



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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March 16, 2015

To: The Honorable Gilbert S. C. Keith-Agaran, Chair,
The Honorable Maile S. L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Thursday, March 19, 2015
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 1268 H.D. 2 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB1268 HD2 proposes to amend section 386-25(a), Hawaii Revised Statutes (HRS), to exclude injured public employees who have retired from a public employer with whom they sustained their work injury from vocational rehabilitation (VR) services.

The proposed amendment also requires employees of public employers as defined in section 76-11, HRS, who are eligible for their respective public employer's return to work program, including temporary light duty placement efforts, to participate in and complete the return to work program as a prerequisite to VR benefits under section 386-25(a), HRS.

The department supports the intent of this measure with comments.

II. CURRENT LAW

Chapter 386-25, HRS, provides rules for an injured employee to enroll in a vocational rehabilitation program to assist the injured employee to return to suitable gainful employment in the active labor force as quickly as possible in a cost-effective manner. Injured employees who retire from their job of injury may enroll in VR services if they cannot return to the same type of work and are still looking for other employment. The Department of Human Resources

Development (DHRD) and the City and County of Honolulu (City) currently have a return to work program for the State and City workers injured on the job, however, nothing in the current VR statutes or rules prevent State and City workers from self-enrolling in a VR program outside of the DHRD and City return to work programs.

III. COMMENTS ON THE HOUSE BILL

The Department supports the intent of this measure.

The department is in accord with the requirement that injured public employees must participate in and complete their return to work program as a requisite to VR benefits as this would ensure injured employees are given the opportunity to return to government service through the return to work program before self-enrolling in a VR program.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RANDY BALDEMOR
DEPUTY DIRECTOR

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

March 17, 2015

**TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR**

For Hearing on Thursday, March 19, 2015
9:30 a.m., Conference Room 016

BY

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 1268, H.D. 2
Relating to Workers' Compensation

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON GILBERT KEITH-AGARAN AND MEMBERS OF THE
COMMITTEE:

Thank you for the opportunity to testify on H.B. 1268, H.D. 2.

The purpose of H.B. 1268, H.D. 2, is to require injured public employees who are eligible to take part in an employer's return to work program do so as a prerequisite to receiving vocational rehabilitation through workers' compensation coverage.

The Department of Human Resources Development ("DHRD") has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD **strongly supports** this bill.

First, this measure recognizes one of the central tenets of workers' compensation claims handling, which is to return injured employees to work as soon as possible in a cost-effective manner. The timetable for an employee to return to work following a work-related injury or illness is inherently difficult to predict due to myriad interrelated factors, including the nature and severity of the injury, the overall health of the employee, the treatment regimen of the attending physician, and the response of the

employee to the treatment. However, the benefits of a prompt return, whether to temporary light duty or permanent alternate employment, are well-recognized, including: employees remain physically conditioned and maintain their employment skills; employees psychologically maintain their identity as employees and are less likely to become clinically depressed; employees continue their routine of getting up in the morning and going to work; and employers mitigate their costs for temporary disability wage loss replacement benefits.

Second, this measure supports and codifies the State's existing policy and practice of returning injured employees to work via DHRD's Return to Work Priority Program ("RTWPP"), which is administered by a Vocational Rehabilitation Specialist who is also a Certified Rehabilitation Counselor. The RTWPP was promulgated pursuant to Administrative Directive 94-02, which expresses the State's policy that each department head shall give injured and disabled State employees priority consideration in returning to employment. Under the RTWPP, employees who are medically cleared are returned to temporary light duty work while they recover from their injury. Subsequently, if their work injury permanently precludes them from returning to their usual and customary employment, the RTWPP seeks permanent alternate employment within the State—with the injured employee retaining pay and having priority over all other applicants to vacant positions for which they are qualified and are within their geographical preferences. If a return to employment within the State is not successful during the RTWPP eligibility period, the employee is terminated. However, the State will continue to assist with job search efforts through other provisions of the law, which include private vocational rehabilitation to seek other suitable gainful employment unless the employee decides to retire. The RTWPP eligibility period has the added benefit of giving the employee's department a timetable for the anticipated vacancy and allow it to plan recruitment efforts. Once the position is vacated, the department can then proceed with hiring someone else who is able to perform the work required of the position.

Third, by making the RTWPP a prerequisite to private vocational rehabilitation, this bill will clarify the RTWPP's relationship to our overall vocational rehabilitation

obligations under Chapter 386, HRS. Since the RTWPP was designed to address the first two steps of vocational rehabilitation under Section 386-25(e), HRS, (return to usual and customary employment or return to modified/other work with the same employer), private vocational rehabilitation providers can then concentrate their efforts on the last two steps (employment with another employer or training for another occupational field) and avoid duplicating the previous efforts of the State. This is a critical point to understand because employees who are in vocational rehabilitation are entitled to ongoing temporary total disability (“TTD”) benefits—paid by their employer—if they earn no wages during that time. These TTD benefits are often the largest component of any vocational rehabilitation liability when compared to direct VR costs such as books, equipment, tuition, and the vocational rehabilitation provider’s fees. For example, an employee who is entitled to the maximum compensation rate of \$786.00 per week would receive \$40,872.00 in TTD alone while in vocational rehabilitation for just one (1) year.

Finally, we believe this bill will assist the State with controlling its workers’ compensation costs based on some of the adverse administrative decisions that have been rendered against the State over the years and our claims handling experiences. For example, the State has been held liable for an employee’s vocational rehabilitation and TTD benefits even though the employee had already retired and removed himself from the active labor force. We have also been held liable for ongoing TTD benefits for an employee who refused to return to work even after she was medically cleared by her physician and was offered light duty work within her restrictions. We have also faced situations where employees do not participate in the RTWPP and then challenge their proper termination under Section 386-142, HRS, which allows same when the employer has no other available work which the employee is capable of performing. At other times, we have had employees who self-refer to private vocational rehabilitation providers who then bill the State for “monitoring” the employee during the RTWPP process. We believe that all of the foregoing decisions and situations, together with the attendant costs of same, can be prevented in the future should this bill become law.

Thank you for the opportunity to testify in **strong support** of this measure.

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/19/2015

Time: 09:30 AM

Location: 016

Committee: Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

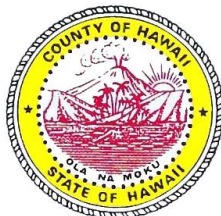
Title of Bill: HB 1268, HD2 RELATING TO WORKERS' COMPENSATION.

Purpose of Bill: Requires injured public employees who are eligible to take part in an employer's return to work program do so as a prerequisite to receiving vocational rehabilitation through workers' compensation coverage. (HB1268 HD2)

Department's Position:

The Department of Education (Department) supports H.B. 1268, H.D. 2. The bill supports the Department's return to work program which provides eligible injured Department employees, who are unable to return to their usual and customary duties due to injury or illness, a cost-effective opportunity for temporary duty or placement to another suitable position.

William P.
Kenoi



Sharon Toriano
Director of Human
Resources

Nicholas M.
Hermes

County of Hawaii
Department of Human Resources

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March 17, 2015

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

For Hearing on Thursday, March 19, 2015
9:30 a.m., Conference Room 016

BY

SHARON TORIANO
DIRECTOR

**House Bill No. 1268, H.D. 2
Relating to Workers' Compensation**

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON GILBERT KEITH-AGARAN AND MEMBERS OF THE
COMMITTEE:

Hawai'i County submits this testimony in strong support of H.B. 1268,
H.D. 2.

The purpose of H.B. 1268, H.D. 2, is to require injured public employees who are eligible to take part in an employer's return to work program do so as a prerequisite to receiving vocational rehabilitation through workers' compensation coverage.

The County of Hawai'i, Department of Human Resources has a fiduciary duty to administer the County's self-insured workers' compensation program and the expenditure of taxpayer dollars. We strive to judiciously manage workers' compensation claims, while at the same time providing the injured employee with all of the remedies mandated by Chapter 386 HRS.

Hawai'i County is an Equal Opportunity Provider and
Employer.

A challenge that we continually face in our claims management is coordinating early return to either light/modified work, or in the case of permanent impairment, return to alternate work. The passage of this Bill will facilitate an early return to work of injured workers' by expediting and mandating employee's enrollment and participation in the County's Return to Work Program which is administered by the Department of Human Resources.

The County's Return to Work Program provides employees priority consideration in returning to employment once they have been cleared to return to work. The Program also provides for temporary light duty work while they recover from their injury. If an employee's work injury permanently precludes them from returning to their usual and customary employment, the County's Return to Work Program identifies employment and placement opportunities within the County, with the injured employee retaining pay and having priority over other applicants to vacant positions for which they are qualified. Absent the identification of employment within the County's Return to Work specified six month eligibility period, the employee is terminated, but remains entitled to private vocational rehabilitation to seek other suitable employment.

By mandating the participation of injured employee's in the County's Return to Work Program as a prerequisite to private vocational rehabilitation, private vocational rehabilitation providers can focus their efforts solely on employment with another employer or training for another occupational field, and avoid duplicating the previous efforts taken by the County.

We believe this bill will aid the County with controlling its workers' compensation costs. As with other public sector self-insureds, Hawai'i County has suffered adverse administrative decisions over the years, some of which have resulted in the County being held liable for an employee's vocational rehabilitation and temporary total disability (TTD) benefits even though the employee had already retired and removed himself from the active labor force. The County has also been held liable for ongoing TTD benefits for employees who refused to return to work even after medically cleared by physicians and offered light duty work within their restrictions. In some instances, employees

who have not participated in the County's Return to Work Program have challenged their proper termination under Section 386-142, HRS, which is allowable when the employer has no other available work for which the employee is capable of performing. We are encouraged by the recognition of and attempt to curb what we perceive to be an unnecessary cost driver to claims management.

Thank you for the opportunity to testify in **strong support** of this measure. We respectfully urge the Committee to pass this bill.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

March 19, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee
on Judiciary and Labor
The Senate
State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members of the Committee:

SUBJECT: House Bill No. 1268, HD2
Relating to Workers' Compensation

The purpose of H.B. 1268, HD2, is to limit vocational rehabilitation services under Hawaii Revised Statutes (HRS) Section 386-25 to those public employees who have participated in and completed their respective public employer's return to work program and limit vocational rehabilitation to those employees who have not retired from the employer with whom they sustained their work injury.

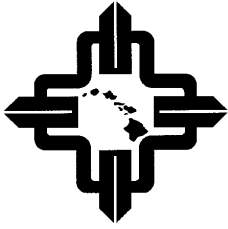
The City and County of Honolulu, Department of Human Resources, supports H.B. 1268, HD2. The revisions to HRS Section 386-25 proposed by the measure will provide clarification regarding eligibility for vocational rehabilitation benefits. At the same time, H.B. 1268, HD2, will increase the effectiveness of a public employer's return to work program while also providing an injured public employee the opportunity to continue working with his or her current employer.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo".

Carolee C. Kubo
Director



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

March 19, 2015
Conference Room 016
9:30 a.m.
Hawaii State Capitol

**Testimony Supporting House Bill 1268 (HD2),
Relating To Workers' Compensation.
Requires injured public employees, who are eligible to participate in
an employer's return to work program, do so as a prerequisite
to receiving vocational rehabilitation benefits.**

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony in **support of HB 1268 (HD2)**, that requires an eligible injured employee to participate in the employer's return to work priority program (RTWPP) as a prerequisite to vocational rehabilitation benefits.

HHSC is committed to assisting our employees who are disabled by a work-related injury or illness in obtaining suitable employment. Like many – if not all – public employers in Hawaii, HHSC has a RTWPP program that details the benefits, procedures, and job search criteria. The program has a "light duty work" option which mandates the Human Resources Director to consider temporary modifications of the employee's normal duties and responsibilities. This assessment is done in an effort to accommodate any restrictions the employee may have, and to begin the journey of the employee's return to work. However, many eligible employees do not utilize this light duty benefit because participating in the RTWPP program is voluntary. Thus, many eligible employees simply opt-out of participation altogether.

Under the current workers' compensation system, an eligible employee can initiate vocational rehabilitation benefits and select a certified provider. Other than filing an objection to the employee's choice of plan, the employer's role is very limited in the process. In the interim, the employee continues to be out of work, and paid temporary disability benefits as required by law. Should the injured employee's absence be prolonged – which is common – the employer struggles to meet its operational demands. In the case of HHSC, preserving high quality patient care in our 24/7 facilities

requires adequate staffing at all times. Hence, we must have the ability to forecast and direct our workforce.

This uncertainty of when an employee will return to duty is daunting. The unintended consequence is that existing employees must take on the additional duties and responsibilities. This, in turn, adversely affects morale in our departments. The employer sustains additional costs in overtime and, where department turnover is high as a result, the training of new employees. This domino effect puts an unnecessary strain on the workforce and the community at large.

Passage of this bill will alleviate the aforementioned problems by encouraging more collaboration between the employer and the injured employee. It will allow the employer more ability to control its workforce, and help pave the way for the employee's return to work.

Thank you for the opportunity to testify before this committee. We respectfully recommend the Committee's support of this measure.