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January 28, 2009

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

Date: January 30, 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. 332 - Relating to Employment Security**

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.B. 332 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.

H.B. 332 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 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.

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.

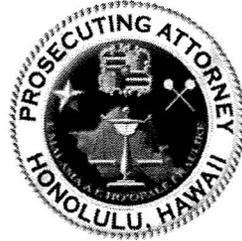
The Department emphasizes that benefits are already available and allowed to victims of domestic and sexual violence, and we currently consider personal reasons for separation without disqualification such as those advanced by this bill. While the Department is not in agreement with some of the provisions, 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.

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**THE HONORABLE KARL RHOADS, CHAIR  
THE HONORABLE KYLE T. YAMASHITA, VICE CHAIR  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**

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

January 30, 2009

**RE: HOUSE BILL 332; RELATING TO EMPLOYMENT SECURITY**

Good Morning Chair Rhoads and members of the Labor and Public Employment Committee, the Department of the Prosecuting Attorney provides the following testimony **in support of H.B. 332**, which proposes to provide eligibility for unemployment benefits for victims of domestic violence and sexual assault.

The purpose of H.B 332 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. Thank you for your time and consideration.

# **hscadv** **HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE**

Date: January 28, 2009

To: Karl Rhoads, Chair and Kyle Yamashita, Vice Chair  
Committee on Labor

From: Carol Lee, Executive Director

Re: HB 332 Establishes Eligibility for Unemployment Insurance

Hearing Date and Time: Friday, January 30, 2009, 8:30 a.m.

Good morning Representative Rhoads, Representative Yamashita, and Committee members. 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.

HSCADV suggests that one minor (but very significant) change be made to the section that describes under what circumstances a victim of domestic or sexual violence will have good cause for not accepting otherwise suitable, available work. As written, the victim is required to seek appropriate assistance in responding to the violence, including reporting to the police, obtaining services from a victim services organization, and taking other appropriate legal action. We would like to suggest that the word “or” be inserted between each of these requirements.

Victims of domestic violence may have legitimate reasons (perhaps bad previous experiences, privacy apprehensions, or even safety concerns) for not meeting all of the requirements as the bill is currently written. Recent evidence that the victim has taken one or more of the steps outlined to seek appropriate assistance in responding to the violence should be sufficient to determine good cause.

Thank you for your consideration of our testimony.

*~ Together we can do amazing things ~*



# Domestic Violence Action Center

Formerly the *Domestic Violence Clearinghouse and Legal Hotline*

PO Box 3198 ● Honolulu, Hawaii 96801 ● Ph:808/534-0040 ● Fax:808/531-7228

TO: Chair Karl Rhoads  
Vice Chair Kyle Yamashita  
Members of the Committee

FR: Nanci Kreidman, M.A.  
Chief Executive Officer

RE: H.B. 332

Aloha! Please accept this testimony in support of H.B. 332. We want to support each of the community efforts designed to assist victims of domestic violence become safe and self sufficient.

If a victim is unable to continue working due to danger, or destabilization resulting from abuse, it is important for her/him to have options and financial resources to assist during the transition.

The option for our community's victims to focus on transition is crucial to long term safety and family well being.

We are available to consult further on the issues inherent in such legislation, as session progresses, should that be desirable. Thank you for including this bill on today's agenda for hearing.