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February 11, 2020

To: The Honorable Chris Lee, Chair,
The Honorable Joy A. San Buenaventura, Vice Chair, and
Members of the House Committee on Judiciary

Date: Tuesday, February 11, 2020

Time: 2:05 p.m.

Place: Conference Room 3325, State Capitol

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

**Re: H.B. No. 2350HD1 RELATING TO THE DEPARTMENT
OF LABOR AND INDUSTRIAL RELATIONS**

I. OVERVIEW OF PROPOSED LEGISLATION

This measure seeks to improve the effectiveness of monetary penalties and maintain their deterrent effect in Hawaii's labor laws by revising penalty amounts to account for inflation. Most of the revised amounts of the penalties were derived by using the Bureau of Labor Statistics (BLS) Consumer Price Index Inflation Calculator. Calculations were made by using the month and year of the enactment or amendment of a penalty provision and using the BLS calculator for the equivalent amount in May 2019.

The DLIR strongly supports this Administration measure.

II. CURRENT LAW

Section 371-9, HRS, provides for up to a \$250 fine for willful violations of undefined penalties in laws that the DLIR enforces.

Section 378-29.3 (Lie Detector Tests), HRS, provides for a \$100 to \$1,000 fine for intentional resistance, prevention, impediments, or interferences of DLIR investigations into discriminatory employment practices.

Section 378-65, HRS, provides for a \$500 to \$5,000 fine for each violation of the

Whistleblowers' Protection Act.

Section 383-73, HRS, provides a ten per cent or \$10 fine for delinquent contributions to the State's Unemployment Insurance Fund.

Section 385-11, HRS, provides for a \$20 to \$200 fine or imprisonment of thirty days or both for false statements or representations or failing to disclose a material fact to obtain or increase benefits and payments under the unemployment law.

Section 386-27, HRS, provides for up to a \$1,000 fine for health care providers that fail to comply with the requirements of providing appropriate care to injured workers.

Section 386-94, HRS, provides for a \$10,000 fine for attorneys, physicians, and other health care providers for receiving fees, other consideration, or gratuity on accounts of services provided without the approval of the DLIR Director or the Labor and Industrial Relations Appeals Board.

Section 386-97.5, HRS, provides for up to a \$250 fine for a violation of any provision or rule of the Workers' Compensation Law that does not have a specified penalty.

Section 386-98, HRS, provides for up to a \$10,000 fine for the commission of a fraudulent insurance act or a willful false statement or representation under the Workers' Compensation Law.

Section 387-7, HRS, provides for up to a \$500 fine for the willful hindrance or delay of the DLIR's enforcement of the Wage and Hour Law.

Section 387-12, HRS, provides for a \$50 to \$500 to any employer, employer's agent, employer's officer who pays or agrees to pay an employee less wages than the employee is entitled to.

Section 388-53, HRS, provides for a \$100 to \$1,000 fine for violations of the Payment of Wages and Other Compensation Law.

Section 392-68, HRS, provides for at least a \$10 fine to any employer or insurer that fails to pay contributions to the Trust Fund for Disability Benefits.

Section 392-69, HRS, provides for up to a \$10 fine to any employer that fails to file wage and employment information for an employee claiming temporary disability insurance benefits from the Trust Fund for Disability Benefits.

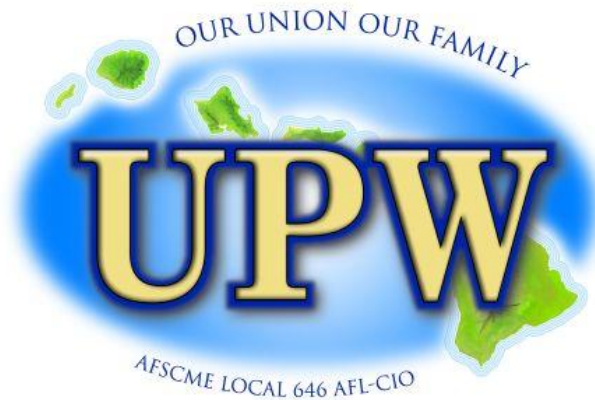
Section 392-92, HRS, provides for up to a \$250 fine for violations of the Temporary Disability Insurance Law.

Section 392-101, HRS, provides for a \$50 to \$500 fine for services charged or received by an attorney or agent of a party in a proceeding related to the Temporary

Disability Insurance Law that is not approved by the DLIR or a referee.

III. COMMENTS ON THE HOUSE BILL

The DLIR strongly supports the measure as it will improve DLIR's ability to promote compliance with labor laws by increasing monetary fines. The fines in this measure have not been raised either since the enactment of the statutes or recently, and have lost their deterrent effect. Therefore, adjusting the penalties will improve the department's ability to promote compliance with labor laws as well as its support for responsible employers that comply with the labor laws.



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Thirtieth Legislature
Regular Session of 2020

COMMITTEE ON JUDICIARY

Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

DATE OF HEARING: Tuesday, February 11, 2020
TIME OF HEARING: 2:05 PM
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 325

TESTIMONY ON HOUSE BILL 2350 HD1

By DAYTON M. NAKANELUA,
State Director of the United Public Workers (UPW),
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 13,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB2350 updates various assessments and penalties under DLIR's jurisdiction by revising the monetary assessments according to changes in the Consumer Price Index. Takes effect on 1/1/2050.

The UPW supports this measure.

Thank you for the opportunity to submit this testimony.



HAWAII REGIONAL COUNCIL OF CARPENTERS

Committee on Judiciary
The House of Representatives
Hawaii State Legislature
February 11, 2020
2:05 p.m., Room 325

Statement of the Hawaii Regional Council of Carpenters in strong support of H.B. 2350, H.D. 1

The Hawaii Regional Council of Carpenters (HRCC) strongly supports H.B. 2350, H.D. 1, to rationalize assessments and penalties levied for violations of Hawaii Statutes protecting rights and benefits of workers.

In recent Legislative sessions, certain assessments and penalties under the jurisdiction of the Department of Labor and Industrial Relations (DLIR) were increased after many years without change. H.B. 2350, H.D. 1 seeks to bring remaining assessments and penalties up to standard levels, based on like categories.

Penalties, along with education and communication, are an integral part of achieving equal compliance among employers, and enforcement of laws administered by the DLIR. Penalty amounts left unchanged for years became meaningless, such as those requiring \$1 per day of noncompliance, until recent updating by the Legislature. The laws administered by the DLIR are of particular importance because they seek to protect individual workers who have unequal powers and resources as compared to their employers. Meaningful assessments and penalties are needed to deter unfair treatment.

Systematic, periodic revisions will keep penalties meaningful, preventing would be violators from ignoring the law or calculating them as diminishing costs of business as years pass without updating. Honest employers face unfair competition from those who violate labor laws as part of their business models.

Thank you for your positive consideration of upholding standards in our community.

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Testimony of
Pacific Resource Partnership

House Committee on Judiciary
The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair

HB 2350 HD1

Tuesday, February 11, 2020
2:05 P.M.
Conference Room 325

Aloha Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

Pacific Resource Partnership (PRP) **strongly supports** HB 2350 HD1, which updates various assessments and penalties under the jurisdiction of the Department of Labor and Industrial Relations (DLIR) by revising the monetary assessments according to changes in the Consumer Price Index.

In 2016, Act 187 increased penalties under DLIR's jurisdiction after many years without any increases to penalties. The purpose for an increase in penalties was to incentivize employers to comply with labor laws, and penalize unscrupulous employers from cheating their employees from appropriate wages and benefits.

HB 2350 HD1 will provide much needed updates to the law in order to ensure that assessments and penalties keep up with changes in the Consumer Price Index, and, most importantly, incentivize employers to comply with labor laws. Given the above, PRP respectfully requests that this Committee support this bill. Thank you for this opportunity to submit written testimony.

