NEIL ABERCROMBIE
GOVERNOR

DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 17, 2011

To: The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the House Committee on the Judiciary

Date: Thursday, February 17, 2011
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. No. 341 Relating to Employment Practices

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 341, proposes to add a new protected class of workers under the Unlawful Suspension or Discharge Law, Chapter 378-Part III, by adding a new section making it unlawful for employers and labor organizations to bar, discharge from employment, withhold pay from, or demote an employee solely because an employee used accrued and available sick leave provided by the employer.

This law will take effect upon approval.

II. CURRENT LAW

There is currently no provision in the law that requires employers to provide sick leave outside Temporary Disability Laws.

Chapter 378, HRS, Part III, prohibits employers from unlawfully suspending, discharging or discriminating against an employee for four things: 1) solely because the employer was summoned as a garnishee in an employee's proceedings under Chapter XIII of the Bankruptcy Act; 2) solely because the employee suffered a work injury that was compensable under the Workers Compensation Law, Chapter 386, HRS, 3) because the employee testified or was subpoenaed to testify in a proceeding under Part III, or 4) because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5.

III. HOUSE BILL

While the DLIR supports the intent of this measure, the following are some concerns:

1. This bill would afford limited protections provided by this Chapter against unlawful suspension or discrimination due to the heavy burden of proving that the suspension, discharge or discrimination was "solely" due to the use of sick leave. Therefore, the department suggests that the word "solely" be deleted as follows:

   "(b) It shall be an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee [~~solely~~] because the employee uses accrued and available sick leave."

3. It is unclear how the workload of the hearings branch can handle this additional responsibility with the limited resources currently in the Division.

Local Union 1260
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LANCE M. MIYAKE
Business Manager-Financial Secretary

LOREN TAGUCHI
President

January 27, 2011

Representative Gilbert S. C. Keith-Agaran
Chair, House Committee on Judiciary
The House of Representatives
State of Hawaii

Dear Chair Keith-Agaran:

RE: HB No. 341

IBEW Local 1260 supports and request that the Committee on Judiciary submit H.B. No. 341 to the House of Representatives for the enactment of this bill. The Local Union with this testimony will expose how Hawaiian Electric Company, Inc. uses their Attendance Improvement Program (AIP) to intimidate and discipline their employees from using their sickness benefits.

The AIP is a Company policy that was not negotiated, and it is only implemented on the union members of the Company. Since it only affects the union members, it is not only discriminatory but is unfair because it uses discipline to discourage use of a negotiated benefit.

Quoting the AIP, "For purpose of the AIP, 'absences' that are monitored include the following: sickness; unscheduled absences; unexcused absences; and tardiness." According to the AIP, the definition for unexcused absence is "any unscheduled absence or tardiness from the defined work scheduled where appropriate notice is not provided and/or the supervisor does not approve the absence."

The Company has encouraged employees to use the FMLA for illnesses and/or injuries so the occurrence will not count on the AIP. The purpose and reason for FMLA was if employees did not have vacation or sick benefits, they could use FMLA to avoid being disciplined for the time away from work.

Under "Rights of Management," it states that the Company has the right to determine when an employee can take vacation or excused absence. The definition of excused absence is not clearly defined, but assuming that sick leave with physician's note is an excused absence, how does the Company schedule the sick leave?

The Corporate Health Administrator or Director, Corporate Health & Wellness (same person), whose qualifications have been questioned by the Local Union, has ruled on most of the AIP "Steps" that employee did not have documentation to support the absence. The Administrator has also, on numerous occasions, stated that she has reviewed the documentation from employee and determined that the absence(s) does not qualify as serious, chronic, or FMLA-related. The Administrator, who has not established her qualifications to the Local Union, is actually disputing the physician's note for the absence(s). How does she determine if an absence is FMLA-related when the employee's physician needs to fill out Section 3 of the form?

The employee's sick leave record for their career is not considered. The employee may have an excellent attendance record, but if that employee is experiencing a "bad" time in his career regarding being ill, injured, or both, that employee will receive discipline. The attachment will show that the Company has stated to employees that they will be held to the triggers of the AIP.

The AIP policy discourages use of sick leave, and therefore there may be times when an employee will come to work sick. The Local Union has been trying to point out to the Company that prevention of pandemic outbreaks is to stay home when you feel any type of symptoms associated with influenzas or colds because even if you take a test, the results takes a while to come back. If a pandemic outbreak occurs because of policies like the AIP, where a child who is most vulnerable may suffer or possibly die, would be unforgivable.

The Local Union is not against any policy for abuse of sick leave or sick benefits, but since it is a negotiated benefit in the CBA, the Local Union would like to have collective bargaining involved in establishing such policies. It is not this Local Union's intention to hinder the Company in its operations, but the Company needs to establish that abuse has occurred. Please stop companies like Hawaiian Electric Company, Inc. from using policies like the AIP to circumvent sick benefits negotiated in collective bargaining agreements (CBA). Imagine what might be happening to employees who work for companies that don't have a CBA.

Sincerely,

Lance M. Miyake
Business Manager – Financial Secretary

Attachment

HAWAIIAN ELECTRIC COMPANY, INC.

ATTENDANCE IMPROVEMENT PROGRAM

Effective: April 2002

PURPOSE & OBJECTIVE

Employees are expected to maintain a reasonably healthy lifestyle as every employee's well-being contributes to a safe, efficient and productive workplace. In addition, a consistently dependable employee is critical to the health and well-being of other members of the team.

The Attendance Improvement Program (AIP) establishes definitive expectations of attendance and guidelines for fair and consistent management of attendance issues related to excessive as well as pattern absences. The purpose of the AIP is to ensure the following:

- employees report to work on time and on a regular basis;
- each job is completed as safely, effectively and efficiently as practical by those best qualified;
- disruptions to operations (resulting from unscheduled absences) are minimized;
- morale of all employees is maintained at a consistently high level; and
- the Company can compete in a competitive environment.

It is important to note that the AIP is not meant to be punitive, but rather, corrective. The objective is to establish a fair and equitable solution, sensitive to employees' ailments / needs, while modifying the behavior that is below expectations.

RIGHTS OF MANAGEMENT

The Company has the sole and exclusive right to determine when an employee can take vacation or excused absence. Supervisors are expected to appropriately approve or deny absences based on a determination of whether the absence is disruptive and / or unavoidable. An employee may be denied vacation if the absence is determined to be disruptive or the reason inadequate.

The Company recognizes that employees may have a "bad year" and, thus, administration of the AIP relies on supervisory judgment and management review as well as considering past history and patterns of absences.

MONITORING & ADMINISTRATION

Departments will manage the attendance of all its employees by:

- establishing attendance expectations for "frequency," "total hours" and "patterns";
- monitoring attendance relative to expectations; and
- taking actions as outlined in the AIP.

For purposes of the AIP, "absences" that are monitored include the following:

- sickness;
- unscheduled absences;
- unexcused absences; and
- tardiness.

Once problem attendance has been identified, the employee is placed in the AIP to help the employee better manage his / her attendance challenges by providing clear procedures and / or consequences for current and subsequent occurrences of absence.

CORRECTIVE ACTION PROCESS

The following process shall be used to promote improved attendance. Note that the timeframe for the next trigger begins on the date of the last occurrence.

STEP I: COUNSELING

Trigger for Step I:

- 4th occurrence within a twelve-month period, OR
- 48 hours within a twelve-month period; OR
- 2 or more pattern occurrences, such as where the absence(s) coincides with a day of leave, with or without pay, within a twelve-month period.

STEP II: DOCUMENTED VERBAL WARNING

Trigger for Step II:

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

STEP III: WRITTEN WARNING

Trigger for Step III:

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

STEP IV: DECISION-MAKING LEAVE AND PERSONAL ACTION PLAN

Trigger for Step IV:

- 2 occurrences within the next six-month period, OR
- 24 hours within the next six-month period.

STEP V: TERMINATION

Trigger for Step V:

- Next occurrence within the next six-month period.

GETTING OFF THE PROGRAM

An employee who does not meet the criteria for the next trigger is removed from the AIP.

EMERGENCY LEAVES

Emergency leaves are available only for compelling, urgent or unusual circumstances. The Supervisor or Superintendent MUST approve this type of unscheduled absence and the employee must provide a legitimate reason for the urgency or lack of notice. Generally, "personal reason" is not a sufficient explanation for emergency leaves. Typical examples include, but are not limited to the following types of requests:

- Addressing the safety of the employee, the health or well-being of the employee's family, or that qualifies under the FMLA;
- Transacting business which cannot be otherwise transacted before / after scheduled workdays or on days off;
- Where the situation was beyond the employee's control and other arrangements such as the swapping of shifts / work schedules could not be arranged.

DOCTOR'S CERTIFICATE OF ILLNESS / INJURY

A doctor's certification of illness or injury preventing an employee from performing his or her job responsibilities is required in the following situations:

1. absences of 3 or more consecutive days;
2. any absence where the employee has 4 or more separate absences within a 12 month period;
3. any absence where the employee is not at home when called on by a Company representative during the period that the employee is absent from work;
4. situations which may require a supervisor to ensure the employee's state of health does not represent a danger to themself or fellow workers, or that the supervisor must determine whether an act of deception or dishonesty might have taken place. In any case, such a demand shall not be made arbitrarily.

Failure to provide valid certification as requested shall result in non-payment of sickness benefit. All medical records obtained in accordance with this policy shall be deemed confidential and shall be maintained by the Corporate Health Administrator.

Employees with chronic or serious illnesses / injuries, as certified by the treating physician, will be reviewed on a case-by-case basis by the Corporate Health Administrator and handled accordingly.

FALSIFICATION & / OR ABUSE

Any employee found to have falsified illness reports or otherwise abused the privileges of the sickness benefit plan will be dealt with in accordance with Company policies and the Collective Bargaining Agreement.

TARDINESS

Disruptive or habitual tardiness must be addressed and officially acted upon. Tardiness will not be tolerated and will be dealt with on a case-by-case basis using frequency, duration, and its effect on operation as a means of determining corrective action necessary.

DEFINITION OF TERMS

Chronic or Serious Illnesses / Injuries
A chronic or serious illness/injury is a life threatening or very serious condition which requires hospital care, ongoing outpatient follow-up, and is a situation where return to normal work may be detrimental to the patient's health or to other employee's health, or the patient is felt by his/her physician to be completely incapacitated to perform any of the duties of his/her job.

Decision-making Leave
The employee placed on a one (1) day paid administrative leave (not deducted from employee's leave account) and decide on returning with:

1. a decision to voluntarily resign, to be effective immediately; OR
2. a written Personal Action Plan stating:
   - the **actions** the employee will take to improve his/her absenteeism, and
   - that he/she understands the **repercussions** of the next "trigger," and
   - that he/she understands the **timeframe** for improvement.

Note: It is critical that the employee understand that the **decision-making day** is NOT a "day off." The employee is given a direct order to make a final decision while on the clock. Failure to do so ("I couldn't make up my mind" or "I decided not to decide") is insubordination – failure to follow a direct and legal order – and will result in disciplinary action, up to and including termination.

Disruption
An absence is defined as disruptive if it causes, but is not limited to, the following:

1. overtime
2. delays in normal schedule
3. delays completion of work within the expected timeframe.

Excused Absences
Excused absences are those in which appropriate notice (at least one day) is provided AND the supervisor approves the absence (e.g., vacation, excused absence with / without pay, etc).

Pattern Absences
Patterns of abuse include the following examples, but are not all-inclusive:

- unscheduled absences correlating with holidays, regular days off, and paydays
- absences which reflect a trend (i.e., Mondays and Fridays)
- frequent tardiness in reporting to work or reporting back to work during the course of the workday.

Personal Action Plan (PAP)
The Personal Action Plan is a mutual understanding between the supervisor / Company and the employee where goals, specific steps and measurements are identified to improve his / her attendance.

Trigger
A trigger is the point that initiates / prompts action. The timeframe for the next trigger begins on the date of the last occurrence.

Unexcused Absences
Unexcused absences are defined as any unscheduled absence or tardiness from the defined work schedule where appropriate notice is not provided and / or the supervisor does not approve the absence.

International Brotherhood of Electrical Workers

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Scot F. Long
Business Mgr. / Financial Sec.

Ted M. Furukado
President

HB 341

RELATING TO EMPLOYMENT PRACTICES

SCOT F. LONG

BUSINESS MANAGER / FINANCIAL SECRETARY

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL UNION 1357

February 17, 2011

Chair Keith-Agaran and Members of the Judiciary Committee:

I am Scot Long, testifying on behalf of IBEW Local Union 1357 on HB 341, "A BILL TO ADDRESS THE TAKING OF LEGITIMATE SICK LEAVE".

IBEW Local Union 1357 strongly supports this bill.

IBEW Local Union 1357 represents over 800 hourly employees at Hawaiian Telcom and throughout our tenure there many of our members have been disciplined for taking legitimate, negotiated sick leave benefits. However,

this is not a Hawaiian Telcom Bill, as other employers have been administering to a "2% no fault attendance policy" which is a trigger for disciplining employees for legitimate illnesses.

Now, schools require that children must stay home for a minimum of 3 days if they have any flu like symptoms and employers are telling employees not to come to work if they have a contagious illness (pink eye, H1N1, etc.). But, if employers continue to discipline employees for using their sick leave benefits for legitimate illnesses then, out of fear, employees would go to work and possibly contaminate the work environment thus creating more problems. And so this Bill would support the employers' concerns.

Employers will say that this Bill is a license for abuse and may prey on the unsophisticated. IBEW Local Union 1357 prides itself on responsible behavior and there are provisions in our Collective Bargaining Agreement, as well as recourse under Federal Regulations, to address any abuse. No, this Bill is not a license for abuse, but just the opposite. This is a Bill to restore dignity and civility in the workplace.

The same compelling reasons that this body passed SB 2883 in 2010, which was then vetoed by the Governor, are still prevalent. We humbly ask for your support of HB 341 and we thank you for the opportunity to testify.

International Brotherhood of Electrical Workers

Edwin D. Hill
International President

Lindell K. Lee
International Secretary - Treasurer

Michael Mowrey
International Vice President

Ninth District

The House of Representatives
Twenty-Sixth Legislature
Regular Session of 2011

COMMITTEE ON JUDICIARY
Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

Hearing: Thursday, February 17, 2011
Time: 2:00 p.m.
Place: Conference Room 325

TESTIMONY OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW)

RE: HB 341, HD1 RELATING TO EMPLOYMENT PRACTICES.

HB 341, HD1 would make it unlawful for any employer to discipline an employee because their employee legitimately uses accrued and available sick leave benefits.

The IBEW strongly supports this measure.

Today, all too often, many of Hawaii's employers are harassing, intimidating, suspending and even terminating employees who are legitimately ill for utilizing their accrued and available sick leave benefits under the guise of a "no fault attendance policy". It is ridiculous, immoral and unethical for an employer to offer sick leave benefits to employees and then turn around and discipline employees who are sick and attempt to utilize their sick leave.

Not only is this type of bait-and-switch behavior by employers ridiculous, immoral and unethical, it also poses a great danger and safety concern to the public for the spread of infectious viruses and disease (H1N1) when workers who are legitimately ill are forced to

come to work because of fear of being disciplined under these type of unjust, inhumane, punitive policies.

Please understand that nothing in this bill encourages sick leave abuse or minimizes the employer's rights to guard against abuse. The employer still would have full authority and ability to discipline, to include termination, any employee who is found abusing their sick leave benefit.

This bill is about one thing.....Protecting Hawaii's legitimately ill employees from unscrupulous employers who seek to penalize them for being sick and utilizing their available benefit.

We ask for quick passage of HB341, HD1.

Thank you for the opportunity to provide testimony.

Harold J. Dias, Jr
International Representative
IBEW

The Twenty-Sixth Legislature
Regular Session of 2011

#HOUSE OF REPRESENTATIVES
Committee on Judiciary
Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

State Capitol, Conference Room 325
Thursday, February 17, 2011; 2:00 p.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 341, HD1
RELATING TO EMPLOYMENT PRACTICES

The ILWU Local 142 supports H.B. 341, HD1, which makes it unlawful for any employer or labor organization to suspend, discharge, or discriminate against an employee solely because the employee uses accrued and available sick leave and allows an employer or labor organization to require written verification by a physician that the employee was ill.

H.B. 341, HD1 addresses a practice among a growing number of employers to undermine sick leave provisions of collective bargaining agreements or employment policies by adopting "no-fault attendance policies" which penalize employees for absence from work irrespective of the reason for the absence. Under these "no-fault" policies, any absence or tardiness is considered an "incident" that can progressively subject the employee to discipline and discharge, even if some or all of the absences are due to legitimate, verifiable illness.

By law, employers are required to provide temporary disability insurance or, in the alternative, sick leave that meets statutory requirements. By passing the TDI statute, lawmakers recognized that workers will become ill or injured from time to time and should be entitled to benefits to allow them to stay away from work and recuperate during those periods of illness or incapacity. The law was not intended to allow employers to penalize employees for using TDI or sick leave benefits. However, over the years, with "no-fault attendance policies" in place, employees who exceed a specified threshold of total absences can ultimately be disciplined or discharged due to absence for a legitimate, verifiable illness.

Attendance policies are, in most cases, implemented unilaterally as "House Rules," are not subject to bargaining, and are considered "no-fault," although the implication is that it's always the worker's fault. This means any absence, regardless of the nature, will count toward the incident threshold. In the case of one attendance policy, four incidents in a 12-month period will result in a verbal warning, five will merit a written warning, six will result in suspension, and seven will mean discharge. An employee could take sick leave for legitimate illnesses and still be subject to this progressive discipline.

We do not believe such action is consistent with the intent of the TDI law. If an employee has a cold or the flu, an employer should want the employee to stay away from work, especially if the employee's job requires contact with guests, customers, co-workers, or the handling of food. However, a no-fault attendance policy serves as a disincentive for employees to use their accrued and available sick leave. Thus, no-fault attendance policies and sick leave/TDI policies seem to be in conflict with each other.

We can understand an employer's desire to curb abuse of sick leave. We can also understand an employer's desire to establish a "no-fault" policy to remove subjectivity from the process in determining what is "legitimate" illness and what is not. However, we strongly believe that use of sick leave or TDI for illnesses that do not rise to the level of FMLA protection should not be used to penalize an employee.

We also support in principle an amendment offered jointly by the House Committee on Labor and the House Committee on Economic Revitalization and Business to require written verification of illness by a physician. However, we caution that requiring employees to visit the doctor for every illness may have the unintended consequence of increasing medical costs that will increase plan premiums. Also, asking employees to visit the doctor for every minor cold or flu may be counter-productive.

In spite of these concerns, the ILWU urges passage of H.B. 341, HD1. Thank you for considering our testimony.

HAWAII STATE AFL-CIO

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Randy Perreira
President

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The Twenty-Sixth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Judiciary

Testimony by
Hawaii State AFL-CIO
February 17, 2011

H.B. 341, HD1 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 341, HD1 which makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee solely because the employee uses accrued and available sick leave.

H.B. 341, HD1 ensures that employees will stay at home when diagnosed with a contagious illness. A perfect example of such situations was the outbreak of the H1N1 virus a few years ago, where employees affected by the virus were instructed to stay away from work for a lengthy period of time to avoid infecting co-workers. Employees should not fear discipline or the chance of losing their job solely because they got sick. H.B. 341, HD1 simply protects employees from being disciplined for taking legitimate sick leave.

Unfortunately, some employers do not exclude sick leave as part of its hours of absence. As a result, employees who use legitimate sick leave may be subject to various disciplinary actions. In one company, employees may be disciplined under company policy even though there is a collective bargaining agreement that provides for the use of legitimate sick leave. This practice is patently unfair.

In the case of *Auer v. Village of Westbury*, the New York Supreme Court, Appellate Division ruled in favor of an employee who had been suspended for thirty days for using his sick leave. The Court proclaimed "the fact that the employee used all his available sick days under the collective bargaining agreement did not alone establish that he was abusing his sick leave and, thus, did not warrant a finding of misconduct." As a result, the Court nullified the penalty and finding of guilt and ordered the employer to repay the employee for the entire period he was suspended.

Employees who use legitimate sick leave should be protected under the law from abuse and discipline. Employees should not be fearful of getting sick and worried that if they take off from work they could be subjected to various forms of discipline including suspension or even termination.

The Hawaii State AFL-CIO strongly urges the passage of H.B. 341, HD1 to ensure employers do not discipline employees who use legitimate sick leave, correcting an injustice that befalls too many workers.

Respectfully submitted,

Randy Perreira
President

Testimony before the House Committee on Judiciary

on
H.B. 341, H.D.1, Relating to Employment Practices

Thursday, February 17, 2011
2:00 p.m.
Conference Room 325, State Capitol

By Sherri-Ann Loo, Manager
Hawaiian Electric Company

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

I am Sherri-Ann Loo, Manager, Human Resources Programs and Strategies at Hawaiian Electric Company, Inc. I represent Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (collectively "HECO") consisting of 2300 employees. We provide the power to keep the lights on for 95% of Hawaii's residents.

We respectfully oppose House Bill 341, H.D.1.

We cannot support H.B. 341, H.D.1 because the bill would still entitle employees to use paid sick leave for absence from work, without a balance to control repeated and chronic absenteeism. Although H.D. 1 allows employers the option of requiring the employee to provide written verification from a physician, it still does not give employers the right to question or challenge the sufficiency or legitimacy of such verification. Employees are expected to practice reasonable health and safety habits to avoid excessive use of sickness benefits, and maintain a high level of productivity. Pay for absences due to illness is a requirement under the Temporary Disability Insurance law. Many employers like us provide sick leave benefits over and above the statutory requirement as an additional benefit. In order to ensure that the use of sick leave benefits will take place only when an employee is incapacitated and unable to work, employers typically apply attendance improvement programs or incentives for good attendance. It follows that the ability to take corrective action, up to and including discharge of employment for the misuse of sick leave should be an action vested in employers. The proposed bill could easily result in employers cutting back on sick leave benefits simply because of the need to maintain a productive workforce.

1. Regular attendance at work by all employees is important if Hawaiian Electric is to meet its obligations to the public and customers. Employers should be allowed to consider an applicant's attendance record in determining whether the candidate is able to meet the work and schedule requirements of the position.

2. All regular full-time employees of HECO have a benefit schedule of sick leave ranging from a minimum of 40 hours full pay after 6 months of service to a maximum of 480 hours full pay after 10 years of service. Employees with serious illnesses are allowed to draw upon a bank of unused sick leave. The intent of our benefit is to provide income security in the event of serious illness or injury. We hold employees

accountable to report to work regularly. There will be a negative impact to productivity should all employees be allowed to use their full balance of sick leave with no controls in place to prevent the misuse of the system or avenues to address excessive absenteeism by employees with "a nonchronic condition of a short-term nature." HECO (and possibly other companies) would have to seriously reconsider the amount of sick leave benefit it provides.

3. The Family and Medical Leave Act and Hawaii Family Leave Law allow for the use of sick leave and provide protection for the employee for specific absences and conditions.

We therefore ask the Committee to hold HB 341, H.D.1.

Thank you for the opportunity to share our concerns with you.

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

February 16, 2011

TO: THE HONORABLE REPRESENTATIVE GILBERT S.C. KEITH-AGARAN, CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: H.B.341, HD1 RELATING TO EMPLOYMENT PRACTICES.

NOTICE OF HEARING

DATE: Thursday, February 17, 2011
TIME: 2:00 PM
PLACE: Conference Room 325

Dear Chair Keith-Agaran and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and seventy (570) general contractors, subcontractors, and construction related firms, **opposes** the passage of H.B.341, HD1 Relating to Employment Practices.

The GCA believes that whenever there is any collective bargaining contract in force, the terms of the agreement should prevail. However, the bill should make clear that those terms apply to employees covered by the collective bargaining contract **only**. All other employees continue to be governed by any and all rules and policies adopted by the employer regarding sick leave and other employee benefits.

The GCA recommends that the bill be amended to clarify that when collectively bargained leave benefits conflict with other employer leave policies, contract provision prevail, with respect to covered employees only.

The GCA **opposes** the passage of HB341, HD1.

Thank you for the opportunity to comment on this measure.

The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Testimony to the House Committee on Judiciary
Thursday, February 17, 2011; 2:00 p.m.
Conference Room 325

RE: HOUSE BILL NO. 341 HD1 RELATING TO EMPLOYMENT PRACTICES

Chair Keith-Agaran, Vice Chair Rhoads, 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"). I am here to state The Chamber's opposition to House Bill No. 341 HD1, relating to Employment Practices.

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.

This measure makes it unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued available sick leave. The bill also allows an employer or labor organization to require written verification by a physician that the employee was ill.

While we appreciate the previous committee's amendment that allows for the employer to require a written verification, we still have concerns with the bill.

The Chamber of Commerce of Hawaii has held a longstanding position that sick leave is an employer provided benefit for employees. Businesses generally offer this benefit to employees to create a healthy work environment and to foster a positive relationship with its employees. They understand that employees will require occasional leave from work due to a legitimate sickness. However, occasionally some employees may abuse this privilege or become to sickly to continue in the position. Sick leave paid for by the employer should not become a protected right.

Creating legally protected sick leave may force many businesses, especially small companies, to reduce or eliminate voluntary sick leave due to the potential abuse of this benefit that could result if the measure is passed. This will have the unintended consequence that will impact all employees. Furthermore, the implications of this measure could lead to a rise in the cost of doing business, an unstable work environment, and potential litigation.

Also, we believe the proposed legislation is unnecessary because present law with existing safeguards provide appropriate safety nets such as the Family Medical Leave Act (FMLA) and

the Hawaii Family Leave Act (HFLA) for employees, and balances the interests of the employer and employee.
Additionally, we have some questions and concerns, such as:

1. Who qualifies as a physician under the bill? Does the physician have to be licensed in Hawaii?
2. Can the employer require a second opinion at its expense?
3. What about small employers? Absences hit their businesses hardest. Just because an employer is generous and allows sick leave, should that be used against it to prevent the employer from replacing a sickly employee who is hurting the business and causing a burden for their coworkers?
4. Sick leave must exclude TDI and state approved sick leave plans that satisfy the TDI obligation or everyone can be out 6 months.
5. How do we address employees who sporadically use sick leave (ie. Calls in sick every Monday)?

For these reasons, The Chamber of Commerce of Hawaii respectfully requests that this measure be held.

Thank you for the opportunity to testify.

First Hawaiian Bank
999 Bishop Street Honolulu Hawaii 96813

Presentation to the House Committee on Judiciary

Thursday, February 17, 2011 at 2:00 p.m.

Testimony on House Bill 341 HD 1 Relating to Employment Practices

TO: The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair
Members of the House Committee on Judiciary

My name is Neal Okabayashi of First Hawaiian Bank. We oppose HB 341, HD 1 because it hurts working people because when sick leave is treated as time off that can be misused, companies will consider reducing sick leave benefits. That hurts all workers.

Employers provide sick leave so workers can recover from illness or injury. Many employers are quite generous with sick leave benefits. However, we do recognize there are a few workers that do abuse sick leave by using it like vacation time. The well-known Friday-Monday syndrome of workers who tend to be sick on such days to elongate the weekend is well-known. Under this bill, available sick leave time becomes more like paid time off because a worker can use sick leave even when not sick.

CareerBuilder.com reported that 1 in 4 workers consider sick leave to be vacation time. This bill would make sick leave vacation time for some which means that companies may reduce sick leave time or switch to a PTO system which will reduce the time a worker may take for vacation and sick leave. For those with a serious health problem, that is a serious negative.

Thus, while the concept seems fair on paper, in reality it will be bad for most workers, and unfortunately fails to protect the vast majority of hard working employees who benefit from a sick leave policy that can be used when genuinely ill. Thus, the goal of this bill, while it seems to be well-intended, has the opposite effect and thus, we ask that this bill be held indefinitely.

If this Committee is inclined to adopt this bill, because this matter is related to an issue of collective bargaining, we suggest that the sick leave bill from last year's session be inserted as HD 1. That bill was SB 2883, SD 1, HD 2, CD 1, which was passed by the Legislature last session but vetoed by the Governor. A copy is enclosed for your convenience.

STATE OF HAWAII
DEPARTMENT OF DEFENSE

TESTIMONY ON HOUSE BILL 461 HD1
A BILL FOR AN ACT RELATING TO MILITARY AND OVERSEAS VOTERS ACT

PRESENTATION TO THE
HOUSE COMMITTEE ON JUDICIARY

BY

MAJOR GENERAL DARRYLL D. M. WONG
INTERIM ADJUTANT GENERAL
February 17, 2011

Chair Aquino, Vice Chair Cullen, and Members of the Committee:

I am Major General Darryll D. M. Wong, Interim State Adjutant General. I am testifying on House Bill 461 HD1.

We strongly support House Bill 461 HD1. This measure allows military personnel deployed or stationed outside the United States and other overseas voters an opportunity to vote and submit their ballots for federal, state, and county office in a general, special, primary, or runoff election.

Thank you for the opportunity to provide this written testimony.

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

S.B. NO. 2883 S.D. 1 H.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO EMPLOYMENT PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 378-32, Hawaii Revised Statutes, is amended to read as follows:

"**§378-32 Unlawful suspension, discharge, or discrimination.** (a) It shall be unlawful for any employer to suspend, discharge, or discriminate against any of the employer's employees:

(1) Solely because the employer was summoned as a garnishee in a cause where the employee is the debtor or because the employee has filed a petition in proceedings for a wage earner plan under Chapter XIII of the Bankruptcy Act; [~~or~~]

(2) Solely because the employee has suffered a work injury which arose out of and in the course of the employee's employment with the employer and which is compensable under chapter 386 unless the employee is no longer capable of performing the employee's work as a result of the work injury and the employer has no other available work which the employee is capable of performing. Any employee who is discharged because of the work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the discharge and during the period thereafter until the employee secures new employment. This paragraph shall not apply to any employer in

whose employment there are less than three employees at the time of the work injury or who is a party to a collective bargaining agreement which prevents the continued employment or reemployment of the injured employee;

(3) Because the employee testified or was subpoenaed to testify in a proceeding under this part; or

(4) Because an employee tested positive for the presence of drugs, alcohol, or the metabolites of drugs in a substance abuse on-site screening test conducted in accordance with section 329B-5.5; provided that this provision shall not apply to an employee who fails or refuses to report to a laboratory for a substance abuse test pursuant to section 329B-5.5.

(b) It shall be an unlawful practice for an employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee solely because the employee legitimately uses accrued and available negotiated sick leave in accordance with the employer's attendant and negotiated sick leave policies, except for abuse of sick leave.

(c) Employers and labor organizations are not prohibited from barring or discharging from employment, withholding pay from, or demoting an employee if the employee is unable to fulfill the essential job functions or requirements of the employee's position.

(d) Subsections (b) and (c) shall only apply to employers who have:

(1) A collective bargaining agreement with their employees; and

(2) One hundred or more employees."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2010.

Report Title:
Employment Practices; Sick Leave Benefits

Description:
Makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave. Limited to employers with one hundred or more employees and a collective bargaining agreement. Exempts cases where an employee is unable to fulfill essential job functions. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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Your Partner For Success

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Email: info@hcul.org

Testimony to the House Committee on Judiciary
Thursday, February 17, 2011, at 2:00 p.m.

Testimony in opposition to HB 341, Relating to Employment Practices

To: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice-Chair
Members of the Committee on Judiciary

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in opposition to HB 341, Relating to Employment Practices. Our concern is that this legislation may work against the best interests of employees who receive paid sick leave as an employee benefit. In today's challenging economic climate, it has become common practice to cut staffing and expenses "to the bone", thus, the survival of any business depends largely on its employees being on the job. If offering paid sick leave to their employees becomes overly burdensome, the employer might opt to do away with it altogether.

Thank you for the opportunity to testify.

NFIB
The Voice of Small Business®

Before the House Committee on Judiciary

DATE: Tuesday, February 17, 2011

TIME: 2:00 P.M.

PLACE: Conference Room 325

Re: HB 341, HD 1 Relating to Employment Practices

Testimony of Melissa Pavlicek for NFIB Hawaii

We are testifying on behalf of the National Federation of Independent Business (NFIB) in opposition to HB 341, HD 1, relating to employment practices.

HB 341, HD 1 makes it an unlawful practice for any employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee solely because the employee uses accrued and available sick leave.

NFIB believes government mandates take away small employers' and employees' freedom to negotiate the benefits package that best meets their mutual needs. While we do not oppose employees' legitimate use of accrued and available sick leave, small employers must have the ability to address an employee's violation of company policies or inappropriate use of sick leave when necessary. During Hawaii's depressed economic growth period, NFIB believes that government must not impose additional burdens upon small businesses.

NFIB is the nation's largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitols, with more than 1,000 members in Hawaii and 600,000 members nationally. NFIB members are a diverse group consisting of high-tech manufacturers, retailers, farmers, professional service providers and many more.

We welcome the opportunity to engage with legislators on this and other issues during this session.

841 Bishop Street, Suite 2100, Honolulu, Hawaii 96813 (808) 447-1840