

# UNIVERSITY OF HAWAI‘I SYSTEM LEGISLATIVE TESTIMONY



HB 2227 – RELATING TO PUBLIC EMPLOYMENT

Testimony Presented Before the  
House Committee on Labor and Public Employment

February 5, 2008

by

Sam Callejo  
Vice President for Administration  
University of Hawai‘i System

Testimony Presented Before the  
House Committee on Labor and Public Employment  
February 5, 2008, at 8:30 a.m.

by  
Sam Callejo  
Vice President for Administration, University of Hawai'i System

HB 2227 – Relating to Public Employment

Chair Sonson, Vice Chair Nakasone, and Members of the Committee:

The University of Hawai'i strongly opposes the passage of HB 2227 because it would inappropriately restrict and hamper the University's ability to comply with other State and federal laws requiring corrective or disciplinary action; because it incorporates vague and improper terminology in the respective statutes; and because it unnecessarily infringes on the rights of civil service employees as negotiated through the collective bargaining process.

Specifically, State and federal laws regarding matters such as discrimination and sexual harassment require employers to investigate and take appropriate corrective action when they become aware of alleged incidents of misconduct. Since allegations of such misconduct may not be reported to supervisors and managers in a timely manner and investigation are often time consuming, this bill would improperly prevent employers from suspending or discharging an employee except when the evidence is "recently obtained." This is a vague and unreasonable standard given the dynamic, and often lengthy, nature of the investigative process.

This bill is also problematic because it introduces vague and inappropriate terminology and standards into a process that has, to date, worked well. For example:

1) The bill introduces "probable cause" as a standard for suspending employees. However, use of this standard is specific to violations of criminal law and is not appropriate in the employment setting, which generally follows the administrative standard of "just cause."

2) This bill would limit the employer's ability to suspend employees unless it is "for a serious offense." There are many types of offenses that, in and of themselves, may not be considered "serious" (e.g., tardiness, sleeping on duty, horse play, etc.); however, when administering progressive discipline, suspension or discharge may be warranted and appropriate for repeat violations.

3) This bill mandates progressive discipline without regard to the severity of the misconduct. Employers should continue to have the ability to discharge an employee for a first offense when the misconduct warrants the severest of penalties. To require progressive discipline in all cases of misconduct would condone improper conduct and send the wrong message to employees.

4) This bill proposes to amend Section 89-9(d) by permitting negotiations over “probations.” This amendment is inappropriate in light of §76-27, HRS, which provides that the probationary period is an extension of the examination process and, therefore, not subject to negotiation. The right of the employer to determine the method and means of determining a candidate’s fitness for duty should remain non-negotiable.

The University also submits that the various collective bargaining agreements covering civil service employees include provisions related to disciplinary actions and the standards for applying discipline. Therefore, this bill is unnecessary and does not promote the stated goal of providing equity and certainty for our civil service employees.

In summary, the University of Hawai‘i strongly opposes all of the amendments proposed by HB 2227.