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February 2, 2010

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

Date: February 2, 2010

Time: 9:00 a.m.

Place: Conference Room 309, State Capitol

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

H.B. 2257 - Relating to Unemployment Insurance Benefits

The Department opposes this measure to automatically allow benefits to an individual who, while on partial claim status, accepts a job with another employer and is subsequently separated for potentially disqualifying reasons. The disqualification provisions must be equally applicable to all unemployed individuals claiming benefits under Chapter 383, Hawaii Revised Statutes. The fact that an individual is still attached to a regular employer is irrelevant if such individual is considered unemployed under the law. According to section 383-1, HRS, an individual shall be deemed "unemployed" in any week during which the individual performs no services and no wages are payable, or in any week of less than full-time work if the wages payable are less than the individual's weekly benefit amount.

The department currently follows the precedent court ruling relevant to the issue of disqualification provisions with respect to separations involving concurrent employment. In *Brooks vs. Agsalud*, the Hawaii Supreme Court concluded that an individual can only be subject to potential disqualification under any provision of section 383-30, HRS if the individual was considered unemployed (as defined in section 383-1, HRS) at one job at the time of separation from another job.

Thus, if a partial claimant is "unemployed" and is terminated from part-time employment, the provisions under section 383-30 are applicable and must be applied accordingly. Conversely, if a partial claimant is not "unemployed" when a job

termination occurs, no disqualification would be applicable. Since this procedure is similarly applicable to totally unemployed claimants, the department does not support this measure to change the existing policy.