

The Twenty-Sixth Legislature  
Regular Session of 2011

#HOUSE OF REPRESENTATIVES  
Committee on Finance  
Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

State Capitol, Conference Room 308  
Monday, February 28, 2011; 3:30 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 341, HD2  
RELATING TO EMPLOYMENT PRACTICES**

The ILWU Local 142 strongly supports H.B. 341, HD2, which makes it unlawful for any employer or labor organization to suspend, discharge, or discriminate against an employee 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 after three consecutive days of illness.

H.B. 341, HD2 addresses a practice among a growing number of employers to undermine sick leave provisions of collective bargaining agreements or employment policies as well as the law 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 and verifiable illness.

Opponents of the bill have raised concerns about legislating policies for the private workplace arena. However, these no-fault policies, imposed in unionized as well as non-unionized workplaces, undermine the temporary disability insurance (TDI) law that was enacted by the Legislature to provide for benefits in the event of an employee's illness or injury. TDI or, in the alternative, sick leave that meets statutory requirements recognize that employees will become incapacitated by colds, flus, injuries and the like from time to time. Compensation should be provided to allow the employee to stay home and recuperate, rather than come to work to spread the illness or to be ineffective and unproductive because of the illness.

We also fully support a judicious amendment offered by the House Committee on Judiciary to require medical certification only after three consecutive days of absence. To require medical certification upon the first day is imprudent, impractical, and costly.

The ILWU urges passage of H.B. 341, HD2. Thank you for allowing us to provide testimony on this matter.



Randy Perreira  
President

# HAWAII STATE AFL-CIO

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

Testimony by  
Hawaii State AFL-CIO  
February 28, 2011

## H.B. 341, HD2 – RELATING TO EMPLOYMENT PRACTICES

The Hawaii State AFL-CIO strongly supports H.B. 341, HD2 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, HD2 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, HD2 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 New York Supreme Court, Appellate Division 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, HD2 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



Local Union 1260

## **International Brotherhood of Electrical Workers**

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Telephone (808) 941-9445

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**LANCE M. MIYAKE**  
Business Manager-Financial Secretary

**LOREN TAGUCHI**  
President

February 27, 2011

Representative Marcus R. Oshiro  
Chair, Senate Committee on Finance  
The Senate  
State of Hawaii

Dear Chair Oshiro:

RE: HB No. 341, HD2

The IBEW Local 1260 support and request that the Committee on Finance submit H.B. No. 341, HD2 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, then how does the Company schedule the sick leave.

# **International Brotherhood of Electrical Workers**

Local 1260



Representative Marcus R. Oshiro

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February 27, 2011

The Corporate Health Administrator or Director, Corporate Health & Wellness (same person), whose qualifications has been questioned by the Local Union, has ruled on most of the AIP "Steps" that the Administrator or Director reviewed the employee did not have documentation to support the absence. The Administrator has also on numerous occasions, states 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 establish 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 on the form?

The employee's record on sick leave 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, injury, 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 awhile 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 allow to hinder the Company in it's 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,

A handwritten signature in black ink, appearing to read "Lance M. Miyake".

Lance M. Miyake

Business Manager – Financial Secretary

Attachment



HAWAIIAN ELECTRIC COMPANY, INC.

# **A**TTENDANCE **I**MPROVEMENT **P**ROGRAM

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:**

- 4<sup>th</sup> 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 themselves 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 Illness / 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.



Representative Marcus Oshiro, Chair  
Representative Kyle Yamashita, Vice Chair  
Committee on Finance

State Capitol, Honolulu, Hawaii 96813

HEARING      Monday, February 28, 2011  
                  3:30 pm  
                  Conference Room 308  
                  Agenda #7

RE:      **HB341, HD2, Relating to Employment Practices**

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest employers in the state, employing almost 24% of the labor force.

**RMH opposes HB341, HD2, which makes it unlawful for any employer to suspend, discharge or discriminate against an employee solely because the employee uses accrued and available sick leave.**

This measure is an unwarranted intrusion into the operations of business and management's right to provide and administer a non-government-mandated benefit. Many employers willingly provide, in addition to TDI, an additional week or so of paid "sick leave," which allows for the occasional cold, flu, etc. For the most part, these minor illnesses do not warrant a visit to a physician, and most employers do not require a doctor's validation in writing.

HB341, HD2 creates a protection for workers who abuse sick leave policy and is an affront to those employees who utilize this benefit for legitimate illnesses. Often, they must assume responsibility for the abusing employee's tasks to fulfill their duties and to maintain the normal operations of the company.

Sick leave is an enhancement to afford an attractive and stable work environment. Because it is employer-provided, regulation is the employer's right. Hawaii's employers and their employees deserve a viable marketplace where prosperity is facilitated and encouraged, rather than impeded by regulations.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB466, HD2. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII  
1240 Ala Moana Boulevard, Suite 215  
Honolulu, HI 96814  
ph: 808-592-4200 / fax: 808-592-4202



**I**nternational  
**B**rotherhood of  
**E**lectrical  
**W**orkers

**Edwin D. Hill**  
International President

**Lindell K. Lee**  
International Secretary - Treasurer

**Michael Mowrey**  
International Vice President

**Ninth District**

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

COMMITTEE ON FINANCE

Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

Hearing: Monday, February 28, 2011  
Time: 3:30 p.m.  
Place: Conference Room 308

TESTIMONY OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS (IBEW)

**RE: HB 341, HD2 RELATING TO EMPLOYMENT PRACTICES.**

HB 341, HD2 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



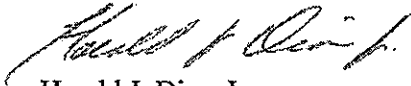
come to work because of fear of being disciplined under these type of unjust, inhumane, punitive policies.

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, HD2.

Thank you for the opportunity to provide testimony.



Harold J. Dias, Jr  
International Representative  
IBEW

**HB 341 HD2**  
**RELATING TO EMPLOYMENT PRACTICES**  
**HAWAIIAN TELCOM**

**February 28, 2011, Agenda 7**

Chair Oshiro and members of the House Finance Committee:

Hawaiian Telcom is opposed to HB 341 HD2 - "RELATING TO EMPLOYMENT PRACTICES."

Hawaiian Telcom believes that this bill is unnecessary and therefore as a matter of public policy should not be a subject for legislative action. Hawaiian Telcom already provides a very generous package of employee sick leave, disability, and family leave benefits. For example, the current collective bargaining agreement provides for up to 52-weeks of company paid employee sick leave depending on the years of service.

It is widely acknowledged that the company is one of the few or maybe the only business in Hawaii that provides up to a whole year of paid sick leave. In addition to this negotiated employee benefit, Hawaiian Telcom fully complies with the Federal Family Medical Leave Act (up to 480-hours of leave a year) and the Hawaii Family Medical Leave Act (an additional 160-hours of leave a year).

Hawaiian Telcom is not mandated by law to provide additional sick leave benefits. It is a voluntary benefit that is provided as somewhat of an "insurance policy" for employees should they become sick to ensure they have the time and financial means to fully recuperate and recover before returning back to work. It is inconceivable that the company should be expected to sanction sick leave abuse by allowing employees unrestricted absenteeism without the means to curb highly

questionable or excessive absences. Condoning unrestricted absenteeism will severely hamper Hawaiian Telcom's ability to provide the same high level of telecommunication services that its customers expect and deserve.

In addition, HRS Chapter 269 requires Hawaiian Telcom to meet certain customer and service benchmarks or face administrative fines or other penalties. The company utilizes an attendance policy that is both fair to employees while recognizing that regular scheduled work attendance is essential in order to satisfy these mandated customer service quality requirements.

If issues arise involving Hawaiian Telcom's negotiated sick leave policy, the company believes that as a matter of public policy the proper venue for resolution is through the collective bargaining process and not by other avenues. The legislature in its wisdom established the collective bargaining process to allow parties to resolve employment issues without the need to legislate every dispute that arises. This bill attempts to undermine the integrity of this well established process by legislating the optional employer-provided benefit of sick leave. Sick leave is part of a negotiated contract between employer and employee and is best resolved through the collective bargaining process.

For all of the reasons set forth above, Hawaiian Telcom opposes HB 341 HD2 and respectfully requests this measure be tabled this session.

Thank you for the opportunity to provide comments.

**Testimony before the House Committee on Finance**  
**on**  
**H.B. 341, H.D.2, Relating to Employment Practices**

**Monday, February 28, 2011**  
**3:30 p.m.; Agenda #7**

By Sherri-Ann Loo, Manager  
Hawaiian Electric Company

Chair Oshiro, Vice Chair Lee, 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.2.

We cannot support H.B. 341, H.D.2 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. 2 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.2.

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



**Testimony to the House Committee on Finance  
Monday, February 28, 2011  
3:30 p.m.  
Conference Room 308, State Capitol  
Agenda #7**

**RE: HOUSE BILL NO. 341 HD2 RELATING TO EMPLOYMENT  
PRACTICES**

Chair Oshiro, Vice Chair Lee, 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 HD2, 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 a 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, creating a protection of the use of 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 has to 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. 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 provide testimony.



## **Before the House Committee on Finance**

DATE: Tuesday, February 28, 2011  
TIME: 3:30 P.M.  
PLACE: Conference Room 308

### **Re: HB 341 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 relating to employment practices.

HB 341 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.



999 Bishop Street Honolulu Hawaii 96813

Presentation to the House Committee on Finance

Monday, February 28, 2011 at 3:30 p.m.

Testimony on House Bill 341 HD 2 Relating to Employment Practices

TO: The Honorable Marcus R. Oshiro, Chair  
The Honorable Marilyn B. Lee, Vice Chair  
Members of the House Committee on Finance

My name is Neal Okabayashi of First Hawaiian Bank. We oppose HB 341, HD 2 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 two-day 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 3. That bill was SB 2883, SD 1, HD 2, CD 1, which was passed by the Legislature last session but vetoed by the Governor.



To: House Committee on Finance

Hearing: February 28, 2011, 3:30 p.m.  
Conference Room 309

Re: HB 341, Relating to Employment Practices

From: Society for Human Resource Management - Hawaii Chapter

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The Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”) represents more than 1,000 human resource professionals in the State of Hawaii. On behalf of our members, we would like to thank the Committee for giving us an opportunity to comment on HB 341, relating to employment practices.

We are opposed to HB 341 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 because the employee uses accrued and available sick leave.

We are concerned HB 341 has the potential to conflict with other leave requirements and policies on the local, state and federal levels including, but not limited to the Hawaii Family Leave Law, the Family Medical Leave Act, the National Defense Authorization Act Amendments, the Americans with Disabilities Act, workers' compensation and temporary disability insurance.

Moreover, we are concerned HB 341 will have the unintended consequence of employers seeking to implement a Paid Time Off policy rather than maintaining separate vacation and sick leave policies. Employees may lose the flexibility they currently have as employers will be more likely to impose and enforce strict requirements for use of sick leave such as requiring a doctor's visit/note and/or that sick leave shall be used solely for the employee's illness and not that of a family member such as a child.

SHRM Hawaii, like SHRM, the national organization of which it is an affiliate, believes that employers, not the government, are in the best position to address workplace needs and know the benefit preferences of their employees which may include other types of leave policies. HR professionals have decades of experience in designing and implementing programs that work for both employers and employees. We're eager to share this expertise with policymakers and welcome a positive dialogue on workplace flexibility policy, rather than a mandate.

Once again, thank you for this opportunity to provide you with this input.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 27, 2011 11:04 PM  
**To:** FINTestimony  
**Cc:** JSWJR66@AOL.COM  
**Subject:** Testimony for HB341 on 2/28/2011 3:30:00 PM  
**Attachments:** HB341 TESTIMONY.pages

Testimony for FIN 2/28/2011 3:30:00 PM HB341

Conference room: 308  
Testifier position: support  
Testifier will be present: No  
Submitted by: JAMES WATARU  
Organization: Individual  
Address:  
Phone:  
E-mail: [JSWJR66@AOL.COM](mailto:JSWJR66@AOL.COM)  
Submitted on: 2/27/2011

Comments: