



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

February 9, 2023

To: The Honorable Scott Z. Matayoshi, Chair,
The Honorable Andrew Takuya Garrett, Vice Chair, and
Members of the House Committee on Labor & Government Relations

Date: Friday, February 9, 2023
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 854 RELATING TO DISLOCATED WORKERS

I. OVERVIEW OF PROPOSED LEGISLATION

The DLIR **opposes** this measure as drafted, but appreciates the intent to help ensure certain incumbent workers maintain gainful employment during a divestiture of a business entity subject to Hawaii's Dislocated Worker Law. The measure raises several issues that the DLIR suggests requires clarification.

HB854 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by requiring the retention of employees who would be displaced from an employer by divestiture through a transfer of a covered establishment to a new employer. The following requirements would apply to the new employer:

- A. Shall hire all incumbent nonsupervisory and non-confidential employees;
- B. Shall not require such employees to file employment applications with the successor employer to be considered for hire unless the existing files are incomplete;
- C. May retain less than one hundred percent of incumbent employees if the successor employer is substantially dissimilar to the former employer's business;
- D. Shall recognize all existing collective bargaining agreements if the number of incumbent employees in the bargaining unit is sufficient to require recognition of the bargaining unit;

- E. If in violation, shall compensate the dislocated worker the difference between the employee's salary or wage earned under the employee's former employer and the dislocated employee's unemployment insurance benefits received for the covered period.

For the purposes of this bill, a "covered establishment" means any industrial, commercial or other business entity that employed twenty-five or more persons at any time in the preceding twelve-month period.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance for workers who are faced with termination due to a closing, divestiture, partial closing or relocation as a result of a sale, transfer, merger, bankruptcy or other business transactions by:

- A. Requiring employers with fifty or more employees in the State of Hawaii to provide advance notification to the Department of Labor and Industrial Relations and to all affected employees: this is the State counterpart to the federal Worker Adjustment and Retraining Notification (WARN) notice.
- B. Requiring employers to provide a Dislocated Worker Allowance (the difference between the employee's average weekly wage and the weekly unemployment compensation benefit) to affected employees who apply for and are found eligible for unemployment compensation.
- C. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation; and
- D. The definition of a "divestiture" is the transfer of any covered establishment from one employer to another because of the sale, transfer, merger, bankruptcy or other business takeover or transaction of business interests that causes the covered establishment's employees to become dislocated workers.

III. COMMENTS ON THE HOUSE BILL

The DLIR offers the following comments:

- The terms "nonconfidential," "employee's wages," and "substantially dissimilar" should be defined to provide guidance to the department on the intent of the law.

- The DLIR is unsure if requiring the recognition of all existing collective bargaining agreements comports with State and Federal law.
- The proposed new subsection provides a different definition of “covered establishment” than the existing one in §394B-2 Definitions.
- The right of the employer in proposed subsection (b) and the provisions 1-4 in the proposed (a) would be difficult for the department to interpret.
- Due to these ambiguities above, and in light of the requirement to adopt rules, it is difficult for the DLIR to ascertain how many staff and what amount of general fund appropriation may be required to carry out the measure.



Eric W. Gill, Financial Secretary-Treasurer

Gemma G. Weinstein, President

Cade Watanabe, Senior Vice-President

February 8, 2023

Committee on Labor & Government Operations
Representative Scot Matayoshi, Chair
Representative Andrew Garrett, Vice Chair

Testimony in **support of HB854**

Chair Matayoshi, Vice Chair Garrett and Members of the Committee:

UNITE HERE Local 5 represents working people throughout Hawaii's hotel, food service and health care industries. **UNITE HERE Local 5 is in support of HB854.**

HB854 would provide a critically needed protection for workers. As a labor organization with a long history of activism we are well-aware of the injustice that can occur when a business is sold or otherwise transferred to new owners.

Without protections, workers can be laid off en masse, forced to re-apply for jobs they held for years (sometimes at reduced pay or benefits), or forced to look for new work. Ownership changes and associated layoffs are an opportunity for discrimination, particularly based on age, but also on sex, race, gender identity, disability, etc. Ownership changes shouldn't be a cause of insecurity for workers.

The disruptive COVID-19 pandemic showed how important it is for workers to have protections in the face of workplace upheaval. When the COVID-19 lockdowns resulted in mass layoffs and furloughs, it was unclear if anyone would ever return to work. The mood of fear and uncertainty during the pandemic was wide scale, and it continues today on a micro level every time a business is taken over and workers can't rely on laws to protect their economic security. In today's world, where individual retirement accounts have largely replaced pensions, where health care coverage is largely dependent on one's employment, where housing, child care, elder care, school, and basic goods and services are increasingly expensive, workers have taken on more risk than ever. This bill can mitigate some of that risk without costing employers anything.

HB854 would provide a basic level of dignity and peace of mind to working individuals in times of great uncertainty. Please pass HB854. Thank you for your attention.

UNITE HERE Local 5