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February 25, 2009

To: The Honorable Marcus R. Oshiro, Chair  
and Members of the House Committee on Finance

Date: February 27, 2009  
Time: 4:00 p.m.  
Place: Conference Room 308, State Capitol

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

**Re: H.B. 332 H.D. 1 - Relating to Employment Security**

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.B. 332 H.D. 1 proposes to add a new section to Chapter 383, HRS, to provide for the eligibility of unemployment benefits for domestic or sexual violence victims. This measure will allow unemployment benefits to an individual who is separated voluntarily or involuntarily from employment due to circumstances resulting from the individual or the individual's minor child being a victim of domestic or sexual violence. The bill also provides for good cause to refuse work due to an unreasonable risk of violence, and considers an individual able and available for work by registering for work has not been offered reasonable employment opportunity within 30 days after the date of the individual's loss of employment.

H.B. 332 H.D. 1 also proposes to amend section 383-65(b) by relieving the employer of charges for benefits paid to individuals who are discharged due to circumstances resulting from domestic or sexual violence, or due to actions or absences from work taken by the individual, leading to a discharge.

## **II. CURRENT LAW**

Currently, sections 383-30(1) and (2) disqualify an individual who quits without good cause or is discharged for misconduct.

Under administrative rule section 12-5-47(c)(7), Chapter 5, Title 12, good cause for leaving employment may be found where there is "evidence that the individual was a victim of domestic or sexual violence, including any circumstance which causes a reasonable person to believe that other available alternatives, such as a leave of absence, a transfer of jobs, or an alternate work schedule, would not be sufficient to guarantee the safety of the individual and that separation from employment was necessary to address the resulting physical and psychological effects, to seek or reside in an emergency shelter, or to avoid future domestic or sexual violence. Such evidence includes police records, court records, statements from the individual, a volunteer of a victim services organization, the individual's attorney or advocate, a member of the clergy, medical or other professional from whom the individual has sought assistance related to the domestic or sexual violence, or other corroborating evidence. As used in this subsection, 'domestic or sexual violence' includes domestic abuse, sexual assault, or stalking."

Under administrative rule section 12-5-51, "misconduct" in discharge or suspension cases is defined as "actions which show a willful or wanton disregard of the employer's interests, such as deliberate violations of or deliberate disregard of the standards of behavior which the employer has a right to expect of an employee, or carelessness, or negligence of such a degree or recurrence as to show wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, poor performance because of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good-faith errors in judgment or discretion are not misconduct."

Section 383-65(b) does not currently contain any specific provision for non-charging an employer for terminations involving domestic or sexual violence, which may be considered for reasons other than misconduct connected with work. Benefit payments attributed to any discharge for no misconduct are chargeable to the employer. Where an individual leaves work voluntarily for personal good cause not attributable to the employer, an employer is non-charged for the benefits paid under section 383-65(b)(1).

## **III. HOUSE BILL**

The Department supports the intent of this measure to ensure safety and economic security to victims of domestic and sexual violence as evidenced by our administrative rule that was promulgated in 2006.

However, the Department raises the following concerns:

1. Section 383-29(a)(2) and (3), HRS, in separate provisions, require that an unemployed individual must be registered for work and be able/available for work (AA) to be eligible for unemployment insurance (UI) benefits. The single exception for AA is in medical waiver situations in which the claimant becomes incapacitated while on active UI status. Being registered for work or being exempted from active search for work does not automatically satisfy all AA requirements under the law. There is no thirty-day grace period under the law.

The U.S. Department of Labor has consistently interpreted federal provisions governing the UI program as requiring that state UI laws contain tests, applied equally to all individuals, to assure that all claimants are in continued attachment to the labor force, including making weekly job contacts and being ready, willing and able to accept immediate suitable employment. Should the victim of domestic or sexual violence be unable to work due to the "need to take care of the physical, psychological, legal and other effects of the domestic or sexual violence," then eligibility for UI benefits would be highly questionable.

Failure to meet federally established guidelines relating to AA may raise a conformity issue. If the state law is in violation, certification of the FUTA tax offset credit would be denied and administrative grants to operate the UI program would be withheld, which would lead to the closing of all UI offices.

2. With respect to the non-charging of benefits paid in discharge of individuals due to circumstances relating to individuals who are victims of domestic or sexual violence, the Department does not feel a change to the current law is warranted. Section 383-65, HRS, permits non-charging in circumstances where the employer has no control over an employee's resignation or where the employee acted in willful disregard of an employer's interests. Extending non-charging of benefits to discharge for no misconduct situations would open the floodgates to every other termination situation, including lay offs due to the lack of work, to the point of erosion of the experience rating system. Where the USDOL finds that employer rates are not based on a pooled fund system in which employers are rated on the basis of their experience with unemployment or other factors bearing a direct relation to unemployment risk, all subject employers would be in jeopardy of losing their FUTA tax offset credit. As a result, businesses would be assessed higher federal taxes.

For reasons cited above, the Department recommends deleting the subsection that excuses domestic violence victims from being able and available for work and the section

that non-charges benefits paid due to discharges of domestic violence victims.

The Department emphasizes that benefits are already available and allowed to victims of domestic and sexual violence, and we currently consider personal reasons for separation without disqualification such as those advanced by this bill.

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**THE HONORABLE MARCUS R. OSHIRO, CHAIR  
THE HONORABLE MARILYN B. LEE, VICE CHAIR  
HOUSE COMMITTEE ON FINANCE**

**TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2009**

February 27, 2009

**RE: HOUSE BILL 332, H.D. 1; RELATING TO EMPLOYMENT SECURITY**

Good afternoon Chair Oshiro and Vice Chair Lee and members of the Finance Committee, the Department of the Prosecuting Attorney provides the following testimony **in support of H.B. 332, H.D. 1**, which proposes to provide eligibility for unemployment benefits for victims of domestic violence and sexual assault.

The purpose of H.B. 332, H.D. 1 is to assure that victims of domestic violence and sexual assault who are forced to leave employment due to the effects of their victimization do not lose their eligibility for unemployment benefits. Domestic abusers will frequently target their spouse or partner's ability to make a living as a means of furthering their agenda of complete control over the victim. This places domestic abuse victims at greater risk of loss of employment. Since financial security is often a key factor in forcing victims back to their abuser, we believe that it is critical that victims of domestic violence and sexual assault remain eligible for unemployment benefits. To allow otherwise would only reward abusers for their violent behavior and aid them in cutting off the victim's means of support.

For the reasons cited above, we request your support for H.B. 332, H.D. 1. Thank you for your time and consideration.



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

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DATE: February 27, 2009

TO: The Honorable Marcus R. Oshiro, Chair  
The Honorable Marilyn B. Lee, Vice Chair  
Committee on Finance

FROM: Adriana Ramelli, Executive Director  
The Sex Abuse Treatment Center

RE: Support for HB332 HD1  
Relating to Employment Security

Good afternoon Representatives Oshiro and Lee and members of the House Committee on Finance. My name is Adriana Ramelli and I am the Executive Director of the Sex Abuse Treatment Center (SATC), a program of the Kapi'olani Medical Center for Women & Children (KMCWC), an affiliate of Hawaii Pacific Health.

The SATC supports bill HB332 HD1 which provides for unemployment insurance to those separated from their employment as a result of domestic or sexual violence. This proposed legislation acknowledges the serious impacts of violence on individuals and/or their minor children and the real world challenges many victims must face.

Many victims of sexual assault experience significant psychological trauma. Their lives are altered in fundamental ways and it takes support, treatment and time to recover. Immediately after the assault, it is not uncommon for victims to report feeling out of control of their lives, overwhelmed by reminders of the assault and fearful for their safety, particularly if the offender is someone they know. All of these factors can interfere with their employment. It is therefore reasonable and compassionate to allow victims to qualify for unemployment benefits while they or their minor child obtain treatment services and/or during the time it takes to change their place of employment if they have concerns about their safety should they remain with their previous employer.

We urge you to pass HB332 HD1. It is sound legislation that addresses the safety and financial security of victims as they transition from victimization to stabilization and recovery.

Testimony

HB 332 HD1, Relating to Employment Security

House Committee on Finance

February 27, 2009

4:00 pm

House Conference Rm. #308

Aloha, Chair Oshiro, Vice Chair Lee, and members of the House Committee on Finance.

My name is Bridget Bond, and I am a Master's degree student at the University of Hawaii at Manoa Myron B. Thompson School of Social Work. I am here today to **SUPPORT HB 332 HD1**, relating to employment security.

According to statistics compiled by the American College of Emergency Physicians in November 2006, "Intimate partner violence costs exceed \$8.3 billion. Victims of severe intimate partner violence lose nearly 8 million days of paid work, the equivalent of more than 32,000 full time jobs, and almost 5.6 million days of household productivity a year." Additionally, in a study published in May 2002 by both Chaminade University and the State of Hawaii's Attorney General, the City and County of Honolulu harbors the highest state percentage of sexual offenders.

Adjudication, incarceration, and rehabilitation costs for sexual and domestic violence offenders are a financial strain on the State of Hawaii, and recidivism rates are high. Additionally, as re-offending perpetrators of domestic violence commit these acts against their partners and/or children, emergency room visits for the treatment of domestic violence spike;

often the victim and/or children have no insurance to cover these costs due to domestic violence complications, such as being forced to leave his or her job due to violent threats.

Eschewing moral rhetoric and emotional conjecture, lost productivity and ever-rising health care costs are a high economic burden for the State of Hawaii to shoulder in a financial climate that is tenuous at best. Other agencies knowledgeable in the behavioral and emotional needs of domestic violence victims as pertaining to employment security have previously provided testimony. The passing of HB332 HD1 as a preventative measure both meets the needs of the population of the State of Hawaii, and will also save the State much needed financial resources in future.

Mahalo for the opportunity to provide testimony today.