

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: dlr.director@hawaii.gov

March 2, 2009

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

Date: Tuesday, March 2, 2009

Time: 10:00 a.m.

Place: Conference Room  
State Capitol

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

**Re: S.B. 823 SD 1 - Relating to Family Leave**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. 823, SD1 proposes to amend the Hawaii Family Leave Law ("HFLL"), Chapter 398, Hawaii Revised Statutes ("HRS") to require employers to post a notice of employees' rights under HFLL.

This Act would take effect upon approval.

**II. CURRENT LAW**

HFLL does not currently require any notifications by the employer.

**III. SENATE BILL**

1. The Department supports the amendment as written in S.B. 823, SD1:

1. Although notice by the employer is already required under Chapter 387, HRS, and Chapter 388, HRS, there is no requirement to post a notice of the employees' rights under Chapter 398, HRS. Requiring employers to keep information posted in a

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conspicuous place provides a daily reminder to individuals without wasting resources.

LINDA LINGLE  
GOVERNOR OF HAWAII



MARIE C. LADERTA  
DIRECTOR

CINDY S. INOUE  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

February 27, 2009

**TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

For Hearing on March 3, 2009  
10:00 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 823, SD1  
Relating to Family Leave**

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON RHOADS AND MEMBERS OF THE COMMITTEE:

The bill proposes to amend the Hawaii Revised Statutes by adding a new section requiring employers to post notice of employees' entitlement to family leave.

The Department of Human Resources Development has no objection to this measure. This requirement is reasonable and consistent with the State's posting requirements of other State labor laws found in Chapters 387 and 388 of the Hawaii Revised Statutes.

Thank you for the opportunity to testify.

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**Testimony to the House Committee on Labor & Public Employment  
Tuesday, March 3, 2009  
10:00 a.m.  
Conference Room 309**

**RE: SENATE BILL NO. 823 SD1 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 Senate Bill No. 823 SD1, 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.

SB 823 SD1 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 SB 823 SD1 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.



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

### Opposition to SB823 SD1

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 Senate Bill 823 SD1, which would require employers to post and keep posted notices of employees' entitlement to family leave in conspicuous places in the establishment.

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 Senate Bill 823 SD1.

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

# UNIVERSITY OF HAWAI'I AT MĀNOA

School of Social Work

**Testimony to the House Committee on Labor and Public Employment  
Tuesday, March 3, 2009  
Conference Room 309; 10:00am**

**RE: S.B. No. 823, S.D. 1 Relating to Family Leave.**

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

My name is Wes Lum and I am testifying in opposition to 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 post notice of employees' entitlement to family leave.

Based on the Department of Labor's testimony, current labor laws require employers to keep information posted in a conspicuous place that all have access to. However, the results of two studies<sup>1 2</sup> performed in the Fall of 2007 indicate that these current practices are ineffective. 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.

S.D. 1 doesn't change the practice of educating employees of their family leave benefits, and therefore, the discrepancy between the types of eldercare policies and benefits that employers offer and what working caregivers believe to be offered will continue to exist.

Employers must ensure that their employees are aware of all benefits to them, and therefore, I ask you to consider replacing S.D. 1 with H.B. No. 823.

Thank you for the opportunity to testify.

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<sup>1</sup> Arnsberger, P. and Lum, W. (2007). State of Hawaii Family Caregiver Needs Assessment. Prepared for the Joint Legislative Committee on Family Caregiving.

<sup>2</sup> Lum, W., Arnsberger, P., Sur, J., Blumhardt, F., and Nagatoshi, C. (2007). Eldercare Policies in the Workplace: Results of a Survey Conducted in 2007. Prepared for the Executive Office on Aging.

**TO:** COMMITTEE ON LABOR AND EMPLOYMENT  
Representative Karl Rhoads, Chair  
Representative Kyle Yamashita, Vice Chair

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

**SUBJECT:** SB 823, SD1 RELATING TO FAMILY LEAVE

**HEARING:** Tuesday, March 3, 2009 10:00 a.m. room 309

**POSITION:** Support the intent of SB 823, SD 1

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.

SB823, SD1 which requires the employer to post notice of employees' entitlement to family leave is a step in the right direction. The law still needs to be expanded so that the employee requiring family leave will be able to have this time off paid and also be able to look forward to returning to their position that was held prior to the time off for family leave.

Thank you for your consideration of this testimony.

Eudice R. Schick,  
Chair PABEA Legislative Committee

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**yamashita1- Kathy**

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**From:** Tomoso Home [jtomoso@hawaii.rr.com]  
**Sent:** Saturday, February 28, 2009 9:06 AM  
**To:** LABtestimony  
**Subject:** Testimony on SB.833, SD 1 (SSCR439)

823

02-28-09

TO: Committee on Labor & Public Employment  
RE: Hearing on Tuesday, 03-03-09, 10:00 a.m., Conf. Room 309

Aloha kakou,

I am in favor of this bill as it puts into place, in the workplace, information that can affect the caregiving responsibilities of employees. As caregiving becomes more of a daily responsibility of our workforces, it behooves us to establish "aging infrastructure" via public policy and workplace/ workforce processes and procedures. Family Leave is "infrastructure" through which Employers and Employees will properly meet each others needs of work, production and profit. Sooner or later, we will all be directly or indirectly involved in caregiving with and to aging and/or disabled family members or friends.

O wau iho no,

John A. H. Tomoso, MSW, ACSW, LSW  
51 Ku'ula Street  
Kahului, Maui, Hawai'i 96732-2906  
808-871-4982  
[jtomoso@hawaii.rr.com](mailto:jtomoso@hawaii.rr.com)

BCC: JACOSA, Maui County State Legislators, PIO Mahina Martin

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

State Capitol, Conference Room 309  
Tuesday, March 3, 2009; 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 823, SD1  
RELATING TO FAMILY LEAVE**

The ILWU Local 142 supports S.B. 823, SD1, which requires employers to post notice of employees' entitlement to family leave.

SD1 only requires employers to post notice about the family leave law and the employees' entitlement to the leave. We believe this requirement already exists and is important information to those who need to care for aged and disabled parents and other relatives. Many workers are still not aware of the federal and state laws that require their employers to provide unpaid family leave, despite laws in place for more than 10 years.

However, SD1 deleted the provision to require employers to inform their employees about any adverse impact of taking family leave. This adverse impact could include loss of seniority, loss of pension credits, loss of medical benefits, etc. The employee should be made aware of these consequences of taking family leave.

In deleting the requirement to notify workers of the adverse impact of taking family leave, the Senate Committee on Labor noted the "costly burden" of an annual notice requirement. However, the burden could potentially be even more costly for the worker who should know what he or she is giving up when taking family leave.

As a compromise, we recommend that the notice itself include the potential adverse impacts of taking family leave as well as an invitation to speak with the employer individually about what those impacts may be for the worker personally. Once notified, employees themselves can then take the responsibility to inquire about possible adverse impacts. However, the Committee should be aware, as our experience has shown, many employees do not heed bulletin board notices.

If this is the best we can do at this time, and the Committee is not inclined to restore language about adverse impacts, the ILWU supports passage of S.B. 823, SD1 . Thank you for considering our views and concerns.