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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 2, 2009

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on
Labor and Public Employment

Date: Tuesday, February 3, 2009
Time: 8:30 a.m.
Place: Conference Room 309
State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Re: H.B. 319 - Relating to Family Leave

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 319 proposes to amend the Hawaii Family Leave Law ("HFFL"), Chapter 398, Hawaii Revised Statutes ("HRS") to require employers give annual notification of the employees' rights under HFFL.

This legislation also requires an employer to inform the employee of any possible adverse impacts to any other employee rights as a result of taking leave under HFFL.

This Act would take effect upon approval.

II. CURRENT LAW

HFFL does not currently require any notifications by the employer.

III. HOUSE BILL

The Department has the following concerns regarding H.B. 319:

1. This measure requires employers to alert employees of "possible adverse impacts from the taking of family leave". The purpose of the HFFL is to protect employee rights. This statement concerns the Department because it implies there is a problem with the law.

2. The Department finds requiring annual notification to each employee of their rights under HFFL is burdensome and unnecessary.

3. Although notice by the employer is already required under some labor laws, including the Wage and Hour Law, Chapter 387, HRS, and the Payment of Wages and Other Compensation Law, Chapter 388, HRS, none of the current notice requirements require employers to notify employees annually. Rather, these laws require employers to keep information posted in a conspicuous place that all have access to. This provides a daily reminder to individuals without waste of resources.

4. If the Committee were to amend the notification requirements in the bill, the Department recommends a posting requirement similar to Chapter 387, HRS, as follows:

   "**[§398-] Posting of notices.** Every employer shall post and keep posted such notices pertaining to the application of the law as shall be prescribed by the director in conspicuous places in every establishment where any employee is employed so as to permit the employee to observe readily a copy on the way to or from the employee's place of employment."

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the House Committee on Labor & Public Employment
Tuesday, February 3, 2009
8:30 a.m.
Conference Room 309

RE: HOUSE BILL NO. 319 RELATING TO FAMILY LEAVE

Chair Rhoads, Vice Chair Yamashita, and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber does not support House Bill No. 319, relating to Family Leave.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

HB 319 requires employers to notify employees annually of their entitlement to family leave, as well as possible adverse impact of taking family leave.

The Chamber believes this measure is not required. State law already requires employers to provide sufficient notice. Under Title 12, Chapter 27, the Administration and Enforcement of the Family Leave Law, the administrative rule provides:

> § 12-27-10 Notice requirements. (a) Every employer covered by the statute shall notify employees in writing at the time of hire of their rights and responsibilities under the statute, including any employer policy regarding the statute. The notice, and any revision, shall contain, but not be limited to:
>
> > (1) Any requirement for the employee to furnish certification in accordance with section 398-6, HRS, and section 12-27-11, and the consequences of failure to do so;
> >
> > (2) The employee's right to substitute accrued paid leave, and whether the employer will require the substitution of any paid leave;
> >
> > (3) Any requirement for the employee to make any premium payments to maintain health and other benefits and the

arrangements for making such payments;

(4) Information on employee right to restoration to the same or equivalent position as required under the statute; and

(5) Other information as required by the department.

Most employers subject to Hawaii's Family Leave Act are also subject to the federal Family and Medical Leave Act which recently implemented exhaustible new requirements on notice obligations to employees. Adding another burden atop these new additional regulations is unfair and will lead to greater cost and confusion when existing law is adequate to inform employees of their rights."

Thus, The Chamber respectfully requests HB 319 be held as existing law is adequate to meet the overall objective of this legislation without unduly adding extra cost and burdens to employers in this dire economic time.

Thank you for the opportunity to testify.

The Twenty-Fifth Legislature
Regular Session of 2009

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Karl Rhoads, Chair
Re. Kyle T. Yamashita, Vice Chair

State Capitol, Conference Room 309
Tuesday, February 3, 2009; 8:30 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 319
RELATING TO FAMILY LEAVE

The ILWU Local 142 supports H.B. 319, which requires employers to notify employees annually in writing of their entitlement to family leave, as well as the possible adverse impact of taking family leave.

Informing workers about their employment rights is always a good thing. If laws are enacted to provide workers with protections and benefits, the workers should know about those laws. It should be the employer's responsibility to educate the workers, who have fewer resources and ability than employers to understand the laws.

Workers with aged and disabled parents will want to know and be reminded about their rights under the family leave law--as well as any consequences of taking such leave. The obligation under this bill is for employers to provide written notice of the employees' rights under the law and the impact of taking leave. This is not an onerous obligation as it is likely that the State can provide language, if not the notice itself, to employers. It would then be the employees' responsibility to heed the notice and request the leave when appropriate.

The ILWU urges passage of H.B. 319. Thank you for the opportunity to share our views on this issue.

Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 03, 2009
8:30 am
Conference Room 309

RE: HB319, Relating to Family Leave

Chair Rhoads, Vice Chair Yamashita, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a 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.

RMH opposes HB319, relating to family leave, which requires employers to notify employees annually of their entitlement to family leave, as well as possible adverse impact of taking family leave.

Both the Family & Medical Leave Act and the Hawaii Family Leave Law require employers to place posters defining these as well as other employee benefits in prominent locations. In addition, most employers provide employee handbooks which explain employee benefits in greater detail.

Requiring an annual review of this entitlement by employers is a redundancy that is not without cost, particularly for the small business owner, and places a needless and costly burden on the employer. If would be far more efficient and effective for the employee, when faced with a family leave situation, to sit down and discuss options particular to his/her circumstance with the employer.

We respectfully request that you hold HB319. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill

President

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TO: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

FROM: Eudice R. Schick
PABEA (Policy Advisory Board for Elder Affairs)

SUBJECT: HB 319

HEARING: Tuesday, February 3, 2009 8:30 a.m. Room309

POSITION: Support of HB 319

I am offering testimony on behalf of PABEA, the Policy Advisory Board for Elder Affairs, which is an appointed Board tasked with advising the Executive Office on Aging (EOA). My testimony does not represent the views of the EOA but of the Board.

HB 319 is a Bill that benefits the employees and is at no cost to an employer. It is so important that the work force, which is being tasked with family care giving, know what is available to them so that they can plan should the need to take leave occurs. This segment of the work force is going to dramatically increase over the next 10-20 years.

Your support of this bill will show that you care about the families of our State and especially our Kupuna

Eudice R. Schick, Chair PABEA Legislative Committee

AFFILIATE OF SHRM
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

SHRM HAWAII

Chair, Representative Karl Rhoads
Vice-chair, Representative Kyle T. Yamashita
Committee: Labor & Public Employment Committee
Society for Human Resource Management (SHRM) Hawaii
Testimony date: Tuesday, February 3, 2009

Opposition to HB319

SHRM Hawaii is the local chapter of a National professional organization of Human Resource professionals. Our 1,200+ Hawaii membership includes those from small and large companies, local, mainland or internationally owned - tasked with meeting the needs of employees and employers in a balanced manner, and ensuring compliance with laws affecting the workplace. We (HR Professionals) are the people that implement the legislation you pass, on a day-to-day front line level.

SHRM Hawaii strongly opposes House Bill 319, which would require annual written notification to employees of protected leave available to them, and the adverse affects of taking such leave.

Current Federal and State laws require written notice of Family Medical Leave (FMLA) and Hawaii Family Leave (HFLA) to be prominently posted in an area that employees frequent. In addition, they require notification of employees as to their FMLA rights when an employee takes four days off from work due to personal illness or the illness of a qualified family member. Lastly, as is written in the currently required postings, it is unlawful to adversely affect any employee for the use of FMLA or Hawaii Family Leave (HFLA).

SHRM Hawaii believes the two current forms of notification adequately notify employees of their rights under FMLA and HFLA. Adding a third notification may lead to confusion on the part of employers and employees. In light of the regulations already in place, the additional administrative and record keeping burden for employers and cost of enforcement do not appear justified.

SHRM Hawaii respectfully urges the committee to kill HB 319.

Thank you for the opportunity to testify. SHRM Hawaii offers the assistance of the Legislative Committee in discussing this matter further.

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SHRM Hawaii Chapter PO Box 3175 Honolulu, HI 96801 (808) 447-1840

yamashita1- Kathy

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 01, 2009 2:43 PM
To: LABtestimony
Cc: thirr33@gmail.com
Subject: Testimony for HB319 on 2/3/2009 8:30:00 AM

Testimony for LAB 2/3/2009 8:30:00 AM HB319

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: Arvid T. Youngquist
Organization: The Mestizo Association
Address:
Phone:
E-mail: thirr33@gmail.com
Submitted on: 2/1/2009

Comments:
Chair Karl Rhoads
Vice Chair Kyle Yamashita
Honorable Members of the House LAB Committee

Please permit be to provide a testimony in support of HB 319 Relating to Family Leave annual requirement by employers to inform their workforce of the rights as well as the adverse impact of family leaves.

Normally, any bill that would pour cold water on individuals who need to take family leave is something I take exception to.

However, the workforce need to be informed of the existence of such resources and benefits. Interestingly, this bi-partisan Kupuna Caucus bill, may have something to offer the workforce as well as small business employing retirees and seniors. In any event, the difference between the Federal Family Leave Program and the State Family Leave Program administration by the Executive branch has to be reconciled. The Hawaii Administrative Rules have to be more in conformity with a revamped work-in-progress Federal Family Leave Program.

Thank you for this opportunity to provide testimony in support of this bi-partisan bill which will be beneficial to the working people. The adverse impact has to be toned down and perhaps be amended out.

Mahalo nui loa.
("1 of 16,588 local voices)

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UNIVERSITY OF HAWAI'I AT MĀNOA
School of Social Work

Testimony to the House Committee on Labor and Public Employment
Tuesday, February 3, 2009
Conference Room 309; 8:30am

RE: H.B. No. 319, Relating to Family Leave.

Chair Rhoads, Vice Chair Yamashita, and Members of the Committee,

My name is Wes Lum and I am testifying in support of this measure. I am an Assistant Specialist with the University of Hawaii Center on Aging. My testimony represents my personal opinion and does not reflect the position of the University of Hawaii nor of the Center on Aging.

This bill requires employers to annually notify employees of their entitlement to family leave, as well as possible adverse impact of taking family leave.

The "Eldercare Policies in the Workplace: Results of a Survey Conducted in 2007" conducted by the Executive Office on Aging and the "State of Hawaii Family Caregiver Needs Assessment" that was conducted by the Joint Legislative Committee on Family Caregiving were simultaneously performed in the Fall of 2007, giving the surveyors an opportunity to ask an identical set of questions to both the family caregiver and the employer. Here, I provide a comparison of the responses of the working caregiver and the employer when asked about (1) the types of eldercare benefits that the employer offers and (2) the extent to which eldercare has affected the workplace.

Comparison of Eldercare Benefits

A major discrepancy exists between the types of eldercare policies and benefits that employers offer and what working caregivers believe is offered. In all cases, the employer said that they offered numerous eldercare benefits, but the working caregiver was not aware of these benefits. Eighty percent of the employers say that they offer paid bereavement leave while only 4.7% of the employed caregivers knew of this benefit. About 70% of the employers offered unpaid family leave while only 18.0% of the working caregivers were aware of this benefit. Only five percent of the working caregivers knew that their employer offered leave without pay, but the employers said that 66.3% of the employers offered this benefit.

1800 East West Road, Henke Hall 226, Honolulu, Hawai'i 96822
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Comparison of Eldercare Benefits from the Employer and Caregiver Perspective

Benefits/Policies	Employer Perspective	Working Caregiver Perspective
Unpaid family leave	70.2%	18.0%
Part time work	38.5%	9.7%
Dependent care flexible spending accounts	44.2%	9.7%
Flextime	55.8%	9.7%
Brown bag lunches	11.5%	8.5%
Caregiver support groups	8.7%	8.5%
Employee assistance programs	29.8%	8.5%
Compressed work scheduled	32.7%	7.5%
Paid sick leave	53.8%	7.4%
Leave sharing	9.6%	7.3%
Paid family leave	43.3%	7.3%
Eldercare referrals	25.0%	6.3%
Legal services	9.6%	6.3%
Long-term care insurance	15.4%	5.2%
Job sharing	11.5%	5.2%
Leave without pay	66.3%	5.0%
Paid bereavement leave	79.8%	4.7%

Comparison on the Effects of Employment

Working caregivers believed that they had a higher percentage change in their work situation and impact on employment because of caregiving than did the employers. Seventeen percent of working caregivers believed that they had reduced their number of work hours while only 12% of employers believed that their employees had reduced their number of work hours due to caregiving. Eleven percent of working caregivers said that they turned down a promotion and 6.9% of employed caregivers said that they took a less demanding job due to caregiving. However, none of employers believed that their employed caregivers had made changes to their work situation in these categories.

Of those caregivers who made changes to their work situation because of caregiving, 94.3% rearranged their work schedule, 77.9% took time off during the day, and 56.3% arrived early or left work late. In comparison, employers attributed the above-mentioned changes to employee's work situation due to caregiving at 45.3%, 35%, and 41% respectively.

Comparison of Effects on Employment from the Employer and Caregiver Perspective

Effects on Employment	Employer Perspective	Working Caregiver Perspective
Changes in Work Situation of all Employed Caregivers		
1. Reduced # of work hours	12.0%	16.5%
2. Leave of absence	17.1%	11.1%
3. Turned down promotion	0%	10.8%
4. Quit job	8.5%	9.3%
5. Changed job	--	8.7%
6. Took less demanding job	0%	6.9%
7. Took 2nd or 3rd job	1.7%	6.0%
8. Retired	12%	3.0%
Other Impacts on Employment among Those Who Made a Change Due to Caregiving		
1. Rearranged work schedule	45.3%	94.3%
2. Took time off during the day	35.0%	77.9%
3. Arrive early or leave late	41%	56.3%
4. Experience work day interruptions for crisis care	18.8%	52.7%
5. Experience scheduling difficulties	17.1%	52.2%
6. Experience stress related health problems	12.0%	48.1%
7. Conducted personal business during work hours	24.8%	41.8%
8. Missed meetings/appointments	9.4%	41.6%
9. Experience difficulties with management	2.6%	34.0%
10. Distracted at work/poor concentration	21.4%	26.9%
11. Experience resentment from coworkers	3.4%	14.6%
12. No problems I am aware of	29.9%	--

The response rate for EOA's Employer Survey was low, which may dilute the level of precision that reflects the results of the target population as precisely as needed. However, the methodology to select the sample represents a broad cross-section of employers in Hawaii and is representative due to the randomness of the sample selection. It is quite possible that a disproportionate number of employers may have responded who are interested in eldercare issues and have initiated some steps to support caregivers. The findings of the survey should be interpreted with this caveat in mind.

In essence, there is a major discrepancy between the types of eldercare policies and benefits that employers offer and what working caregivers believe to be offered. If employees are unaware of available benefits, there will be an underutilization of such benefits.

Employers must ensure that their employees are aware of all benefits to them, and therefore, I support this measure and ask for your favorable consideration. Thank you for the opportunity to testify.