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February 4, 2008

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on Tuesday, February 5, 2008
8:30 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 2479
Relating to Workers' Compensation

TO CHAIR ALEX M. SONSON AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2479 is to amend Section 386-25(b), Hawaii Revised Statutes, to expand eligibility for vocational rehabilitation to injured workers who are deemed unable to return to their regular jobs after they have achieved maximum medical improvement and where the employee has made no offer of suitable work that would restore the earnings capacity as nearly as possible to the level that the employee was earning at the time of injury.

The Department of Human Resources Development takes its responsibility seriously to assist employees, within the Executive Branch of government, in their efforts to return to work if they are no longer able to do the job that they were hired to do. In order to accomplish this goal, we established the Return to Work Priority Program, in 1992, which provides a process that identifies suitable gainful employment for our injured work force in order to retain our most valuable assets.

The Department of Human Resources Development opposes this bill as it might be inconsistent with our administrative rules, policies and procedures, and collective bargaining agreements which govern salary changes when moving from one position to another.

Respectfully submitted,


MARIE C. LADERTA

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

Date: Tuesday, February 5, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2479, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2479. We support the apparent intention of this bill to expand opportunities for vocational rehabilitation, but suggest it should be refined and simplified.

As presently drafted, HB 2479 permits employees to participate in vocational rehabilitation if they have or may have suffered permanent disability, or "have otherwise been deemed unable to return to their regular jobs after they have achieved maximum medical improvement, where the employer has made no offer of suitable work that would restore the earnings capacity as nearly as possible to the level that the employee was earning at the time of the injury."

We suggest this language be revised. First, the attainment of "maximum medical improvement" should be stricken. Vocational rehabilitation can be useful in returning an employee to light or modified work even *before* an employee has attained maximum medical improvement, but the addition of this criteria by HB 2479 may be misconstrued to deny some employees such vocational assistance. Where it is medically feasible, vocational counseling is generally most effective when it is implemented promptly, before an injured employee becomes overly accustomed to disability and habits and patterns of disability become ingrained. Waiting for "maximum medical improvement" thus thwarts the overall call need for speedy rehabilitation.

Second, the bill should be amended to protect workers from employers who do not make bonafide offers of suitable work, but simply offer temporary employment to end the payment of temporary total disability with the intent of later terminating the employees' employment. While it is certainly desirable to encourage employers to return their injured employees to work, HB2479 should require that the "offer of suitable work" be bonafide and permanent. Otherwise, illusory temporary offers will prevent an employee from receiving needed vocational rehabilitation.

As a practice, the Vocational Rehabilitation Branch of the Department of Labor and Industrial Relations now requires that an employee be receiving temporary total disability as precondition for enrolling in vocational rehabilitation. If an unscrupulous employer wished to avoid its obligation to furnish VR, it would temporarily employ an injured worker, then eliminate the position due to some imagined business necessity. Because the injured worker had returned to work, temporary total disability would no longer be paid, and the vocational rehabilitation unit would deny the employee entry into vocational rehabilitation programs.

If the modifications we propose are adopted, we support passage of HB 2479.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 5, 2008

H.B. 2479 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO supports the expansion of eligibility to receive vocational rehabilitation services under H.B. 2479. As drafted, the bill will enable workers to receive vocational rehabilitation services if they are unable to return to their regular job and are not offered work at their pre-injury salary level.

This is a much needed improvement to the workers' compensation statute and we appreciate the opportunity to testify in support of H.B. 2479.

Respectfully submitted,

Randy Perreira
President