



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 15, 2016

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

The Honorable Rosalyn H. Baker, Chair  
The Honorable Michelle N. Kidani, Vice Chair, and  
Members of the Senate Committee on Commerce, Consumer Protection,  
and Health

Date: Thursday, March 17, 2016  
Time: 9:00 a.m.  
Place: Conference Room 016, State Capitol

From: Linda Chu Takayama, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2363 H.D. 1 Relating to Labor**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB2363 HD1 proposes to amend sections 386-31, 386-95, 386-96, 386-123, and 386-129, Hawaii Revised Statutes (HRS), of the workers' compensation (WC) law by increasing the penalties for noncompliance with the WC law, and for late or non-filing of required reports to an unspecified amount. The proposal also allows electronic filing of employer's and physician's reports.

HB2363 HD1 also proposes to amend sections 392-5 and 392-47, HRS, of the temporary disability insurance (TDI) law by adding additional exclusions and increasing the penalties for noncompliance with the TDI law to an unspecified amount.

Thank you for hearing this Administration proposal. The department strongly supports this measure and notes that the current WC penalties were last amended twenty-eight (28) years ago in 1988, while the TDI penalties have not changed since they were first

established forty-seven (47) years ago in 1969.

## **II. CURRENT LAW**

Section 386-31(b), HRS, provides requirements for payment of WC temporary total disability (TTD) benefits and penalties for noncompliance when an injured employee is temporarily unable to work due to their work injury.

Section 386-95, HRS, provides employer's requirements for filing reports for the work injury.

Section 386-96, HRS, provides requirements for physicians, surgeons, and hospitals to file their reports for treatment of the industrial injury and penalties for noncompliance.

Section 386-123, HRS, provides penalties for noncompliance in securing coverage for employees with the WC law.

Section 386-129, HRS, provides penalties against employers for deducting any of the WC premium cost from the wages of an employee.

Section 392-5, HRS, identifies services excluded under the TDI law.

Section 392-47, HRS, provides penalties for noncompliance with the TDI law.

## **III. COMMENTS ON THE HOUSE BILL**

The department strongly supports this proposal for the following reasons.

The proposed amendments to the TDI law in section 392-5, HRS, will exclude certain employers from providing TDI coverage for themselves if they perform services in certain types of entities (i.e. their own corporation, limited liability company (LLC), limited liability partnership (LLP), partnership, or sole proprietorship). These exclusions mirror the ones in the WC law and will facilitate the enforcement of the TDI compliance statutes.

The proposed amendments to the WC law in sections 386-95 and 386-96, HRS, will allow employers and physicians to file reports electronically, and will expedite the transmission and receipt of important claims and medical information. Faster receipt of reports and documents will facilitate the resolution of disputed WC cases and provide medical and indemnity benefits more quickly to the injured employee.

The proposed increase in WC and TDI penalties will provide a stronger incentive for employers and stakeholders in the WC and TDI industry to comply with their respective laws. The current WC penalties were last amended twenty-eight (28) years ago in 1988, while the TDI penalties have not changed since they were first established forty-seven (47) years ago in 1969.

Considering the length of time since the penalties were last changed, the department recommends the following increase in WC fines and penalties.

- Section 386-31(b), HRS, (Failure of the employer to comply with WC Temporary Total Disability payments section) to increase from not more than \$2,500.00 to not more than \$5,000.00.
- Section 386-96(b)(2), HRS, (Failure of the physician to file a timely final report) to increase from \$250.00 to \$500.00.
- Section 386-96(d), HRS, (Failure of the employer to furnish medical reports) to increase from \$1,000.00 to \$5,000.00.
- Section 386-123, HRS, (Failure of the employer to secure WC coverage) to increase from a minimum penalty of not less than \$250.00 to not less than \$500.00. Also, instead of charging \$10.00 per employee per day, the department recommends an increase to \$100.00 per employee per day for each day of non-coverage.
- Section 386-129, HRS, (Employer charging the employee for WC premium costs) the maximum cap to increase from \$2,500.00 to \$5,000.00.

Similarly, the department recommends increasing the minimum penalty for non-compliance with the TDI law from \$25.00 to \$500.00 and the penalty for non-coverage from \$1.00 per employee per day to \$100.00 per employee per day for each day of non-coverage.

# Hawai'i Construction Alliance

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March 15, 2016

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

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Senate Committee on Commerce, Consumer Protection, and Health  
Hawai'i State Legislature  
Honolulu, Hawai'i 96813

## **RE: Strong Support for HB2363 HD1, Relating to Labor**

Dear Chair Keith-Agaran, Chair Baker, Vice Chair Shimabukuro, Vice Chair Kidani, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support HB2363 HD1, relating to labor**, insofar as the bill proposes to increase penalties for:

- Failure to make correct or timely temporary total disability benefit payments or for terminating such benefits (Section 1) ;
- A physician's failure to file medical reports or for an employer's failure to provide copies of requested medical reports (Section 3);
- Not having TDI coverage (Section 4);
- Deducting premium payments from employee wages (Section 5); and
- Not having Workers' Compensation coverage (Section 7).

We also strongly support the bill insofar as it would allow for electronic reporting of injuries and other workers' compensation reports (Sections 2 and 3), as we believe this will facilitate more timely and accurate reporting by physicians and employers regarding workers' compensation claims.

We do not offer comments at this time pertaining to Section 6 of the bill, which would redefine the term "employment" in HRS §392-3.

It is far too common for employers in Hawai‘i — particularly in the construction industry — to not provide their employees with temporary disability insurance and workers’ compensation coverage. Often, this is due to employers fraudulently misclassifying workers as “independent contractors,” or willfully neglecting to provide such coverage in an attempt to cut costs and retain profits. This sort of behavior is unacceptable and actively harms Hawai‘i workers and families. The extent of this problem was made clear to the general public through a “regulatory action” undertaken by DLIR at a high-profile construction site late last year.

We firmly believe that the existing fine structure is outdated and is not an effective deterrent in today’s market. The fines for not providing temporary disability insurance coverage were last updated forty-five years ago (Act 109, 1971), and the fines for not providing workers’ compensation coverage was last updated twenty-eight years ago (Act 37, 1988). If the fine structure is not modified, unscrupulous behavior on the part of employers will continue to proliferate, not only in the construction industry, but throughout other sectors of the economy as well.

Therefore, we strongly urge your committees to pass HB2363 HD1, relating to labor.

Mahalo,

A handwritten signature in black ink, reading "Tyler Dos Santos-Tam". The signature is fluid and cursive, with the first name "Tyler" being the most prominent.

Tyler Dos Santos-Tam  
Executive Director  
Hawai‘i Construction Alliance

Testimony of  
Pacific Resource Partnership

State of Hawaii  
Senate Committee on Commerce, Consumer Protection, and Health  
Senator Rosalyn H. Baker, Chair  
Senator Michelle N. Kidani, Vice Chair

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

HB 2363, HD1 – Relating to Labor  
Thursday, March 17, 2016  
9:00 A.M.  
State Capitol – Room 016

Aloha Chairs Baker & Keith-Agaran, Vice Chairs Kidani & Shimabukuro and members of the Committees:

We support HB 2363, HD1 which proposes to align Hawaii's penalties with other states. The fines for not providing temporary disability insurance (TDI) coverage were last updated over 40 years ago and the fines for not providing workers' compensation (WC) coverage was last updated over 25 years ago. We believe the current fine structure needs to be updated as it is not an effective deterrent in today's market.

It is a common practice for employers, especially in the construction industry, to not provide TDI and WC insurance coverages due to the misclassification of employees as independent contractors.

Misclassified employees often are denied access to protections and benefits to which they are entitled. Employee misclassification generates substantial losses to our local and federal governments in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds. If the fine structure is not modified, unscrupulous contractors will continue to cheat the system hurting taxpayers and undermining the economy.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on HB 2363, HD1.



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About PRP

*Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.*