

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 17, 2009

To: The Honorable John M. Mizuno, Chair
and Members of the House Committee on Human Services

Date: Thursday, February 19, 2009
Time: 8:15 a.m.
Place: Conference Room 329, 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.”

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 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. While the Department is not in agreement with some of the provisions, we support the purpose of this measure and are willing to work with this Committee to draft suitable language that will be mutually agreeable to all parties involved.

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.

hscadv **HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE**

To: Chair Representative Mizuno, Vice Chair Representative Brower and members of the Committee on Human Services

From: Carol Lee, Executive Director

Re: HB 332 Establishes Eligibility for Unemployment Insurance

Hearing Date and Time: February 19, 2009, 8:15 a.m.

The Hawaii State Coalition Against Domestic Violence (HSCADV) appreciates the opportunity to submit testimony in support of HB 332.

HSCADV strongly supports the provisions in HB 332 which more clearly and specifically provide unemployment benefits to victims of domestic and sexual assault whether their separation from employment is voluntary or involuntary. HB 332 also defines more comprehensively "good cause" for not accepting work.

Thank you for your consideration of our testimony.

~ Together we can do amazing things ~



THE SEX ABUSE TREATMENT CENTER

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

Executive Director
Adriana Ramelli

Advisory Board

President
Mimi Beams

Vice President
Peter Van Zile

Marilyn Carlsmith

Senator
Suzanne Chun Oakland

Monica Cobb-Adams

Dennis Dunn

Senator
Carol Fukunaga

Tina Watson

Frank Haas

Philip Hyden, M.D.

Roland Lagareta

Willow Morton

R. Carolyn Wilcox

DATE: February 19, 2009

TO: The Honorable John M. Mizuno, Chair
The Honorable Tom Brower, Vice Chair
Committee on Human Services

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

RE: Support for HB332 HD1
Relating to Employment Security

Good morning Representatives Mizuno and Brower and members of the Committee on Human Services. 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.