



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

March 23, 2026

To: The Honorable Brandon J.C. Elefante, Chair,
The Honorable Rachele Lamosao, Vice Chair, and
Members of the Senate Committee on Labor and Technology

Date: Monday, March 23, 2026
Time: 3:01 p.m.
Place: Conference Room 225, State Capitol

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

Re: H.B. 2165 HD2 RELATING TO HAWAII EMPLOYMENT SECURITY LAW

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports the intent** of this measure and **respectfully requests** an amendment in SECTION 2 to move the amendment pertaining to limiting collections from subsection (a) to subsection (c). The measure also amends an eligibility provision regarding labor disputes to conform to federal law in response to formal guidance (attached) issued by the U.S. Department of Labor (U.S. DOL).

HB2165 HD2 proposes to amend HRS Chapter 383 to conform it to federal law and improve operations by:

- Clarifying the circumstances in which individuals are required to register for work,
- Limiting individuals' liability for overpaid benefits to 50% of the weekly benefit amount up to \$250 per week,
- Removing the two-year limitation on the recoupment of overpaid benefits,
- Allowing the Department to assess and collect a service charge for dishonored payments,
- Specifying that the Department may use electronic notification to inform employers to submit separation responses and wage information,
- Increasing the penalties for failure to file wage reports and reports of separations; and
- Removing and updating various statutory provisions.

II. CURRENT LAW

§383-29 provides eligibility criteria for benefits and specifies the circumstances in which individuals are required to register for work.

§383-44(a) provides the general principles pertaining to the recovery of benefits overpaid.

§383-44(c) requires the repayment of overpaid benefits and limits recovery of overpaid benefits from new claims benefits within two years of a final determination or decision. It also enables the Department to recover overpaid benefits from federal income tax refunds.

§383-70 requires employers to pay contributions and submit reports to the Department.

§383-94 requires employers to maintain accurate records and provide reports and information to the Department.

III. COMMENTS ON THE HOUSE BILL

The Department supports the intent of this measure to improve operations and align state law with federal unemployment insurance requirements. However, the Department has grave concerns regarding the overpayment provision contained in Section 2 of the current draft of the measure, as it undermines program integrity requirements and exposes the State to significant federal conformity risk. The U.S. DOL requires that states pursue the recovery of overpayments by utilizing available methods, including offsetting overpayments from future unemployment benefits.

Therefore, the Department recommends that the language relating to the limitations on collections should be relocated from subsection (a), which addresses liability, to subsection (c), addressing recovery methods (suggested language below).¹ Thereby, §383-44(a) can be deleted from the measure. This structure is consistent with the existing statutory framework and will clearly distinguish between the determination of liability and the mechanisms available for recovery. Further discussion regarding overpayments is provided below.

On January 8, 2026, the U.S. DOL issued formal guidance pertaining to labor disputes (attached), which makes it clear that the amendment requested by the DLIR last session and that was enacted is not in conformity to the federal law (Act 214, SLH 2025). The requirements set forth in the guidance do not apply to workers who are members in good standing of a union with a hiring hall.

The U.S. DOL guidance emphasizes that states are required to enforce eligibility requirements for work registration, availability for work, and active work search, and may not create exceptions to those requirements for individuals involved in labor disputes, unless they are members in good standing of a union with a hiring

hall. Failure for the State to comply jeopardizes the UI administrative grant (≈ \$14,000,000) and employer tax credits.

The Department strongly supports the other provisions of this measure that improve the administration of the UI program. The measure improves operational efficiency by authorizing a service charge for dishonored payments and modernizing employer reporting requirements. Dishonored payments create significant administrative burdens, requiring staff to reconcile, reprocess, and account for these transactions. They also result in additional administrative and banking costs, including staff time and fees assessed by financial institutions.

The service charge language is drafted in general terms to allow flexibility as these costs may change over time. This approach ensures that the Department can recover actual costs without requesting statutory amendments. This language also supports program operations by having recovered amounts deposited into the special unemployment insurance administration fund.

The measure also modernizes employer reporting requirements by requiring responses from employers to electronic requests from the DLIR within five calendar days. This five-day response requirement already exists in §383-94, which is being amended in this measure to require electronic communications, and which is essential to ensure that claims are processed accurately and that benefits are paid when due.

Employers have access to the State Information Data Exchange System (SIDES), which is a free, federally supported platform that allows employers to receive requests electronically and respond quickly and efficiently. The Department has conducted substantial outreach and provided training to employers on SIDES to facilitate employer adoption. Timely responses benefit employers as delayed responses can result in benefits being paid before issues are identified, leading to redeterminations, appeals, and potential improper charges to employer accounts.

The measure also updates penalty provisions that have not been updated since the adoption of the statute and which no longer provide a meaningful deterrent for late or missing reports. In response to concerns about a large increase, the Department suggested amending the penalty amounts to \$300. This amount is a meaningful incentive that will promote compliance and timely reporting. The DLIR notes it retains the discretion to waive or reduce penalties pursuant to §383-73.

Overpayments

As drafted, Section 2 circumvents the determination process and creates an exception where a claimant would not be required to repay an overpayment if the liability would reduce the weekly benefit amount to below \$250. As a result, benefits that were determined to have been improperly paid can never be recovered, despite the fact that they remain legally owed to the Unemployment Compensation Trust Fund (UCTF).

When a claimant is determined to have been overpaid unemployment insurance benefits and is held liable for repayment, that determination reflects that the claimant was not entitled to those benefits under the eligibility requirements of the UI program. The determination is made after the Department conducts a fact-finding process in which all parties, including the claimant, are given the opportunity to present arguments, documentation, and other evidence. The determination can be appealed to the Employment Security Appeals Referees Office and courts. Additionally, the Department also has the discretion to waive recovery of overpayments when the overpayment occurred without fault and recovery would be against equity and good conscience. The Department also works with individuals to establish reasonable repayment arrangements when appropriate.

The proposed provision also raises federal conformity issues under the “Immediate Deposit and Withdrawal Standard.” This standard protects funds in the UCTF by prohibiting withdrawals for purposes other than the payment of unemployment compensation, except as specifically authorized under federal law. Allowing improperly paid benefits to remain with individuals who were determined to be ineligible conflicts with this federal requirement.

Improperly paid benefits remain legally owed to the UCTF, which is funded entirely by employer contributions. Federal law requires states to maintain effective procedures to detect and recover unemployment benefit overpayments. The Social Security Act mandates that state unemployment compensation laws must include methods of administration reasonably calculated to ensure the proper payment of benefits and the safeguarding of unemployment funds. In addition, state laws must satisfy the conformity requirements of the Federal Unemployment Tax Act (FUTA), which require state programs to operate in a manner consistent with federal program integrity standards.

The U.S. DOL requires that states pursue the recovery of overpayments by utilizing available methods, including by offsetting overpayments from future unemployment benefits. The U.S. DOL further declared that the offsets from future benefits are the principal method of collecting overpayments because they provide a direct, efficient, and feasible means of ensuring that the debts owed to the UCTF are repaid.

Therefore, the liability limitations contained in this measure prevent the Department from maintaining recovery mechanisms as required by federal law. The U.S. DOL oversees and evaluates the Department's conformity and compliance with federal requirements and expects that the Department will ensure that overpayments are recovered. **A finding of non-conformity and/or non-compliance will result in the loss of federal funding for the entire UI program, and the employer tax credits under the FUTA.**

Thank you for the opportunity to provide testimony on this measure.

¹"(c) The individual liable, in the discretion of the department, shall repay the overpaid amount [~~to which the individual is liable under subsection (a)~~] and the penalty assessment amount to the department for the fund or have the overpaid amount only deducted from any future benefits payable to the individual under this chapter [~~within two years after the date of mailing of the notice of redetermination or the final decision on an appeal from the redetermination.~~]; provided that deductions shall not exceed fifty per cent of the weekly benefit amount paid for that week and does not reduce the weekly benefit amount below \$250. [~~Effective April 1, 2013, the~~] The overpaid benefits amount and the penalty assessment amount, costs, and administrative fees may be deducted from federal income tax refunds."



January 8, 2026

Dear State Administrators and UI Directors,

To preserve the integrity of the nation's Unemployment Insurance (UI) system, I am writing to clarify the requirements of federal UI law with respect to the UI eligibility of individuals during a strike.

Federal law establishes requirements for state UI programs, including broad coverage provisions, benefit provisions, experience rating requirements, and certain administrative requirements.¹ A state's failure to follow these requirements may lead to conformity or compliance issues. A state's law must conform to the requirements of federal UI law in order for the state to receive grants to administer their UI programs and for employers in the state to receive credits under the Federal Unemployment Tax Act (FUTA).²

Please find attached a series of questions and answers that can help states remain in conformity and compliance with federal UI law on the issue of striking workers.

I hope this information is helpful. If you have additional questions or would like further technical assistance on proposed legislation, please contact your ETA Regional Office.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Beebe".

Michelle Beebe
Administrator
ETA Office of Unemployment Insurance

Attachment(s): Questions and Answers

¹ See, 26 U.S.C. 3301, et seq., 42 U.S.C. 501, et seq.

² See, 20 C.F.R. Part 601 *et seq.*

Questions and Answers

Question #1. Is it a violation of federal UI law for states to provide UI benefits to striking workers?

Response #1.

The only provision in federal law that addresses UI coverage in the context of a labor dispute is [Section 3304\(a\)\(5\) of the Federal Unemployment Tax Act \(FUTA\)](#), which requires, as a condition for employers in a state to receive credit against the federal tax, that UI benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;*
- (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;*
- (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.*

In 1979, the Department published [Unemployment Insurance Program Letter \(UIPL\) No. 24-79](#), which addresses this topic. The UIPL discusses the U.S. Supreme Court's decision not to disturb New York's law allowing payment of UI benefits to striking workers after an extended eight week waiting period in New York. See, *Telephone Company v. New York State Dept. of Labor*, 440 U.S. 519 (1979).

Question #2. If state law permits the payment of UI benefits to striking workers, what are the federal requirements for making such payments?

Response #2. States must require claimants to be able to work, available for work, and actively seeking work. [Section 303\(a\)\(12\)](#), of the Social Security Act (SSA), requires that state UI law provide "as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work." A state may not exempt individuals from the requirements of Section 303(a)(12), SSA.

While activities constituting "actively seeking work" are not defined in federal UI law, State UI law must require, at minimum, some evidence of work search activity for each week received. Thus, **an individual who is on strike must engage in activities that demonstrate to the state UI agency that he or she is able and available for work and actively seeking work under State law.**

The state UI agency must also monitor in accordance with state policies and procedures whether the claimant is able and available for work and actively seeking other work for

each week UI benefits are received. The state UI agency must, in accordance with state policies and procedures, examine the claimant's activity to make sure the effort to secure other work is genuine in nature and that the claimant has not withdrawn from the labor market, including by engaging in activity, such as picketing, to the exclusion of seeking other work.

With respect to the work search requirement, states must establish active work search requirements "consistent with the strong expectation that [UI] beneficiaries will be engaged in concerted and effective efforts calculated to find a suitable job in the shortest period of time that is practicable." See, [UIPL No. 05-13](#).

Question #3. Do the terms "available to work" and "actively seeking work" mean the claimant has to be looking for a new job and able to take one if offered? Or does it mean that at some time in the future they will be willing to return to a job once the union is satisfied with the term of a contract offer from the employer?

Response #3. Section 303(a)(12), SSA provides that the Secretary of Labor shall make no certification for payment to any state unless the Secretary of Labor finds that the law of such state, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for "a requirement that, as a condition of eligibility for regular compensation for any week, a claimant must be able to work, available to work, and actively seeking work." See, 42 USC 503(a)(12). A state may not, consistent with Section 303(a)(12), SSA, exempt individuals from these requirements. As a result, the state UI agency must monitor whether the worker is able and available for work and actively seeking other work for each week benefits are claimed. The state UI agency must examine the claimant's activity to make sure the effort to secure other work is genuine in nature and that the claimant has not withdrawn from the labor market by engaging in activity (e.g., picketing) to the exclusion of seeking other work.

With respect to the work search requirement, states must establish active work search requirements "consistent with the strong expectation that [UI] beneficiaries will be engaged in concerted and effective efforts calculated to find a suitable job in the shortest period of time that is practicable." See, [UIPL No. 05-13](#).

States may not provide for blanket exemptions from the work search requirement. In addition, the Department has long held that states must consider an individual who satisfies the following criteria to meet the work search requirement: (1) the individual is members of a union with a union hiring hall; (2) the individual is eligible to receive work from the union hiring hall (*e.g.*, is a member in good standing); and (3) the individual complied with the union's requirements, where the hiring hall is the only permissible way for them to seek work in accordance with the terms of their current union contract/membership. The Department has taken this position because applying the work search requirement in a different manner to these individuals would conflict with Section 3304(a)(5), FUTA, which prohibits states from denying UI benefits to an individual for refusing to accept work that would require the individual to resign from or refrain from joining a bona fide labor organization.

Question #4. Are workers who are involved in a strike “actively seeking work” if their only work search activity is remaining in contact with their union?

Response #4. No. The worker must satisfy the criteria in **Question #3**.

Question #5. What does federal UI law require in a situation where an employer asks an employee to come back to work before the labor dispute is resolved and the employee refuses? Would that refusal have an impact on an employee’s eligibility for unemployment benefits?

Response #5. Depending on the circumstances of the scenario described, the employer’s request could be considered an offer of work and the state would need to adjudicate the issue in accordance with state law regarding refusals of work.

Before a state could adjudicate the issue, the agency would need to confirm that the offer of work meets the labor standards requirements of 3304(a)(5), FUTA, including that is not a position that is open due to the strike. The labor standards contain a minimum threshold that any offers of new work must meet in terms of labor/management relations and prevailing wages, hours or other conditions of work in the locality. The state must consider whether the “*wages, hours, or other conditions of work are substantially less favorable than those prevailing for similar work in the locality*” even when the offer of work comes from an employer the claimant previously or most recently worked for. Similarly, it makes no difference that the claimant may have previously worked at a job “*below*” the conditions prevailing in the locality. See, [UIPL No. 41-98](#), and [UIPL No. 41-98, Change 1](#).

Question #6. If a state’s law exempts striking workers from having to conduct a job search, would the state be in violation of federal unemployed compensation law?

Response #6. Yes.

Question #7. What are the potential consequences if a state is out of conformity or compliance with Section 303(a)(12), SSA requirements are met?

Response #7. A finding that the state is not in substantial compliance could result in the loss of their administrative grants under Title III, SSA.

Requesting Additional Assistance. Should your office or the relevant state agency have questions about federal conformity or the Department’s position on labor dispute disqualifications, ETA remains available to provide technical assistance.

Please also note the ongoing requirement to transmit proposed and enacted legislation and regulations to the Department using Form MA 8-7, *Transmittal for Unemployment Insurance Materials*. See, [UIPL No. 26-13](#).



The Senate Committee Labor and Technology
March 23, 2026
Room 225
3:01 PM

RE: **HB 2165 HD2, Relating to the Hawaii Employment Security Law**

Attention: Chair Brandon J.C. Elefante, Vice Rachele Lamosao, Members of the
Committee

The University of Hawaii Professional Assembly (UHPA), the exclusive bargaining representative for all University of Hawai'i faculty members across Hawai'i's statewide 10-campus system, **supports HB 2165 HD2.**

We extend our appreciation to the prior committee for amending the current HD2 draft to address the unlimited lookback period for overpayment recovery. While we understand the need for the efficient administration of the Unemployment Insurance Trust Fund, subjecting workers to lifetime liability for the State's administrative errors is fundamentally unfair. We are grateful that the HD2 draft addresses this issue, ensuring that a reasonable statute of limitations remains in place for finalizing accounts. This crucial protection ensures that public employees will not be disproportionately penalized indefinitely for unintentional administrative overpayments.

UHPA supports the passage of HB 2165 HD2.

Respectfully submitted,

Christian L. Fern
Executive Director
University of Hawaii Professional Assembly



Senate Committee on Labor & Technology
Senator Brandon Elefante, Chair
Senator Rachele Lamosao, Vice Chair

Monday, March 23, 2026, at 3:01 pm

RE: HB 2165, HD2, Relating to Hawaii Employment Security Law

Chair Elefante, Vice Chair Lamosao, and Members of the Committee:

The Society for Human Resource Management – Hawaii (“SHRM Hawaii”) respectfully opposes HB 2165, HD2, Relating to Hawaii Employment Security Law. This bill provides, among other provisions, that employers must report separation and wage information within five calendar days of notice being sent, whether by mail or electronic notification.

While we support efficient administration of workforce programs, we have significant concerns with the provision requiring employers to report separation and wage information within five calendar days of notice being sent, whether by mail or electronic notification.

Using calendar days rather than business days creates an extremely compressed and inflexible reporting window. Notices sent late in the week or before a holiday may leave employers only one or two actual business days to retrieve wage records, confirm separation details, coordinate with payroll departments or third-party vendors, and review submissions for accuracy.

Many Hawai'i employers rely on third-party payroll providers, Professional Employer Organizations (PEOs), or centralized HR systems that operate on fixed processing schedules. Accessing verified wage and separation data often requires coordination that cannot reliably be completed within five calendar days. The bill does not account for vendor timelines, weekends, holidays, or unforeseen system delays, and would disproportionately impact small and neighbor island employers with limited administrative capacity.

Thank you for this opportunity to provide testimony.

Erin Kogen and Maggie Batangan
Co-chairs, SHRM Hawaii Legislative Affairs Committee



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840



Senate Committee on Labor and Technology
Sen. Brandon Elefante, Chair
Sen. Rachele Lamosao, Vice Chair

Testimony in Strong Opposition to HB 2165

Chair Elefante, Vice Chair Lamosao, and Members of the Committee,

UNITE HERE Local 5 represents 10,000 working people in the hotel, food service and health care industries across Hawaii. **We are strongly opposed to HB 2165.**

It is **not necessary** to delete HRS § 383-29(a)(2)(D) as Section 1 of this bill proposes. This would disallow workers in a labor dispute from being eligible for unemployment benefits without meeting the job search requirement. The department already has the discretion to not waive the job search requirement:

Section §383-29(a)(2) states:

“(2) The individual has registered for work, as defined in section 383-1, and thereafter continued to report, at an employment office in accordance with rules the department may prescribe, or such other place as the department **may** approve, except that the department may waive or alter either or both of the requirements of this paragraph for:”

If federal guidance indicates that the Department must not waive this requirement in the case of labor disputes, the Department can use its discretion to follow that guidance. Federal guidance changes from time to time, sometimes from day to day. Changing the law permanently in response to this is not justified, and it is not helpful to the struggles of working people in Hawai'i.

This language would threaten further punishment of workers for going on strike.

Only a fraction of workers on strike apply for unemployment benefits, and of those, only some actually qualify and receive those benefits. DLIR tests week by week whether a “work stoppage” existed for that week based on whether an employer’s operations decreased by 20-30% or more that week. If they did, workers will be considered ineligible for unemployment benefits for that week.

When workers strike, they are making big sacrifices and taking big risks. They don’t do it for fun – they do it to provide for the future for their own families, for their coworkers families, and for future generations of employees. It is a difficult decision, and this legislation would only make it more difficult and put more pressure on workers to accept whatever conditions the corporations and their investors want to impose on them in their attempts to maximize profits.

Other pieces of this bill are also harmful to working people. Removing the statute of limitations for clawing back overpayments creates permanent uncertainty and risk in people’s lives. Some people have no idea they have been overpaid. Now this bill would hold it over their heads for the rest of their lives, that someday someone might claim they were once overpaid and need to pay back the state.

The statute of limitations for filing a complaint about unpaid wages in Hawai'i is one year (see HRS §388-11(b)). Wage theft by employers in the U.S. accounts for a far greater amount of stolen value than all other forms of theft combined. How can the statute of limitations for wage theft be one year and the clawback for unemployment overpayments have no statute of limitations at all?

If we need to raise or retain more tax money, we should be taxing REITs and millionaires. But instead it is working people who are made to suffer – taking on new costs, new risks, benefit cuts, eligibility restrictions.

After COVID, the Hawai'i Legislature replenished the unemployment fund with over \$700 million of federal COVID relief money (ultimately taxpayer money), instead of getting the money from employers as the system is set up to do. So there are certainly better ways to recoup unemployment insurance fund money than to try to get it back from the people who need it the most and will have already used it.

We ask you not to make life harder for the very people whose sacrifices are the main force for building a decent standard of living in Hawai'i. **Do not pass HB 2165.**

Thank you.