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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 8, 2016

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 9, 2016
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 2363 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2363 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. The proposal also allows electronic filing of employer's and physician's reports.

H.B. 2363 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.

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.

The department proposes to increase the following workers' compensation penalties:

- Section 386-31(b) (Failure of the employer to comply with WC TTD payments section) will increase from not more than \$2,500.00 to not more than \$5,000.00.
- Section 386-96(b)(2) (Failure of the physician to file a timely final report) will increase from \$250.00 to \$500.00.
- Section 386-96(d) (Failure of the employer to furnish medical reports) will increase from \$1,000.00 to \$5,000.00.
- Section 386-123 (Failure of the employer to secure WC coverage) will 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 (Employer charging the employee for WC premium costs) the maximum cap will increase from \$2,500.00 to \$5,000.00.

The department proposes to increase the minimum penalty for noncompliance with the TDI law from \$25.00 to \$500.00 and increase the penalty from \$1.00 per employee per day to \$100.00 per employee per day for each day of non-coverage. The department believes the increase in penalties will promote compliance with the TDI law.

Hawai'i Construction Alliance

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February 8, 2016

The Honorable Mark M. Nakashima, Chair
The Honorable Jarrett Keohokalole, Vice Chair
and members
House Committee on Labor and Public Employment
Hawai'i State Legislature
Honolulu, Hawai'i 96813

RE: Strong Support for HB2363, Relating to Labor

Dear Chair Nakashima, Vice Chair Keohokalole, 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, 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 committee to pass HB2363, 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 Brooke Wilson
Pacific Resource Partnership

Committee on Labor and Public Employment
Representative Mark Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Committee on Transportation
Representative Henry Aquino, Chair
Representative Matthew LoPresti, Vice Chair

HB 2363 – Relating to Labor
Tuesday, February 09, 2016
9:30 A.M.
State Capitol – Room 309

Aloha Chairs Nakashima and Aquino, Vice Chairs Keohokalole and LoPresti and members of the Committees:

We support HB 2363 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.



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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.

The Twenty-Eighth Legislature
Regular Session of 2016

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
State Capitol, Conference Room 309
Tuesday, February 9, 2016; 9:30 a.m.



**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2363
RELATING TO LABOR**

The ILWU Local 142 **supports** H.B. 2363, which excludes employers from providing TDI coverage for themselves if they perform services for their own corporation, limited liability company, limited liability partnership, partnership or sole proprietorship. Also allows the Director to receive electronic reports of injuries and other required workers' compensation reports and increases penalties for not having TDI coverage, for failure to make correct or timely benefit payments, for terminating such benefits, for failure to file medical reports, for employer's failure to provide copies of requested medical reports, for not having workers' compensation coverage, and for deduction of premium payments from employee wages.

Increasing penalties for employers' failure to provide timely payments, reports, workers' compensation coverage and the like is appropriate given the fact that these penalties have remained the same for almost 30 years, despite increases in Hawaii's cost of living. Without adequate penalties, employers have acted with impunity while workers have suffered.

Allowing reports to be filed electronically just makes sense in our increasingly technological world. It is amazing that this was not allowed sooner.

Our only concern about H.B. 2363 is the specific exclusion of employers from temporary disability insurance coverage as a blanket exclusion rather than allowing individual employers to opt in or opt out as they choose.

The ILWU supports H.B. 2363 with the concern noted. Thank you for allowing us to share our views and concerns.