §386-79 currently does not have an established time frame as there are numerous reasons for IMEs, and the circumstances of each individual case varies widely. DLIR suggests that the effect of the measure would result in a “one size fits all” requirement that would be unworkable in many instances.

DLIR notes the following considerations:

- This measure as written is not clear. There are several reasons why injured workers are subject to IMEs, for example, by instruction from the employer or by order of the Director with or without an IME doctor identified. At what point is the IME doctor “selected or appointed”? Further, the measure requires the IME doctor to “examine the employee within thirty calendar days of the person’s receipt of the notice of the selection or appointment.” How is the IME doctor supposed to know when the injured workers received the notice and how would the department rule on dispute thereof?
- The thirty-day time frames are unreasonable:
  - To schedule and complete the examination. An examination includes an evaluation on the complexity of the injury and associated body parts, the age of the injury/case, and other factors; therefore, the allotted time to complete the IME report should not be a “one size fits all”. DLIR notes that some exams are performed by out-of-state physicians and surgeons which the State nor the employer has control over scheduling or business practices.
  - To write and transmit the report. The employers have no control over how long the doctor will take to complete the report. If the doctor fails to report timely, the employer is unable to rely on the report and the report

shall not be valid.

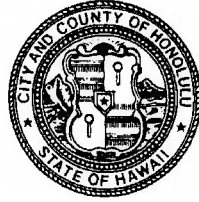
- DLIR is concerned that reducing the time that the doctor is allotted to complete the report may have unintended consequences. The doctor may not be able to fully evaluate the medical stability of the claimant and/or inadequately address body parts affected.
- There exists a limited pool of IME physicians and especially certain specialists and currently it takes a minimum of eight weeks to get an appointment for an examination with certain specialists. On the Neighbor Islands it's usually a longer period, often up to six months.
- This measure may further reduce the number of physicians or surgeons willing to perform IMEs and the cost of the examination would increase if the physician or surgeon is required to hire additional staff to meet the time frame suggested.
- The measure also reduces the amount of time that a physician or surgeon is allotted to complete a report. The proposed time frame of thirty calendar days will have unintended consequences, such as the inadequately evaluating an employee's medical stability and/or inadequately addressing the alleged injuries.
- §386-85 "Presumptions" provides a strong presumption of compensability for work injury claims. The employer has the right of discovery to fully investigate the work injury. To do so, the employer will rely on the IME report (paid by the employer) to provide evidence to overcome the presumption.

Due to the unreasonable time frames this measure sets forth for the IME process, it is unlikely that the IME report will be admissible. DLIR has serious concerns that the measure will result in further appeals from due process concerns which will prolong the case processing and rightful benefits awarded to claimants.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**  
650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

**LATE**

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

February 5, 2019

The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn K.M. Eli, Vice Chair  
and Members of the Committee  
on Labor & Public Employment  
The House of Representatives  
State Capitol, Room 309  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Eli, and Members of the Committee:

SUBJECT: House Bill No. 389  
Relating to Workers' Compensation

H.B. 389 requires persons performing an independent medical exam or permanent impairment rating exam for a workers' compensation work injury examine the employee within 30 calendar days upon receipt of notice; provides that the employee be provided a copy of the exam within 30 calendar days; and makes the report invalid if the time requirements are not met.

The City and County of Honolulu, Department of Human Resources, offers the following comments on the bill.

First, the thirty (30)-day deadlines in the bill are impractical and unrealistic. It normally takes several months from the time an appointment is made until the examination is completed due to the limited number of physicians available to conduct these examinations and the number of injured workers statewide who need to be examined. Also, it regularly takes more than thirty (30) days for the physician to issue a report because of the voluminous records, examination findings, and opinions that need to be reviewed, evaluated, and incorporated into the report. This is because workers' compensation cases that require an IME/PPD medical examination are often the most complex and convoluted claims.

Second, invalidating a report simply because it misses an arbitrary thirty (30)-day deadline does nothing to advance the claim closer towards a final resolution and

The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn Eli, Vice Chair  
and Members of the Committee  
on Labor & Public Employment  
The House of Representatives  
February 5, 2019  
Page 2

actually raises further issues. For example, if a late IME examination report concludes that an initially-denied claim is actually compensable, an employer can argue that it cannot accept the claim because the report is invalid. An employer could make the same argument if a late PPD report awards the employee a high impairment rating. In either of these scenarios, what would have favorable outcomes to the injured employee would be invalidated by this bill and lead to further delays and costs, to the detriment of all parties.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, reading "Carolee C. Kubo". The signature is written in a cursive, flowing style.

Carolee C. Kubo  
Director

**LATE**

## American Property Casualty Insurance Association

To: The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn K.M. Eli, Vice Chair  
House Committee on Labor and Public Employment

From: Mark Sektnan, Vice President

Re: **HB 389 – Relating to Workers’ Compensation**  
**APCIA Position: OPPOSE**

Date: Thursday, February 7, 2019  
9:30 a.m., Conference Room 309

Aloha Chair Johanson, Vice Chair Eli, and members of the Committee:

The American Property Casualty Insurance Association (APCIA) is opposed to HB 389 which would impose unreasonable timeframes on independent medical examination (IME) process. Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

The independent medical examination process is designed to ensure that injured workers receive appropriate medical care. This bill seeks to place restrictions on ordered IME’s including when the IME must take place, when the IME report must be received and broadens the section to include permanent impairment rating evaluations. It is unclear what problem with ordered IMEs this bill seeks to remedy; however, the proposed changes to Section 386-79, Hawaii Revised Statutes create several additional problems for injured workers, employers and IME physicians.

Many of these provisions are unworkable because of marketplace conditions outside the control of the employer and employee. Most IMEs cannot be scheduled within 30 days. Some reasons are because of the IME physician’s availability in their specialty, overall dearth of IME physicians, claimant schedule, and transportation issues. Furthermore, the bill does not appear to comprehend the process involved when an ordered IME is pursued. An ordered IME is scheduled when an injured worker fails to show up for normally scheduled IME. When an ordered IME is granted, a date, time, and IME physician has already been scheduled. The requirements in the bill would make it unworkable for the employer to try and anticipate when the appointment would be set and

try and time it to somehow comply with the 30-day receipt from the IME physician's office.

The sanctions in the bill will lengthen the time to determine compensability and or medical or disability benefits that may be due and to resolve claims. Both delays are harmful to employer and employee with no benefit to either. If an IME cannot be done within the timeframe, the law cannot preclude an employer from their due process rights. If compensability is forced upon the employer, there will surely be appellate challenges which add unnecessary costs and delays to the system. If the IME or report is late, the process will need to start all over, adding unnecessary costs and delays to the process, and quite possibly harming injured workers where the report finds in their favor. Regardless of the findings, they are invalidated by this bill.

Finally, if a permanent impairment rating examination also falls under these stringent time constraints, a similar result will follow. This harms both employer and employee by delaying settlement of the claim.

For these reasons, APCIA asks the committee to hold this bill.



**HB-389**

Submitted on: 2/6/2019 4:42:34 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Adam Yonamine	Individual	Support	No

Comments:

**HB-389**

Submitted on: 2/6/2019 8:13:31 PM  
Testimony for LAB on 2/7/2019 9:30:00 AM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cathy wilson	Individual	Support	No

Comments:

**To: Rep. Aaron Ling Johanson, Chair**

**Rep. Stacelynn K.M. Eli, Vice Chair**

**Members of the Committee on Labor & Public Employment**

**Date: Thursday, February 7, 2019**

**Time: 9:30 a.m.**

**Place: Conference Room 309**

## **Support for House Bill 389**

**As a patient advocate, I strongly support HB 389.**

This bill attempts to bring greater fairness to the IME process by eliminating unnecessary delays and by bringing a greater transparency to unfair reports shrouded in secrecy.

Thank you for hearing this bill today.

**HB-389**

Submitted on: 2/6/2019 8:28:33 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Delle Tanioka	Individual	Support	No

Comments:

**HB-389**

Submitted on: 2/6/2019 9:01:01 PM

Testimony for LAB on 2/7/2019 9:30:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janel Denny	Individual	Support	No

Comments:

**LATE**

**HB-389**

Submitted on: 2/7/2019 8:38:14 AM

Testimony for LAB on 2/7/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carmen Mitsuyasu-Gapero	Individual	Support	No

Comments:

**LATE**

**HB-389**

Submitted on: 2/7/2019 8:43:18 AM

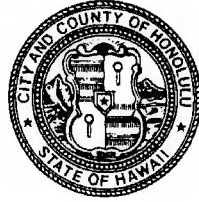
Testimony for LAB on 2/7/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lily Miyahira	Individual	Support	No

Comments:

**LATE**

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

February 5, 2019

The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn K.M. Eli, Vice Chair  
and Members of the Committee  
on Labor & Public Employment  
The House of Representatives  
State Capitol, Room 309  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Eli, and Members of the Committee:

SUBJECT: House Bill No. 389  
Relating to Workers' Compensation

H.B. 389 requires persons performing an independent medical exam or permanent impairment rating exam for a workers' compensation work injury examine the employee within 30 calendar days upon receipt of notice; provides that the employee be provided a copy of the exam within 30 calendar days; and makes the report invalid if the time requirements are not met.

The City and County of Honolulu, Department of Human Resources, offers the following comments on the bill.

First, the thirty (30)-day deadlines in the bill are impractical and unrealistic. It normally takes several months from the time an appointment is made until the examination is completed due to the limited number of physicians available to conduct these examinations and the number of injured workers statewide who need to be examined. Also, it regularly takes more than thirty (30) days for the physician to issue a report because of the voluminous records, examination findings, and opinions that need to be reviewed, evaluated, and incorporated into the report. This is because workers' compensation cases that require an IME/PPD medical examination are often the most complex and convoluted claims.

Second, invalidating a report simply because it misses an arbitrary thirty (30)-day deadline does nothing to advance the claim closer towards a final resolution and

The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn Eli, Vice Chair  
and Members of the Committee  
on Labor & Public Employment  
The House of Representatives  
February 5, 2019  
Page 2

actually raises further issues. For example, if a late IME examination report concludes that an initially-denied claim is actually compensable, an employer can argue that it cannot accept the claim because the report is invalid. An employer could make the same argument if a late PPD report awards the employee a high impairment rating. In either of these scenarios, what would have favorable outcomes to the injured employee would be invalidated by this bill and lead to further delays and costs, to the detriment of all parties.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Carolee C. Kubo  
Director





**LATE**

**To: Rep. Aaron Ling Johanson, Chair  
Rep. Stacelynn K.M. Eli, Vice Chair  
Members of the Committee on Labor & Public Employment**

**Date: Thursday, February 7, 2019**

**Time: 9:30 a.m.**

**Place: Conference Room 309  
State Capitol  
415 South Beretania Street**

**Support for House Bill 389**

**As Chair of the Legislative Committee and Past President of Work Injury Medical Association of Hawaii representing the providers treating injured workers in our state, we strongly support HB 389.**

The key provisions of this bill provide for the following:

- (a) Requires a workers' compensation impartial exam to be conducted within thirty calendar days of the person's receipt of the notice of the selection or appointment;
- (b) Requires that the employee be provided a copy of the report of the independent examination no later than thirty calendar days after the date of the examination; and
- (c) If either (a) or (b) are not done timely, then the report shall not be valid, and the employer shall not be permitted to rely upon the report.

Justification:

- Employer's physicians do not have any duty of care to the injured worker and often unreasonably delay the impartial examination.
- For many workers with severe injuries, the workers' compensation system is the only thing that stands between them and a downward spiral of unemployment, debt and even homelessness. The use of "employer medical examinations" results in delays that often have devastating consequences to injured workers.
- The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. In addition, in many instances, these improper opinions/reports are not provided to the employee.

The inherent disparity of the financial resources of insurance carriers versus an injured worker, who is frequently without income, makes the playing field inherently uneven in favor of the carrier.

- This bill attempts to bring greater fairness to the IME process by eliminating unnecessary delays and by bringing a greater transparency to unfair reports shrouded in secrecy.
- I would encourage you to read, if you haven't already, the Civil Beat series "Waiting In Pain" at <http://www.civilbeat.org/projects/waiting-in-pain/> and the related more recent article at <https://www.civilbeat.org/2018/12/delays-denials-wasted-tax-dollars-does-troubled-treatment-of-injured-workers/>.

Sincerely,

Scott J Miscovich MD

Chair of Legislative Committee and Past President

Work Injury Medical Association of Hawaii