



# Annual Report 2003

## Department of Labor and Industrial Relations

Nelson B. Befitel  
Director

Colleen Y. LaClair  
Deputy Director

Linda Lingle  
Governor

**Commitment**

**Service**

**Responsibility**

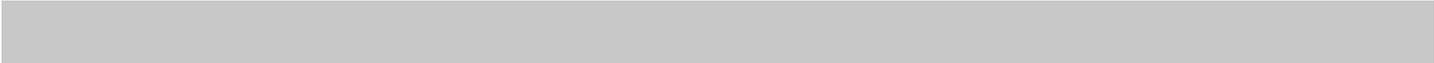
**Accountability**

# Department of Labor & Industrial Relations

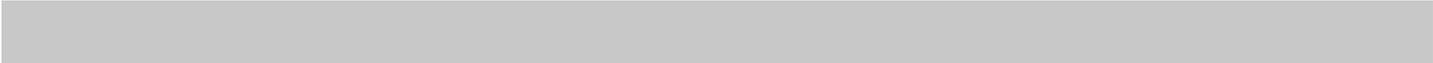
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# **Department of Labor & Industrial Relations 2003 Highlights**



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# 2003 Department Highlights

## Overview

The Department of Labor and Industrial Relations (DLIR) is responsible for the administration of the State's labor laws as enacted in the Hawaii Revised Statutes (HRS) and which are designed to ensure and increase the economic security, physical and economic well-being, and productivity of Hawaii's workers. The department also administers related federal programs in accordance with its responsibilities under state law.

The primary functions of the department are to promote access to employment and continually assess the needs and skills of the workforce. Its objectives are to alleviate the economic hardship of workers during periods of disability or temporary unemployment; protect the employment rights of workers and assure a safe and healthy workplace; develop, deliver and coordinate information to meet labor market supply and demand; and promote harmonious working relationships between business, labor, educators and government agencies.

The DLIR is committed to protecting the rights of working people while ensuring the interests of businesses and employers. In order to accomplish this, the department believes the role of businesses in our state must be reexamined. Recent economic realities have made it clear that we can no longer operate in a business versus labor approach. Decisions on policies and legislation must now be geared toward mutual success for labor and business, as their fate is undoubtedly dependent on each other. As a result, the department has adopted a more business-friendly approach to work with employers, eliminate regulations, policies and practices that may hinder or prevent the growth of business, and help reduce the cost of doing business in Hawaii.

## Hana Lokahi – “Working Together

Fiscal year 2002-2003 found the DLIR embarking on a new beginning and path of working closer together with business, labor, government agencies, and employees. Each division and agency experienced challenges and successes that served to strengthen their commitment and inspire them to continually improve the quality of programs, products and services they administer to better serve the public.

In an effort to eliminate policies and practices that were perceived as heavy-handed, outdated or a hindrance to ensuring a balanced, level-playing field between business and government, the DLIR instituted several policy changes. For example, the department's Hawaii Occupational Safety and Health Division (HIOSH) implemented a one-year pilot program, which allows safety inspectors to issue warning notices, rather than citations, for minor infractions. Employers are now allowed to fix “other than serious” violations on the spot and not be cited. If the

particular violation cannot be fixed on the spot while the HIOSH inspector is at the job site, the employer would be given a “Notice of Violation” instead of a citation. The employer will have one week to abate the problem and mail a pre-addressed letter back to the DLIR informing HIOSH that the hazard has been corrected. This program will enable HIOSH enforcement personnel to concentrate on the more serious hazards in the community.

The department also improved and expanded HIOSH’s consultation program by working with companies who share the same goal of ensuring a safe work environment for their employees. Our administration wants HIOSH to be known as a consultation agency first, rather than solely an enforcement agency. The department encouraged more businesses to partner with HIOSH in creating a safe work environment by participating in the division’s consultation and recognition programs. Employers receive free advice on how to make their workplace safer, and if they successfully complete the consultation program, are exempt from routine inspections. Our administration believes this a more effective approach in preventing accidents. This past year, more businesses participated in HIOSH consultation programs. While we want to first work with companies to prevent accidents, we are also committed to exercise the full measure of our enforcement authority against employers who seriously violate our safety rules or continuously ignore them.

We are also removing policies that are arbitrarily enforced. For example, we removed HIOSH’s ergonomic policies of citing companies for lifting violations. Under the previous policy, companies were cited even though the department failed to adopt any rules informing companies what they have to do to comply with HIOSH’s ergonomic policies or what constitutes a violation. It is unfair to businesses to arbitrarily impose these policies without going through the required public hearing rule-making process where businesses can voice their opinions. Similarly, we removed policies in the Disability Compensation Division (DCD) that were arbitrarily enforced. A working group was established to assist in reviewing policies and rules and provide input on streamlining the overall workers’ compensation process.

Throughout the year, many of the DLIR’s agencies were actively involved in outreach activities to increase awareness and promote the use of the department’s programs, services and products, train service providers on writing effective grant proposals, update the businesses and the community on new or amended labor laws, and serve as a resource to business and community groups. Efforts extended beyond the business community to include public schools and community colleges.

Business relationships also continued to expand as divisions such as the Workforce Development Division, Workforce Development Council, HIOSH and DCD, partnered with various associations and groups to foster communication with employers to improve services for them and their employees. The DLIR also established a Business Relations Strategic Group comprised of the Administrators from the DCD, HIOSH, Unemployment Insurance Division, Workforce Development Division, and Research & Statistics Office. The group’s main objective is to develop, promote and execute innovative strategies between the DLIR and businesses that will help industries gain easier access to services of the department, deliver improved customer service, propose changes to laws, rules, policies and procedures

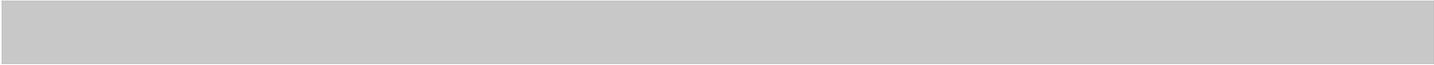
that will improve Hawaii's business climate, and ensure employee work safety, health, well-being and skills development.

Communication was also increased internally as the director's office sought to improve employee relations and solicit input from front-line workers. In addition to promoting an open-door policy, "Breakfast with the Boss" was implemented as a skip-level meeting and informal forum to encourage employee involvement and input. Employees are able to engage in open and candid dialogue with the Director and Deputy Director on a variety of topics and issues. The forum has been an effective means of obtaining valuable insight, feedback and suggestions on specific programs, processes or ideas that DLIR and its divisions may be considering, proposing or implementing.

Employee involvement and partnerships are vital to the success of the DLIR. Their hard work, commitment and achievements serve as the foundation of an administration's success. The department proudly celebrated in 2003, as Governor Lingle named Ms. Judith Nakasone, Unemployment Insurance Assistant, as State Employee of the Year. Ms. Nakasone was recognized for her leadership, diplomacy, technical skills, and strong dedication to her work and co-workers. She was also highly praised for her undying commitment to provide Leeward Oahu clients with exceptional customer service and professionalism.

Hundreds of DLIR employees also gave of their time, energy and resources by participating in numerous community projects and fundraising events during the year. The Great Aloha Run, March of Dimes Walk, Hotel Industry Walk, Relay for Cancer, Read-to-Learn, Hawaii Food Bank, Kauai Junior Golf and Kauai Pop Warner Football programs, and foster parents program, all benefited from the generous outpouring of compassion and caring by employees.

Further demonstration of the department's employees to helping Hawaii's community was evident during the annual Aloha United Way Campaign. Undaunted by a new administration and team that led the DLIR's campaign, employees came through to make 2003 the best year for contributions, employee participation and per capita giving, during the past five years in the department. Despite nearly 23% less employees in 2003 from 2002, over \$30,000 in donations were contributed – a 3.9% increase over the prior year. The department proudly experienced a 67.1% participation rate (7.6% percentage points higher than 2002) and 21.3% more in donations per employee than 2002. To cap the excitement of a very successful campaign and recognize the employees for their enthusiasm, commitment and generosity, the department was nominated by its AUW Community Executive for the "Public Sector Organization of the Year Award".



# **Administrative Services Office**



*Patrick Fukuki, Business Management Officer*





# Administrative Services Office

*Patrick Fukuki,  
Business Management Officer*

## Overview

The Administrative Services Office (ASO) provides the Department with fiscal and financial management support, financial data analysis, information technology support, and office services. The division’s mission is to ensure that the integrity of financial information reported complies with federal and state regulations and audit requirements; facilitate and expedite the processing of transactions that benefit customer programs; and educate users of the reports to better analyze key data and strategically plan and execute successful programs for the public. The division also has oversight of the Electronic Data Processing Service Office (EDPSO) which is responsible for the department’s information technology (IT), systems and programs.

The Business Management Officer also serves as a key staff advisor to the Workforce Development Division Administrator on fiscal and financial matters. Assistance is provided to develop fiscal policy and procedures for the statewide operation of the Workforce Investment Act (WIA), Senior Community Service Employment Program (SCSEP), Employment and Training Fund (ETF), and Welfare to Work (WTF) funds.

## Key Accomplishments

**Information Technology Consolidation:** During the fiscal year, the department changed the structure of IT support services and initiated consolidation plans that focused on tying all divisions together. Prior to consolidation, divisions worked with EDPSO staff that provided exclusive support for the respective agency. The effort includes implementing consistent, department-wide IT policies and procedures, consolidation of division local area networks under one common platform, and procurement of IT hardware/software to leverage limited funds. The department has already realized significant cost savings as a result of initial consolidation efforts. EDPSO acquired anti-virus software under a single purchase agreement that reduced the unit cost of each license fee by 50% and resulted in a \$10,000 savings to the department.

A department IT Consolidation Steering Committee, comprised of members from various divisions/offices was established and is responsible for setting the goals, priorities, and timetables for completing the department’s consolidation plans.

**Act 52:** Act 52, SLH 2003 requires all vendors, upon award of a contract from any state or county agency, to comply with Chapter 383 (Hawaii Employment Security Unemployment Insurance Law), Chapter 386 (Workers' Compensation), Chapter 392 (Temporary Disability Insurance), and Chapter 393 (Hawaii Prepaid Health Care). Staff members from the ASO, Disability Compensation Division (DCD), and Unemployment Insurance (UI) Division, created Form LIR #27 which consolidates the requirements of the three agencies. This new form eliminates the requirement of multiple forms, redundancy of information and streamlines the overall process with a single document that confirms the vendor's compliance with specific labor laws.

**Delivery of Accounting Reports:** During the Fiscal Year Ended (FYE) June 30, 2003, ASO generated monthly accounting reports in 21.75 working days. This is an improvement of 4.75 days from the 26.50 working days in the FYE June 30, 2002. ASO attributes the improvement to better communication and collaborative discussions between its office and their customers regarding specific needs, understanding of work issues and the establishment of definitive timelines and expectations.

## Goals and Objectives

**Website Redesign:** EDPSO is positioned to launch the redesigned DLIR website during first quarter 2004. Throughout FY 2004, further enhancements to the website will include integrating existing division web pages within the DLIR site and enabling on-line applications for various DLIR agencies such as UI and DCD.

**IT Initiatives:** In addition to efforts to complete the IT reorganization and consolidation within the department, the EDPSO team will develop an enhanced disaster recovery plan to ensure timely and successful restoration of essential DLIR services in the event of any Next Generation Network (NGN) communication infrastructure failure.

ASO managers will also be developing a strategic IT plan for the division that will focus on integrating next generation hardware and software to automate certain activities over the next two to three years. New cost accounting software applications will be aggressively researched to replace the existing 30-year-old antiquated system. The new accounting system is needed to generate financial reports faster and more efficiently.

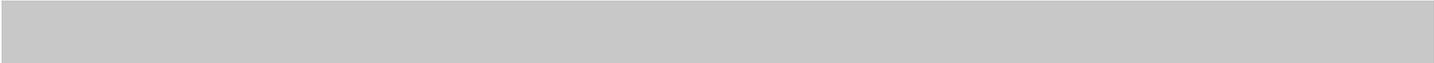
**Disability Compensation Division (DCD) Accounting System:** ASO, EDPSO and DCD will collaborate on system requirements to develop an automated accounting system for the Special Compensation Fund. A key component of the new system will involve the automation of benefit payments which will remedy compliance issues currently being encountered by DCD.

ADMINISTRATION FUNDS  
OBLIGATIONAL AUTHORITY, RECEIPTS AND EXPENDITURES  
JULY 1, 2002 TO JUNE 30, 2003

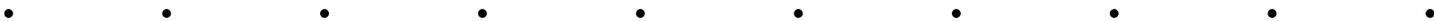
	State Funds	Federal Funds	Special Funds	Total Funds
Obligational Authority	0	79,605,664		79,605,664
Appropriations	17,679,579	0	228,301,482	245,981,061
Expenditures				
Personal Services	11,534,054	18,373,753	3,527,645	33,435,452
Personnel Benefits	0	5,681,007	288,138	5,969,145
Other Current Expenses:				
Services on a Fee	32,361	2,353,163	2,789,080	5,174,604
Supplies	102,346	208,805	12,465	323,616
Freight and Delivery	8,581	64,887	1,121	74,589
Postage	160,027	67,378	742	228,147
Printing	10,129	158,169	23,494	191,792
Communications (includes telephone)	189,278	453,794	11,682	654,754
Travel (includes auto mileage plane fare, per diem, car rental)	94,876	377,131	59,485	531,492
Rent - Premises (including storage)	0	1,325,641	20,808	1,346,449
Rent – Equipment	47,458	155,101	1,351	203,910
Repairs and Maintenance	72,974	378,895	3,000	454,869
Unemployment Compensation	0	0	177,643,622	177,643,622
Workers' Compensation	23,850	0	16,793,925	16,817,775
Miscellaneous	172,798	5,305,716	263,926	5,742,440
Subcontracts	4,590,243	26,275,752	301,234	31,167,229
Total Other Current Expenses	5,504,921	37,124,432	197,925,935	240,555,288
Equipment	228,298	361,769	7,859	597,926
Total Expenditures	17,267,273	61,540,961	201,749,577	280,557,811
Fund Balances	412,306	18,064,703	26,551,905	45,028,914

	State Funds	Federal Funds	Special Funds	Total Funds
Fund Balances:				
Workforce Development Division	6,620	13,201,613	0	13,217,233
Restrictions	410,319	0	0	401,319
Others	0	0	5,920	5,920
Grants, OSHA, Others	0	1,584,221	0	1,584,221
Office of Community Services	4,367	1,446,551	0	1,450,918
Unemployment Insurance	0	1,823,318	12,956,378	14,779,696
Employment and Training	0	0	7,316,936	7,316,936
Workers' Compensation	0	0	5,898,879	5,898,879
Wage Standards	0	0	53,131	53,131
JOBS Program	0	0	320,661	320,661
Total Fund Balances	412,306	18,064,703	26,551,905	45,028,914





# **Disability Compensation Division**



*Gary Hamada, Administrator*





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# Disability Compensation Division

*Gary Hamada, Administrator*

## Overview

The Disability Compensation Division (DCD) is responsible for planning, directing and coordinating statewide activities regarding the interpretation, implementation, and administration of the Workers' Compensation (WC), Temporary Disability Insurance (TDI), and Prepaid Health Care (PHC) laws, rules, regulations, policies and procedures. The division's staff of 116 employees is organized into four (4) program offices (WC, TDI, PHC, and Program Support) and six (6) operational branches (Plans, Enforcement, WC Claims, Cost Review, Hearings, and Vocational Rehabilitation). The main office is located in Honolulu with district offices on the neighbor islands (Kahului, Maui, Kealahou, Hawaii, Hilo, Hawaii, and Lihue, Kauai) to service the public.

DCD's mission is to provide economic security and stability for Hawaii's workforce through education, enforcement, and adjudication of the workers' compensation, temporary disability insurance, and prepaid health care laws. Its primary objectives include ensuring efficient processing of claims; timely provision of medical services and payment of benefits to injured workers; employer compliance with workers' compensation (WC), temporary disability insurance (TDI), and prepaid health care (PHC) insurance coverage requirements; and monitoring health plans to ensure employees are provided with the benefits that are required under the prepaid health care law.

The programs that fall within the division include:

**Workers' Compensation:** An employer paid insurance program, workers' compensation provides economic relief for employees injured on the job. WC benefits include medical and hospital expenses, lost wages, permanent disability disfigurement, and vocational rehabilitation.

**Temporary Disability Insurance.** This employer provided insurance provides partial wage loss benefits to employees who suffer off-the-job injuries or illnesses.

**Prepaid Health Care.** The Prepaid Health Care law requires employers to provide workers with health care benefits for off-the-job injuries or illnesses. Coverage includes hospitalization, surgery, medicine, diagnostic test, and maternity benefits. Hawaii is the only state to adopt a prepaid health care law and continues to be a leader in providing universal health care coverage.

## Key Accomplishment

**Increasing Public Awareness:** Monthly employer workshops were conducted beginning in February 2003 to promote awareness and educate new employers, insurance agents, TDI claims adjusters, and other state agencies on TDI and PHC programs, WC insurance coverage, WC claims process and enforcement of TDI, PHC, and WC laws. The workshops are a DCD initiative to improve and ensure compliance with the TDI, PHC, and WC laws. Approximately 220 attendees participated in the workshops throughout the year.

WC Hearings Officers and DCD Program Specialists also participated as panel members and keynote speakers at various seminars sponsored by the Hawaii Claims Association, Consumer Trial Lawyers Association, Lorman Education Seminars, council of Education and Management, Hawaii Insurers Council, Chamber of Commerce, Society of Human Resource Management, State Council of Human Resources, Industrial Relations Research Association, Health Unified Inc., and Vocational Rehabilitation Association. These forums enabled the division to further the recognition of DCD programs, statutes, rules and guidelines.

**Technology Initiatives:** The DCD continued work on upgrading its information systems to position itself for migration from a mainframe to a data warehouse, client server environment. The upgrade will result in increased office efficiencies, improved service to our customers and a more accessible, dynamic database. The DCD also worked with the department's Electronic Data Processing Service Office (EDPSO) to establish a DCD website to increase public access to information. The website is targeted for completion in first quarter 2004.

**Benefits Facilitator Section:** The Benefits Facilitator section was established September 1999, to ensure workers' compensation claims are processed expeditiously by responding to inquiries from claimants, attorneys, representatives of insurance carriers and employers. The section assists individuals primarily through educational efforts and informing them of their rights and benefits. The office also maintains information programs to keep workers apprised of the Workers' Compensation law; responds to inquires on claim status; question on the Workers' Compensation law; and recommends improvements to the Workers' Compensation claims process to benefit all parties within the Workers' Compensation system. During the fiscal year, over 6,500 inquiries were received and responded to.

**Claims Processing and Benefit Payments:** Benefit programs governed by DCD provide health care and economic relief to workers for on or off the job injuries or illnesses. DCD's goal is to ensure timely processing of claims and provision of medical benefits, ensuring employer compliance with insurance coverage requirements, conducting administrative hearings, and reviewing health benefit plans. During the FYE June 30, 2003, DCD achieved issuing 99% workers' compensation decisions within 60 days, and facilitating the settlement of 60% of contested cases. Objectives for both activities for the year were 90% and 40% respectively.

**Legislative Initiatives:** During fiscal year ending (FYE) June 30, 2003, HRS 393-7 was amended to disallow anyone who represents a health care contractor (i.e. insurance company, HMO, or Mutual Benefit Society) from serving on the PHC Advisory Council. Historically, representatives from health care contractors were allowed to sit on the board and recommend which providers could enter the market in

Hawaii. The arrangement created a perception that having such representation on the advisory council would not lend to unbiased decision-making. The amendment was introduced to ensure the council deliberates in a fair and honest manner and promotes a healthy competitive environment for new businesses to enter the health care market in Hawaii.

**Employee Achievements:** The outstanding contributions, professionalism and work performance of two DCD employees were recognized as Hearings Officer, Patricia Tanaka, and Patricia Liu Man Hin, Clerk Stenographer, received awards for the department's non-clerical (professional) and clerical employees of the year, respectively.

### DCD Activities FY 2003

Investigations	10,847
Audits	1,094
WC Claims	30,692
WC Hearings	2,877
Voc Rehab Referrals	591
New employers registrations	4,640
WC Decisions	11,324

### Goals and Objectives

DCD's initiatives and action plans for FY2004 will focus on initiatives which will help restore trust in government, reduce the cost of doing business in Hawaii, and increase public education and awareness of the division's programs, rules and laws.

**Website Development:** A DCD webpage is being developed in conjunction with the redesign of the DLIR's website. This will enable the public to access program information, download forms, obtain status on their claim, and communicate with the division via advanced technology.

**Information/Technology Systems:** The DCD will spearhead an Electronic Data Interchange WC-1 Project which will allow insurance carriers to electronically file the Employer's Report of Industrial Injury with the division. This new system will provide carriers a faster and more efficient means of transmitting the report. The system is expected to be completed by the end of FY 2004. Subsequent projects to allow electronic transmission of WC Proof of Coverage and the Carrier's Case Reports are also scheduled to commence during the latter half of FY 2004.

**Hawaii Uninsured Project:** Rising health care costs is a critical concern nationwide. While the Prepaid Health Care Act mandates health care coverage for employees, the level of uninsured workers is increasing. The DCD will actively participate in the state's Hawaii Uninsured Project that is focused on developing solutions to provide uninsured citizens with access to health care. "Hawaii Uninsured Project" is the spearheading organization. The project is being funded through grants from the Robert Wood Johnson Foundation, U.S. Department of Health and Human Services, and Health Resource and Services Administration. Other project participants include the State of Hawaii Department of Health, State of Hawaii Department of Human Services, Healthcare Association of Hawaii, the University of Hawaii Social Science Research Institute, business organizations,

healthcare contractor organizations community health centers, and labor organizations.

**Medical Fee Schedule:** Requests to increase the medical fee schedule were made by the Hawaii Medical Association, Hawaii Emergency Physicians Associated, and dental industry. In response to these requests, a public hearing will be conducted in May 2004 to review the feasibility of an increase in rates for various codes in the schedule.



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# Employment Security Appeals Referees' Office

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*Joyce Pang, Employment Security Appeals Officer*



# Employment Security Appeals Referees' Office

*Joyce Pang, Employment Security Appeals Referees' Office*

## **Overview**

The Employment Security Appeals Referees' Office (ESARO) is a quasi-judicial agency under the administrative supervision of the Director in the Department of Labor and Industrial Relations (DLIR). The primary function of the agency is to hear and decide appeals arising from decisions made by the Unemployment Insurance Division. In addition to unemployment cases, ESARO may hear appeals relating to the denial of services in apprenticeship, training and job placement programs that fall under the jurisdiction of the DLIR.

An ESARO referee, also known as the appeals or hearing officer, conducts hearings and provides employers and claimants a chance to present evidence and facts of a case. The appeals officer issues a written decision to the interested parties is the final administrative step in the unemployment insurance program. Thereafter, a party aggrieved by the appeals officer's decision, must file an appeal with the circuit court.

During this fiscal year, the volume of incoming appeals increased by 13.4% over the prior year. The increase is a result of the 46,078 decisions that the Unemployment Insurance Division (UI) issued during the year. These volumes also impacted the number outstanding appeals at the end of this fiscal year.

The following data reflects key results for ESARO for the fiscal year ending June 30, 2003:

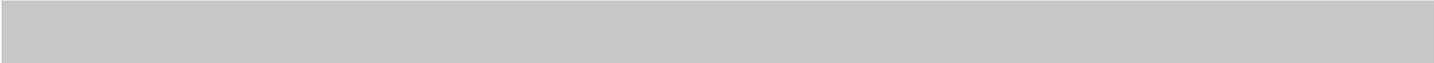
EMPLOYMENT SECURITY APPEALS REFEREES' ACTIVITIES

	Fiscal Year <u>2002</u>	Fiscal Year <u>2003</u>	<u>% Change</u>
Appeals Outstanding, Start of Fiscal Year	356	388	9.0%
Appeals Filed	3265	3704	13.4%
Appeals Disposed	3233	3471	7.4%
Appeals Outstanding, End of Fiscal Year	388	621	60.1%
Percent of Decisions Issued, From Date of Appeal			
0-30 Days	76%	75%	
0-45 Days	90%	89%	
Percent of Decisions Favorable to Appellant			
Total	25%	22%	
Claimant	23%	21%	
Employer	36%	31%	

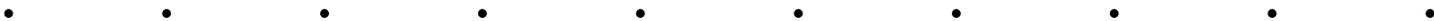
**Continuous Improvement Initiatives - 2003-2004**

**Website Development:** ESARO looks forward to the development of their web page in 2004. This effort is being worked on in conjunction with the DLIR's overall plan to redesign the department's current website and provide better access to general and program information. In line with this initiative, the agency will complete its efforts to automate the intake, disposition, and scheduling of appeals hearings which should improve the overall appeals process.





# Hawaii Civil Rights Commission



*Harry Yee, Commission Chair*  
*William Hoshijo, Executive Director*





## **Mission Statement**

**The mission of the Hawaii Civil Rights Commission is to eliminate discrimination by protecting civil rights and promoting diversity through enforcement of anti-discrimination laws and education.**

## **Overview: Fair and Effective Enforcement**

The state of Hawaii has a strong commitment to the protection of civil rights. Article I, Section 5 of the Hawaii Constitution provides that “no person shall ... be denied the enjoyment of ... civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.” The legislature gave meaning to this commitment by creating the Hawaii Civil Rights Commission (HCRC), through enactment of Act 219 in 1988 and Acts 386 and 387 in 1989.

The HCRC was organized in 1990 and officially opened its doors in January 1991. For twelve years the HCRC has enforced state laws prohibiting discrimination in employment (H.R.S. Chapter 378, Part I), housing (H.R.S. Chapter 515); public accommodations (H.R.S. Chapter 489), and access to state and state-funded services (H.R.S. §368-1.5). The HCRC receives, investigates, conciliates, and adjudicates complaints of discrimination.

The HCRC has five (5) uncompensated volunteer Commissioners. They are appointed by the Governor, with the consent of the Senate, based on their knowledge and experience in civil rights matters and commitment to preserve the civil rights of all individuals.

The HCRC is attached to the Department of Labor & Industrial Relations (DLIR) for administrative purposes. The HCRC has a staff of twenty-nine (29) persons who are divided into separate enforcement and adjudication sections.

## **An Effective And Uniform Enforcement Scheme**

Prior to the establishment of the HCRC, jurisdiction over state anti-discrimination laws was split among several state departments. Enforcement was limited and sporadic. State litigation to enforce fair employment practices law was virtually non-existent. Nearly all aggrieved were left with litigation of individual lawsuits as their only recourse. Few employment discrimination cases brought under state law were adjudicated, and there was little case law. For complainants who could not afford private attorneys to seek remedies in court, there was no administrative process to adjudicate their claims.

The intent of the legislature in creating the HCRC was “...to establish a strong and viable commission with sufficient ... enforcement powers to effectuate the State’s commitment to preserving the civil rights of all individuals.”<sup>1</sup> The cornerstone of the HCRC statutory scheme was the establishment of a uniform procedure “...designed to provide a forum which is accessible to anyone who suffers an act of discrimination.”<sup>2</sup>

## **A Fair Administrative Process**

The HCRC is committed to, and its procedural safeguards are structured to ensure, fairness to both complainants and respondents. The HCRC is a five-member Commission with jurisdiction to enforce state civil rights laws. The HCRC is divided into two separate and distinct sections: the enforcement section, which receives, investigates, and prosecutes discrimination complaints; and the adjudication section which hears, issues orders and renders final determinations on complaints of discrimination filed with the HCRC.

The Commissioners have delegated HCRC enforcement authority to the Executive Director. The Commissioners retain the authority to adjudicate and render final decisions based

on the recommendations of their Hearings Examiner, and oversee the adjudication section through their Chief Counsel.

The Commissioners and Hearings Examiner are not involved in or privy to any actions taken by the Executive Director in the investigation and pre-hearing stages of the HCRC process. Likewise, the Executive Director and enforcement section are not permitted to communicate ex parte with the Commissioners or Hearings Examiner about any case.

The HCRC investigates complaints of discrimination as a neutral fact-gatherer. At the conclusion of an investigation, a determination is made whether or not there is reasonable cause to believe unlawful discrimination has occurred.

The law requires filing of a complaint with the HCRC before filing a discrimination lawsuit in state court. Otherwise, the circuit court will dismiss a lawsuit for failure to exhaust administrative remedies. This requirement prevents overburdening the courts with non-jurisdictional and non-meritorious cases, as well as those cases that can be closed or settled in the administrative process. The great majority of cases filed with the HCRC are resolved, reach disposition, and are closed without resort to the courts.

### **Civil Rights Law Enforcement: State & Federal Law**

Federal fair employment and fair housing laws are enforced by the U.S. Equal Employment Opportunity Commission (EEOC) and U.S. Department of Housing and Urban Development (HUD), respectively. Pursuant to workshare cooperative agreements, both EEOC and HUD rely on the HCRC to investigate complaints filed under both state and federal law (“dual-filed” complaints).

While Hawaii and federal fair employment and fair housing laws are similar, they are not identical. Hawaii has protected bases that are not covered under federal law, and there are substantial differences in the definition of “employer” and the statute of limitations for filing a charge of employment discrimination. In addition to these jurisdictional differences, Hawaii law provides stronger protection against pregnancy discrimination, sexual harassment, and disability discrimination in employment.

The greater protections in Hawaii law are attributable to a strong civil rights mandate contained in the Hawaii State Constitution, HCRC statutes, HCRC rules, HCRC Commission decisions, and state court interpretations. In contrast, federal court interpretations of federal civil rights laws have resulted in fewer protections against discrimination, particularly in the areas of disability and sexual harassment. The issue of state versus federal standards is an important one, particularly in states like Hawaii that have a historically strong commitment to equal opportunity and non-discrimination.

There is a trend of limiting jurisdiction and process under civil rights statutes: sovereign immunity barring individual claims against the states under several federal civil rights statutes; free speech and free exercise of religion claims raised in defense of discrimination complaints; and equal protection and other constitutional claims raised to challenge enforcement processes. In this context, strong enforcement of state civil rights laws is more important than ever before.

## The HCRC Today

During FY 2002-2003, the HCRC experienced several significant changes in management and attorney staff, with the departure of the Deputy Executive Director and two out of three enforcement attorneys. After delays in filling these key vacancies due to budgetary concerns and a state hiring freeze, the HCRC ended the year with full staffing, refocusing its efforts and resources on activities in several key areas:

**Investigation and charge processing.** The HCRC made a concerted effort to complete investigation of the oldest complaints, focusing investigation time and resources on complex or intensive investigations, while expediting disposition of cases when appropriate.

**Mediation.** The HCRC's voluntary mediation program completed its fourth full year of operation, working with the Mediation Centers of Hawaii and community mediation centers on Oahu, Hawaii, Maui, and Kauai. The number of cases referred to mediation increased and 54% of the cases referred to mediation settled.

**Public education.** The HCRC continued its commitment to prevent and eliminate discrimination through public education. HCRC staff made numerous presentations on civil rights and discrimination to labor, business, professional organization, civil rights advocacy, and other community organization audiences. An updated and enhanced HCRC website was also an effective outreach tool, recording nearly 12,000 hits per month.

**Litigation.** The HCRC litigated two major cases on appeal, a constitutional challenge to the HCRC administrative hearing process and a declaratory ruling on the scope of HCRC jurisdiction to accept and investigate sex discrimination complaints.

The Hawaii Supreme Court heard oral argument on a constitutional challenge to the HCRC administrative hearing process, and issued its decision in June 2003. SCI Management Corp., et al. vs. Sims, et al., 101 Haw. 438, 71 P.2d 389 (2003). The Court held that respondents before the HCRC are entitled to a jury trial de novo when seeking judicial review of an HCRC final decision awarding legal relief including compensatory and punitive damages, but are not entitled to "opt out" of HCRC hearing proceedings. The HCRC also appealed a circuit court decision reversing a Commission decision declaring that the Executive Director had jurisdiction to investigate complaints of sex discrimination filed by transsexual or transgendered employees. The appeal is pending before the Hawaii Supreme Court.

The HCRC Commissioners and staff continue their unwavering commitment to the HCRC mission - to eliminate discrimination by protecting civil rights and promoting diversity through enforcement of anti-discrimination laws and education. We renew our pledge to fair and effective enforcement, so that no person shall be denied his or her civil rights under Hawaii law.

## **Objectives and Goals for 2003-2004:**

### **Case Inventory:**

The HCRC is committed to maintain its case inventory at a level that allows for timely investigation of complaints and allocation of resources to complex and meritorious complaints. Toward this end, the HCRC will convene a complaint processing working group, to solicit ideas from businesses, labor, civil rights organizations and attorneys on improving the HCRC's procedures and efficiency without sacrificing fair and effective law enforcement. Special focus will be placed on reducing older case inventory.<sup>3</sup>

### **Voluntary Mediation Program:**

The HCRC plans to improve and expand its voluntary mediation program to encourage and offer mediation in more cases. A pilot program will be implemented which will utilize mediation in housing discrimination cases.

### **Public Awareness:**

Continued focus on HCRC public education activities is planned for the upcoming year. HCRC will work with federal, state, business, labor, and community partners to expand outreach and public education statewide, especially on the neighbor islands. The HCRC will offer scheduled introductory training for the public on civil rights laws on a regular basis. Outreach efforts to public schools, through sponsorship of the annual Hawaii Civil Rights Art Contest and cooperative efforts on diversity education initiatives will be broadened to engage more participation.

The accompanying report is submitted pursuant to H.R.S. §§ 368-4 and 515-9.

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<sup>1</sup>1989 House Journal, Standing Committee Report 372.

<sup>2</sup> Id

<sup>3</sup> Aged case reduction is a priority for the HCRC, as well as for the U.S. Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC), the federal agencies that contract with the HCRC to process complaints dual-filed under state and federal law.

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## **Mediation Program**

HCRC's voluntary mediation program successfully completed its fourth full fiscal year on June 30, 2003. Complainants, respondents, and the HCRC, with the strong support of all the Commissioners, want prompt and fair resolutions to discrimination complaints. To help accomplish this goal, the HCRC developed its voluntary mediation program, a process in which neutral third parties (usually a team of two co-mediators) help the involved individuals discuss, clarify, and settle complaints.

Mediators are unbiased and do not rule on the merits of the complaint. Rather, the HCRC provides them with the basic facts of each case needed to understand the dispute. The mediators then assist parties in reaching agreements such as simple apologies, policy changes, monetary settlements, or other appropriate solutions. Mediation saves time, money and resources, and reduces stress by allowing the parties to explain their side of the case and to control the process of resolving their dispute in a non-adversarial manner.

HCRC works with trained, senior mediators from the Mediation Centers of Hawaii (MCH), a statewide network of community non-profit mediation centers. MCH mediators are trained in civil rights laws by HCRC staff on a regular basis. An HCRC mediation coordinator facilitates the process by explaining mediation and its benefits to the parties. There are mediation centers on Oahu, Maui, Hawaii, and Kauai. The centers charge nominal fees for the sessions, which can be waived or reduced where there is a situation of financial hardship. Private mediation is also available, at a higher cost, if the parties choose.

Mediation can occur at any stage of the complaint process. Mediation is first offered when the complaint is accepted, because disputes are often easier to resolve while the facts are fresh and before potential damages accumulate and the positions of the parties become rigid.

During FY 2002-2003, 47 cases were referred into mediation; 37 were disposed of during the year, with 20 of those cases resulting in mediated settlements. This represented a 54.1% overall settlement rate, which was down from a 70% settlement rate last year. However, the total monetary value of mediated agreements was up by 35% to \$230,686 (this did not include 2 privately mediated agreements, for which the figures were not disclosed). Most of the mediation referrals (81.2%) were referred to the Mediation Center of the Pacific in Honolulu; followed by Mediation Services of Maui (8.1%); West Hawaii Mediation Center (2.7%); and Kuikahi Mediation Center in Hilo (2.7%). Two cases (5.3%) were referred to private mediation upon the parties' request.

The three most typical primary protected bases of referred cases were: sex (30%); disability (22%); and race/national origin (14%). Other primary protected bases included: retaliation, religion, age, arrest and court record, and sexual orientation. Employment cases accounted for all 47 referrals this year.

The program has received high marks in satisfaction. Evaluations are sent to the parties in all mediated cases. The average rating of whether parties "would recommend the program to others," was a 4.2 (on a 1-5 scale, with 5 being, "strongly agree").

The following are some examples of cases settled in mediation:

- A 19-year employee earning \$30,000/year at a large food products company was terminated from his position as a supervisor, for an alleged physical disability. His requests for reasonable accommodations were declined and he alleged the company threatened to terminate him if he had surgery for his impairment. In mediation, the parties agreed on a settlement of \$56,000 and modification of personnel records to reflect a voluntary termination. Both parties were represented by counsel.
- A security officer alleged discrimination by his employer, a large security firm, on the basis of his race (African-American). The alleged discrimination consisted of unequal assignment of posts, verbal racial harassment by his supervisors and co-workers, and assignment to an undesirable post in alleged retaliation for filing an internal complaint. In mediation, the parties agreed on a settlement of \$70,000. In addition, the company agreed to revise and post its policies to confirm zero tolerance regarding discrimination, quarterly refresher announcements, training of all employees, and a letter of apology. Both parties were represented by counsel.
- A 21-year-old delivery driver for a food distribution company was terminated from his position. The complainant alleged he was terminated due to his mental disability shortly after the employer found out about his condition. His job performance was satisfactory. In mediation, the parties agreed that a settlement of \$6,500 would be applied directly to treatment and therapy for the complainant and ensured payment was made in such a way as to properly minimize loss of welfare benefits.
- A complainant alleged that she was sexually harassed during her employment as an accounting clerk for a national retail chain store. The alleged harassment was by a company officer and was verbal and physical in nature. Although she complained to her supervisor and human resources department, no corrective action was taken. The complainant then resigned due to the hostile and offensive working environment. In mediation, the parties agreed to a settlement of \$7,000, a letter of acknowledgement of the complainant's painful experience, and posting of the company's sexual harassment policies.
- A female complainant alleged that she was discriminated against in her position as assistant supervisor with a beverage product company because of her gender. She alleged that she was subjected to numerous adverse and unequal job conditions, including reductions in hours, while male employees were not subjected to the same conditions. She alleged that when she filed an internal complaint, she was terminated. A second respondent, a payroll and personnel services firm, also participated in the mediation. In mediation, the three parties agreed to a settlement of \$30,000, payment of a single premium health insurance the complainant had while with the employer, and a comprehensive release. The parties were represented by counsel.

Although monetary settlements were achieved in many agreements, all mediated agreements involved some form of non-monetary affirmative relief. Typical examples of non-monetary relief include:

- 1) training of employers and employees on pertinent civil rights laws;
- 2) restoration of employee benefits;
- 3) formal apology;
- 4) increasing hours for part-time employees;
- 5) providing neutral or positive references for former employees;
- 6) removal of inappropriate negative comments in employee records;
- 7) addition of reasonable accommodations for the disabled;

- 8) clarifications of communications between employer and employee;
- 9) policy revisions and postings;
- 10) thorough and candid discussion of issues, under mediator supervision, which can lead to a settlement of the pending dispute.

### **Public Education & Outreach**

In addition to enforcing anti-discrimination laws, the HCRC is committed to preventing and eliminating discrimination through public education. The HCRC Commissioners and staff have maintained a number of public education efforts, working with civil rights, business, labor, professional, and non-profit organizations, on new and continuing initiatives.

### **Accomplishments**

- The HCRC continued to provide speakers and trainers for conferences, workshops, schools, employers, labor organizations, businesses, landlord and tenant organizations, government agencies, and non-profit and other community groups on rights and responsibilities under anti-discrimination laws and other diversity issues. Some representative trainees included the University of Hawaii - Manoa, Kamehameha Schools, William S. Richardson School of Law, East-West Center, Hawaii Dental Association, Honolulu Medical Group, State Department of Human Services, Society of Human Resource Management, and listeners to the KGU/KHNR radio program, "Flashpoint".
- The HCRC continued to work with the U.S. Department of Housing and Urban Development, the state and counties, and community fair housing organizations to co-sponsor fair housing training on all islands. Some representative trainees in the housing area included the Community Associations Institute, Building Industry Association, property managers, and the V.A. Medical Center.
- The HCRC website ([www.state.hi.us/hcrc](http://www.state.hi.us/hcrc)) received a record total of over 143,000 hits. These hits were in addition to over 5,000 telephone and walk-in inquiries during the year plus approximately 250 email inquiries. The website was continually enhanced and updated during the year.<sup>1</sup>
- HCRC co-sponsored and participated in a number of Martin Luther King, Jr., commemorative events, including the 14th Annual Holiday King Program and the 2003 Annual King Parade and Rally.
- In conjunction with other Martin Luther King, Jr. Day activities, HCRC sponsored a second annual art contest for grades 4-6 with a theme of "What can we do in our daily lives to promote civil rights and diversity in our community?" The winning student artists were honored in a ceremony hosted by Lt. Governor James Duke Aiona.
- HCRC continued its annual trainings on civil rights for mediators of the Mediation Centers of Hawaii from Honolulu, Maui, and the Big Island.

<sup>1</sup> The HCRC again thanks Dr. William Puette, Executive Director of the Center for Labor Education and Research ("CLEAR") at the University of Hawaii - West Oahu, for his continuing service as voluntary webmaster and technical advisor to the HCRC website and on many of its public presentations.

## Special Advisory Committee On Diversity

Because discrimination cannot be eliminated through law enforcement efforts alone, the HCRC established a Special Advisory Committee on Diversity in 1999. For a second year, the Diversity Committee distributed a flyer on diversity and fairness in education to all public school teachers and co-sponsored a civil rights art contest in Oahu public schools.

The flyer included a message encouraging teachers to discuss diversity issues in their classes to eliminate prejudice as part of a commitment to quality education:

*Schools and classrooms are a logical place for us to help to heal the disease of racism and prejudice -- offering the best opportunity to come to grips with the prejudices that can divide us. We need to address the destructive impact prejudice, bullying, and teasing have on our ability to provide safe schools and a healthy learning environment.*

*Our challenge is not merely to teach tolerance -- with rules of conduct to prevent negative incidents -- but to teach healthy attitudes towards people of different cultures and backgrounds, and an understanding of our common humanity. In order to do this, the schools must provide a safe place to discuss and deal with our own biases and prejudices because no one is completely free of prejudice.*

The message urged teachers to facilitate discussion “about the problem we are seeing among our children, and how we can all work together -- parents, teachers, community members -- to develop healthy and respectful attitudes among all of us, but especially to help our children learn new and healthier ways of treating one another.”

The Committee on Diversity with co-sponsors, the Honolulu Chapter of the Japanese American Citizens League (JACL), Student Excellence Equity and Diversity (SEED) program at the University of Hawaii at Manoa, National Industry Liason Group (NILG), and Hawaii Justice Foundation (HJF), held a second annual civil rights art contest for Oahu public school students in grades 4, 5 and 6 based on the theme “What can we do in our daily lives to promote civil rights and diversity in our society?”

Held in conjunction with Martin Luther King, Jr., Day, the contest encourages children to reflect upon Dr. King's life and work, the civil rights movement, and what they can do in their daily lives to promote civil rights and diversity. In addition to artwork, students were required to write one or two lines explaining their ideas at the bottom of their picture. Congratulations to the contest winners:

- Adayna Wong-Sagio, 4th Grade; Kauluwela Elementary School; Teacher: Ms. Anna Lee
- Charlene Malapitan, 5th Grade; Thomas Jefferson Elementary School; Teacher: Ms. Edna Takaki
- Shearamie Esteban, 6th Grade; Kapalama Elementary School; Teacher: Ms. Kaizawa Miyata
- Kristina Kam, 6th Grade; Nu`uanu Elementary School; Teacher: Ms. Geraldine Kajitani

Each winning student received \$50 individually and \$100 for their class. The students participated in a special awards ceremony with Lt. Governor James Duke Aiona, Jr. They also received congratulatory messages from the State Senate and House of Representatives.

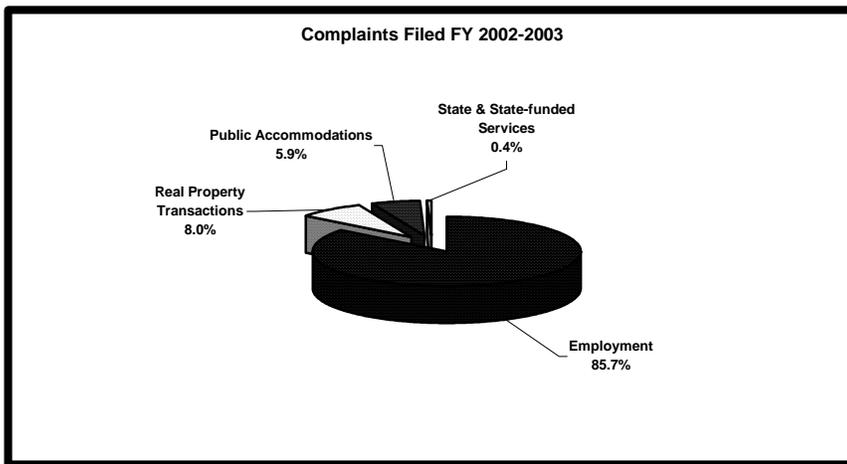
The HCRC Committee on Diversity also initiated discussion with the Hawai`i Justice Foundation on developing and implementing a pilot diversity education project at Kawananakoa Middle School during the 2003-2004 school year.

## Caseload Statistics

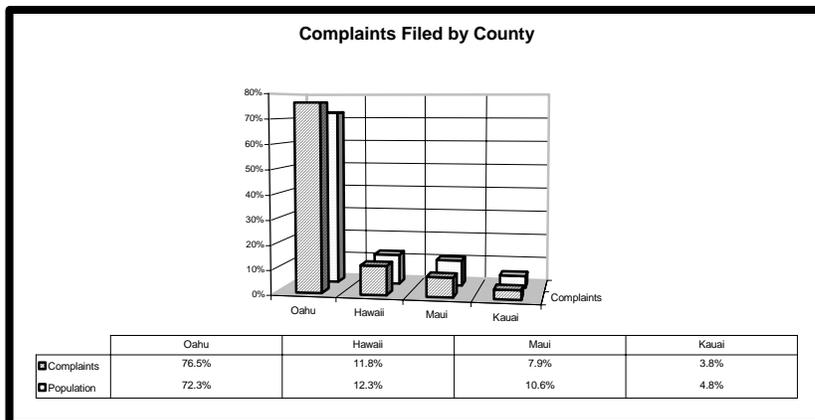
### Intake

During FY 2002-2003, the HCRC received more than 5,000 telephone and walk-in inquiries. 982 intakes were completed by HCRC investigators.

The 712 charges of discrimination were filed with HCRC, or an average of 59 cases a month. These consisted of 491 complaints originating with HCRC investigators (averaging 41 per month), and another 221 more cases originating with and to be investigated by the federal Equal Employment Opportunity Commission (“EEOC”), and dual-filed under state law with HCRC. The 712 cases included 610 employment cases, 42 public accommodations cases, 57 housing cases, and 3 cases involving state and state-funded services. The other inquiries and intake interviews did not lead to filed charges primarily due to: a) lack of jurisdiction; b) failure to correlate the alleged act(s) with the protected basis or bases; or, c) a complainant's decision not to pursue the complaint.



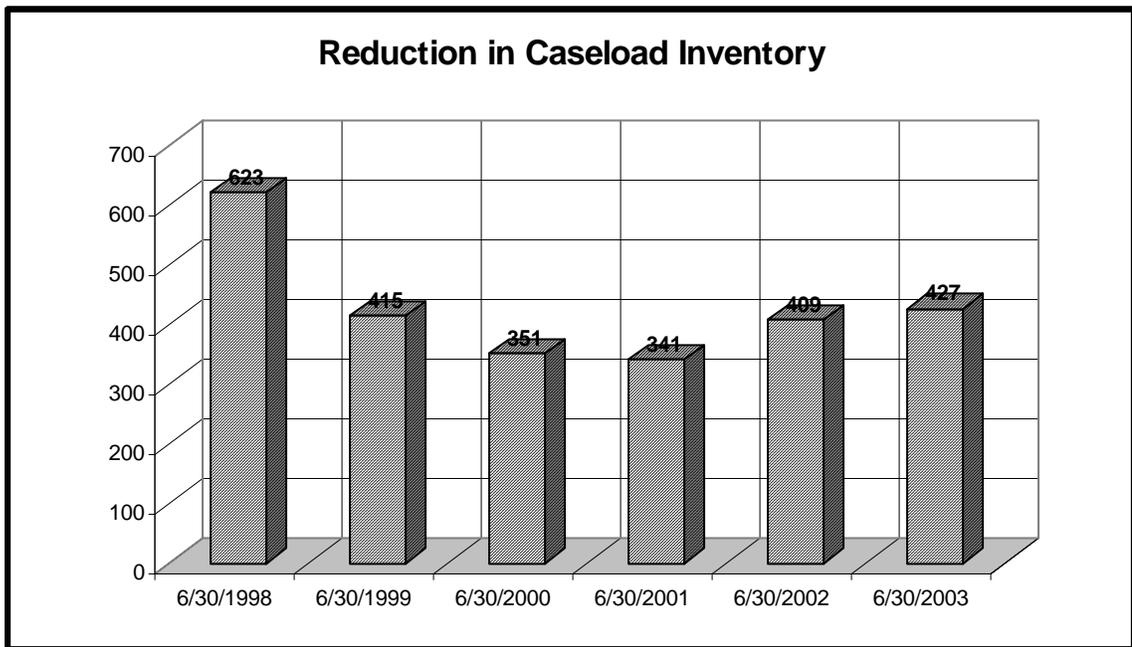
The 712 charges accepted by HCRC consisted of the following number of complaints from each county: Oahu (545), Hawaii (84), Maui (56) and Kauai (27). The number of complaints filed from each county was consistent with its portion of resident population.



## Closures

HCRC investigators and attorneys closed 471 cases during FY 2002-2003, up from 411 cases in FY 2001-2002. This equates to an average closure rate of 39.25 cases per month, up from 34.25 cases in FY 2001-2002. In addition to the 471 closures during the fiscal year, HCRC investigations resulted in cause determinations in another 29 cases.

As of June 30, 2003, there were 427 cases pending with HCRC investigators. Through its prioritized charge processing system and specialization in investigation, the HCRC has maintained its inventory at consistent levels over the past five fiscal years. Maintaining this reduced case inventory brings the HCRC closer to the optimum caseload of 30 cases per investigator, as recommended by the Legislative Auditor in, "A Study on Implementation of the Civil Rights Commission for the State of Hawaii" (Report No. 88-9, January 1989). In order to maintain the case inventory at this level, however, HCRC must continue to close at least 450 cases each fiscal year.



The HCRC has continued to maintain an average closure period of approximately eleven months. The average period for case closure by investigators was 342 days, as compared to 351 days for FY 2001-2002 and 336 days for FY 2000-2001. A review of this fiscal year shows the following reasons for closures<sup>4</sup>:

### <sup>4</sup>Analysis and Explanation of Closure Data

This closure data does not reflect the number of completed investigations which resulted in cause recommendations and determinations. The reason for this is that cases are not closed upon issuance of a notice of cause, but are then conciliated, and, if conciliation fails, are docketed for hearing. (Cause determination are not "closures".)

	No. of cases	% of subtotal	% of total closures
<b>Merit Closures</b>			
Resolved by Parties	42	11.02%	8.92%
Pre-Determination Settlements	14	3.68%	2.97%
Cases Settled or Otherwise Resolved After a Cause Determination	22	5.77%	4.67%
No Cause Determinations	<u>303</u>	<u>79.53%</u>	<u>64.34%</u>
Subtotal	381	100.0%	80.90%
<b>Non-merit Closures</b>			
Complainant Elected Court Action	47	52.23%	9.98%
No Jurisdiction	2	2.22%	0.42%
Complaint Withdrawn	14	15.56%	2.97%
Complainant Not Available	11	12.22%	2.34%
Complainant Failed to Cooperate	13	14.44%	2.76%
No Significant Relief Available	<u>2</u>	<u>2.22%</u>	<u>0.42%</u>
Subtotal	90	100.0%	19.10%

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Historically, there is a relationship between the number of cause cases and predetermination settlements/resolutions between parties. The larger the number of notices of cause, the smaller the number of settlements/resolutions, and vice versa. Typically as a percentage of cases that are investigated to a cause/no cause determination or settled or resolved by predetermination settlement or resolution between the parties, cause recommendations and settlements/resolutions constitute between 15-25% of the total.

During FY 2002-2003, HCRC investigations resulted in 29 cause recommendations. Fifty-six cases were closed on the basis of pre-determination settlement or resolution between parties. Three hundred three cases were closed on the basis of no cause determinations upon completion of investigation. Predetermination settlements/resolutions between parties (85) constituted 22% of the total number of investigation cases closed on a cause/no cause determination or settlement/resolution.

## Employment Cases

H.R.S. Chapter 378, Part I prohibits discriminatory employment practices based on race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, assignment of income for child support obligations, National Guard participation, or breast feeding/expressing milk. Examples of such practices are outlined in H.R.S. § 378-2.

The HCRC has a workshare agreement with the EEOC. Where there is concurrent jurisdiction, a case is filed with both agencies, but only the intake agency conducts the investigation, thereby eliminating duplicate enforcement activity. During the fiscal year, a total 610 employment cases were accepted by the HCRC. HCRC was the intake agency for 389 of these cases and dual-filed another 221 cases originating with EEOC. Of the HCRC-originated cases, 79.4% were also filed with EEOC.

Of the 610 employment cases accepted in FY 2002-2003, sex was the basis cited most often, with 151 cases, accounting for 28% of all employment discrimination cases. Within the sex category, 52 cases alleged sexual harassment (34% of all sex cases) and 34 cases were based on pregnancy (23% of all sex cases).

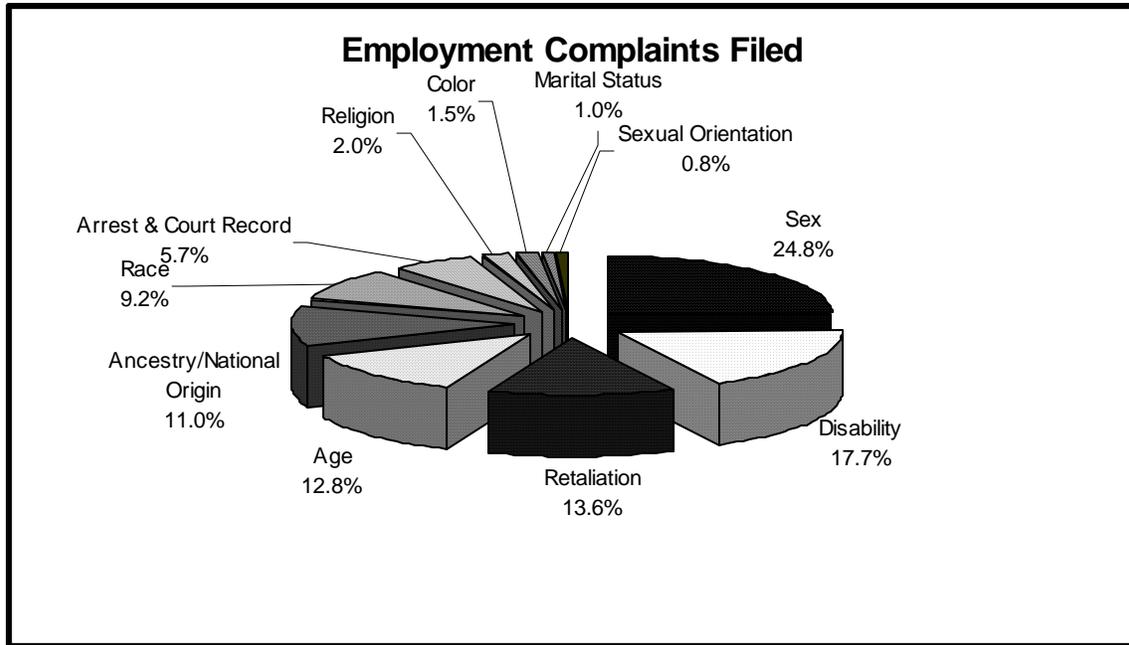
Disability was the second most common basis with 108 cases, representing 17.7% of all employment cases. Retaliatory conduct followed with 83 cases, representing 13.6% of accepted employment cases, followed by age discrimination with 78 cases (12.8%), and ancestry/national origin discrimination with 67 cases (10.9%).

There were 56 cases based on race discrimination (9.2%); 35 cases based on arrest & court record (5.7%); 12 cases based on religion (2%); 9 cases based on color (1.5%); 6 cases based on marital status (1%); and 5 cases based on sexual orientation (0.8%). There were no cases based on National Guard participation or child support obligations.

The case closure period averaged 367 days for the 399 employment cases that were closed (or caused) by HCRC investigators during FY 2001-2002.

### PRIMARY BASIS OF EMPLOYMENT DISCRIMINATION COMPLAINTS ACCEPTED IN FY 2002-2003

<b>Sex</b>	<b>151</b>	<b>Arrest &amp; Court Record</b>	<b>35</b>
<b>Race</b>	<b>56</b>	<b>Sexual Orientation</b>	<b>5</b>
<b>Disability</b>	<b>108</b>	<b>Ancestry/National Origin</b>	<b>67</b>
<b>Marital Status</b>	<b>6</b>	<b>Color</b>	<b>9</b>
<b>Religion</b>	<b>12</b>	<b>Retaliation</b>	<b>83</b>
<b>Age</b>	<b>78</b>	<b>National Guard Participation</b>	<b>0</b>
<b>Child support obligations</b>	<b>0</b>		



### Housing Cases

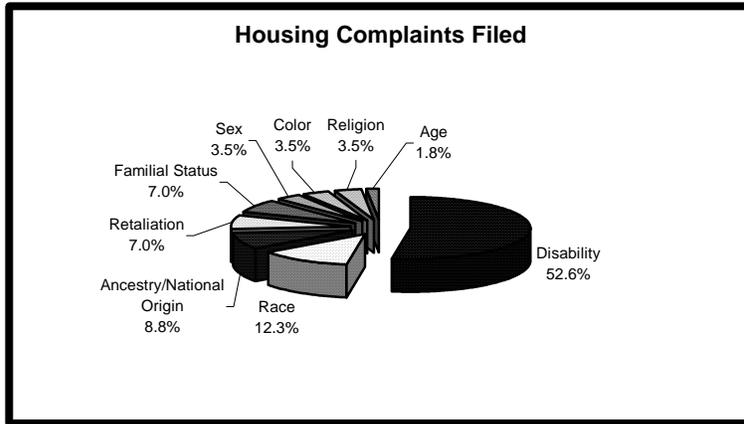
H.R.S. Chapter 515 prohibits discriminatory housing practices based on race, sex, color, religion, marital status, familial status, ancestry, disability, age, or HIV infection. Examples of such unlawful practices are listed in H.R.S § 515-3 and include actions such as refusing to rent, sell, or grant loans to an individual because of one or more of the above protected bases.

The HCRC has a workshare agreement with the U.S. Department of Housing & Urban Development (HUD). HUD refers most of the complaints it receives regarding unlawful discrimination in real estate transactions in Hawaii to the HCRC for investigation.

During FY 2002-2003, the HCRC accepted 57 cases of housing discrimination. The breakdown of these cases are as follows:

Disability status	30
Race	7
Ancestry/National origin	5
Retaliatory Conduct	4
Familial Status	4
Sex	2
Color	2
Religion	2
Age	1

Housing case closures averaged 199 days for the 42 cases closed (or caused) during FY 2002-2003.

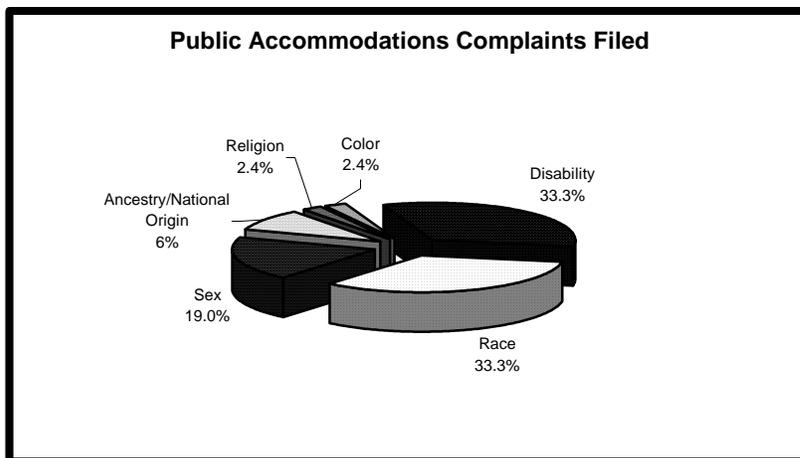


### Public Accommodations Cases

H.R.S. Chapter 489 prohibits unfair discriminatory practices that deny, or attempt to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation on the basis of race, sex, color, religion, ancestry, or disability. Public accommodations include retail stores, restaurants, theaters, sports arenas, public transportation, healthcare providers, hotels, and banks.

During the fiscal year, 42 new cases of public accommodations discrimination were accepted. There were 14 cases based on disability discrimination, 14 cases alleging race discrimination, 8 cases based on sex discrimination, 4 cases based on ancestry, and 1 case each based on religion and color.

Public accommodations case closures averaged 240 days for the 36 cases closed (or caused) during FY 2002-2003.



## Access To State & State-Funded Services Cases

H.R.S., §368-1.5 prohibits state agencies, or any program or activity receiving state financial assistance, from excluding from participation, denying benefits or otherwise discriminating against persons with disabilities (the only protected class under this statute).

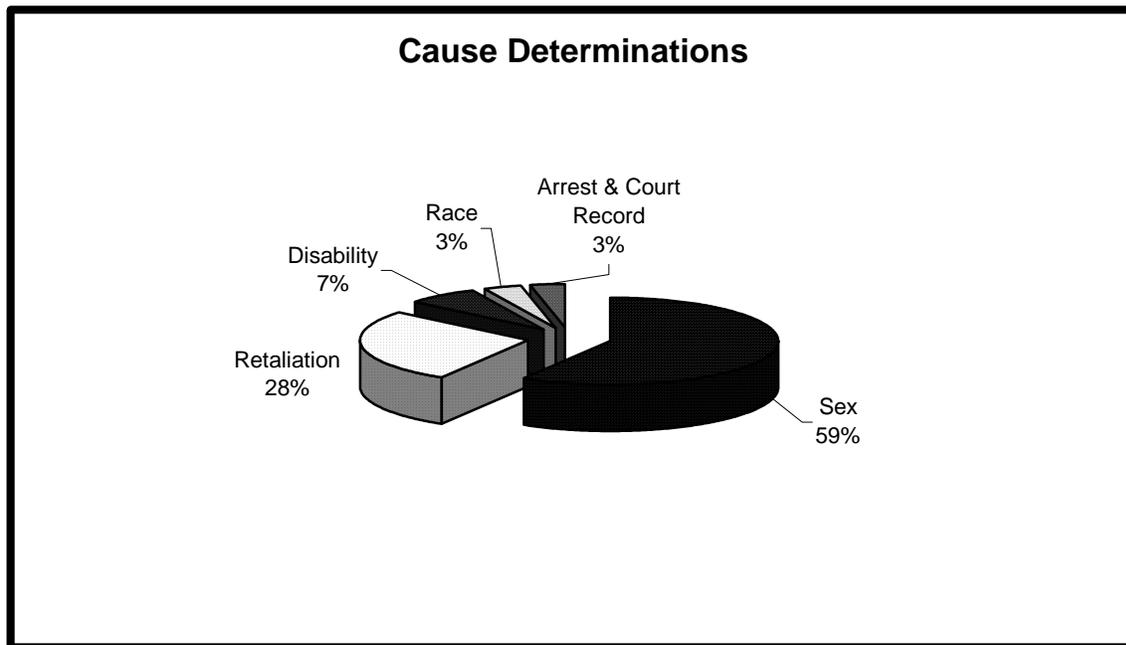
During the fiscal year, there were 3 cases filed under § 368-1.5. One case was closed during FY 2002-2003, which was closed in 87 days.

## Cause Cases

When the investigation results show that there is “reasonable cause” to believe that discrimination has occurred, the case is assigned to an HCRC enforcement attorney for legal action. In FY 2002-2003, the enforcement attorneys received 29 recommendations for cause determinations. Of these, 25 (86%) were employment cases, 3 (10%) were housing cases, and 1 (3%) was a public accommodation case.

Of the 29 investigations resulting in a cause recommendation, 17 (59%) involved discrimination on the basis of sex, 8 (28%) involved retaliation, 2 (7%) investigations or 7% involved discrimination due to disability, and 1 (3%) involved discrimination due to arrest and court record, and 1 case (3%) involving race.

During FY 2002-2003, enforcement attorneys closed 27 cases, and all but one were negotiated settlements.



## Case Settlements

The HCRC promotes and encourages settlement during all stages of the complaint process. Through pre-determination settlements, mediation, and conciliation, the HCRC obtains relief and resolves complaints while avoiding unnecessary litigation. These settlements provide closure for the parties and conserve HCRC investigation and litigation resources for complex or precedent setting cases.

During FY 2002-2003 the total monetary relief obtained through settlements totaled more than \$545,000.00. In the 14 settlements obtained by HCRC attorneys in cases with a finding of reasonable cause, the monetary relief obtained for parties through conciliation exceeded \$264,315.00. In the 40 cases settled prior to an investigative finding, monetary relief totaled more than \$280,000.00. This figure includes both pre-determination settlements obtained through HCRC investigators (\$50,051.44) and investigative settlements obtained through the HCRC Mediation program (\$230,686.00).

In addition to monetary relief, significant affirmative relief was also obtained. The HCRC seeks affirmative relief for four basic reasons: to enforce civil rights laws, stop discriminatory conduct, prevent future harm to complainants, and assist respondents in avoiding future violations. HCRC settlements and conciliation agreements routinely include various types of affirmative relief, including developing and implementing anti-discrimination policies, employee and supervisor training on anti-discrimination policies, posting policies, and publishing notices informing the public of HCRC's role in enforcing state anti-discrimination laws.

In some instances, non-monetary relief can be an important element of a settlement. For example, in FY 2002-2003, there were complainants who received letters of apology pursuant to the terms of a settlement. A simple apology sometimes goes a long way towards healing the rift between a complainant and respondent, and this form of relief is often not available as a court ordered remedy. Some cases are resolved when an employer, housing provider, or public accommodation corrects an unlawful discriminatory policy or practice after notice of the violation. During FY 2002-2003, a significant number of employers, housing providers, and public accommodations voluntarily agreed to correct unlawful employment applications, leave policies, or house rules.

The following descriptions are illustrative of the HCRC cases that were conciliated and the relief that was obtained during FY 2002-2003:

- A complainant alleged he was harassed and subjected to unequal working conditions because of his sex and religion. The settlement included payment of \$60,000 to the complainant, adoption of anti-discrimination employment policies in compliance with Chapter 378, and training for the employer's staff in compliance with such non-discrimination policies.
- In four cases filed against a national company, the complainants alleged they were unlawfully fired or suspended due to their arrest and court records. Settlement included payment in the sum of \$40,000, to one complainant, \$32,500 to another complainant and \$25,000 to each of the other complainants. The Respondent also agreed to affirmative relief in a companion action filed by the Executive Director.
- Settlement of a case alleging employment discrimination based on pregnancy resulted in the complainant receiving over \$8000 and restoration of all sick leave. The employer also adopted a written non-discrimination policy and agreed to affirmative relief.
- In a case in which the complainant alleged she was not restored to her position after a period of leave and terminated because of her disability, the case was settled for \$32,500. The complainant was terminated after the recurrence of an illness that had been in remission for several years.
- A case alleging unlawful questions based on national origin and ancestry resulted in a settlement of \$4,000 to the complainant. The employer also agreed to adopt a non-discrimination policy and to train its workers on how the policy should be applied.

- A complainant who was allegedly subjected to sexual harassment was paid \$12,500 in settlement of her claims. The respondent agreed to re-affirm its policy of non-discrimination, as well as provide training to all employees.
- A case alleging same-sex harassment in employment was settled for \$12,000. Affirmative relief included a reference letter and adoption of an anti-discrimination policy.
- In a case alleging the complainant was not hired because of race, the complainant received a full-time position and \$5,000.
- A case alleging denial of goods and services because of race resulted in a settlement of \$3,000 to the complainant.

### **HCRC Warning Letters**

In an effort to prevent future or recurring problems, HCRC provides respondents with “warning letters” advising them of unlawful or potentially unlawful practices that HCRC discovers during the course of its investigation of other claims against the respondent. In those instances where the HCRC investigation does not result in a recommendation of reasonable cause on the claims filed but the HCRC investigator finds other unlawful practices, such as a discriminatory written policy or employment application, or conduct in the workplace that could rise to the level of unlawful harassment if repeated, HCRC will advise the respondent of the potential violations and give the respondent information on how it can correct the possible violation of the law. Warning letters have resulted in policy and application form changes, as well as discrimination prevention training for employees and managers.

## Case Decisions

### Contested Case Hearings

During FY 2002-2003, HCRC Enforcement Attorneys docketed only one case for hearing, and two cases were pending at the end of the fiscal year. The low number of cases docketed was directly attributable to staff turnover, the departure of the Deputy Executive Director and two of three enforcement attorneys, a 6-month delay in filling the vacant attorney positions due to budget considerations, and a statewide hiring freeze. In addition, the pending constitutional challenge to the HCRC administrative hearing process created uncertainty over the efficacy of docketing cases for hearing, which was resolved by the Hawaii Supreme Court's decision in SCI Management Corp., et al. vs. Sims, et al., 101 Haw. 438, 71 P.2d 389 (2003).

### Circuit Court

In RGIS Inventory Specialist v. The Hawaii Civil Rights Commission, Civil No. 02-1-1703-07 (EEH), appellant RGIS appealed to circuit court challenging the HCRC decision in a declaratory relief petition that it had jurisdiction to investigate complaints of sex discrimination filed by male to female transsexual or transgendered employees. The HCRC ruled, based on a U.S. Supreme Court case, Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775 (1989), that if an employer discriminates because an individual does not conform to gender stereotypes, such action can constitute sex discrimination. The HCRC decision authorized the Executive Director to investigate the complaints despite RGIS' refusal to respond to the investigation.

On January 27, 2003, the circuit court reversed the HCRC decision on the grounds that sex discrimination only covers the biological differences between men and women. It held that sex discrimination under the employment discrimination law did not encompass transgender and transsexual discrimination. The court drew a distinction between RGIS and Price Waterhouse, because that case involved gender stereotyping of women, and not transgender and transsexual individuals.

The HCRC has appealed the circuit court's decision to the Hawaii Supreme Court.

### Supreme Court

In SCI Management L.P. v. Sims, 101 Haw. 438, 71 P.3d 389 (June 18, 2003), the Hawaii Supreme Court vacated the circuit court's decision which held that HRS § 368-12 was unconstitutional because it violated a respondent's right to equal protection by denying their right to jury trial.

However, the Court ruled that a respondent must be given the right to a jury trial if the HCRC final decision awards legal remedies (including compensatory and punitive damages) to the complainant after a contested case hearing. A respondent can then file a request for jury trial with the circuit court and get a de novo jury trial. If legal remedies are not awarded, the final decision will be reviewed by the circuit court as set forth under existing law and neither party will be entitled to a jury trial.

The effect of the Supreme Court's decision is that the HCRC administrative hearing process remains unchanged, but if a case is appealed to circuit court, respondents may be entitled to a jury trial if the HCRC awards legal remedies.

## **Legislation**

Act 33 amends the hate crimes law to add gender identity or expression as a protected basis. This means that a defendant, who intentionally selects a victim or the property of a person because of hostility toward the person's actual or perceived gender identity or expression, can be sentenced to an extended prison term. It also requires that hate crime reports include information about hate crimes based upon gender identity or expression.

Act 95 incorporates the recommendations of the criminal history records checks working group established pursuant to Act 263, SLH 2001, to address inconsistencies and duplicative statutory language authorizing record checks for employment background checks, certifications, and licensing of individuals. The HCRC was a participant in the working group. The Act amends the employment discrimination law to clarify which employers are allowed to inquire into an applicant's criminal convictions before making offers for certain jobs, based upon express exemptions contained in other laws. It also authorizes public employers (the state and counties) to consider criminal convictions, after making a conditional job offer, if the offense is rationally related to the job duties and functions and occurred within the past 10 years. This change allows state and county employers to consider criminal convictions to the same extent as private employers. Act 95 excluded the period of incarceration of an individual from the 10-year time period.

Act 76 amends the Administrative Procedures Act to allow state agencies to encourage the parties to resort to voluntary mediation in lieu of a contested case hearing. The HCRC already encourages parties to voluntarily mediate cases which are docketed for hearing, as well as cases under investigation.

## Appendix

### Administrative Procedure

Before the HCRC accepts a complaint of discrimination, a complaining person must allege that:

- 1) She or he has been subjected to unlawful discrimination<sup>1</sup> because of a "protected basis,"<sup>2</sup> and,
- 2) The unlawful discrimination occurred within the previous 180 days.<sup>3</sup>

After a complaint is filed with HCRC, in appropriate cases the parties are offered an opportunity to voluntarily mediate the complaint through the HCRC Mediation Program. If the parties agree to mediate, the HCRC mediation coordinator refers the parties to a community mediation center, which schedules and holds mediation sessions. Parties may alternatively choose to hire a private mediator.

In cases not referred to mediation, or those in which mediation is unsuccessful, an HCRC investigator conducts an objective, fact-finding investigation. As objective fact-finders, HCRC investigators favor neither party, and gather evidence to allow the Executive Director to make a determination in each case. As appropriate, the HCRC investigator collects, reviews, and analyzes documents, and contacts and interviews witnesses. Some witnesses questioned may be identified by the complainant or by the respondent, and some are independent witnesses, including experts, who are identified by the investigator, by other witnesses, or are discovered during the investigation. In many cases, the investigator also attempts to settle the complaint prior to an investigative determination (pre-determination settlement).

After an HCRC investigation is completed, H.R.S. 368-13(b)-(c) requires the Executive Director to determine whether reasonable cause exists to believe that discrimination has occurred. Where no reasonable cause is found, the Executive Director dismisses the complaint and issues a right to sue letter to the complainant. Where a determination of reasonable cause is recommended, the complaint is assigned to an HCRC enforcement attorney for legal review and final recommendation to the Executive Director.

Upon the issuance of a finding of reasonable cause to believe that unlawful discrimination has occurred, the HCRC enforcement attorney attempts to conciliate or settle the complaint.<sup>4</sup> If conciliation is unsuccessful, the complaint is docketed for a contested case hearing. An HCRC enforcement attorney presents the case in support of the complainant before an impartial hearings examiner. The respondent (represented by themselves or by counsel or representative of their choice) is also given the opportunity to present its case at the hearing. Generally, a complainant may intervene in the contested case process as a party and also be represented by counsel or other representative of their choice.

After the completion of the contested case hearing, the hearings examiner issues a proposed decision based on the evidence. The five-member Commission Board then reviews the proposed decision and the hearing record. The parties may file written exceptions and support statements and present oral arguments to the Board. The Commission Board then accepts, rejects, or modifies the proposed decision, issues a final decision and order, and awards remedies, if appropriate. This decision is legally binding. If any party disagrees with the decision, she/he has 30 days to file an appeal to the State Circuit Court. Furthermore, a Respondent who appeals a decision of the Commission Board is entitled to a jury trial on any claims that form the basis for an award of common law damages.<sup>5</sup>

The HCRC enforcement and administrative process is more cost effective than litigation in court. It provides for the investigation of complaints and access to justice for those who lack the resources to pursue their claims in court. This is particularly important in employment discrimination cases, where employees have often lost their source of income through termination and have little or no control over the evidence needed to prove discrimination.

The HCRC enforcement and adjudication process also funnels cases away from the courts, saving judicial resources and associated costs. Complainants who file suit in court must first exhaust administrative remedies by filing a complaint with the HCRC. The primary reason for this requirement is to prevent the courts from being overburdened with non-judicial or non-meritorious complaints, or with complaints that can be closed or settled in HCRC's administrative process. In fact, the great majority of complaints filed with HCRC are resolved or disposed of without resort to the courts.<sup>6</sup>

Although only a small number of cases are brought to administrative hearing and result in final Commission decisions, these cases are important because they create a body of legal precedent. Case law precedents – in Hawaii and across the United States -- provide the basis for anti-discrimination principles, such as the doctrine of sexual harassment. Case law also establishes standards that define the rights and protections under civil rights laws, and give guidance to employers, landlords, and businesses on how to prevent and eliminate discrimination.

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1 “Unlawful discrimination” may occur in any of the following ways:

- a. Disparate Treatment – this is the usual form of discrimination; it occurs when individuals are treated in an unequal manner because of a “protected basis.” Examples of disparate (unequal) treatment include: firing an employee because of her race, her age, or because she is pregnant; refusing to serve a person because of his race or his disability; refusing to rent to a person because of her race; or refusing to rent to a family because it has young children.
- b. Reasonable Accommodation – this is the second most common way that discrimination appears; it occurs when an individual is denied a “reasonable accommodation” designed to allow an individual to have equal access or equal benefits. Examples of failure to accommodate include: refusing to allow a seeing-impaired customer into a taxicab because he is accompanied by a seeing-eye dog; refusing to allow a pregnant cashier to sit on a stool so that she can work while pregnant; or refusing to make exceptions to a condominium association's "no pets" house rule to allow a disabled resident to keep a service animal.
- c. Disparate Impact -- the least common way that discrimination appears; however, when discrimination occurs in this form, it may impact the greatest number of people. Disparate impact occurs when a policy, practice, or test that has a “disparate impact” on persons with a particular “protected basis.” Examples of disparate impact include: a pre-employment test that includes a number of questions that are not job-related but have the effect of disqualifying a large number of women, or men, or any other protected basis.

<sup>2</sup>“Protected basis” is the criteria that it is unlawful for a respondent to discriminate upon. Protected bases vary depending on the statute involved:

- a. State Funded Services (Chapter 368, H.R.S.) The only protected basis is disability.
- b. Employment (Chapter 378, Part I, H.R.S.) The protected bases that an employer, employment agency, or labor organization may not discriminate on are: race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record.
- c. Public Accommodations (Chapter 489, H.R.S.) The protected bases that a public accommodation may not discriminate on are: race, sex, color, religion, ancestry, or disability.
- d. Housing (Chapter 515, H.R.S.) The protected bases that an owner, a real estate broker or any person engaging in a real estate transaction, may not discriminate on are: race, sex, color, religion, marital status, familial status, ancestry, disability, age or HIV (human immunodeficiency virus) infection.

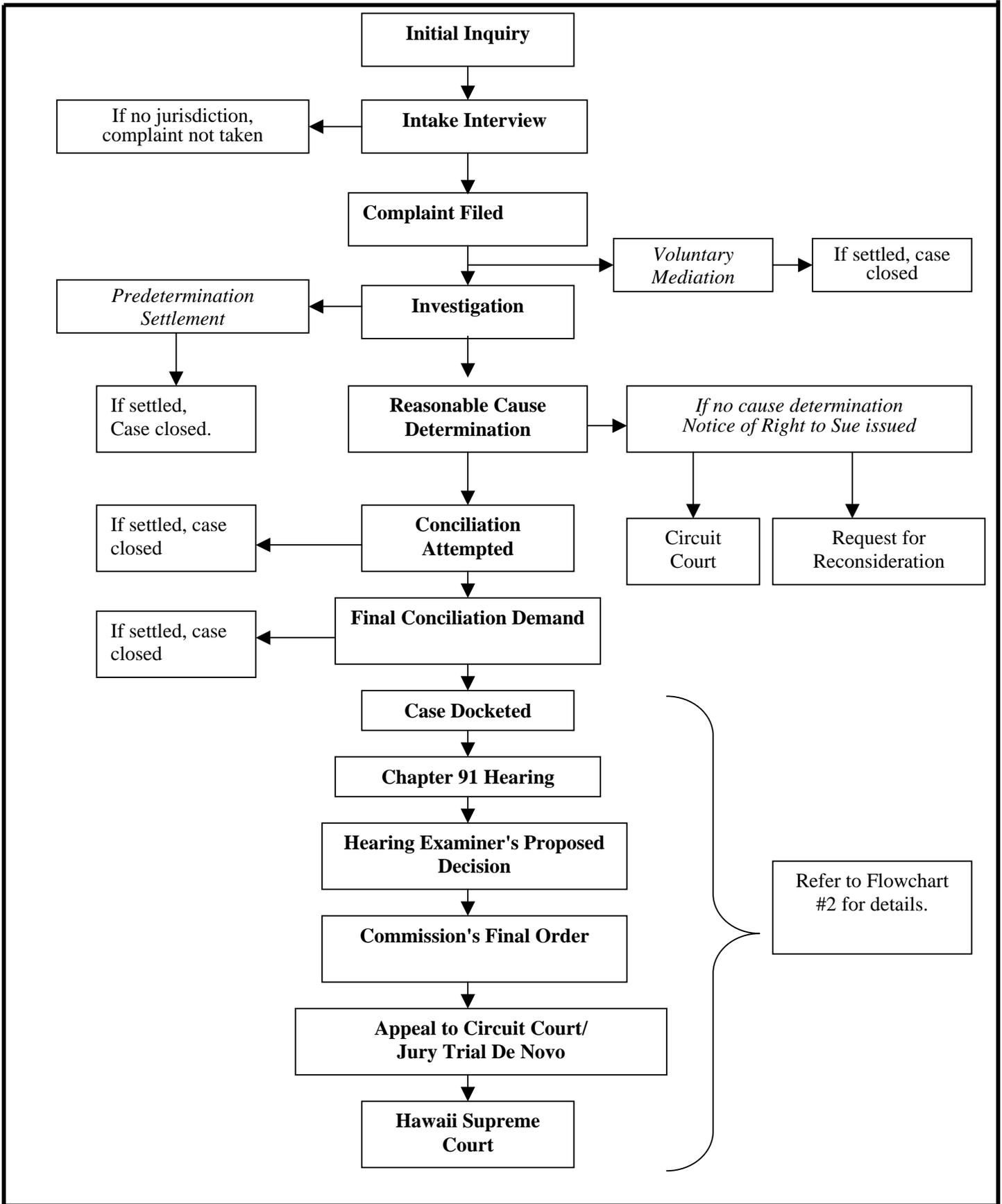
<sup>3</sup> Complaints filed with HCRC usually involve a discrete act – such as termination, eviction, demotion, etc. – or involve acts that are ongoing and constitute a continuing violation. An example of a “continuing violation” is sexual harassment that began more than 180 days before the complaint is filed, but continued or ended less than 179 days before the complaint is filed. When discrimination involves a discrete act, such as termination, the HCRC can only accept a complaint within 180 days of that complained action.

<sup>4</sup> During FY 2002-2003, of all complaints closed (471), 19.11% (90) were closed on the basis of the complainant electing court action or other administrative closure. The remaining cases (381) were closed on the basis of a completed investigation or a pre-determination settlement: in 64.33% (303) the Executive Director found no cause and dismissed the complaint; in 4.67% (22) the case was resolved through settlement or litigation by HCRC enforcement attorney after the issuance of a notice of cause; and 11.89% (56) were settled prior to a cause determination.

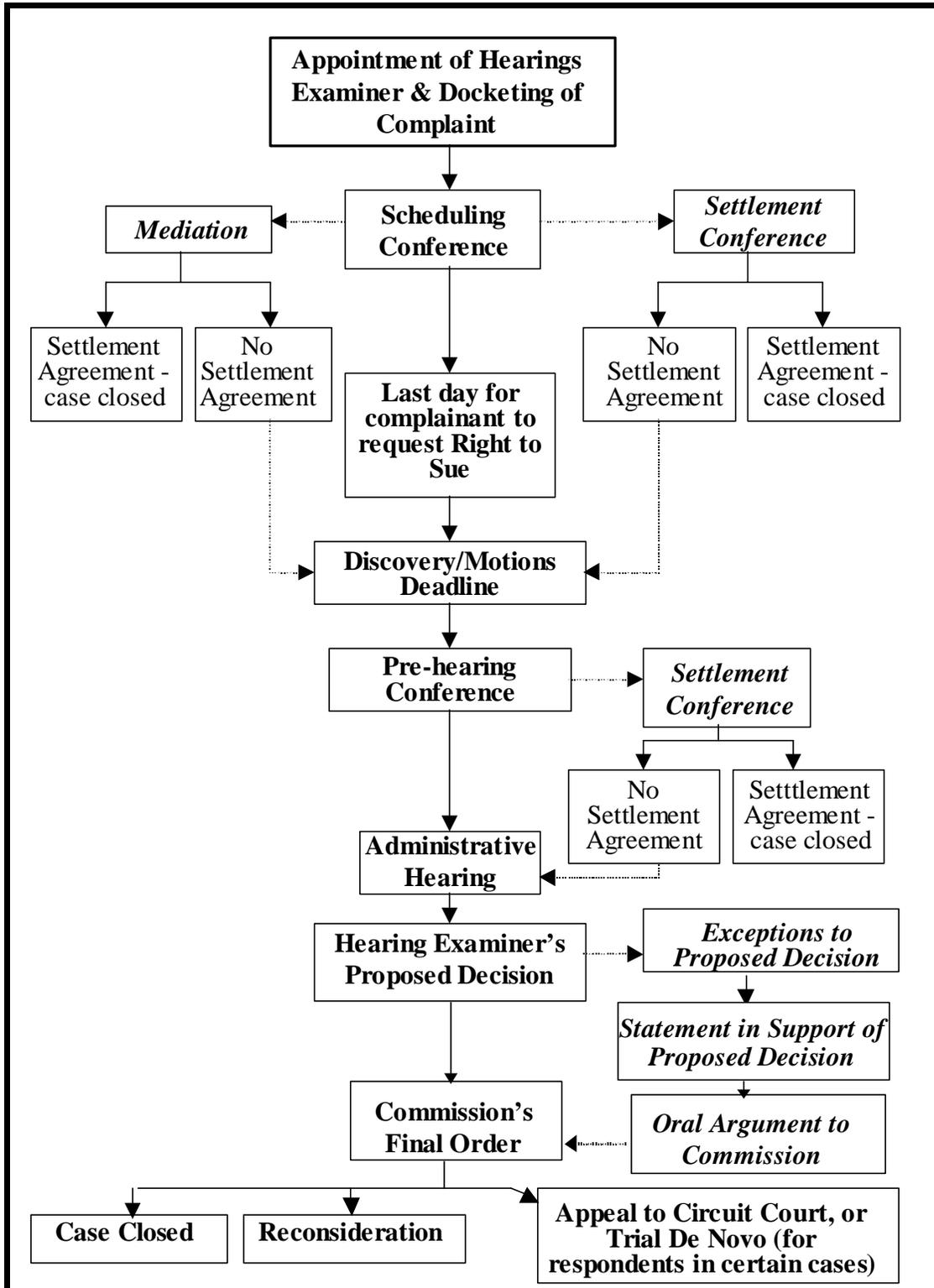
<sup>5</sup> The HCRC administrative procedure and circuit court appeal is illustrated in Flowchart # 1. In SCI Management Corporation, et. al. v. Darryllyne Sims, et. al., No. 24485, June 18, 2003, the Hawaii Supreme Court held that “a respondent who appeals a final order of the HCRC, pursuant to HRS § 368-16, is entitled to a jury trial on any claims that form the basis for an award of common law damages by the HCRC.”

<sup>6</sup> HCRC case dispositions are illustrated in Flowchart # 2 .

# HCRC Procedural Flowchart #1



HCRC Contested Case Flowchart # 2



## **HCRC Commissioners**

### **Harry Yee**

Chair (Terms 1997-2001, 2001-2005)

During FY 2002-2003, Mr. Yee was an attorney in private practice. He served as President of the Federal Bar Association, Hawaii Chapter and on the board of the National Asian Pacific American Bar Association. Mr. Yee served as an Assistant Attorney General with the Civil Rights Division of the Massachusetts Office of the Attorney General and managing attorney for Greater Boston Legal Services, Chinatown Office. He was a member of the Greater Boston Civil Rights Coalition and the George Lewis Ruffin Society, which promotes greater understanding between minority communities and the criminal justice system. Mr. Yee was appointed Chair of the Commission in December 1998. He was reappointed for another four-year term in 2001. Mr. Yee resigned as Chair and Commissioner, effective September 5, 2003, and is now an Assistant United States Attorney in Honolulu.

### **Faye Kennedy**

Commissioner (Terms 1995-97, 1997-2001, 2001-2003)

Ms. Kennedy is a former New York social worker and author. She is a past member of the Martin Luther King, Jr. Commission and the Commission on the Status of Women. She is also a member of the U.S. Civil Rights Commission's Hawaii Advisory Committee and is currently listed in Who's Who of American Women. Appointed in 1995 to serve out the remaining term caused by a vacancy on the Commission, she was appointed to her first full term in 1997. Among her other duties as a Commissioner, Ms. Kennedy coordinated the Commission's participation in Martin Luther King, Jr., Holiday Commemoration events and activities. She was reappointed for another two-year term in 2001. Ms. Kennedy's term expired on June 30, 2003.

### **Allicyn Hikida Tasaka**

Commissioner (Terms 1996-2000, 2000-2004)

Ms. Tasaka is Executive Director of the Hawaii State Commission on the Status of Women. She is serving her second four-year term as a commissioner. She was the Communications Director for former Lieutenant Governor Mazie K. Hirono, Chair of the Hawaii State Commission on the Status of Women, and the first woman president of the Honolulu Chapter of the Japanese American Citizens League (JACL). She also serves as director on the boards of the Hawaii Women's Political Caucus, Winners at Work, Awareness Foundation, and as a commissioner of the Department of Education's Gender Equity in Athletics Advisory Commission.

### **June Motokawa**

Commissioner (Terms 1998-1999, 1999-2003)

Ms. Motokawa is a special education teacher at Kawanakoa Middle School and has been a teacher in Hawaii public schools for 30 years. She is a past president of the Hawaii State Teachers' Association and Civic Forum on Public Schools. She served on the Commission on the Handicapped in the 1980's and formerly served as Congresswoman Patsy T. Mink's Hawaii liaison. Ms. Motokawa was appointed in October 1998 to serve the remainder of the late Commissioner Claudio R. Suyat's term. She was appointed to her second term in 1999. Ms. Motokawa chairs the HCRC Special Advisory Committee on Diversity.

### **Richard Turbin**

Commissioner (Term 2002-2006)

Mr. Turbin was born in New York City and graduated from Cornell University, Magna Cum Laude, and Harvard Law School where he served as editor and author of the Harvard Civil Rights Law Review. He has been a litigation lawyer in Hawaii for 31 years. He is the Chair of the Kahala Neighborhood Board, the President of the Consumer Lawyers of Hawaii, and a board member of Mothers Against Drunk

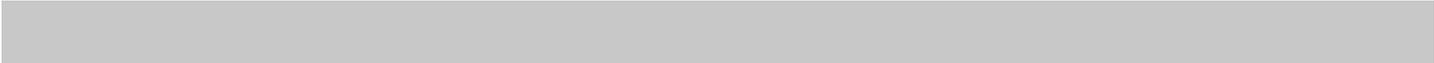
Driving (MADD) and the Judicial History Center. He has also served as the Hawaii State Bar Association Chair of the legal malpractice insurance section and the 1999-2000 Chair of the Tort and Insurance Practice Section (TIPS) of the American Bar Association (ABA), which is comprised of 30,000 members, the largest such organizations in the world.

### **HCRC Staff**

The HCRC staff consists of 29 individuals in the following positions:

- Executive Director
- Enforcement Staff:
  - Deputy Executive Director
  - Enforcement Attorneys (4)
  - Administrative Services Asst.
  - Investigator-Supervisors V (2)
  - Investigator III-IV (11)
  - Secretary III
  - Legal Stenographer I
  - Clerk Typists (4)
- Adjudication Staff:
  - Chief Counsel
  - Hearings Examiner
  - Secretary II





# Hawaii Labor Relations Board



*Brian K. Nakamura, Chair*

*Chester C. Kunitake, Member*

*Kathleen Racuya-Markrich, Member*





## **I. INTRODUCTION**

Pursuant to Hawaii Revised Statutes (HRS) § 89-5(a), the Hawaii Labor Relations Board (HLRB or Board) presents its annual report to the Governor describing its activities for fiscal year 2002 – 2003 (FY 2003) and reflecting the status of the Board on June 30, 2003.

## **II. MISSION STATEMENT**

The mission of the Board is to enforce and protect the rights of employees and unions to organize and bargain collectively in balance with the employer's rights to manage operations as provided by HRS Chapters 89 and 377 by fairly and efficiently resolving labor disputes brought before it. The Board is committed to promote the harmonious and cooperative relations between the parties.

In 2002, the Board also acquired jurisdiction to conduct de novo hearings on contests from citations issued by the Director of the Department of Labor and Industrial Relations (DLIR) through the Hawaii Occupational Health and Safety (HIOSH) Division and appeals from HIOSH's findings in discrimination complaints involving retaliation for reporting safety and health violations. The Board's mission pursuant to HRS Chapter 396 is to ensure the right of workers to a safe and healthful work environment and encourage employer and employee efforts to reduce injury and disease arising out of employment.

## **III. OVERVIEW**

### **Governing Constitutional Provisions and Statutes**

Private employees in the State of Hawaii have a constitutional right to organize. Article XIII, Section 1 of the State Constitution, provides that, "Persons in private employment shall have the right to organize for the purpose of collective bargaining." The Hawaii Employment Relations Act (HERA) was enacted in 1945 and codified as HRS Chapter 377 to permit employees who are not subject to the Railway Labor Act or the National Labor Relations Act to participate in collective bargaining. The Hawaii Employment Relations Board (HERB) was created to administer the provisions of the HERA.

Similarly, in 1968, the State Constitution was amended to afford public employees in the State of Hawaii the right to organize for the purpose of collective bargaining. Article XIII, Section 2 of the State Constitution, provides that, "Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law." In 1970, the Legislature enacted Act 171, Session Laws of Hawaii, which was subsequently codified as HRS Chapter 89, Collective Bargaining in Public Employment, to encourage joint decision-making in administering government. The Act created the Hawaii Public Employment Relations Board (HPERB) to administer the provisions of HRS Chapter 89. In 1985, the Legislature abolished the HERB and transferred its functions to the HPERB and renamed it the Hawaii Labor Relations Board (HLRB). Effective January 1, 1986, the HLRB began administration of the provisions for both HRS Chapters 89 and 377.

Thereafter, in 2002, the Legislature enacted Act 104, Session Laws of Hawaii, which empowered the Board to conduct de novo hearings in reviewing contests from citations or orders of the Director of Labor and Industrial Relations involving occupational health and safety pursuant to HRS § 396-11.<sup>5</sup>

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<sup>5</sup>Prior to 2002, the Labor and Industrial Appeals Board of the DLIR (LIRAB) heard contests filed under HRS § 396-11.

## **Functions**

The Board is an agency within the DLIR for administrative and budgetary purposes. The Board exercises quasi-judicial powers with jurisdiction over disputes over collective bargaining in the public sector arising under HRS Chapter 89 and in the private sector, under HRS Chapter 377. Accordingly, the primary duties of its members are to hear and decide contested cases involving prohibited or unfair labor practice complaints and to render declaratory rulings on questions submitted. These cases typically involve an employer or union's failure to bargain in good faith, an employer or union's interference with an employee's right to participate in or refrain from bargaining activities, or a union's failure to fairly represent its members in the negotiation of agreements or the pursuit of grievances. The Board also conducts union representation elections, supervises the impasse procedures in public employment, and issues declaratory rulings to clarify the applicability of governing statutes and its rules. In addition, the Board also resolves disputes involving bargaining unit designations and determines the appropriateness of dues refunds for nonmembers.

In the public sector, the Board has jurisdiction over state and county employees, judiciary employees, public school teachers, faculty of the University of Hawaii and community college system, employees of the Hawaii Health Systems Corporation, and charter school employees.

In the private sector, the Board similarly conducts representation elections and resolves unfair labor practice complaints. The Board has jurisdiction over primarily agricultural employees and employers and those private employees and employers who are not subject to the jurisdiction of the National Labor Relations Board. Typically, the employees are members of unions or are involved with organizing activities.

In addition, the Board decides contests and appeals of decisions rendered by the Director of Labor and Industrial Relations, State of Hawaii, through HIOSH under HRS Chapter 396. These cases are typically employer contests of citations and penalties issued and appeals in discrimination cases involving retaliation against employees for reporting safety and health violations.

## **Board Members**

The Board is composed of three members, one of whom is representative of management, one who is representative of labor and the third member, the Chair, who represents the public. Each member is appointed by the governor and confirmed by the Senate for six-year terms. Because cumulative experience and continuity in office are essential to the proper administration of HRS Chapter 89, the two-term appointment limit in HRS § 26-34 is not applicable, and members can continue in office as long as efficiency is demonstrated. The Board is composed of the following members:

**BRIAN K. NAKAMURA**, Chair, appointed July 1, 2000; \$77,964 annual salary. Mr. Nakamura was an attorney in private practice who previously served for two years as general counsel for the Hawaii State Campaign Spending Commission and chief counsel for the Senate Judiciary Committee in 1997. From 1993 to 1996, he was the Executive Officer at the UH Hawaii Natural Energy Institute and prior to that time, served as chief of staff and legal officer in the Lieutenant Governor's Office. Mr. Nakamura also served as U.S. Senator Daniel Inouye's chief of staff and legal officer in his state office and chief of staff and legal officer in the U.S. Senate Sergeant-At-Arms Office, Washington, D.C., as well as legal counsel and legislative assistant to Senator Inouye in Washington, D.C.

Mr. Nakamura graduated from the University of Hawaii with a Bachelor of Arts degree from the College of Arts and Sciences in political science, a teaching certificate in secondary education from the College of Education, and a Juris Doctor degree from the William S. Richardson School of Law.

**CHESTER C. KUNITAKE**, Member, appointed February 20, 1997; \$74,065.92 annual salary. Mr. Kunitake was the Public Policy Officer of the Hawaii Government Employees Association and worked for the union for over 26 years. Mr. Kunitake graduated from the University of Hawaii with a degree in business administration. Mr. Kunitake serves as the labor representative to the Board.

**KATHLEEN RACUYA-MARKRICH**, Member, appointed July 1, 2000; \$74,065.92 annual salary. Ms. Racuya-Markrich served as press secretary to Governor Benjamin Cayetano for six years and previously served for seven years as a Deputy Attorney General in the Employment Law Division of the State Department of the Attorney General representing the public employer and specializing in employment litigation for seven years. Ms. Racuya-Markrich graduated from the William S. Richardson School of Law with a Juris Doctor degree and also with a Bachelor of Science in Foreign Service from Georgetown University, School of Foreign Service. Prior to law school, Ms. Racuya-Markrich worked in Washington, D.C. as a staff aide/secretary to the Administrative Assistant for U.S. Senator Spark Matsunaga and an immigration caseworker. Ms. Racuya-Markrich is the management representative to the Board.

### **Board Staff**

Pursuant to HRS § 89-5(a), the Board may appoint the members of its staff. The legal clerk is in the civil service system and excluded from collective bargaining. Other staff members are exempt from civil service and excluded from collective bargaining. The staff is composed of the following:

Valri Lei Kunimoto, Executive Officer, \$79,999 annual salary. The executive officer is legal counsel to the Board, represents the Board in the courts, and performs such legal and administrative duties as may be delegated by the Board Chair. Her administrative duties may include supervising the other staff members and editing Board publications and decisions.

Sau Lan Leung, Legal Clerk, \$31,200 annual salary. The Legal Clerk performs a variety of clerical tasks; types Board decisions, orders, notices and legislative documents; prepares and files court documents, including pleadings, records on appeals, and briefs; and maintains the Board's library.

## **IV. DATA ON THE PUBLIC SECTOR BARGAINING UNITS**

The collective bargaining law for public employees divides all State and county employees covered by Chapter 89, HRS, into 13 units based upon occupational and compensation plan groupings. These bargaining units, described in HRS §89-6(a), are as follows:

- (1) Non-supervisory employees in blue collar positions;
- (2) Supervisory employees in blue collar positions;
- (3) Non-supervisory employees in white collar positions;
- (4) Supervisory employees in white collar positions;
- (5) Teachers and other personnel of the department of education under the same pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
- (6) Educational officers and other personnel of the department of education under the same pay schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Institutional, health and correctional workers;

- (11) Firefighters;
- (12) Police officers; and
- (13) Professional and scientific employees, who cannot be included in any of the other bargaining units.

It is customary to refer to the bargaining units by the numbers used in HRS § 89-6(a). For example, the unit consisting of firefighters is referred to as Unit 11.

**Exclusive Representatives**

All 13 public employee collective bargaining units have selected employee organizations to serve as their exclusive representatives. Throughout the remainder of this report, the following abbreviations will be used to refer to the respective exclusive representatives (or unions):

- HFFA Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO
- HGEA Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO
- HSTA Hawaii State Teachers Association
- SHOPO State of Hawaii Organization of Police Officers
- UHPA University of Hawaii Professional Assembly (NEA-AAUP)
- UPW United Public Workers, AFSCME, Local 646, AFL-CIO

**Number of Employees in Units**

The following table indicates, for each bargaining unit, the number of employees who are included in the unit, the union and the date that the union was initially selected and certified as the exclusive representative.

<b>0Unit</b>	<b>No. of Employees<sup>6</sup></b>	<b>Exclusive Representative</b>	<b>Date of Initial Certification</b>
01	8,749	UPW	10/20/71
02	843	HGEA	10/20/71
03	14,031	HGEA	04/03/72
04	845	HGEA	05/03/72
05	12,854	HSTA	05/21/71
06	856	HGEA	06/10/71
07	3,359	UHPA	11/01/74
08	1,469	HGEA	01/26/73
09	1,538	HGEA	07/10/79
10	2,992	UPW	02/11/72
11	1,767	HFFA	02/04/72
12	2,613	SHOPO	07/14/72
13	7,404	HGEA	05/03/72

## V. CASES BEFORE THE BOARD DURING FY 2003

### Code Used to Designate Cases

#### Public Sector

Each public sector petition filed with this Board is assigned a case number designated by a three-part code. The first part indicates the type of proceeding; the second part indicates the number of the bargaining unit referred in the petition; and the third part indicates the chronological number in the series for that type of case.

For example, “Case No. CE-05-03” is interpreted as follows:

CE indicates the case is a prohibited practice complaint against an employer;  
05 indicates the case concerns Unit 05; and  
03 indicates this is the third case filed in the CE series.

The following code letters represent the types of cases:

<u>Code Letters</u>	<u>Type of Case</u>
R	Representation
RD	Decertification
RA	Clarification or Amendment of Appropriate Bargaining Unit
CE	Prohibited Practice Complaint Against an Employer
CEE	Prohibited Practice Complaint Against an Employee
CU	Prohibited Practice Complaint Against an Exclusive Representative
I	Impasse
DR	Declaratory Ruling
PD	Review of Refunds
PE	Petition for Enforcement of Board Order
RM	Rulemaking

#### Private Sector

Each private sector petition filed with this Board is assigned a case number designated by a three-part code. The first part indicates the year in which the case was filed; the second part indicates the chronological number for cases filed within the year; and the third part indicates the type of case.

For example, “Case No. 03-1(RD)” is interpreted as follows:

03 indicates the case has been filed in 2003;  
1 indicates this is the first case filed in 2003; and  
(RD) indicates the case is a decertification case.

The following code letters represent the types of cases:

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<sup>6</sup>These figures are from HLRB Informational Bulletin No. 41, dated April 3, 2003, as amended August 21, 2003, which was compiled from data supplied by the public employers. These figures are current as of December 31, 2002.

<u>Code Letters</u>	<u>Type of Case</u>
R	Representation
RD	Decertification
RA	Determination of Collective Bargaining Unit
CE	Unfair Labor Practice of Employer
CEE	Unfair Labor Practice of Employee
CU	Unfair Labor Practice of Exclusive Representative
DR	Declaratory Ruling

### Occupational Safety and Health

Each contest filed with the Board is assigned a two-part case number. The number following OSAB<sup>7</sup> or OSH<sup>8</sup> designation indicates the year in which the case was filed; the second part indicates the chronological number for cases filed within the year.

For example, “Case No. OSH 2003-1” is interpreted as follows:

03 indicates the case has been filed in 2003; and  
1 indicates this is the first case filed in 2003.

### Case Statistics

The following represents the cases filed and pending before the Board in FY 2003:

<b>Type of Case</b>	<b>Pending 6/30/02</b>	<b>Filed</b>	<b>Closed</b>	<b>Pending 6/30/03</b>
<b>Public Sector</b>				
Prohibited Practice against Employer	11	33	24	20
Prohibited Practice against Union	10	19	23	6
Impasse	0	13	1	12
Declaratory Ruling	1	1	0	2
Investigation	1	0	0	1
<b>Private Sector</b>				
Representation	0	1	1	0
Decertification	0	1	1	0
Unfair Labor Practice against Employer	0	1	0	1
Unfair Labor Practice against Union	0	1	1	0
<b>Type of Case</b>	<b>Pending 6/30/02</b>	<b>Filed</b>	<b>Closed</b>	<b>Pending 6/30/03</b>
<b>HIOSH Appeals</b>				
Citation	18	12	15	15
Discrimination	1	4	2	3
<b>Total</b>	<b>42</b>	<b>86</b>	<b>68</b>	<b>60</b>

<sup>7</sup> Occupational Safety Appeals Board, which is the designation assigned previously by LIRAB.

<sup>8</sup> Occupational Safety and Health, which is the designation assigned by the Board in 2003.

A total of 86 cases (66 public sector, 4 private sector, and 16 HIOSH cases) were filed with the Board during the past fiscal year. The Board closed 68 cases as described in Appendix A. One measure of the Board's efficiency is whether the case was disposed of within 30 days of submission. During FY 2003, the Board closed 44 of the 68 cases or 64.7% of the cases within 30 days. These cases vary in complexity; some involving issues affecting one employee and others affecting the rights of a large number of employees. Some petitions filed did not result in formal Board decisions because they were either withdrawn by the petitioners or the cases were settled by the parties at some point in the proceedings with the Board's approval. Motions filed with the Board are not counted as separate filings and are disposed of by Order rather than Decision.

### **Cases Closed During FY 2003**

The chart in Appendix A provides information on the cases closed by the Board during FY 2003.

### **Cases Pending on June 30, 2003**

The chart in Appendix B provides information on the cases pending before the Board on June 30, 2003.

### **Cases on Appeal in the Courts in FY 2003**

The chart in Appendix C provides information on the cases in the courts.

## **VI. PUBLICATIONS**

1. HLRB Decisions: The Board, working with the Industrial Relations Center (IRC), University of Hawaii, publishes the Board's decisions in loose-leaf binders for sale on a subscription basis. Thus far Volume 1, containing Decision Nos. 1 through 85 covering the years 1971-77; Volume 2, containing Decision Nos. 86 through 155 covering the years 1978-81; Volume 3, containing Decision Nos. 156 through 209 covering the years 1982-85; Volume 4, containing Decision Nos. 210 through 311 covering the years 1986-90; Volume 5, containing Decision Nos. 312 through 393 covering the years 1991-97; and Volume 6 containing Decision Nos. 394 to 430, have been issued.

The Board also distributes copies of its decisions as they are rendered to the respective parties in interest, the State agencies as required by HRS § 93-3, the IRC, and the Center for Labor Education and Research.

2. Informational Bulletin: Each year the Board issues an Informational Bulletin which provides, by employing jurisdictions, the number of public employees in each of the 13 collective bargaining units established by HRS § 89-6(a). The figures are compiled from data supplied by the public employers.

3. Website: The DLIR is establishing an updated website in early 2004 which will include the Board's rules and forms. The Board is hopeful to have its decisions on its website in the next fiscal year.

## VII. CONCLUSION

During the past legislative session, the Legislature amended HRS § 89-11 to permit the bargaining units represented by the HGEA to pursue their impasses to final and binding arbitration. (See, Act 6, 2003 Session Laws of Hawaii, Special Session). The HGEA previously had the right to arbitrate its impasses but it was abolished in 2002. The HGEA presently has six impasses pending before the Board which may proceed to arbitration under Act 6. In other legislation affecting the Board, the Legislature enacted a provision for voluntary mediation before administrative agencies. While the Board encourages the settlement of disputes before it and offers its services to the parties to assist in settlement conferences, Act 76, 2003 Session Laws of Hawaii, provides a vehicle for the parties to retain the services of a third party to assist in the resolution of the disputes before the Board.

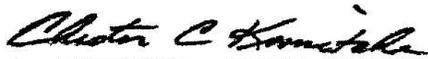
During this past year, the cases before the Board continued to present complex legal and procedural issues concerning the interpretation of HRS Chapters 89, 377, and 396. The Board members attempted to meet this challenge by applying their collective judgment in rendering fair decisions in promoting the policies underlying these statutes. The Board continues to endeavor to strike a balance between the employees' right to collectively bargain and participate in decisions affecting their rights and working conditions and the employer's right to manage its operations. In reviewing the case activity for this fiscal year, the Board believes it has continued to meet its goals of fairly administering the provisions of HRS Chapters 89 and 377, credibly and objectively resolving labor-management disputes, promoting good faith and harmony in labor relations. With respect to the HIOSH contests, the Board conducted de novo hearings on the contests of citations and decisions in discrimination cases and endeavors to provide a forum for the fair and efficient adjudication of safety and health contests.

As for its short-term goals, the Board intends to promulgate procedural rules governing HIOSH appeals under Chapter 396 as well as refining its current rules governing proceedings filed under Chapters 89 and 377.

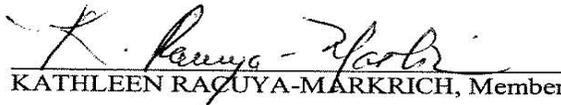
Respectfully submitted,



\_\_\_\_\_  
BRIAN K. NAKAMURA, Chair



\_\_\_\_\_  
CHESTER C. KUNITAKE, Member



\_\_\_\_\_  
KATHLEEN RAQUYA-MARKRICH, Member

Dated: November 3, 2003  
Honolulu, Hawaii  
(revised 12/22/03)

## Appendix A - Cases Closed FY2003

Case No.	Parties	Concerns	Disposition	Date
CE-10-501	Albert G. Moniz v. Ted Sakai	Termination without just cause; failure to provide reasons for termination; failure to properly investigate	Dismissed for lack of jurisdiction - untimely and failure to exhaust contractual remedies. Order No. 2102.	07/31/02
CU-01-189 CE-01-493	Helen L. Gabriel v. UPW and Dept. of Parks and Recreation, County of Hawaii	Duty of fair representation (DFR) and non-selection	Granted UPW's motion for summary judgment and dismissed County. Order No. 2105.	08/08/02
OSAB 2002-29	DLIR and Macy's West, Inc.	Citation	Approved Stipulation and Settlement Agreement. Order No. 5.	08/14/02
OSAB 2002-30	Katherine Bergamasco v. Na Hale Holo, Inc. and DLIR	Discrimination	Withdrawn. Order No. 7.	08/21/02
OSAB 2001-09	DLIR and Goodfellow Bros., Inc.	Citation	Approved Stipulation and Settlement Agreement. Order No. 8.	08/22/02
CE-05-482 CE-05-483 CU-05-190(A&B)	John Mussack and Michael Harano, et al.	Written and oral reprimand; DFR	Dismissed - untimely; no breach of DFR. Dec. No. 436.	08/23/02
CE-05-505	John Mussack and Lea Albert	Falsification of information and reprisal for participating in grievance process	Withdrawn. Order No. 2107.	08/26/02
CE-05-506	John Mussack and Lanelle Hibbs	Retaliation	Withdrawn. Order No. 2108.	08/26/02
OSAB 2002-15	DLIR v. Rainbow Rehabilitation Services, Inc.	Citation	Affirmed Citation. Dec. No. 1.	09/06/02
CE-10-503 CU-10-201	Bert Sam Fong v. Ted Sakai, et al. and UPW	Assignment of overtime to supervisors; DFR	Granted UPW's motion for summary judgment and dismissed State. Order No. 2113.	09/12/02
CU-03-183	Lewis W. Poe v. HGEA	Denial of access to Memoranda of Agreement	Dismissed. Dec. No. 437.	09/13/02
OSAB 2002-17	DLIR v. Hawaii Concrete Products, Inc.	Citation	Approved Stipulation and Settlement Agreement. Order No. 12.	09/18/02
CE-05-496	HSTA v. Benjamin J. Cayetano and BOE	Refusal to implement non-disputed portions of contract	Withdrawn. Order No. 2117.	09/23/02
CE-10-513	Alvin M. Ikemoto v. Ted Sakai	Denial of promotion	Dismissed - no jurisdiction over movement to excluded position. Order No. 2121.	10/03/02
CU-05-206 CE-05-512	Alexander M. Cyran v. HSTA and BOE	DFR; Denial of sabbatical leave at charter school	Withdrawn. Order No. 2122.	10/04/02

## Appendix A - Cases Closed FY2003

Case No.	Parties	Concerns	Disposition	Date
OSAB 2002-16	Kay Miura v. Pacific Ohana Hostel, et al.	Discrimination	Reversed. Dec. No. 2.	10/04/02
CU-10-184	Deborah Taylor, et al. v. Eddie Espiritu, et al.	Selection of posts violated contract	Granted UPW's motion for summary judgment - no DFR. Order No. 2126.	10/21/02
OSAB 2002-18 OSAB 2002-20	DLIR v. Vet's Termite Control	Citation	Withdrawn. Order No. 15 .	10/21/02
OSAB 2002-21	DLIR v. H&W Foods Acquisition Corp. dba Palama Meat Co.	Citation	Approved Stipulation and Settlement Agreement. Order No. 16.	10/21/02
CE-10-514 CU-10-207	Kevin D. Flores and PSD, et al. and UPW, et al.	Termination; DFR	Dismissed for lack of prosecution. Order No. 2128.	10/24/02
CU-03-203	Lewis W. Poe v. HGEA	DFR - no response to request for status of grievances	Breach of DFR. Dec. No. 438.	10/24/02
02-1(RD)	Dorothy K. Quintua and ILWU and Coffees of Hawaii, Inc.	Decertification	ILWU decertified. Order No. 2129.	10/25/02
OSAB 2001-41	DLIR v. Swanson Steel Company, Inc.	Citation	Affirmed Citation. Dec. No. 3.	11/06/02
CU-10-205	Vincent Walker v. UPW, et al.	DFR - failure to file grievance	Granted UPW's motion for summary judgment no DFR. Order No. 2131.	11/13/02
OSAB 2002-31	DLIR v. Four Seasons Resort Hualalai	Citation	Approved Stipulation and Settlement Agreement. Order No. 20.	11/14/02
CE-10-504	UPW v. Ted Sakai	Retention of derogatory files	Stipulation and Order. Order No. 2135.	12/05/02
CE-10-510	Vincent Walker v. Benjamin J. Cayetano, et al.	Termination	Dismissed - failure to exhaust contractual remedies. Order No. 2137.	12/10/02
CE-10-516	Nena B. Pattugalan v. DOH and DHRD	Reduction in force	Dismissed - failure to exhaust contractual remedies. Order No. 2136.	12/10/02
CE-01-519	UPW v. Benjamin J. Cayetano, et al.	Circumventing arbitration procedure and harassment	Withdrawn. Order No. 2141.	12/20/02
CU-03-208	Lewis W. Poe v. HGEA	Failure to include date of execution of Memorandum of Agreement and inclusion of invalid provision	Granted HGEA's motion for summary judgment. Order No. 2144.	01/07/03
CU-03-209	Connie L. Almeida and Bob Doi, et al.	DFR - failure to file grievance over discrimination/hostile work environment	Withdrawn. Order No. 2146.	01/08/03
CU-03-148 CU-03-174 (Remand)	Lewis W. Poe v. HGEA	DFR - failure to file grievance over rest periods	Dismissed - no contractual or statutory violation. Dec. No. 439.	01/13/03

## Appendix A - Cases Closed FY2003

Case No.	Parties	Concerns	Disposition	Date
OSAB 2002-32	DLIR v. Sunrise Construction, Inc.	Citation	Approved Stipulation and Settlement Agreement. Order No. 31.	01/21/03
CU-13-202	Susan Sugarman Free v. Kevin Mulligan et al.	DFR - failure to file grievance/arbitrate	Dismissed - failure to state a claim and filing more than one complaint on same controversy. Order No. 2150.	01/22/03
OSH 2003-1	DLIR v. Steven J. Berman, M.D., F.A.C.P.	Citation	Approved Stipulation and Settlement Agreement. Order No. 32.	01/23/03
CE-05-521	Richard Hunt v. Catherine Bratt, et al.	Non-selection	Dismissed - failure to exhaust contractual remedies and no jurisdiction over promotion to excluded position. Order No. 2153.	01/29/03
CU-10-212	Gordon K. Leslie v. Laurie Santiago, et al.	DFR - failure to file grievance over post/shift change	Dismissed - untimely. Order No. 2152.	01/29/03
CE-01-522	Michael K. Noguchi v. Brian Minaai, et al.	Failure to act on harassment complaints	Dismissed - untimely and failure to state a claim. Order No. 2154.	01/30/03
CU-03-213	Richard K. Condon v. Marvis Tauala, et al.	DFR	Withdrawn. Order No. 2164.	02/03/03
OSAB 2002-37	DLIR v. Raytheon Corporation	Citation	Approved Stipulation and Settlement Agreement. Order No. 34.	02/06/03
CE-01-500	UPW v. Frank J. Doyle, et al.	Repudiation of agreement to restore and expand refuse collection	Dismissed. Dec. No. 440.	02/11/03
CE-10-523	UPW and Ted Sakai, et al.	Failure to provide information to process grievance	Prohibited practice found - breach of contract and duty to bargain in good faith. Order No. 2177.	03/06/03
03-2R	ILWU and AOA of Kona by the Sea	Representation election	Withdrawn. Order No. 2182.	03/28/03
OSAB 2002-13	DLIR v. Oahu Express, Ltd.	Citation	Approved Stipulation and Settlement Agreement. Order No. 40.	04/03/03
OSAB 2002-33	DLIR v. Department of Transportation, Airports Division, Lihue Airport	Citation	Approved Stipulation and Settlement Agreement. Order No. 42.	04/09/03
OSAB 2002-12	DLIR v. Home Depot, Inc.	Citation	Approved Stipulation and Settlement Agreement. Order No. 43	04/22/03

## Appendix A - Cases Closed FY2003

Case No.	Parties	Concerns	Disposition	Date
03-1(CU)	Mark J. Valencia v. AFSCME	DFR - failure to file grievance/arbitrate	Withdrawn. Order No. 2185.	04/23/03
CU-03-211	Lewis W. Poe v. HGEA	Failure to notify of Supplemental Agreement	Dismissed. Dec. No. 441.	05/01/03
OSAB 2002-36	DLIR v. Costco Wholesale	Citation	Approved Stipulation and Settlement Agreement to Withdraw Citation and Notification of Penalty and Notice of Contest. Order No. 46.	05/22/03
CU-03-216 CE-03-525	Steve Eng v. HGEA and Hawaii State Public Library System, State of Hawaii	DFR; Derogatory information in personnel file and denial of access to information	Dismissed - lack of prosecution. Order No. 2189.	05/29/03
CE-03-517a CE-04-517b	HGEA v. Benjamin J. Cayetano, et al.	Intimidation and harassment of employees	Withdrawn. Order No. 2190.	06/05/03
CU-03-218	Richard Condon v. Marvis Tauala, et al.	DFR - denial of temporary assignment	Dismissed - failure to state a claim. Order No. 2191.	06/06/03
CU-10-215	DHS v. UPW	Request for fees in arbitration	Dismissed - failure to state a claim and mootness. Order No. 2192.	06/17/03
CE-01-527	UPW v. Kathleen Watanabe, et al.	Denial of holiday pay; repudiation of arbitration award	Dismissed. Order No. 2193.	06/19/03
I-09-91	HGEA v. Benjamin J. Cayetano, et al.	Arbitration award issued.	Dismissed. Order No. 2194.	06/20/03
CE-03-530	Philip Thorp v. The Judiciary, et al.	Non-selection	Dismissed. Order No. 2204.	06/25/03
CU-03-220	Lewis W. Poe v. HGEA	DFR - failure to file grievance on night differential	Breach of DFR. Dec. No. 442.	06/30/03
OSAB 2002-19	DLIR v. M. Dyer & Sons, Inc.	Citation	Approved Stipulation and Settlement Agreement. Order No. 52.	06/30/03

## Appendix B - Cases Pending June 30, 2003

Case No.	Parties	Concerns	Status
CE-03-357a CE-10-357b CE-13-357c	UPW, et al. v. Benjamin J. Cayetano, et al.	Privatization of Hale Hauoli, Kauai	Pending decision.
CE-03-377	Lewis W. Poe v. James Takushi	Failure to provide information	Pending Supreme Court decision in related cases.
CE-01-378a CE-03-378b CE-10-378c CE-13-378d	UPW, et al. v. Benjamin J. Cayetano, et al.	Privatization of Hale Hauoli	Taken under advisement.
INV-01-02 INV-02-02 INV-03-02 INV-04-02 INV-05-02 INV-06-02 INV-07-02 INV-08-02 INV-09-02 INV-10-02 INV-11-02 INV-12-02 INV-13-03	Benjamin J. Cayetano, et al. v. UPW, et al.	Board investigation of bargaining unit exclusions	Pending; order to issue.
CE-13-488	HGEA v. Benjamin J. Cayetano, et al.	Failure to bargain over working conditions in Motor Vehicle Safety Office, DOT	Pending settlement.
DR-01-68a DR-02-68b CU-01-137a CU-02-137b (Remanded)	Benjamin J. Cayetano v. HGEA, et al.	Arbitration award involving temporary assignment out of the bargaining unit	Pending Supreme Court decision in related appeal.
OSAB 2002-23 OSAB 2002-24 OSAB 2002-25 OSAB 2002-26 OSAB 2002-27 OSAB 2002-28	Kiewit Pacific Company v. DLIR; A-1 A-lectrician, Inc. v. DLIR; Engineering Professional Services, Inc. v. DLIR; Rancho Santa Fe Technology-MCS, Inc. v. DLIR; Alaka'i Mchanical Corp. v. DLIR; A.O. Reed and Company v. DLIR	Citation	Pending trial.

## Appendix B - Cases Pending June 30, 2003

Case No.	Parties	Concerns	Status
I-11-90	HFFA and Benjamin J. Cayetano, et al.	Impasse	Arbitration award rendered; pending funding.
CE-01-508	UPW v. Cheryl Okuma-Sepe, et al.	Failure to select arbitrator	Pending decision.
CE-01-509	UPW v. Cheryl Okuma-Sepe, et al.	Failure to select arbitrator	Pending decision.
CE-01-511a CE-10-511b	UPW v. David Arakawa, et al.	Derogatory materials	Pending decision.
CE-01-515	UPW v. Glenn Okimoto, et al.	Refusal to bargain in good faith; breach of contract; interference with employee rights	Pending decision.
CE-03-518	HGEA v. Benjamin J. Cayetano, et al.	Refusal to pay mileage reimbursement to Cabral	Pending decision.
CU-12-210 CE-12-520	Richard Garcia Gonsales II v. SHOPO; Richard Garcia Gonsales II v. Jeremy Harris, et al.	DFR; refusal to reinstate	Pending decision.
OSAB 2004-34	DLIR v. Global Consultants & Coatings	Citation	Pending decision.
OSAB 2002-35	Craig Gomes v. Hawaiian Electric Co., et al	Discrimination	Pretrial motions
I-12-92	SHOPO and Linda Lingle, et al.	Impasse	In arbitration.
CU-03-214	Lewis W. Poe v. HGEA	DFR- Compensation for rest periods	Pending decision.
OSH 2003-2	Vernon Y. Yamada v. Four Seasons Resort, Hualalai, et al.	Discrimination	In trial.
DR-00-88	Hawaii County Civil Service Commission and Hawaii Civil Rights Commission	Jurisdiction over complaint of race discrimination	Pending decision.
I-07-93	UHPA	Impasse	Partial settlement; pending further negotiations.
I-01-94	UPW and Linda Lingle, et al.	Impasse	Contract extended to 06/30/04; either party can terminate extension no sooner than 1/1/04.
I-10-95	UPW and Linda Lingle, et al.	Impasse	Pending arbitration.

## Appendix B - Cases Pending June 30, 2003

Case No.	Parties	Concerns	Status
I-02-96	HGEA and Linda Lingle, et al.	Impasse	Contract extended to 06/30/04; either party can terminate extension no sooner than 1/1/04.
I-03-97	HGEA and Linda Lingle, et al.	Impasse	Contract extended to 06/30/04; either party can terminate extension no sooner than 1/1/04.
I-04-98	HGEA and Linda Lingle, et al.	Impasse	Contract extended to 06/30/04; either party can terminate extension no sooner than 1/1/04.
I-06-99	HGEA and Linda Lingle, et al.	Impasse	Contract extended to 06/30/04; either party can terminate extension no sooner than 1/1/04.
I-08-100	HGEA and Linda Lingle, et al.	Impasse	Contract extended to 06/30/04; either party can terminate extension no sooner than 1/1/04.
I-13-101	HGEA and Linda Lingle, et al.	Impasse	Contract extended to 06/30/04; either party can terminate extension no sooner than 1/1/04.
OSAB 2001-18 (Remand)	DLIR v. Maryl Pacific Constructors	Citation	Further findings to be made.
OSH 2003-3	DLIR v. Si-Nor, Inc.	Citation	Pretrial motions and discovery.
OSH 2003-4	Charles K. Ke-a v. Si-Nor, Inc.	Discrimination	Pretrial discovery.
I-05-102	HSTA and Linda Lingle, et al.	Impasse	Partial settlement through 06/30/05; reopener on cost issues.
CE-12-524	SHOPO v. Jeremy Harris, et al.	Refusal to bargain in good faith - subsidized vehicles	Pretrial motions.
CU-03-148	Lewis W. Poe	Request for damages	Pending.
CU-13-217	J. Tek Yoon v. HGEA and Parks and Recreation, City and County of Honolulu	DFR; suspension	Pretrial motions.
CE-13-526			
OSH 2003-5	DLIR v. Parks and Recreation, City and County of Honolulu	Citation	Pending discovery.

## Appendix B - Cases Pending June 30, 2003

Case No.	Parties	Concerns	Status
CE-11-528	HFFA v. Darryl Oliveira, County of Hawaii	Unilateral change in working conditions for EMTs and MICTs	Pending settlement.
CU-10-219 CE-10-529	Tui Isaia v. PSD and UPW	Compensation and DFR	Pending issuance of order.
CE-05-531	John Mussack v. Patricia Hamamoto and DOE	Termination	Pending issuance of order.
CE-01-532	UPW v. William Takaba, et al.	Contracting out of golf cart maintenance operations	Pending hearing on motions.
03-3(CE)	ILWU v. Del Monte Fresh Produce, Inc.	Refusal to provide information on downsizing	Hearings continuing.
CE-03-533a CE-04-533b CE-13-533c	HGEA v. DOE, Virginia Lowell, et al.	Unilateral change in work schedules	Pending hearing.
OSH 2003-6	DLIR and Hawaiian Dredging Construction Co.	Citation	Pending discovery.
CE-03-534a CE-13-534b	HGEA v. Linda Lingle, et al.	Delayed payment of wage increase	Pending prehearing conference.
CE-01-535 CU-01-221	David Rita v. Peter T. Young, et al.	Improper settlement of grievance; DFR	Pending hearing on motions.
CE-03-536	HGEA v. City and County Emergency Medical Services	Repudiation of settlement agreement	Pending notice of complaint.

## Appendix C - Court Cases in FY2003

Case No.	Parties	Concerns	Status
S. Ct. No. 21838 Civil No. 97-2960-12 Case Nos. CE-01-356a, et seq.	UPW, et al, v. HLRB, et al. and Benjamin J. Cayetano, et al.; Benjamin J. Cayetano, et al. v. Bert Tomasu, et al., and UPW, et al.	UPW and HGEA appealed Dec. No. 393 regarding the privatization of Hana Medical Center.	The First Circuit Court affirmed the Board's decision. The Hawaii Supreme Court affirmed the First Circuit Court in a memorandum opinion.
S. Ct. 23491 Civil No. 99-4200-1 Case No. CE-03-283	Lewis W. Poe v. HLRB and Benjamin J. Cayetano	Lewis W. Poe filed an appeal from Dec. No. 402 contesting Employer's untimely response to grievance. Board dismissed complaint because Complainant failed to exhaust contractual remedies and violation was de minimis.	The First Circuit Court affirmed the Board's decision. Lewis W. Poe filed an appeal with the Supreme Court. Briefing is completed and the matter has been taken under advisement.
S. Ct. No. 23535 Civil No. 99-4594-12 Case No. CE-03-300	Lewis W. Poe v. HLRB and Benjamin J. Cayetano	Lewis W. Poe filed an appeal from Order No. 1812 contesting Employer's denial of overtime. Board dismissed complaint for failure to exhaust contractual remedies.	The First Circuit Court affirmed Order No. 1812 and Lewis W. Poe appealed to the Supreme Court. Briefing is completed and the matter was taken under advisement.
S. Ct. No. 24073 Civil Nos. 00-01-1867- 06; 00-01-1868-06; 00- 01-2199-07; 00-01-2200- 07; 00-01-2349-07 Case Nos. CE-03-237; CE-03-445; CE-04-404; CE-03-416; CE-03-379	Lewis W. Poe v. HLRB and Benjamin J. Cayetano; et seq.	Lewis Poe filed appeals from Order Nos. 1866, 1864, 1885, 1883, 1882, respectively, where Board dismissed his complaints because he failed to exhaust his contractual remedies.	The First Circuit Court consolidated the appeals and affirmed the Board Orders. Lewis W. Poe appealed to the Supreme Court. Briefing is completed and the matter has been taken under advisement.
S. Ct. No. 24237 Civil No. 00-1-2134-07 Case Nos. DR-01-68a, DR-02-68b; CU-01- 137a, CU-02-137b	Benjamin J. Cayetano v. HGEA, et al., UPW and HLRB	HGEA filed an appeal from Order No. 1881 where Board dismissed petition and complaint as moot.	The First Circuit Court reversed the Board's Order. The UPW and the Board appealed the Court's order to the Supreme Court. Briefing is completed and the matter has been taken under advisement.

## Appendix C - Court Cases in FY2003

Case No.	Parties	Concerns	Status
S. Ct. No. 24313 Civil No. 00-1-3007-09 Case No. DR-03-67	Lewis W. Poe v. HLRB and HGEA	Lewis Poe filed an appeal from Order No. 1910 regarding inclusion of Alternative Work Schedules provision in the contract. The Board dismissed the petition for mootness.	The First Circuit Court affirmed Order No. 1910. The Supreme Court dismissed Lewis W. Poe's further appeal for lack of jurisdiction (8/1/02).
S. Ct. No. 24308 Civil No. 00-1-3200-10 Case Nos. CE-01-410a and CE-10-410b	UPW v. James H. Apana, Jr., et al. and HLRB, et al.	UPW appealed Order No. 1934 denying its motion to enforce regarding expungement of derogatory information.	The Circuit Court affirmed the Board's Order. The UPW appealed to the Supreme Court which issued a Summary Disposition Order affirming Circuit Court's Order Denying Appeal on 6/27/03.
S. Ct. No. 24415 Civil No. 00-1-3460-11 Case No. CE-10-267; consolidated with Civil No. 01-1-0161-01	UPW v. Benjamin J. Cayetano, et al. and HLRB, et al.	UPW appealed Order No. 1947 regarding its motion to enforce the Board's order regarding the Hawaii State Hospital pharmacy.	The First Circuit Court affirmed Order No. 1947 and UPW appealed to the Supreme Court. Briefing is completed and the matter has been taken under advisement.
Civil No. 01-1-0161-01 Case No. CE-10-267 consolidated with Civ. No. 00-1-3460-11	UPW v. Benjamin J. Cayetano, et al. and HLRB, et al.	UPW filed an appeal from the Board's Order No. 1979 denying attorney's fees in Case No. CE-10-267.	The First Circuit Court affirmed denial of attorney's fees.
S. Ct. 24519 S. P. No. 01-1-0250 SSM	HLRB v. Benjamin Cayetano, et al. and UPW	The Board filed a motion to enforce its orders in Case No. CE-10-267.	The First Circuit Court granted the Board's motion to enforce. The State appealed the Court's order to the Supreme Court.
S. Ct. 24476 Civil No. 00-1-3610-11 Case No. DR-03-81	Lewis W. Poe v. HLRB	Lewis W. Poe filed an appeal from Order No. 1913 interpreting the Board's rules to require a certificate of service on an application for subpoenas.	The First Circuit Court affirmed Order No. 1913 and dismissed appeal. The Intermediate Court of Appeals reversed Board Orders. The Board filed application for writ of certiorari with the Supreme Court which denied the Board's application (1/13/03).

## Appendix C - Court Cases in FY2003

Case No.	Parties	Concerns	Status
S. Ct. 24600 Civil No. 00-1-3725-12 Case No. CU-03-153	Lewis W. Poe v. HLRB and HGEA	Lewis W. Poe filed an appeal from Order No. 1951 dismissing as moot his complaint contending a memorandum of agreement was not properly ratified.	The First Circuit Court affirmed Order No. 1951 and Lewis W. Poe appealed to the Supreme Court. The Supreme Court issued a Summary Disposition Order affirming Order No. 1951 and Lewis W. Poe filed a motion for reconsideration which was denied by the Court (1/15/03).
Civil No. 01-1-1023-03 Case No. CE-11-459	HFFA v. Brian Nakamura, et al.	HFFA filed an appeal from Order No. 1990 dismissing its complaint alleging unilateral implementation of a cardio pulmonary stress test.	The First Circuit Court affirmed Order No. 1990 and dismissed appeal (8/20/02).
Civil No. 02-1-0519-02 Case No. DR-03-85	Lewis W. Poe v. HLRB	Lewis W. Poe filed an appeal from Order Nos. 2043 and 2054 denying the petition contending that the Board's List of Employee Organizations does not comply with HRS Section 89-17.	First Circuit Court affirmed Order Nos. 2043 and 2054, in part, and reversed in part, requiring the Board to include all memoranda of agreement on the list.
Civil No. 02-1-0059 Case No. DR-01-86	Maryanne Kusaka, et al. v. HLRB and UPW	Maryanne Kusaka and the Department of Water, County of Kauai filed an appeal from Order No. 2066.	Parties settled underlying dispute and stipulated to dismiss appeal.
S. Ct. 25442 Civil No. 02-1-0929-04 Case No. CE-01-465	UPW v. Jeremy Harris, et al. and HLRB, et al.	City and County of Honolulu appealed Decision No. 433 finding prohibited practice in transferring refuse workers.	First Circuit Court affirmed Dec. No. 435 and dismissed appeal. City and County appealed to the Supreme Court. Pending briefing.
Civil No. 02-1-0925-04 Case No. CU-03-186	Lewis W. Poe v. HLRB and HGEA	Lewis W. Poe filed an appeal from Order Nos. 2050 and 2069 dismissing the complaint alleging union wrongfully failed to respond to his request to inspect the collective bargaining agreement within a certain time frame.	First Circuit Court affirmed Board Order Nos. 2050 and 2069.

## Appendix C - Court Cases in FY2003

Case No.	Parties	Concerns	Status
Civil No. 02-1-1941-08 Case No. CU-03-188	Lewis W. Poe v. HLRB and HGEA	Lewis W. Poe filed an appeal from Dec. No. 435 and Order No. 2101 dismissing the complaint alleging union wrongfully failed to provide notices and bargaining proposals upon request.	First Circuit Court affirmed Dec. No. 435 and Order No. 2101.
Civil No. 02-1-2414-10 Case No. CU-03-183	Lewis W. Poe v. HLRB and HGEA	Lewis W. Poe filed an appeal from Dec. 437 dismissing his complaint alleging union wrongfully refused to provide him access to three memoranda of agreement scheduled for ratification vote.	Court reversed Dec. No. 437.
Civil No. 03-1-0299-02 Case No. CE-03-208	Lewis W. Poe v. HLRB and HGEA	Lewis W. Poe filed an appeal from Order No. 2144 granting summary judgment in favor of HGEA. Complainant contested the union's failure to include an execution date in the collective bargaining agreement and publication of invalid provision.	Briefing completed; pending oral argument.
Civil No. 03-1-0546-03 Case No. CE-01-500 consolidated with Civ. No. 03-1-0552-03	UPW v. Frank Doyle, et al. and HLRB, et al.	UPW filed appeal from Dec. No. 440 dismissing prohibited practice complaint alleging repudiation of agreement to expand refuse services.	Pending briefing.
Civil No. 03-1-0552-03 Case No. CE-01-500 consolidated with Civil No. 03-1-0546-03.	UPW v. Frank Doyle, et al. and HLRB, et al.	Frank Doyle, et al. filed appeal from Dec. No. 440.	Pending briefing.



# Hawaii Occupational Safety & Health



*Jennifer Shishido, Administrator*





# Hawaii Occupational Safety and Health

*Jennifer Shishido, Administrator*

## Overview

The Hawaii Occupational Safety and Health (OSH) Law was enacted in 1973 to assure safe and healthful working conditions for Hawaii’s workers. The Department of Labor and Industrial Relations administers the Hawaii OSH Law through its Hawaii Occupational Safety and Health Division (HIOSH) and has the authority to enforce all laws and standards concerning safety and health at the worksite. HIOSH standards and rules are contained within Title 12, Subtitle 8 of the Hawaii Administrative Rules.

HIOSH, whose mission is to “Save Lives and Prevent Injuries and Illnesses”, covers nearly all workers in the state, including those employed by state and county government. Excluded from state coverage are federal employees, workers in the maritime industry, domestic workers, and family farms. The division is responsible for ensuring compliance of laws in the area of workplace safety and health, and the use and operation of boilers, pressure systems, elevators, escalators and related equipment, and amusement rides. HIOSH also provides consultation services, training, and seminars on various topics of safety and health.

The division is comprised of five branches: Occupational Safety, Occupational Health, Consultation and Training, Boiler and Elevator Safety, and Administration and Technical Support.

***Occupational Safety Branch:*** The Occupational Safety Branch plans and executes a statewide occupational safety and health inspection and enforcement program with special emphasis on physical, mechanical or circumstantial hazards. These functions include the scheduling of unannounced inspections in places of employment; investigations complaints on safety conditions and fatal or serious accidents; counseling of employers on hazard abatement methods; issuance of citations and assessment of penalties for violations; conducting follow-up inspections; and, administering the issuance of Certificates of Fitness to use explosives. They also provide expert testimony in hearings, appeals and court proceedings and maintain liaisons with other state and private agencies concerning safety and health enforcement matters.

***Occupational Health Branch:*** The Occupational Health Branch plans and executes a statewide occupational safety and health inspection and enforcement program with special emphasis on chemical, biological and physical stressors that may cause or contribute to any illness of workers. These functions include the scheduling of unannounced inspections for health hazards in places of employment; investigating complaints involving health conditions and discrimination and fatal and serious accidents; counseling employers on hazard abatement methods; issuance of citations and assessing penalties for violations; conducting follow-up inspections; and maintaining appropriate program records. The branch is also involved in studying the work environment, processes and operations of a company. The nature of the work, materials and equipment used, and products and by-products that are generated are reviewed to determine the magnitude of exposure to workers and recommend corrective measures. They also provide expert testimony in hearings, appeals and court proceedings and maintain liaisons with other state and private agencies concerning safety and health enforcement matters.

***Consultation and Training Branch:*** The Consultation and Training branch provides free statewide consultation, training, and information in an effort to promote employer's voluntary compliance with occupational, safety and, health rules and standards. Consultations help employers identify potential hazards at their worksites and improve their occupational safety and health management systems. A comprehensive consultation includes an appraisal of mechanical and environmental hazards and physical work practices, appraisal of the job safety and health program, a conference with management on findings, a written report of recommendations and agreements, and training and assistance with implementing recommendations.

***Boiler and Elevator Safety Branch:*** This section performs safety and compliance inspection and investigation activities on equipment, facilities and operations related to elevators, dumbwaiters, escalators, moving walks and ramps, lifts, tramways, amusement rides, boilers, pressure vessels, pressure piping and systems, and related equipment. The branch also administers licensing examinations for boiler and elevator inspectors, and provides on the job training and continuous standardization training for inspectors.

***Administration and Technical Support:*** The support team is responsible for administrative and technical assistance in HIOSH. The support group monitors federal standards and determines its applicability to State programs. This includes the coordination of new standards through the review, public hearing, and approval processes. They also provide technical interpretations on OSH standards, assists in the development of legislative proposals for revisions to the law, investigates discrimination complaints and employee complaints about safety and health hazards, and monitors inspection and consultation field activities.

## **Key Accomplishments**

This past year saw significant increases in whistleblower complaints, and musculoskeletal disorders. HIOSH conducted a number of well-attended seminars and set out to grow its Voluntary Protection Plan (VPP) and Safety Health Achievement Recognition Program (SHARP) and strengthen its alliances and partnerships with employers in their outreach efforts.

**Inspections:** In fiscal year 2003, HIOSH conducted 954 inspections, an increase of 20.3% over fiscal year 2002. The Boiler and Elevator Safety Branch conducted 9,861 inspections throughout the State, resulting in zero equipment accidents. This was a 40.9% increase from the previous fiscal year.

**Outreach Programs:** Throughout the year, HIOSH conducted a number of conferences, training workshops and seminars designed to educate and update employers on the latest safety and health laws.

“*Reducing Injury Costs in Your Workplace*” conferences were specifically designed to address the needs of Hawaii’s small business community. Eight conferences were held throughout the state, resulting in over 800 attendees. The number of attendees are indicative of a strong need and interest in training on workers’ compensation, reducing back injuries, and risk management by small businesses. HIOSH partnered with various stakeholders including small business groups, insurance carriers, healthcare providers, and safety and health associations to conduct the popular seminars.

*National Board of Boiler Inspectors (NBBI) Convention.* HIOSH hosted the national convention in Hawaii in conjunction with the American Society of Mechanical Engineers (ASME). The convention was attended by over 600 Chief Boiler Inspectors and staff from across the nation and Canada.

*New Steel Erection Standard* training was provided for over 125 attendees in May 2003. HIOSH partnered with the Ironworkers Union Local 625, contractors’ associations, and the American Society of Safety Engineers – Hawaii Chapter, to produce the training.

*Workshops and Seminars:* HIOSH kept an active pace in their outreach efforts and conducted forty workshop and seminars on a variety of safety and health topics throughout the year, attracting 1,671 managers and workers.

*HIOSH Website:* HIOSH unveiled its new website in April 2003 which provides greater accessibility to current safety and health information, more local features, a training calendar and workshop and presentation materials. The website may be accessed at: <http://hiosh.hawaii.gov>

*Voluntary Protection Program:* HIOSH was proud to present the State of Hawaii’s highest and most coveted safety and health recognition award, the Hawaii Voluntary Protection Program’s, “Hana Po’okela Award”, to two companies: Chevron-Hawaii Refinery and Frito-Lay. Both companies were recognized with this prestigious award for their exemplary safety and health programs and exceptional commitment by leadership, to the safety, health and well-being of their employees.

## **Continuous Improvement Initiatives – 2003-2004**

**Building Partnerships:** HIOSH is committed to transforming its image of a heavy-handed agency through the establishment of partnerships with businesses that are based on trust. The division is adopting a more business-friendly approach to help

employers learn how to reduce injuries and illnesses in the workplace. Some of the activities planned for fiscal year 2004 include the provisioning of training and guidance to Hawaii County to help reduce their high workers' compensation rates and costs; training instructors of Industrial Arts programs within the Department of Education; and encouraging businesses to participate in its Consultation and Training programs.

### ***Expanding Consultation and Training Programs***

*Voluntary Protection Program (VPP):* The VPP promotes effective worksite based safety and health and is intended primarily for larger employers that employ 250 or more employees. In the VPP, management, labor and HIOSH establish cooperative relationships at workplaces that have implemented a comprehensive, rigorous safety and health management system. HIOSH has committed to add a minimum of one company to the program in fiscal year 2004.

*Hawaii Safety and Health Achievement Recognition Program (HI-SHARP) and PRE-Hawaii Safety and Health Achievement Recognition Program (Pre-SHARP):* The HI-SHARP is designed to provide incentives and support to smaller, high hazard employers to develop, implement and continuously improve effective safety and health programs at their worksite. HI-SHARP is a reward for those employers that receive a comprehensive safety and health visit, correct all workplace safety and health hazards, and adopt effective safety and health management systems. HI-SHARP employers have demonstrated exemplary achievements in workplace safety and health programs by obtaining a three-year safety performance average that is below the national or state average for their particular industry.

PRE-SHARP is designed for employers who seek HI-SHARP status. This includes employers that can achieve this status in 18 months or less. In some cases, it may also include those employers that may not be able to reach HI-SHARP status within 18 months. This may be due to such situations where the employer currently has injury and illness rates that are too high to achieve a reduction to below the state or national average within 18 months. However, they have been determined to have the tools and commitment necessary to eventually attain HI-SHARP status.

HIOSH has a goal to commit a total of 20 companies to HI-SHARP and PRE-SHARP status during the fiscal year 2003-2004.

***Outreach Initiatives:*** In addition to continuing to provide workshops, training and seminars for employers on safety and health topics, 2004 is the year in which the ***Governor's Biennial Pacific Rim Safety & Health Conference*** will be held. The conference is the premier safety and health conference in Hawaii, attracting speakers and attendees from all over the Pacific Region. It is a nationally recognized event that is world class in breadth and quality. The conference is designed to meet the needs of Hawaii businesses, institutions and government by providing safety practitioners with state of the art programs and technical information to maximize the safety efforts of organizations. Over 100 vendors and service providers specializing in safety and health, are set to showcase their services and products. Some of the special guests that are scheduled to speak at the conference or: The Honorable Governor Linda Lingle, Mr. John Henshaw, Assistant Secretary of Labor for

Occupational Safety and Health, Mr. Gene Barfield, ASSE President Elect, and Mr. Billy Robbins, popular motivational speaker on safety and health.

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# Report of Occupational Safety and Health Training and Assistance Special Fund

*June 1, 2002 – June 30, 2003*

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This report is submitted in accordance with section 396-4(c)(3)(D), Hawaii Revised Statutes, Act 130, SLH, 1994, as amended by Act 12, Special Session Laws of Hawaii 1995, and Act 28, SLH, 1999.

The beginning balance of the fund for this fiscal year was \$1,003,732.26. Total revenue for the year was \$745,959 of which \$712,442 was collected from penalties and \$33,517 from interest income. Expenditures of \$123,625 for personal services, \$2,190 for equipment, and \$384,328 for other current expenses, amounted to a total of \$510,143.

The fund was used to provide the following:

- a. “Reducing Injury Costs in Your Workplace” - Eight (8) one-day conferences on Hawaii, Kauai, Maui, and Oahu; over 800 attendees
- b. “Safety and Health Program Management” – Eight (8) workshops
- c. “New Steel Erection Standards Workshop”
- d. Thirty-eight (38) training sessions for employers or employer associations (refer to page 5)
- e. HIOSH Quarterly Newsletter – Distribution to 4600 employers and associations
- f. HIOSH Website Maintenance and Upgrade
- g. Occupational Safety and Health Standards – Printing of Materials
- h. Voluntary Protection Program (VPP) Activities
- i. 2004 Governor’s Pacific Rim Safety and Health Conference – Sponsorship
- j. Training Program Materials for Loan to Employers
- k. Associate Safety Professional Certification – Preparatory Training for HIOSH staff
- l. HIOSH Advisory Committee Meeting (Public Meeting)

The Occupational Safety and Health Training and Assistance Special Fund had a sunset date of June 30, 2003. As such, \$1,237,605 of the fund's balance was transferred into the Department of Labor and Industrial Relations' General Fund at the end of this fiscal year. The remaining balance of the Training and Assistance and Special Fund as of June 30, 2003 is \$1,943.

**Beginning Fund Balance, 07/01/02**

Revenue:			\$1,003,732
Penalty Income		\$712,442	
Interest Income		33,517	
Total Revenue		<u>                    </u>	\$745,959
Less: Expenditure			
Personal Services Payroll		\$123,625	
Other Current Expenses:			
Office Supplies	\$ 4,799		
Dues & Subscription	976		
Freight & Delivery	1,121		
Postage	668		
Telephone	1,128		
Printing & Binding	115,896		
Advertising	221		
Car Mileage	500		
Travel, Intra-State	2,804		
Travel, Out-of-State	1,825		
Equipment Rental	679		
Service on a Fee Basis	149,012		
Miscellaneous-Training	<u>104,699</u>		
Total Other Current Expenses	384,328		
Equipment	<u>2,190</u>	<u>\$386,518</u>	
Total Expenditures			\$510,143
Change in Fund Balance			\$ 235,816
Balance			\$1,239,548
Less: Transfer out			\$1,237,605
<b>Ending Fund Balance, 6/30/03</b>			<b>\$ 1,943</b>

**HIOSH Workshops and Training**

<u>Date</u>	<u>Group</u>	<u>Subject</u>	<u># Att</u>	<u>Length</u>	<u>Man-hours</u>
7/16/02	HIOSH Trng	Advanced S&H Mgmt	15	4	60
7/17/02	SBDC - Oahu	Creating S&H Workplace	9	3	27
7/24/02	Kanoelehua (KIAA)	Various	25	3	75
7/30/02	HI County-Fire	Hazard Recognition	39	7	273
8/9/02	DOE	OSHA Recordkeeping	39	1.5	58.5
8/21/02	HAMC, HFDA	Bloodborne Pathogens	50	1.5	75
8/22/02	HIOSH Trng	D/I S&H Program	11	4	44
8/27/02	HI County-Fire	Hazard Recognition	18	7	126
8/30/02	Big Island Security	Ergo, Noise, RK	70	4	280
9/12/02	HTA	Industry Specific	60	1	60
9/17/02	HIOSH Trng	D/I S&H Program	15	4	60
9/18/02	E HI Physicians	Bloodborne & Hazcom	100	1.5	150
10/15/02	HIOSH Trng	D/I S&H Program	18	4	72
10/17/02	HI State Bar	Whistleblower	40	1	40
10/18/02	Aston Hotels	Hotel Maintenance	40	1	40
10/23/02	SBDC - Kauai	D/I S&H Program	6	4	24
10/24/02	Outrigger	D/I S&H Program	15	4	60
10/31/02	DOE - Tech Ed	S&H Awareness	175	0.5	87.5
11/1/02	DOE - Tech Ed	S&H Awareness	145	0.5	72.5
11/13/02	SBDC - East HI	OSHA Recordkeeping	25	3	75
11/14/02	SBDC - West HI	OSHA Recordkeeping	27	3	81
11/19/02	HIOSH Trng	Eff S&H Supervision	8	4	32
11/21/02	SHRM	Ergonomics	20	1	20
11/25/02	Outrigger	D/I S&H Program	18	4	72
12/5/02	UH-West Oahu	Intro to HIOSH	14	1	14
1/10/03	HPD	OSHA Recordkeeping	15	1	15
1/16/03	HI Dental	Industry Specific	200	1	200
2/6/03	DOT - Highways	OSHA Recordkeeping	21	1	21
2/11/03	HIOSH Trng	Eff S&H Supervision	16	4	64
2/20/03	Outrigger Reef	Eff S&H Supervision	37	4	148
2/25/03	SBDC - Kauai	Eff S&H Supervision	40	4	160
3/7/03	DLIR Safety Comm	Positive Safety Attitude	12	0.75	9
4/10/03	Subcontractors	Affirmative Defense	44	3	132
4/11/03	OSHA Workshop	Effective Listening	100	1	100
4/11/03	OSHA Workshop	Prepare for OSHA	100	1	100
4/22/03	HIOSH Trng	Eff S&H Supervision	7	4	28
4/29/03	DOT - Airports	Eff S&H Supervision	24	4	96
5/9/03	SBDC - Oahu	OSHA Recordkeeping	8	3	24
5/14/03	SBDC - West HI	Eff S&H Supervision	20	3	60
5/15/03	South Oahu Assn	Slips/Trips/Falls	25	1	25
			1671		3160.5





# Occupational Safety and Health

## *Amended Report of Contested Cases*

*June 1, 2002 – June 30, 2003*

This report is submitted in accordance with section 396-11(k), Hawaii Revised Statutes.

1. Number of Contests Filed	12
2. Disposition:	21
Affirmed	6
Modified	0
Vacated	0
Withdrawn	0
Settled	15
Dismissed	0
3. How many cases were modified, vacated, or settled due to the conduct of an employee or employees who failed to act within the scope of their office, employment or authority under this chapter?	0



# Unsafe Employment for Women

## INTRODUCTION

This report was prepared in accordance with Section 396-17, Hawaii Revised Statutes that requires an annual report on “occupations and other employment activities that are considered to be unsafe and are predominantly performed by women.”

In 1999, 65 million of the 108 million women aged 16 and older were workforce participants, defined by the Bureau of Labor Statistics (BLS) as persons who are working or looking for work. 75% of employed women worked full-time, while 25% (16 million) worked part-time. Nationwide, 3.7 million or nearly 6% of working women hold multiple jobs and many believe that the percentage is even higher for working women in Hawaii. Obviously, work and the ability to work is extremely important for women in Hawaii.

For this report, the Hawaii Occupational Safety and Health Division (HIOSH) is using the National Institute for Occupational Safety and Health (NIOSH) as the definitive source for what might be considered as unsafe occupations or activities for women. Neither HIOSH nor the Occupational Safety and Health Administration (OSHA), define “unsafe” occupations. Employment activities that are typically considered to be unsafe by HIOSH and OSHA include tasks and activities that are predominantly performed by men. These include construction, mining, durable goods manufacturing such as steel and construction materials, logging, truck driving, and fishing. But this perception is based somewhat on a biased notion that only mortality information is important, the paucity of information on occupational diseases, and the outdated and incorrect belief that men’s work is more important because males are usually identified as the primary breadwinner.

Although women experience proportionately fewer lost-time injuries than do men, their rates are nonetheless substantial, accounting for one of every three lost-work-time injuries during 1999.<sup>9</sup> In Hawaii, more women have to work than nationwide, thus contributing an even larger share of potential injuries. In 1997, 63.5% of women in Hawaii aged 16 or older were in the Labor Force compared to 60.1% for the rest of the nation.<sup>10</sup> The changing demographics of the nation’s workforce over the past 40 years - more minorities, more women, more health compromised workers who are able to work because of advances in medical technology, an increasingly older population, and the decline of manufacturing and increase in the service sector -- has yielded new information on hazards that were not previously associated with the workforce. These new or emerging hazards, such as reproductive hazards of cancer drugs, ergonomic hazards in the services and health care industry, and workplace violence in late-night retail and health care industries, are often just as life-threatening as the traditional workplace injury or fatality, and in many cases are even more insidious because women in these female dominated jobs were either unaware of these “hazards” when they originally entered the profession, or the traditional thought is that these are “safe” occupations. Once made aware, women often view their jobs as generally more unsafe than first thought. In a survey of working women sponsored by the Teresa and H. John Heinz III foundation, one-quarter of all women viewed their jobs as dangerous to their health.<sup>11</sup>

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<sup>9</sup> Bureau of Labor Statistics, *Lost-Work-time Injuries, and Illnesses. Characteristics and Resulting Time Away from Work: 1999*. Washington D.C.: United States Department of Labor: 2001-3-28. USDL 01-71.

<sup>10</sup> Ciazza Amy B, ed., *The Status of Women in Hawaii. Politics-Economics-Health-Demographics*. Washington D.C. The Institute for Women’s Policy Research and the Hawaii State Commission on the Status of Women, 2000.

<sup>11</sup> Carey AR, Mullins AE. Workplace health worries. Report on a survey conducted by Lake Sosis Snell Perry for the Teresa and H. John Heinz III Foundation. *USA Today*. 1998:1-5.

This report, therefore, uses the NIOSH assessment of women's workplace health and safety issues, which is based on a woman's perspective, as the framework for discussing the status of unsafe occupations or employment activities for the women of Hawaii.

## MUSCULOSKELETAL DISORDERS

Sprains and strains, carpal tunnel syndrome, tendonitis, and other musculoskeletal disorders account for more than half (52%) of the injuries and illnesses suffered by female workers in the United States, as compared to 45% for male workers. Women workers are at disproportionately high risk for musculoskeletal injuries on the job. Liberty Mutual's Workplace Safety Index reports that the number one cause of workplace injuries is overexertion, which accounted for \$9.8 billion, or 25.3% of the total paid by employers in direct wages and medical costs for injuries resulting in employees missing five or more days of work in 1998. Repetitive motion adds another \$2.3 billion and together they comprise more than 31.3% of the total direct costs. Indirect costs – which may include the paperwork and administrative costs of filing and processing claims, hiring and re-training replacement workers – add, conservatively, another four times to the direct costs or \$50 billion.

Musculoskeletal disorders are often crippling, resulting in not only disability for the affected worker but a severe reduction in the quality of life. Sprains and strains of the back, neck, shoulder and upper extremities due to overexertion often extend into the home life. Women, in particular, whose "work" continues beyond the job to the home, are severely affected by such injuries that can impact their ability to perform routine household tasks. Such costs and burdens to the family are often not accounted for in workers' compensation payments.

BLS reports that Hawaii has one of the highest rates of ergonomic related injuries. From 1999 to 2001, Hawaii experienced an increase in ergonomic injuries each year, whereas most other states experienced a slight decrease. From 2001 to 2002, total workers' compensation musculoskeletal (MSD) injuries processed cases with cost increased by 1.56% from 20,400 cases in 2000 to 20,719 cases in 2002. The total cost of these MSD cases increased by 24.12% from \$117,181,801 to \$145,448. Days lost also increased for MSD cases from 646,182 days to 754,720 days for a total increase of 16.8%.<sup>12</sup> With Hawaii's higher proportion of women working; with female dominated occupations such as nurses, nurses' aides, housekeepers, seamstresses, and food servers having high rates of ergonomic injuries, and Hawaii's rising ergonomic injury rates and costs -- clearly, ergonomic hazards severely impact women workers in Hawaii.

OSHA adopted an ergonomic standard in 2000 which was repealed by Congress soon after. OSHA's current approach to ergonomic hazards is "multi-pronged": (1) Guidelines are based on best practices or developed through industry partnerships; (2) Compliance assistance is provided in the form of consultations, training and training grants, electronic tools, and outreach materials and information; (3) Research in ergonomic hazards and fixes are coordinated through a national advisory committee on ergonomics; and (4) Enforcement of guidelines for employers who have high rates of ergonomic injuries and have done little or nothing to address them. OSHA currently has several guidelines for industries where women comprise a significant proportion of workers and are continuing to work on establishing additional ones.

The department had previously issued 12 citations for lifting hazards. All but 4 were accepted or settled. The remaining citations were vacated until formal rules and guidelines are established. The department will, however, issue citations where egregious ergonomic situations are encountered.

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<sup>12</sup> "Musculoskeletal Disorder Injuries & Illnesses in Hawaii", DLIR Research & Statistics Office, September, 2003

## **JOB STRESS**

Stress at work is a growing problem for all workers, including women. In one survey, 60% of employed women cited stress as their number one problem at work. Furthermore, levels of stress-related illness are nearly twice as high for women as for men.

Many job conditions contribute to stress among women. Such job conditions include heavy workload demands; little control over work; role ambiguity and conflict; job insecurity; poor relationships with coworkers and supervisors; and work that is narrow, repetitive, and monotonous. Other factors such as sexual harassment and work and family balance issues, may also be stressors for women in the workplace.

Job stress has been linked with cardiovascular disease, musculoskeletal disorders, depression, and burnout. In 2002, 20 of 31 reported fatalities in Hawaii were due to heart attacks or strokes.<sup>13</sup>

HIOSH believes that its role in reducing job stress is in carrying out its mission of assuring safe and healthful working conditions for every working man and woman in the state.

## **VIOLENCE IN THE WORKPLACE**

Homicide is the leading cause of injury death for women in the workplace. Homicide accounts for 40% of all workplace death among female workers. Workplace homicides are primarily robbery-related, and often occur in grocery/convenience stores, eating and drinking establishments and gasoline service stations.

Over 25% of female victims of workplace homicide are assaulted by people they know (coworkers, customers, spouses, or friends). Domestic violence incidents that spill into the workplace account for 16% of female victims of job-related homicides.

In 2000, assaults and violent acts were the number one cause for workplace fatalities, accounting for 40% of the fatal occupational injuries in Hawaii.<sup>14</sup> In 2002, assaults and violent acts accounted for only 6.5% of total reported fatalities.

Female workers are also at risk for non-fatal violence. Women were the victims in nearly two-thirds of the injuries resulting from workplace assaults. Most of these assaults (70%) were directed at women employed in service occupations, such as health care, while an additional 20% of these incidents occurred in retail locations such as restaurants and grocery stores, all of which employ women in significant numbers.

HIOSH's strategy involves outreach and assistance for employers in the development of workplace violence prevention approaches. HIOSH assisted the state Attorney General's office in developing a workplace violence manual entitled "Workplace Violence: Prevention, Intervention and Recovery". This publication is available on the HIOSH website (<http://hiosh.hawaii.gov>), in addition to links to other workplace violence prevention information. HIOSH enforces its general duty clause where employers are not taking reasonable action to prevent workplace to their workers.

## **WOMEN IN NON-TRADITIONAL EMPLOYMENT**

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<sup>13</sup> "2002 Hawaii Reported Fatalities", DLIR Research & Statistics Office, September, 2003.

<sup>14</sup> U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with State and Federal Agencies. Census of Fatal Occupational Injuries (CFOI).

Women in non-traditional employment may face health and safety risks due to the equipment and clothing provided to them at their workplace. Personal protective equipment (PPE) and clothing (PPC) are often designed for average-sized men. The protective function of PPE/PPC (such as respirators, work gloves, and work boots) may be reduced when they do not fit female workers properly. In addition, there may be a false sense of security that the equipment will be protective, although its function has been compromised by a poor fit.

Women who work in nontraditional employment settings may also face specific types of stressors such as sexual harassment and gender-based discrimination. Other risks that women may face in non-traditional employment are uncertain as traditional research in this area have involved studies based on men. At this point, there is insufficient information about the relative risks of hazards to women in non-traditional employment.

Through its outreach, training, consultation, and enforcement programs HIOSH endeavors to assure the proper evaluation of hazards, selection and fit of PPE/PPE, and training on its use and limitations.

## **CANCER**

NIOSH believes that workplace exposures to hazardous substances may play a role in the development of these types of cancer. An example is perchloroethylene, a chemical used in the dry-cleaning industry. NIOSH believes there is a connection between perchloroethylene and cervical cancer. An estimated half of dry-cleaning workers in the United States are women. HIOSH's permissible exposure limit to perchloroethylene is 25 parts per million (ppm), which is four times lower than that of OSHA.

## **HEALTH CARE WORKERS**

Ninety-two percent of the 4.3 million nurses and nursing aides in the U.S. are female. In addition to being at risk for incidents of musculoskeletal disorders, workplace violence, and exposure to hazardous substances, health care workers face other hazards including latex allergy and needlestick injuries.

Approximately 600,000 - 800,000 needlestick injuries occur annually in health care settings, mostly involving nurses. These injuries pose both physical and emotional threats to health care workers, as serious infections from bloodborne pathogens (such as hepatitis B virus, hepatitis C virus, and human immunodeficiency virus (HIV)) may result. On November 6, 2000, Congress passed legislation

through "The Needlestick Safety and Prevention Act", which requires the use of safer needle devices. Hawaii adopted the required rule in 2001.

Health care workers may have an increased risk for developing latex allergy due to their use of latex gloves. Among health care workers who experience frequent latex exposure, 8-12% develop sensitivity to latex. Latex sensitivity may lead to symptoms of latex allergy, such as skin rashes; hives; nasal, eye or sinus symptoms; asthma, and in rare instances, shock.

In the U.S., the nursing and personal care industry experienced an injury and illness rate more than double the average for the private sector. The 1999 rate was 13.5 and the 2000 rate, 13.9, versus the national average for private sector rates of 6.3 and 6.1, respectively.

HIOSH has conducted special outreach programs for the nursing home industry in the areas of ergonomics, specifically patient transfer and handling; workplace violence; bloodborne pathogens; and common safety hazards such as slips, trips, and falls.



# Hoisting Machine Operators' Advisory Board

*Lora Contreras, Executive Director*

## **Purpose**

The Hawaii State Legislature created the Hoisting Machine Operators' Advisory Board for the purpose of assuring the safe operation of cranes and hoisting machines by establishing a certification program for operators as well as to advise the Hawaii Occupational Safety and Health Division of the Department of Labor and Industrial Relations.

## **Governance**

Established by the Hawaii State Legislature in 1998 through Act 165, the Hoisting Machine Operator's Advisory Board is governed by a five-member executive board appointed by the Governor. The board has held meetings since May 1999 and its proposed administrative rules were adopted on November 26, 2002.

## **Funding**

The Hoisting Machine Operators' Certification Revolving Fund was established in 1998 to support the process for certifying hoisting machine operators. The fund is used to cover personnel and operating expenses for the advisory board to oversee certification standards that meet nationwide standards; the cost of preparing and disseminating information on hoisting machine operators' certification and training; and annual reports on the program's accomplishments. The reimbursable sum of \$50,000 in start-up moneys was appropriated out of the general fund for FY 1998-99. The program has been supported by the Occupational Safety and Health Training and Assistance Special Fund since FY 1999-00. The fund is now self-supporting.

## **Administrative Rules**

A certificate is required to operate a hoisting machine under the administrative rules. The certification process includes a written and practical exam, a physical examination and requires a thousand hours of crane-related experience as well as other documentation. This program is mandated to secure and document requirements from hoisting machine operators to ensure public and worker safety by requiring a strict certification process. The certification costs each individual a non-refundable \$50.00 application fee and \$500.00 for the certificate. Certificates are valid for five years and the renewals will cost \$500.00. The Board is responsible for ensuring that the costs are borne by the users and not the taxpayers, and that the costs for each individual operator is affordable.

The hoisting machine operator training is an integral part of an overall certification process. Worker and public safety is enhanced with effective training. The certification process ensures a minimum competency level for operators and provides

assurance to employers that the crane operators they employ have received appropriate training. This process benefits workers, their employers and the public.

### **Certification**

As of September 30, 2003, the Department of Labor and Industrial Relations has certified one hundred forty-four (144) crane operators statewide and deposited \$69,450.00 in collected certification fees.

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# Labor & Industrial Relations Appeals Board

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*Randall Y. Iwase, Chairman*  
*Vincente Aquino, Member*  
*Carol K. Yamamoto, Member*

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# Labor & Industrial Relations Appeals Board

*Randall Y. Iwase, Chairman*

*Vincente Aquino, Member*

*Carol K. Yamamoto, Member*

## Overview

The Labor and Industrial Relations Appeals Board (LIRAB) strives to assure equitable treatment of individuals through a prompt, just and inexpensive process of appeals of decisions and orders of the Director of Labor and Industrial Relations that relate to Workers' Compensation and Boiler and Elevator Safety. The Board is an agency within the Department of Labor and Industrial Relations for administrative and budgetary purposes.

During the fiscal year 2003-2004, the LIRAB plans to continue active pursuit of the settlement of at least two cases per trial date to ensure prompt, expeditious resolution to cases and to reduce its backlog of cases.

## LIRAB Activities

<b>Workers' Compensation</b>	<b>2001-2002</b>	<b>2002-2003</b>
Cases Pending, 7/01/01	701	(7/1/02) 605
Cases Received	574	571
Cases Disposed	644	496
Cases Pending, 6/30/02	631	(6/30/03) 680*
Pre-trial Conferences	525	489
Trials Held	77	52
Motions Heard	244	215
Conferences	475	328
<b>Boiler &amp; Elevator Safety</b>	0	0
<b>OSHA Appeals</b>		
Cases Pending, 7/01/01	24	(7/1/02) 24
Cases Received	44	1
Cases Disposed	44	24
<b>Supreme Court Appeals</b>		
Cases Pending, 7/01/01	38	(7/1/02) 51
Appeals to Supreme Court	26	25
Cases Disposed	13	26

\*Included in the number of cases pending before the LIRAB on July 31, 2003, the following should be noted:

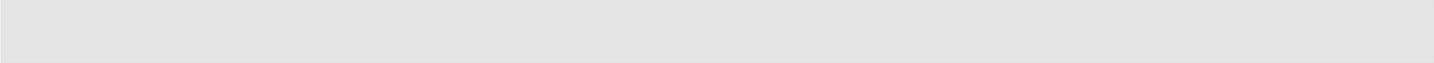
42 cases – Awaiting finalized settlement documents

26 cases – Remanded to the Director to address various issues

25 cases – Held in abeyance for various reasons, including awaiting decisions from Supreme Court, request from parties that cases be held in abeyance, and inability to locate claimants

15 cases – Awaiting written decisions from LIRAB

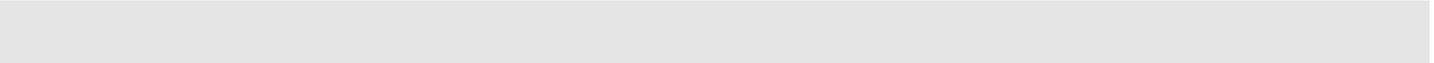




# Office of Community Services



*Sam Aiona, Executive Director*



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# Office of Community Services

*Sam Aiona, Executive Director*

## Overview

The primary responsibility of the Office of Community Services (OCS) is to facilitate and enhance the development, delivery and coordination of effective health and human service programs for the economically disadvantaged, immigrants and refugees. The OCS provides advice and assistance to private social service agencies, agencies of the executive branch and the legislature, with regard to programs for these individuals.

## Key Accomplishments

***Administration and Achievements of Program Funds:*** During the fiscal year 2002-2003, the OCS administered over \$12 million dollars in State and Federal funds to assist the economically disadvantaged, immigrants and refugees in the State of Hawaii. Funds were used for the following purchase of services and Grant-in-Aids.

### **State Funded Programs, \$4,179,622**

Employment assistance to 1,748 qualified low- income persons	\$1,391,546
Employment assistance to 764 immigrants	\$ 599,247
Small business creation service to 301 low-income persons, immigrants and refugees	\$ 392,699
Extended child day care for 242 Head Start children whose parents are employed or in job training	\$ 335,000
Basic transportation services for 11,693 individuals in Hawaii and Maui Counties	\$ 328,160
Equitable access to civil legal services for 9,772 qualified low-income persons and 767 immigrants	\$ 960,701
Support services to 388 at-risk youth in Honolulu school district	\$ 53,370
Nearly nine million pounds of food distributed statewide to the poor	\$ 118,899

**Federal Funded Programs, \$4,748,766**

Community Services Block Grant programs to 31,728 low-income persons	\$3,846,029
Gardening and dietary education that led to improved nutritional intake of 26 economically disadvantaged persons	\$ 15,000
Employment assistance to 65 refugees	\$ 100,000
Cash assistance to 21 refugees	\$ 51,660
Over 2.2 million pounds of emergency food from the U.S. Department of Agriculture distributed to Hawaii's community action agencies and local food banks that feed 177,788 needy persons	\$ 139,000
Over 306,000 pounds of locally grown fruits and vegetables provided by Senior Farmer's Market Nutrition Program to 1,286 eligible senior citizens on Kauai	\$ 378,000
Cost saving energy assistance to 462 low-income persons	\$ 219,077

**State Funded Grant-in-Aid, \$3,894,182**

Services focused exclusively on legal needs and rights of children	\$ 285,357
Horticulture training program for 17 low-income persons on Kauai	\$ 108,825
Administered CIP funds for ORI Anuenue Hale to plan, design and construct training facility	\$ 500,000
Administered CIP funds for design and construction of renovation and expansion of Kalihi, Leeward and Waianae YMCAs	\$ 3,000,000

***New Federal Funds for Hawaii:*** The OCS applied for and received a grant in the amount of \$197,246 from the U.S. Department of Agriculture to expand the Senior Farmer's Market Nutrition Program (SFMNP) from the County of Kauai to the County of Hawaii. Funding for the County of Kauai amounted to \$378,000 bringing the total funding for Hawaii to \$575,246.

The Kauai and Hawaii Food Banks were contracted to purchase fresh fruits, vegetables and herbs from local farmers to distribute to eligible senior citizens to improve their nutritional intake. This program is a triple win situation; the program helps local farmers and low-income seniors, and retains revenue in the state. The program provided a stimulating effect that saw an increase in the number of farms and in some cases, increases in the size of farms in various counties.

***Outreach Initiatives:*** The OCS held individual meetings with their service providers to identify how the state could assist them in their efforts to address the needs of their

target population. As a result, a “Writing Winning Proposals” workshop was conducted, a Community Service Summit “The Power of Partnership” conference was convened, and contract and service overview meetings were held with providers to ensure a clear understanding of contract language, expectations, roles and responsibilities.

During the “Writing Winning Proposals” workshop, 55 participants attended. Attendees were comprised of current and past service providers and interested faith-based organizations. On a rating scale of 1 through 7, with 7 being excellent, 81% of the 47 evaluations rated the workshop a 7. Comments indicated that participants gained new insight on proposal preparation and found the training very worthwhile.

The Community Services Summit, “The Power of Partnership”, drew over 200 participants. The conference, comprised of 3 tracks and 10 workshops, received an averaged review score of 6.3 out of 7. A post-conference survey of attendees revealed that the information received during the conference helped them to assist their consumers. These attendees are looking forward to the next conference.

## **Continuous Improvement Initiatives – 2003-2004**

### ***Needs Assessments:***

*Immigrants and Refugees:* The OCS will undertake an initiative to research the service needs of the immigrants and refugees population in Hawaii and the accessibility of state services to persons with limited English proficiency (LEP). The information obtained will be made available to service providers and others to support funding applications, develop legislation, and plan for services for these populations. Data collected on services availability for persons of LEP will assist the OCS and other agencies to determine the level of accessibility and facilitate improvements in this area.

*Community At Large:* The OCS plans to develop a process that will identify service needs by counties and communities statewide. The information gained will be used to guide the OCS to develop service specifications for future purchase of services.

### ***Resource Provider:***

*Data and Service Directory:* The OCS will undertake an initiative to create a directory that identifies public and private agencies that collect data and/or conduct research on the needs of the economically disadvantaged, immigrants and refugees, in Hawaii. The directory will be available to service providers and others to support funding applications, developing legislation, and planning of services.

### ***Outreach Initiatives:***

*Supporting OCS Service Providers:* The OCS recognizes the value of technical knowledge and assistance in the delivery of efficient services. The OCS intends to offer technical assistance workshops that will assist service providers and partners of the agency to address their capacity building needs.

*Website Development:* The OCS webpage is being redesigned in conjunction with the Department of Labor and Industrial Relations’ overall plan to improve and

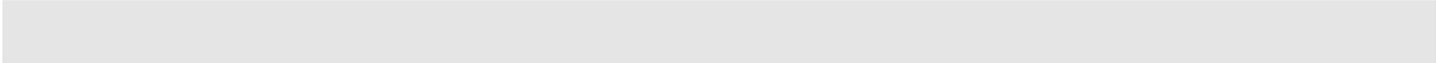
enhance all division and agency sites. The new webpage will provide better access to general and program information, initiatives, funding opportunities, forms and tools designed to facilitate and simplify the contracting processes and requirements.

*2004 Statewide Conference on Poverty:* To promote collaboration among private and public agencies and prudent expenditure of public funds, the OCS convenes the Community Services Summit “The Power of Partnership”, to ensure it meets the needs of those it intends to benefit. The conference is planned and coordinated by a committee comprised of volunteers and stakeholders from public and private agencies.

*Faith-Based and Community Initiative:* The OCS will work on encouraging and implementing federal initiatives that encourage faith-based and community organizations to apply for and receive funding to provide services for Hawaii’s needy.



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# Personnel Office

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*Lois Eiting, Acting Personnel Officer*



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# Personnel Office

*Lois Eiting, Acting Personnel Officer*

## Overview

The Department of Labor and Industrial Relations' (DLIR) Personnel Office (PO) administers state and departmental personnel policies and procedures. The office staff advises the department on the proper application of personnel management practices laws, rules and regulations of the state, and collective bargaining agreement provisions. The office serves as a liaison between the DLIR, Department of Human Resources Development (DHRD), and the exclusive bargaining agents of DLIR employees.

## Key Accomplishments

**Personnel Administrative Rules:** A large majority of the Personnel Administrative Rules were repealed by the Civil Service Reform Act, SLH 2000. The promulgation of new policies and procedures to replace these Rules is still in progress at DHRD. Throughout this fiscal year, the PO staff was provided the opportunity to comment and recommend changes on newly drafted policies and procedures before finalization by DHRD.

**Administrative Duties:** The PO worked on a few major administrative projects that impacted the department's 750 employees. The office was tasked with processing negotiated pay increases for its employees effective July 2002 and completed payroll change actions for merit pay increases for managers in the Excluded Managerial Compensation Plan in November 2002.

Effective July 1, 2003, the Employee-Union Health Benefits Trust Fund (EUTF) replaced the health benefits previously offered through the Hawaii Public Employees Health Fund or HGEA/AFSCME Plans. The processing of enrollment forms to convert employees to the new health plan was successfully completed without any adverse impact to the continuity of coverage for the department's employees.

Training activities coordinated by the PO included Sexual Harassment and ADA Training for all Honolulu-based employees during the first quarter of 2003. State Information Technology Acceptable Use Policy Training was conducted throughout the second quarter of 2003 for all Oahu employees.

**Community Service/Involvement of DLIR Employees:** The PO coordinated two blood drives held at the Keelikolani Building during this fiscal year. Employees

contributed 75 pints of blood during these drives. In addition, DLIR employees demonstrated their spirit of community service by donating approximately 139 pints of blood at the Blood Bank Donor Centers on all islands.

### **Continuous Improvement Initiatives – 2003-2004**

**Customer Service:** The PO will focus efforts on enhancing the services and support that the office provides its clients. Plans during the new fiscal year include conducting customer surveys to assess training needs and current levels of customer satisfaction; increasing the use of technology to improve efficiencies; and developing a model to manage, resolve and facilitate personnel issues in a proactive, partnership manner with division chiefs, employees and the union.

**Continued Training and Development:** The development and training of the DLIR's workforce is crucial for continuity planning, professional growth, and lifelong learning. Training projected for DLIR employees in 2003-2004 include: Violence in the Workplace, Conducting Investigations, Ergonomics, Sexual Harassment/ADA, and Emergency Preparedness.





# Research & Statistics Office



*Naomi Harada, Research & Statistics Officer*





# Research & Statistics Office

*Naomi Harada, Research & Statistics Officer*

## Overview

The Research and Statistics Office (R&S) conducts labor market and labor-related research for Hawaii. The results of this research enable the creation of databases that support and guide workforce development and program delivery initiatives and requirements and equip policy makers with information that is critical in decision-making. The R&S team has a vital role in the development of forecasts and projections on occupations in demand, developing statistical data on the labor force, employment, unemployment, industry wages, job counts, hours and earnings, mass layoffs, and occupational injuries and illnesses in cooperation with the federal Bureau of Labor Statistics.

The office is divided into two major staffs :

***Operations Management Information Staff:*** This staff provides research and statistical services on subject matters related to core programs administered by divisions in the Department of Labor and Industrial Relations: Unemployment Insurance (UI), Hawaii Occupational Safety and Health (HIOSH), Disability Compensation Division (DCD), Wage Standards Division (WSD), and Workforce Development Division (WDD). The services provided to these divisions include developing program and administrative data, conducting workload validation, maintaining and providing analysis from management information systems, and preparing operational reports required by the U.S. Department of Labor and mandated state reports.

***Labor Market Information Staff:*** The staff conducts occupational and labor market research, publishes career information, and implements statistical programs in cooperation with the federal Bureau of Labor Statistics (BLS). They also assist the Workforce Development Council Planning Committee in developing industry-occupational employment projections matrices to determine workforce educational and training requirements and assess labor supply and demand situations. The staff specializes in three program areas of research: the labor market, the labor force and career information.

***Labor Market Research Section:*** The section conducts research activities concerning occupational employment and wages and other related labor market information. The group maintains occupational labor market databases in support of workforce development initiatives and information requirements and develops projections on labor demand.

**Labor Force Research Section:** This group analyzes and disseminates statistical data on the state's labor force, unemployment, employment, industry wages, job counts, hours and earnings and mass layoffs in cooperation with the BLS.

**Career Information Delivery System Section:** This section plans, develops, implements and maintains a comprehensive statewide career information delivery system to provide career, job, occupational, educational and training information to youths, adults and jobseekers.

## Key Accomplishments

**Web-Based Initiatives:** During this fiscal year, the R&S team successfully developed and launched two significant websites, the Hawaii Workforce Informer which was nationally recognized and Career Kokua.

The *Hawaii Workforce Informer* website, "**HiWi**", was developed and installed in January 2003 and is a Labor Market Information (LMI) internet-based system. The site, [www.hiwi.org](http://www.hiwi.org), provides jobseekers, employers, students and other users with vital information on occupations, required job skills, wages, employment trends, training opportunities and other career information. The website was showcased at the 2003 LMI National Conference and received a National Association of State Workforce Agencies' award for excellence in providing quality information in the category of Localized Information for Workforce Development – Electronic.

In addition to HiWi, R&S developed and installed the *Career Kokua* website, [www.careerkokua.org](http://www.careerkokua.org), which provides users with a computerized system of career and related educational information. Its mission is to provide localized current information for career decision-making and career planning. Through Career Kokua, individuals can learn about occupations, industries, programs of study and training, local postsecondary schools, colleges and universities, job search aids, and community resources. Career Kokua provides an excellent platform to begin one's career exploration and planning process. It provides users with a better sense of self, their career goals and decisions.

A key component of Career Kokua focuses on providing parents with useful information, such as the "Parent's Guide to Career Planning" publication, designed to help adults with their child's career exploration. The R&S office has also worked with the University of Hawaii to support the America's Career Resource Network (ACRN) initiative by improving and expanding access to career and educational information for students, parents, teachers, and counselors through this website.

The latest Career Kokua User Survey results showed that Career Kokua continues to exceed projected program Measures of Effectiveness. Table 1 below shows the result of the survey for the various questions on the User Survey as they relate to program Measures of Effectiveness.

**TABLE 1. CAREER KOKUA MEASURES OF EFFECTIVENESS**

*Based on 2002 User Surveys*

(Note: Percentages may not always equal 100% due to rounding.)

**MEASURE I.** Degree of Satisfaction of Respondents using Career Kokua (CK) and Satisfaction with Career Kokua as a Career Exploration Tool

(Projected Measure-85%; **Actual Measure-94%**)

A.	Desirability of Use	95%
	• I liked using CK	96%
	• CK provided information wanted	94%
B.	Ease of Use	97%
C.	Usefulness	90%
	• Learned something about self	85%
	• CK is a worthwhile program	96%

**MEASURE II.** Assistance to User in Decision-Making

(Projected Measure-80%; **Actual Measure-90%**)

• CK provided possible career options	93%
• Using CK made me interested in other career activities	84%
• Using CK helped me with career decisions	93%

**Geo-Coding:** R&S presented Hawaii’s use of the *geo-coding software* in an employment publication at a national conference for state Administrators in September 2003. The geo-coding software was used in the publication to identify business and industry concentration in the City and County of Honolulu. Mapped data provided a visual presentation of the distribution of employment by industry and zip code area for Honolulu. The report is available in PDF format at <http://www.loihi.state.hi.us>.

**Awards and Recognitions:** The Employment and Wage Statistics research team received recognition from the federal Bureau of Labor Statistics for achieving response rates of 97.1 percent for reporting units and 99.9 percent for employment. They wrote, “We attribute this outstanding outcome primarily to the resourcefulness and dedication of your coding staff. They truly were not satisfied with simply meeting the deliverable, but understood that their best efforts would improve data quality for all of our survey.” As a result of Hawaii’s achievement, the San Francisco region of which Hawaii is a part, attained the highest response rates in the nation for both reporting units (88.8 percent) and for employment (90.9 percent).

The Occupational Safety and Health research team received three certificates of excellence for data quality, timeliness and outstanding performance and contributions

in the OSHA 2001 Log Data Collection Program from the U.S. Department of Labor Occupational Safety and Health Administration. Hawaii was one of only three states in the nation to receive these awards.

***Outreach Efforts:*** The R&S office actively participated and supported various conferences and fairs throughout the year. Some of the many events they were involved in were: the annual College and Career Fair, the Department of Education's E-Schools "No Child Left Behind" conference, Technology Day at the State Capitol, and the Joint Services Career Fair. They also conducted twenty-seven (27) Career Kokua training workshops for 229 teachers, counselors, workforce development specialists, career education assistants, and other career development personnel statewide. Career Kokua presentations were also conducted at the Pacific Islands Guidance Institute, Pihana Na Mamo, and GEAR UP conferences.

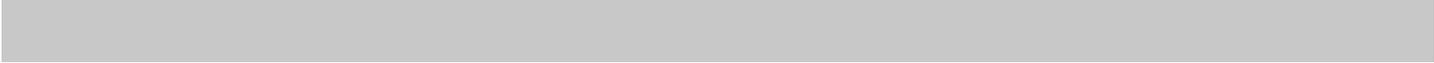
#### **Continuous Improvement Initiatives – 2003-2004**

***Labor E-Information:*** R&S plans to aggressively promote awareness of and access to labor information through its marketing of their Labor E-Information Suite (LEIS), consisting of the HiWi, LOIHI, and Internet Career Kokua web sites. This suite of information systems are used for research, business planning, job search, and career planning in Hawaii.

***Outreach Initiatives:*** The office will continue to actively participate in workshops, seminars, training sessions and presentations to further awareness of their programs and uses of the information they produce to the public. R&S is also reviewing the design of its website products and data reporting to improve the content and language to ensure information is user friendly and easy to understand.

***Enhanced Career Planning Program:*** R&S plans to incorporate career and related educational information through on-line modules that will provide career assessments, job-related videos, a resume writer, and useful, related website links.



# State Fire Council

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*Attilio K. Leonardi, Chair*  
*Darryl Oliveira, Vice Chair*  
*Charles Hiramoto, Member*  
*Carl Kaupalolo, Member*



# State Fire Council

*Attilio K. Leonardi, Chair*

*Darryl Oliveira, Vice Chair*

*Charles Hiramoto, Member*

*Carl Kaupalolo, Member*

## Overview

The State Fire Council (SFC) is comprised of the fire chiefs of the counties. The Council's primary mission is to develop a comprehensive fire service emergency management network for the protection of life, property and the environment throughout the State of Hawaii. The group also strives to unify and standardize fire service by sharing information, technology and resources.

In addition to adopting a State Model Fire Code, the Council serves as the focal point through which all applications to the federal government for grant assistance for fire-related projects are made. The Council may advise and assist county fire departments where appropriate; prescribe standard procedures and forms related to inspections, investigations, and reporting of fires; and advise the Governor and Legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible.

## Key Accomplishments

***Adoption of State Fire Code:*** The SFC adopted the State Fire Code on October 4, 2001. Then Governor Benjamin Cayetano, approved the State Fire Code on November 20, 2001. The Council has diligently worked with the various counties to adopt the code. On October 10, 2002, the City and County of Honolulu adopted, by Ordinance, the State Fire Code, with county amendments. Hawaii, Kauai and Maui counties are finalizing their amendments and plan to adopt the code during the fiscal year 2003–2004.

***Outreach Initiatives:*** Throughout the fiscal year 2002–2003, the SFC met with and provided consultation to local building, fire and private officials on the next building and fire code adoptions. The Council also provided guidance and clarification on fire code requirements and public school fire inspections to the Department of Education.

The SFC successfully coordinated all National Fire Academy regional delivery programs and Wildland Fire Mitigation through national and state agencies, including mutual aid agreements, and training and public awareness programs. \$96,214 in federal grants were obtained and expended for fire code inspections and fire safety education training classes that benefited all federal, state and county fire departments and public safety agencies.

**Legislative Initiatives:** Members of the SFC continued to remain active during the legislative session by providing numerous testimony and recommendations on federal and state proposals on fire-related issues. The group also provided comments and issues from various agencies such as the National Association of State Fire Marshals.

### **Continuous Improvement Initiatives – 2003-2004**

**Mitigate Potential Hazards:** The SFC will continue to develop and execute short and long-term goals to mitigate potential hazards that may impact life, property and the environment in the State of Hawaii. Some of the Council's plans include developing a risk management plan to prioritize fire inspections of occupancies for all counties; conduct statewide presentations to address identified hazards to assist in public education; identify and prioritize areas of vulnerability for all counties and assess the capability of each county in responding to emergencies in determined risk areas.

**Continuous Development and Training:** The SFC continually evaluates the latest technology, equipment and professional training to provide the fire service with the necessary tools to manage any type of emergency. The Council will provide uniform equipment specifications to assist all counties in purchasing necessary equipment and encourage group purchasing to reduce costs and leverage resources. The SFC will help identify minimum qualifications and training requirements of fire service personnel necessary to be certified to work in the fire fighter class, including Chief Officers.

**Statewide Response Policy:** The development of a plan to provide mutual aid agreements to assist individual counties during technological and/or natural disasters and response contingency plans for different types of fires and emergencies will continue in fiscal year 2003-2004. The plan will include the minimum number of personnel necessary to initiate a safe operation based on the risk assessment of the specific occupancy category or emergency.

**Statewide Damage Assessment Protocol:** The SFC will continue its efforts to maintain a statewide protocol in determining accurate fire dollar loss for fire-related activities and tasks by working with private insurance and contractor agencies. The Council will assist in documenting consistent and accurate fire-related losses and savings incurred by fire service personnel's actions.

**Statewide Reporting System:** The Council will work on implementing the National Fire Incident Reporting System (NFIRS) 5.0 in all county fire departments and promote a statewide reporting system and database. Applications for federal and state grants will be filed as opportunities arise to obtain the necessary funding to assist the SFC in meeting the dynamic, changing needs of a statewide reporting system. The Council plans to develop a planning section to analyze the information, database and statistics generated from a statewide reporting system and utilize this data to enhance and improve overall fire service and programs.



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# Unemployment Insurance Division

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*Linda Uesato, Administrator*

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# Unemployment Insurance Division

*Linda Uesato, Administrator*

## Overview

The Unemployment Insurance (UI) program was established by Congress in 1935 as part of the Social Security Act. The program is financed by federal and state taxes assessed on employers based on a percentage of their payroll. The federal tax covers the costs of administering the program, and the state tax, or, contributions as they are commonly called, are deposited into a trust fund and used for the payment of UI benefits.

UI is an income maintenance program providing partial replacement of wage loss during temporary periods of unemployment. The program pays weekly benefits, up to 26 weeks, to individuals who meet requirements of the state unemployment insurance law. Prior work history determines whether and in what amount an individual will qualify for benefits.

The UI Division is currently staffed by 206 dedicated employees guided by the division's mission statement:

***“E Malama, E Ho’olako”***

- to protect the rights of claimants and employers; and*
- to preserve the integrity of the UI program; and*
- to provide quality services to our customers.*

Four branch offices and eight claim offices in Honolulu, Waipahu, Kaneohe, Lihue, Wailuku, Kaunakakai, Kona, and Hilo, serve the public.

The UI program is governed by both federal and state laws. The major statutes are found in Titles III and IX of the Social Security Act, the Federal Unemployment Tax Act, and the Hawaii Employment Security Law under Chapter 383, Hawaii Revised Statutes. State law must conform to federal law. Nonconformity would subject employers to higher tax rates, jeopardize funding for the state program and preclude jobless workers from collecting UI benefits.

## Key Accomplishments

**U.S. Department of Labor Performance Standard:** The federal government closely monitors each state's UI program through performance measurements covering the critical core activities, quality and timeliness in the areas of benefit payments, non-monetary determinations, appeals, and accuracy of new employer status determinations. During the past year, Hawaii's UI Division met or exceeded all 13 required performance criteria.

The Quality Control unit performs ongoing audits on UI claims to determine if benefits are correctly paid. The Hawaii UI program correctly authorized 97% of the total benefits paid to UI claimants in 2002. The correct payment rate remains high each year, attesting to the integrity of Hawaii's UI program. This unit also examines UI tax operations, assessing the accuracy of major tax functions and denial determinations of claims.



### **"Dial and File" Claims using Hawaii Tele-Claim:**

In July 2002, the UI Division completed the installation of its telephone claim filing system, Hawaii Tele-Claim, serving both local claimants and those residing on the mainland. Unemployed workers can now use their telephone to "dial and file" their UI claims from the comfort and convenience of their homes, eliminating the need to drive to the claims office, searching for parking spots, and waiting in long lines. Approximately 21,000 calls are made to Hawaii Tele-Claim each week which is 70% of all initial claim applications and 95% of weekly claim certifications.

**UI Program Integrity:** UI has worked diligently to maintain the integrity of its program. The division implemented several programs which helped them achieve this ongoing goal.

In July 2003, Hawaii converted its access to the U.S. Immigration's Systematic Alien Verification for Entitlements program from a touch-tone telephone to a computer-based method to verify the status of foreign workers as required by the U.S. Department of Labor. The UI Division now has online access to Immigration and Naturalization Service records to validate that non-citizens filing UI claims are legally authorized to work in the U.S.

Also in July, the UI Division completed the electronic transmission of wage and separation information for former military and ex-federal workers from the national database in Florida to improve the timeliness and accuracy of claims filed under these special federally funded programs.

The UI Division continues to implement aggressive programs and initiatives to detect potential fictitious employer schemes by verifying the existence of a business after registration is completed, checking for common post office box addresses, and the backdating of UI claims for newly registered employers.

The UI Division implemented a new workload data validation system in accordance with federal guidelines. The system ensures accurate workload counts which determine appropriate federal financing for UI benefit and tax activities.

***Federal Extended Benefit Programs:*** In addition to the regular UI program, the UI Division administered two new federally funded extended benefits programs.

**Public Law 107-147** was enacted by Congress to provide short-term help to workers who lost their jobs as a result of the September 11 terrorist attacks in 2001. The Temporary Extended Unemployment Compensation (TEUC) program provided for an additional 13 weeks of benefits to unemployed workers who exhausted their 26 weeks of regular benefits. The TEUC program began on March 10, 2002 and, after two extensions in January and May 2003, ended on December 31, 2003. For those who have TEUC balances as of December 31, a transition period will continue payments to March 31, 2004. As of June 30, 2003, approximately 10,200 claims have been processed and \$30.8 million in TEUC benefits have been paid in Hawaii.

Under **Public Law 108-11**, the TEUC program for displaced airline and related workers (TEUC-A) provides for 39 weeks of benefits after exhaustion of regular benefits. The TEUC-A program runs from April 20, 2003 to December 28, 2003 with a transition period up to January 1, 2005.

***Labor Dispute:*** Nurses from three medical centers, Kuakini, St. Francis, and Queen's, went on strike in December 2002 for over five weeks. The UI Division successfully processed approximately 1,100 initial claim applications and over 3,000 weekly claim certifications through the Hawaii Tele-Claim system.

***Customer Service:*** Due to the significant change from a manual to a telephone claim-filing system in July 2002, the division solicited feedback from users. In customer surveys, claimants voiced their approval and consistently rated the new system above 5 on a scale of 1 to 6, with 6 being the highest score.

***Outreach Activities:*** For the business community, the UI Division sponsored five workshops for newly liable employers where they were provided general information on UI taxes, filing requirements, forms, and benefit payments. Arming businesses with this information helps owners better understand how to comply with statutory requirements.

In addition, UI participated in outreach activities such as seminars at the Hawaii Employer's Council and classes at Kapiolani Community College. UI also participated in rapid response seminars, local job fairs, the 2003 Hawaii Small Business Fair, and job recruitment efforts spearheaded by the Workforce Investment Board.

***Employee and Team of the Year Award:*** The division proudly celebrated as top honors in the Department of Labor and Industrial Relations' annual Employee and Team of the Year Awards were presented to Judith Nakasone, Unemployment Insurance Assistant, and the Hawaii Tele-Claim Project Team, respectively. The Hawaii Tele-Claim Project Team was recognized for their successful implementation of a system that allows claimants to "dial and file" their unemployment insurance claims by telephone rather than in person.

Ms. Nakasone was lauded for her leadership, diplomacy and technical skills. In addition to receiving the DLIR's Employee of the Year award, she also received the prestigious State Employee of the Year Award and was recognized by Governor

Lingle for her dedication to her work and co-workers, and commitment to providing Leeward Oahu clients with superior customer service.

***Financial and Statistical Results:***

Total unemployment rate in 2002:	4.3%
Maximum weekly benefit amount in 2002:	\$395
Total initial claims processed as of 6/30/03:	84,782
Total weekly certifications claimed as of 6/30/03:	658,278
Amount of regular benefits paid as of 6/30/03:	\$143.1 million
Average length of unemployment in 2002:	19.2 weeks
Average weekly benefit amount in 2002:	\$279
Total number of covered employers in 2002:	28,800
Taxable wage base in 2002:	\$29,300
Trust Fund balance as of 6/30/03:	\$314.2 million

**Continuous Improvement Initiatives – 2003-2004**

***UI Fraud Prevention and Detection:*** Hawaii has participated in several U.S. Department of Labor-sponsored UI integrity conferences. During these conferences, states share information on issues and develop action plans for handling UI fraud and identity theft. To detect unreported employment, the UI Division operates a new hire cross-match that matches UI benefit payment records against new employee hire reports submitted to the State Directory of New Hires. The recent receipt of a \$90,000 federal grant will enable the Hawaii UI Division to further enhance its current new hire cross-match system during the coming year.

The Hawaii UI Division is one of few states in the nation that is currently using the State Verification and Exchange System (SVES) developed by the Social Security Administration (SSA). Under SVES, UI claim information such as social security numbers and date of birth are matched against the records maintained by the SSA to insure legitimate UI claims are filed.

***Internet Registration and Wage Report Filing:*** Utilizing the state’s “Acces Hawaii” internet portal, the division is developing a system that provides employers with a simple, secure method to submit quarterly wage reports. This web-based system will eliminate the use of diskettes and other magnetic media to transfer reports and records.

***New Legislation for Alternate Base Period effective January 1, 2004:*** The 2003 legislative session approved Act 219 which will expand eligibility for workers through the use of an alternate base period effective January 1, 2004. For individuals who initially are determined ineligible for unemployment insurance using wages in the first four of the last five completed quarters, the office will re-evaluate eligibility using the last four completed quarters. This amendment to the UI law is expected to increase initial claims by 3% or approximately 1,500.



# Annual Evaluation of the Hawaii Unemployment Compensation Fund

**State of Hawaii**  
**Department of Labor & Industrial Relations**

## EXECUTIVE SUMMARY

### Highlights

	2002	2003	2004
<b>Unemployment Compensation Fund</b>			
Contributions	\$135 million	\$147 million*	\$119 million*
Interest	\$24 million	\$20 million*	\$20 million*
Benefits – Regular	\$144 million	\$124 million*	\$134 million*
Benefits – State Additional	\$9 million		
Fund Balance (end of year)	\$304 million	\$346 million*	\$352 million*
<b>Unemployment Rates</b>			
Hawaii Insured Unemployment Rate	2.4%	1.9%*	2.0%*
Hawaii Total Unemployment Rate	4.2%	3.8%*	3.6%*
U.S. Total Unemployment Rate	5.8%	6.0%*	5.8%*
<b>Taxable Wage Base</b>			
	\$29,300	\$30,200	\$31,000
<b>Tax Schedule</b>			
	Schedule C	Schedule D	Schedule C
<b>Tax Rates</b>			
Minimum	0.0%	0.2%	0.0%
Maximum	5.4%	5.4%	5.4%
Average			
% of Taxable Wages	1.2%	1.7%*	1.2%*
% of Total Wages	0.8%	1.2%*	0.8%*
<b>Weekly Benefit Amount</b>			
Minimum	\$5	\$5	\$5
Maximum	\$395	\$407	\$417
Average	\$280	\$295*	
<b>Average Benefit Duration</b>			
	19.2 weeks	15.5 weeks*	

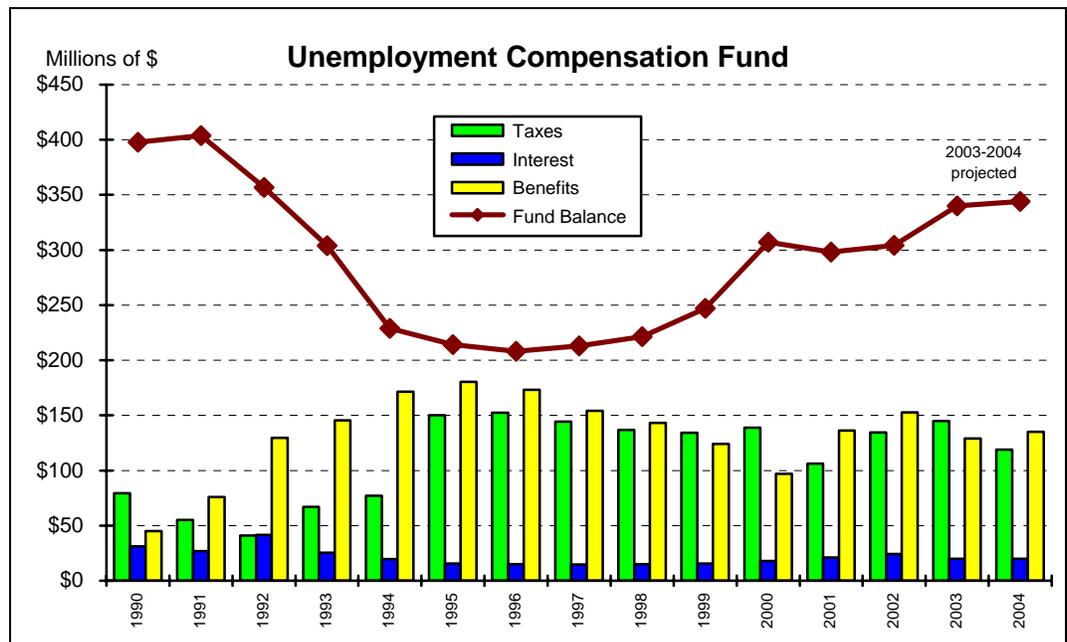
\* estimated

### Status of the Fund

The Hawaii Unemployment Compensation Fund *balance was \$353 million at the end of November 2003*. During the first eleven months of 2003, \$147 million in taxes and \$14 million in interest were added to the Fund. At the same time, \$113 million in benefits were paid out from the Fund. As of November, the fund balance is at 101% of the adequate level. This amount would finance about one and a half years of unemployment at the worst level experienced during the last ten years.

*The fund balance at the end of 2003 is projected to be \$346 million. Assuming the year 2004 insured unemployment rate averages about 2.0%, or about 10,500 claims per week, the fund*

balance would be \$352 million at the end of 2004. The November 2004 balance would be just over 100% of the adequate reserve amount and Schedule C would continue to be in effect for 2005.

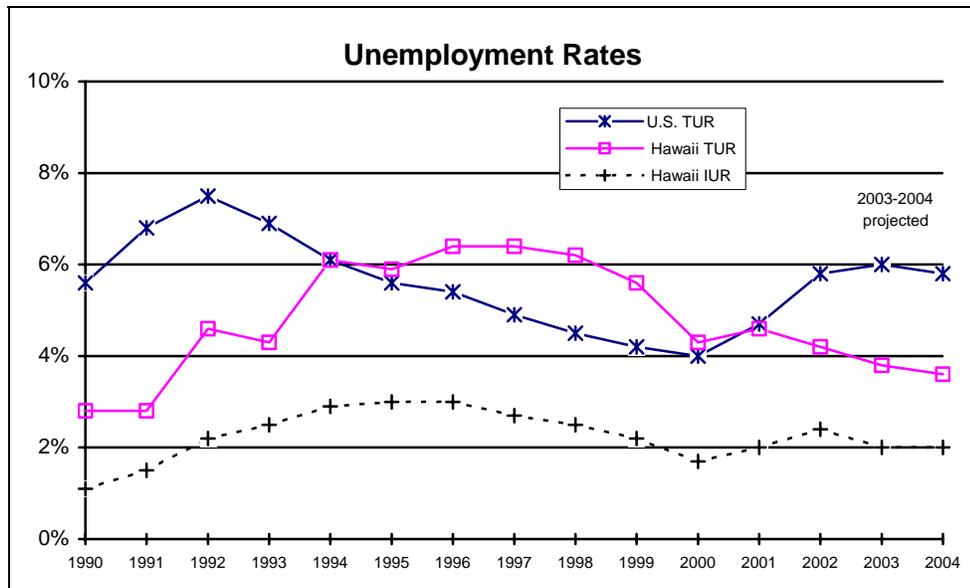


## Economic Outlook

The unadjusted national total unemployment rate (TUR) averaged 6.0% for the first nine months of 2003, increasing slightly over the 2002 annual average rate of 5.8%. Hawaii's total unemployment rate (TUR) averaged 3.9% for the first nine months of 2003 as compared to the 2002 annual average rate of 4.2%. Total nonagricultural wage and salary job counts are also improving in Hawaii, averaging 565,500 for the first nine months of 2003. This is 13,150 more than during the same period in 2002.

The insured unemployment rate (IUR), a measure of the unemployed covered by Hawaii's unemployment compensation program, is used to project outgo from the Unemployment Compensation Fund. The IUR averaged 2.4% in 2002. It has dropped to 1.85% as of November 2003.

*Projections in this report assume that national and Hawaii labor force numbers will reflect improving conditions. Hawaii's total unemployment rate (TUR) is projected to average 3.8% in 2003 and 3.6% in 2004. Trust fund estimates are based on an insured unemployment rate (IUR) of 1.9% in 2003 and 2.0% in 2004.*



### 2004 Tax Schedule and Taxable Wage Base

Tax schedule C will be in effect for the year 2004. Tax rates will range from 0.0% to 5.4%. The estimated average tax rate will be 1.2%.

The taxable wage base (maximum annual wages taxable per employee) will increase by \$800 to \$31,000 in 2004, from \$30,200 in 2003.

## BACKGROUND INFORMATION

### Purpose of Report

This report is produced to meet the requirements of section 383–126.5, Hawaii Revised Statutes, which calls for an *annual evaluation of the adequacy of the Hawaii Unemployment Compensation Fund balance*, taking into account conditions in the State and national economic trends. The report is due to the Legislature no later than 20 days prior to the convening of the regular session.

### Fund Definition and Requirements

**Establishment of Fund in Hawaii state law.** The Hawaii Employment Security Law (Hawaii Revised Statutes, chapter 383) establishes the Unemployment Compensation Fund under the administration of the Department of Labor and Industrial Relations. Unemployment insurance contributions (taxes) are collected from employers and deposited into this fund. Interest earned on the fund balance is also credited to the fund. The fund can be used *only* to pay unemployment insurance benefits or refunds of overpaid contributions.

**Federal requirements.** The unemployment insurance program is governed by both state and federal laws. The Federal Unemployment Tax Act (FUTA), which is part of the U.S. Internal Revenue Code, provides for a federal payroll tax—currently 6.2% of the first \$7,000 in wages per year per employee. Employers receive a tax credit of 5.4% against the Federal tax (resulting in a net tax rate of 0.8%) if their state's law meets all the requirements in the federal laws. The federal tax pays for state and federal administration costs, the federal share of extended benefits, and a loan fund for states that deplete their unemployment funds.

The Social Security Act also contains many requirements relating to the unemployment insurance program.

Three important trust fund related federal requirements are as follows.

- All state unemployment compensation funds must be maintained in the U.S. Treasury as part of the federal Unemployment Trust Fund. Each state has an account in the Trust Fund and interest is paid quarterly to the account by the federal government.
- The Trust Fund can be used essentially only for the payment of unemployment benefits.
- Employers receive the full 5.4% federal tax credit only if the state's system for determining individual employer tax rates meets federal standards. For example, the state's maximum tax rate must be at least 5.4% and an employer's tax rate may be reduced from the maximum, but the reduction must be based on that employer's experience with unemployment (experience rating).

Nonconformity to federal standards can result in:

- denial of all credit against the federal tax (employer's federal tax would be the full 6.2% on the \$7,000 wage base);
- denial of additional credit (employer's federal tax would be the difference of the full federal tax minus their state taxes paid); and/or
- denial of administration grants to run the state program.

To insure that Hawaii employers continue to receive full federal unemployment tax credits, and funding for the state program is not lost, federal standards must be considered in developing laws affecting Hawaii's Unemployment Compensation Fund.

## STATUS OF THE UNEMPLOYMENT COMPENSATION FUND

### Status of the Fund

(Historical data from 1970: Appendix B, page A-5)

The fund balance was \$353 million at the end of November 2003 compared to \$304.3 million at the end of 2002. During the first eleven months of 2003, \$147 million in taxes and \$14 million in interest were added to the Fund. At the same time, \$113 million in benefits were paid out from the Fund.

*Projections through 2004: For this report the insured unemployment rate is projected to average 1.9% in 2003 and 2.0% in 2004. This would result in a benefit outgo of about \$135 million in 2004. Taxes and interest are projected at about \$134 million in 2004. On the basis of this forecasted level of unemployment, the fund balance would be at about \$352 million by the end of 2004. At this level, tax schedule C would be in effect for 2005.*

### HAWAII UNEMPLOYMENT COMPENSATION FUND

(in millions of \$)

Year	Taxes*	Interest	Benefits	Fund Balance
2001	\$106.3	\$21.1	\$136.1	\$298.2
2002	\$134.6	\$24.2	\$152.7	\$304.3
2003				
Jan	\$6.7	\$0.0	\$10.4	\$300.6
Feb	\$11.6	\$0.0	\$9.6	\$302.6
Mar	-\$0.3	\$4.7	\$11.0	\$295.9
Apr	\$16.9	\$0.0	\$10.5	\$302.4
May	\$32.2	\$0.0	\$10.2	\$324.3
Jun	\$1.6	\$0.0	\$11.7	\$314.2
Jul	\$15.3	\$4.7	\$10.7	\$323.5
Aug	\$28.7	\$0.0	\$9.4	\$342.8
Sep	\$0.3	\$5.0	\$10.8	\$337.3
Oct	\$13.8	\$0.0	\$9.7	\$341.4
Nov	\$20.0	\$0.0	\$8.7	\$352.7
<i>Projected</i>				
2003	\$147	\$20	\$124	\$346
2004	\$119	\$20	\$134	\$352

\*Includes special distribution of \$30.8 million in federal Reed Act funds in 2002.

### Fund Solvency

(Historical data from 1970: Appendix B, page A-6)

The Hawaii Employment Security Law defines the factors used to determine the adequacy of the Fund and how the tax rate schedule for the coming year is computed based on that adequacy level. Appendix A outlines the method for determining the tax schedule and how each employer's individual tax rate is computed based on the employer's experience as well as the schedule in effect.

On page A-6, Appendix B, the table entitled *Ratio of Current to Adequate Reserve Fund* shows the data used in tax schedule computations since 1970. The *adequate reserve fund* is

basically the amount of benefits that would be paid out during one and a half years of unemployment at the highest level experienced during the most recent ten years. For the 2004 tax schedule computation, the adequate amount is \$348,975,403. The current reserve fund (actual fund assets as of November 30, 2003) is \$352,679,746. The current reserve is 100% of the adequate reserve. Based on this computation, Schedule C will be in effect for 2004.

## **Tax Rates**

*(Historical data from 1970: Appendix B, page A-7)*

One of eight tax schedules, A through H, is in effect for a calendar year as explained in Appendix A. Schedule A has the lowest tax rates, while schedule H has the highest. The average tax rate attainable from a particular tax schedule depends on the distribution of employers by reserve ratio groups. Employers tend to move to higher reserve ratio groups during periods when contributions exceed benefits. Thus more employers move into the lower tax rate groups and the average tax rate for a schedule decreases. Minimum, maximum, and average tax rates are shown on page A-7, Appendix B. Taxes are estimated to average about 1.7% of taxable wages during calendar year 2003 with Schedule D in effect and 1.2% in 2004 with Schedule C in effect.

## **Taxable Wage Base**

*(Historical data from 1970: Appendix B, page A-8)*

There is a maximum limit on the amount of taxable annual wages per employee for unemployment insurance tax purposes. The law sets this amount, the *taxable wage base*, at 100% of the statewide average annual wage. The wage base was \$30,200 in 2003. For 2004 it will be \$31,000. Setting the wage base at the average annual wage results in approximately 70% of all wages being subject to unemployment insurance taxes. The *Total and Taxable Wages* table on page A-8, Appendix B shows the taxable wage bases and the proportions of wages taxed since 1970.

The current tax schedule system was designed to work with the currently defined taxable wage base. If the wage base is lowered, the tax schedules will produce lower levels of income than they were designed to produce.

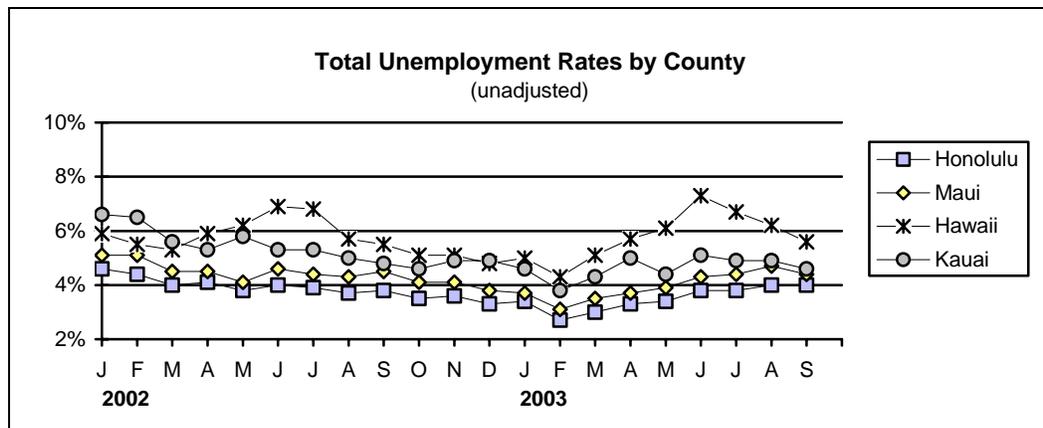
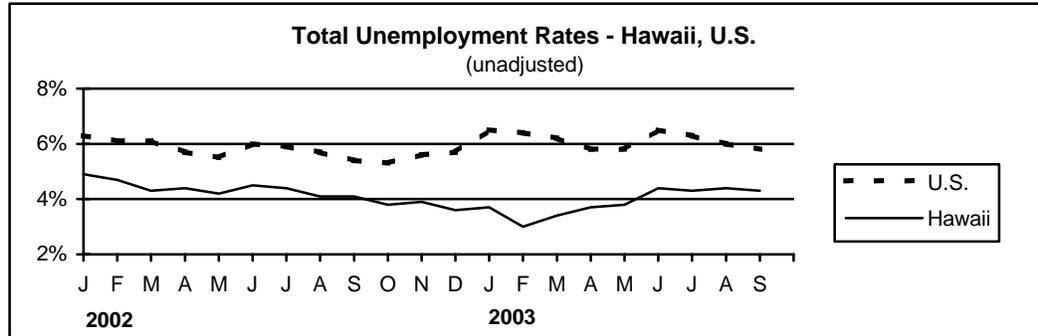
## ECONOMIC OUTLOOK

### General Conditions and Outlook

Two years after the September 11 terrorist attacks, Hawaii's economy is faring better than the national economy. The state's unemployment rate improved to 3.9% for the first nine months of 2003, down 0.3 percentage point from 4.2% in 2002. During the same nine month period, the U.S. unemployment rate averaged 6.0%, an increase of 0.2 percentage point from an annual jobless rate of 5.8% in 2002.

In conjunction with the state's improving unemployment rate, job opportunities in Hawaii are on the rise. The total nonagricultural wage and salary job count for the January through September 2003 period was 565,500. This is a 2.4% increase or 13,150 more than the 552,350 average for the first nine months of 2002. All of the major sectors except manufacturing and information (which includes telecommunication) expanded. Three sectors—professional and business services; trade, transportation and utilities; and education and health services—each increased by more than 2,000 jobs, contributing over half of the total job increase. The natural resources, mining and construction sector increased at the fastest rate, by 7.1%.

*Outlook:* This report assumes U.S. and Hawaii economies will reflect improving conditions in 2004. Tourism is doing well with visitor days up nearly five percent compared with a year ago. Construction and real estate are also expected to benefit from continued low interest rates.



## Labor Force Data

(Historical data from 1970: Appendix B, page A-2)

Employment in Hawaii is stronger in 2003, averaging 577,950 for the first nine months of 2003 compared to an annual average of 557,450 for calendar year 2002. Unemployment has stabilized from an average of 24,750 in 2002 to an average of 23,450 for the January through September 2003 period.

Hawaii's total unemployment rate (TUR), averaged 3.9% over the first nine months of 2003, improving over the 4.2% average for 2002.

The total unemployment rate for the U.S. averaged 5.8% in 2002. It has increased to an average of 6.0% for the first nine months of 2003.

*Projections for this publication assume the U.S. total unemployment rate will average 6.0% in 2003 and 5.8% in 2004, and Hawaii's TUR will average 3.8% in 2003 and 3.6% in 2004.*

### LABOR FORCE DATA

Unadjusted

Year	Hawaii			U.S. Total Unemployment Rate
	Employment	Unemployment	Total Unemployment Rate	
2001	564,200	27,150	4.6%	4.7%
2002	557,450	24,750	4.2%	5.8%
2003				
Jan	575,200	21,900	3.7%	6.5%
Feb	576,400	17,900	3.0%	6.4%
Mar	572,350	19,950	3.4%	6.2%
Apr	576,350	22,350	3.7%	5.8%
May	577,300	22,950	3.8%	5.8%
Jun	579,050	26,450	4.4%	6.5%
Jul	587,950	26,500	4.3%	6.3%
Aug	580,950	26,850	4.4%	6.0%
Sep	576,100	26,000	4.3%	5.8%
<i>Projected</i>				
2003			3.8%	6.0%
2004			3.6%	5.8%

## Insured Unemployment and Employment Covered by the Unemployment Compensation Fund

(Historical data from 1970: Appendix B, page A-3)

The average monthly number of employees covered by the Fund was 414,417 in 2002, a slight decrease from 416,770 in 2001. Covered employees have increased to about 418,500 during the first half of 2003.

The insured unemployment rate (IUR) is average weekly unemployment insurance claims as a percent of covered employees. The IUR was 1.85% as of November 2003, compared to the 2002 average of 2.4%. The average weekly number of claims filed under the regular state program was 11,979 in 2002. The number of weekly claims has declined to about 9,900 as of November 2003.

*Projections for the IUR: average of 1.9% for 2003 and 2.0 for 2004.*

### INSURED UNEMPLOYMENT RATE AND EMPLOYMENT COVERED BY THE UC FUND

Year	Insured Unemployment		Employees Covered By the Fund
	Rate (IUR)	Average Weekly Claims*	
2001	2.0%	11,545	416,770
2002	2.4%	11,979	414,417
2003			
Jan	1.95%	10,259	415,638
Feb	2.00%	10,500	417,365
Mar	2.00%	10,527	419,199
Apr	1.97%	10,324	417,211
May	2.00%	10,486	419,550
Jun	2.05%	10,762	421,819
Jul	2.07%	10,924	
Aug	2.04%	10,797	
Sep	1.99%	10,494	
Oct	1.91%	10,173	
Nov	1.85%	9,866	
<i>Projected</i>			
2003	1.9%	10,400	
2004	2.0%	10,500	

\*Monthly data are for the week containing the 12<sup>th</sup> of the month and are based on 13 week moving averages.

## **Weekly Benefit Amounts and Average Duration**

*(Historical data from 1970: Appendix B, page A-4)*

The *maximum weekly benefit amount* payable to claimants will rise to \$417 for the year 2004—a \$10 increase from the \$407 maximum in 2003. Under Hawaii's law a new maximum weekly benefit amount is computed each year as 70% of the current statewide average weekly wage. Prior to 1992, the computation used 2/3 rather than 70%.

*Average weekly benefits* received by claimants increased to an average of \$295 for the 12-month period ending October 2003 as compared to an average of \$280 for calendar year 2002. A weekly benefit amount is computed for each claimant based on prior earnings. Average weekly benefits usually increase when earnings do over time. Benefits may also increase rapidly when workers with higher wages experience more unemployment, and decrease when lower wage claimants represent a larger proportion of the unemployed.

Claimants may receive up to the equivalent of 26 weeks of regular benefits at their computed weekly benefit amount. However many return to work before collecting this entire amount. The *average number of weeks of regular benefits* received per claimant was 15.5 weeks for the twelve-month period ending October 2003.

## EXPERIENCE RATING

### Description

Experience rating means that each employer's unemployment insurance tax rate is based on the employer's own benefit, contribution, and wage history. For each employer an account is kept of the amount of benefits paid to former employees and the amount of taxes paid into the Unemployment Compensation Fund. At the end of the year, a *reserve ratio* is computed for each employer and that reserve ratio determines the employer's tax rate for the coming year. Appendix A describes this procedure.

### Charged and Noncharged Benefits

*(Historical data from 1970: Appendix B, page A-9)*

For experience rating purposes benefits paid to former employees are usually charged to the employers' individual accounts. However, under certain conditions where the employer may be considered not responsible for the claimant's unemployment, the benefits paid to that former employee is *not* charged to the employer's account. The conditions for noncharging are described in Appendix C. In 2002, 17% of all benefits paid were not charged to an individual employer account. Noncharged benefits are financed by Unemployment Compensation Fund interest income or by employers as a whole by triggering a higher tax schedule due to a lower fund balance.

### 2002 Employer Data

The following tables show 2002 employment, wage, benefit and contribution data for employers who contribute to the Unemployment Compensation Fund and for whom a tax rate was computed for calendar year 2003. Information on employers who were covered under the Hawaii unemployment insurance program during 2002, but were no longer covered as of January 1, 2003, are not included in these tables. Data are shown by reserve ratio, county, size of firm, and industry groups. The reserve ratio tables show 2002 data by reserve ratios as of the end of 2002. Also shown on those tables are the 2003 tax rates assigned to each reserve ratio group.

Eleven percent of all employers were in the highest reserve ratio group, with ratios of 0.1500 and higher. These employers, the largest group of experience rated employers, were assigned the minimum 0.2% tax rate for 2003. Five percent of the employers were assigned the maximum 5.4% tax rate, mostly due to delinquent filing of tax reports.

## Employer Data

### 2002 Employment and Wage Data by Reserve Ratio

Reserve Ratio End of 2002	2003 Tax Rate	Number of Employers	% of Total	Employment	% of Total	Total Wages \$000	% of Total	Taxable Wages \$000	% of Total
.1500 and over	0.2%	3,265	11	24,633	6	827,904	7	473,738	6
.1400 to .1499	0.4%	876	3	10,365	3	326,035	3	211,773	2
.1300 to .1399	0.6%	1,414	5	20,225	5	688,821	6	408,858	5
.1200 to .1299	0.8%	1,646	6	35,589	9	1,055,831	8	731,994	9
.1100 to .1199	1.0%	1,624	6	40,529	10	1,340,457	11	863,047	10
.1000 to .1099	1.2%	1,563	5	43,832	11	1,341,012	11	948,090	11
.0900 to .0999	1.4%	1,573	5	42,345	10	1,229,695	10	874,649	10
.0800 to .0899	1.6%	1,490	5	34,056	8	1,004,739	8	712,451	8
.0700 to .0799	1.8%	2,835	10	31,037	8	903,068	7	624,705	7
.0600 to .0699	2.0%	1,860	6	32,782	8	892,827	7	642,836	8
.0500 to .0599	2.2%	963	3	20,000	5	553,267	4	417,079	5
.0300 to .0499	2.6%	890	3	17,471	4	523,798	4	366,690	4
.0000 to .0299	3.0%	778	3	12,520	3	361,839	3	271,440	3
-.0000 to -.0499	3.4%	635	2	8,712	2	297,471	2	206,056	2
-.0500 to -.0999	4.0%	342	1	3,443	1	119,698	1	84,019	1
-.1000 to -.4999	4.6%	886	3	10,101	2	406,058	3	251,932	3
-.5000 to -.9999	5.2%	226	1	2,809	1	139,775	1	87,260	1
-1.0000 to -1.4999	5.4%	98	0	841	0	26,626	0	19,365	0
-1.5000 to -1.9999	5.4%	37	0	626	0	35,020	0	19,822	0
-2.0000 and less	5.4%	78	0	168	0	6,041	0	4,247	0
New & Reactive	3.0%	4,380	15	11,334	3	305,205	2	223,575	3
N&R Neg Reserve	5.4%	216	1	298	0	9,552	0	8,004	0
Delinquent	5.4%	1,122	4	4,639	1	101,740	1	92,813	1
Total		28,797	100	408,356	100	12,496,477	100	8,544,442	100

## 2002 Benefit and Contribution Data by Reserve Ratio

Reserve Ratio End of 2002	2003 Tax Rate	Benefits Charged \$000	Benefits Noncharged \$000	Total Benefits \$000	% of Total	Cost Rate* %	Contributions \$000	% of Total	Tax Rate* %
.1500 and over	0.2%	1,739	688	2,427	2	0.5	788	1	0.2
.1400 to .1499	0.4%	1,074	339	1,412	1	0.7	303	0	0.1
.1300 to .1399	0.6%	830	718	1,548	1	0.4	1,117	1	0.3
.1200 to .1299	0.8%	2,085	1,442	3,528	3	0.5	2,923	3	0.4
.1100 to .1199	1.0%	3,111	1,541	4,651	4	0.5	5,279	5	0.6
.1000 to .1099	1.2%	6,076	1,895	7,971	6	0.8	7,099	7	0.7
.0900 to .0999	1.4%	4,278	2,179	6,457	5	0.7	8,164	8	0.9
.0800 to .0899	1.6%	5,448	2,179	7,627	6	1.1	8,493	8	1.2
.0700 to .0799	1.8%	4,741	1,988	6,730	5	1.1	9,728	9	1.6
.0600 to .0699	2.0%	5,365	2,063	7,429	6	1.2	10,359	10	1.6
.0500 to .0599	2.2%	3,873	1,466	5,338	4	1.3	7,054	7	1.7
.0300 to .0499	2.6%	8,698	1,560	10,257	8	2.8	6,487	6	1.8
.0000 to .0299	3.0%	7,501	1,304	8,804	7	3.2	5,976	6	2.2
-.0000 to -.0499	3.4%	8,588	1,062	9,650	8	4.7	5,283	5	2.6
-.0500 to -.0999	4.0%	7,045	2,312	9,356	7	11.1	2,444	2	2.9
-.1000 to -.4999	4.6%	17,361	1,108	18,469	15	7.3	8,806	9	3.5
-.5000 to -.9999	5.2%	6,389	369	6,758	5	7.7	3,629	4	4.2
-1.0000 to -1.4999	5.4%	2,439	80	2,519	2	13.0	864	1	4.5
-1.5000 to -1.9999	5.4%	1,988	63	2,051	2	10.3	1,035	1	5.2
-2.0000 and less	5.4%	833	65	898	1	21.1	204	0	4.8
New & Reactive	3.0%	223	62	284	0	0.1	5,322	5	2.4
N&R Neg Reserve	5.4%	565	63	628	0	7.8	349	0	4.4
Delinquent	5.4%	1,697	389	2,085	2	2.2	805	1	0.9
Total		101,944	24,935	126,879	100	1.5	102,510	100	1.2

\* Cost Rate: Total Benefits divided by Taxable Wages  
Tax Rate: Contributions divided by Taxable Wages

## 2002 Employment and Wage Data by County

County	Number of Employers	% of Total	Employment	% of Total	Total Wages \$000	% of Total	Taxable Wages \$000	% of Total
Oahu	17,346	60	230,097	56	7,090,915	57	4,740,378	55
Maui	3,404	12	36,157	9	1,005,814	8	766,415	9
Hawaii	3,352	12	32,706	8	891,172	7	678,839	8
Kauai	1,489	5	16,379	4	384,327	3	303,648	4
Interstate	3,206	11	93,017	23	3,124,249	25	2,055,162	24
Total	28,797	100	408,356	100	12,496,477	100	8,544,442	100

## 2002 Benefit and Contribution Data by County

County	Benefits Charged \$000	Benefits Noncharged \$000	Total Benefits \$000	% of Total	Cost Rate* %	Contributions \$000	% of Total	Tax Rate* %
Oahu	60,671	13,797	74,468	59	1.6	54,055	53	1.1
Maui	8,235	2,750	10,985	9	1.4	10,452	10	1.4
Hawaii	9,733	2,211	11,944	9	1.8	9,730	9	1.4
Kauai	4,165	985	5,149	4	1.7	4,800	5	1.6
Interstate	19,141	5,192	24,333	19	1.2	23,474	23	1.1
Total	101,944	24,935	126,879	100	1.5	102,510	100	1.2

\* Cost Rate: Total Benefits divided by Taxable Wages  
 Tax Rate: Contributions divided by Taxable Wages

## 2002 Employment and Wage Data by Size of Firm

Employment Size	Number of Employers	% of Total	Employment	% of Total	Total Wages \$000	% of Total	Taxable Wages \$000	% of Total
Less than 5	18,026	63	30,648	8	980,566	8	657,848	8
5 to 9	4,622	16	32,211	8	930,476	7	632,878	7
10 to 19	2,922	10	40,588	10	1,219,248	10	814,909	10
20 to 49	1,953	7	60,374	15	1,823,489	15	1,242,585	15
50 to 99	665	2	46,437	11	1,510,516	12	990,845	12
100 to 249	410	1	62,536	15	1,935,135	15	1,353,310	16
250 or more	199	1	135,562	33	4,097,048	33	2,852,067	33
Total	28,797	100	408,356	100	12,496,477	100	8,544,442	100

## 2002 Benefit and Contribution Data by Size of Firm

Employment Size	Benefits Charged \$000	Benefits Noncharged \$000	Total Benefits \$000	% of Total	Cost Rate* %	Contributions \$000	% of Total	Tax Rate* %
Less than 5	14,093	3,857	17,950	14	2.7	9,059	9	1.4
5 to 9	8,006	1,712	9,718	8	1.5	8,202	8	1.3
10 to 19	11,208	2,316	13,524	11	1.7	11,206	11	1.4
20 to 49	16,247	3,822	20,069	16	1.6	17,520	17	1.4
50 to 99	11,391	3,040	14,431	11	1.5	13,285	13	1.3
100 to 249	14,688	4,094	18,783	15	1.4	17,491	17	1.3
250 or more	26,311	6,093	32,404	26	1.1	25,747	25	0.9
Total	101,944	24,935	126,879	100	1.5	102,510	100	1.2

\* Cost Rate: Total Benefits divided by Taxable Wages  
 Tax Rate: Contributions divided by Taxable Wages

## 2002 Employment and Wage Data by Industry

Industry	Number of Employers	% of Total	Employment	% of Total	Total Wages \$000	% of Total	Taxable Wages \$000	% of Total
Agriculture	764	3	11,722	3	312,180	2	248,084	3
Construction, Mining	2,446	8	24,159	6	1,181,650	9	731,034	9
Manufacturing	954	3	15,945	4	547,289	4	366,410	4
Transportation, Communication, Utilities	1,292	4	39,056	10	1,548,142	12	943,638	11
Wholesale Trade	2,155	7	20,191	5	739,985	6	477,395	6
Retail Trade	5,142	18	112,859	28	2,162,735	17	1,771,308	21
Finance, Insurance, Real Estate	3,231	11	31,387	8	1,408,445	11	789,636	9
Services	10,259	36	150,260	37	4,519,196	36	3,159,655	37
Other	2,554	9	2,777	1	76,857	1	57,282	1
<b>Total</b>	<b>28,797</b>	<b>100</b>	<b>408,356</b>	<b>100</b>	<b>12,496,477</b>	<b>100</b>	<b>8,544,442</b>	<b>100</b>

## 2002 Benefit and Contribution Data by Industry

Industry	Benefits Charged \$000	Benefits Noncharged \$000	Total Benefits \$000	% of Total	Cost Rate* %	Contributions \$000	% of Total	Tax Rate* %
Agriculture	5,365	604	5,969	5	2.4	3,976	4	1.6
Construction, Mining	29,435	2,928	32,363	26	4.4	21,097	21	2.9
Manufacturing	4,607	822	5,428	4	1.5	3,998	4	1.1
Transportation, Communication, Utilities	13,173	4,211	17,385	14	1.8	8,522	8	0.9
Wholesale Trade	3,565	1,058	4,623	4	1.0	4,472	4	0.9
Retail Trade	13,110	5,388	18,499	15	1.0	15,928	16	0.9
Finance, Insurance, Real Estate	4,589	1,746	6,335	5	0.8	6,679	7	0.8
Services	28,027	8,172	36,199	29	1.1	36,690	36	1.2
Other	72	6	78	0	0.1	1,148	1	2.0
<b>Total</b>	<b>101,944</b>	<b>24,935</b>	<b>126,879</b>	<b>100</b>	<b>1.5</b>	<b>102,510</b>	<b>100</b>	<b>1.2</b>

\* Cost Rate: Total Benefits divided by Taxable Wages  
 Tax Rate: Contributions divided by Taxable Wages

## APPENDIX A

### Computation of Employer Contribution Rates

An employer's Hawaii unemployment insurance tax rate is computed once a year based on the employer's reserve ratio and the tax schedule (one of eight possible schedules, A through H) in effect for the year. The tax rates corresponding to each tax schedule and reserve ratio group are shown below in the **Contribution Rate Schedules** table.

Employers not chargeable with benefits for the 12-month period prior to the rate computation date are ineligible for an experience (reserve ratio) computation and are assigned the tax rate corresponding to a zero reserve ratio; if the ineligible employer has a negative reserve balance, a rate of 5.4% is assigned.

#### Computation of Employer Reserve Ratio:

Reserve Ratio = all contributions paid by the employer minus all benefits charged to the employer, divided by 1/3 of the sum of the employer's taxable payrolls for the last 3 consecutive calendar years.

#### Determination of Tax Schedule:

- (a) Compute Adequate Reserve:  
 Adequate Reserve = 1.5 times highest benefit cost rate occurring during the last 10 years, times total wages for last completed fiscal year ending June 30.  
 Benefit cost rate = total benefits paid during a 12 consecutive month period, divided by total wages for the last 4 completed calendar quarters ending at least 5 months before the end of the 12 consecutive month period.
- (b) Compute ratio of Current Reserve to Adequate Reserve:  
 Ratio = Current Reserve (Unemployment Compensation Fund balance as of November 30) divided by Adequate Reserve.
- (c) Determine Tax Schedule based on ratio of current to adequate reserve as shown below.

Contribution Rate Schedules									Tax Schedule Computation	
Reserve Ratio	A	B	C	D	E	F	G	H	Ratio of Current to Adequate Reserve	Tax Schedule
	Contribution Rates (%)									
.1500 and over	0.0	0.0	0.0	0.2	0.6	1.2	1.8	2.4	More than 1.69	A
.1400 to .1499	0.0	0.0	0.1	0.4	0.8	1.4	2.0	2.6	1.3 to 1.69	B
.1300 to .1399	0.0	0.0	0.2	0.6	1.0	1.6	2.2	2.8	1.0 to 1.29	C
.1200 to .1299	0.0	0.1	0.4	0.8	1.2	1.8	2.4	3.0	0.80 to 0.99	D
.1100 to .1199	0.0	0.2	0.6	1.0	1.4	2.0	2.6	3.2	0.60 to 0.79	E
.1000 to .1099	0.1	0.3	0.8	1.2	1.6	2.2	2.8	3.4	0.40 to 0.59	F
.0900 to .0999	0.3	0.5	1.0	1.4	1.8	2.4	3.0	3.6	0.20 to 0.39	G
.0800 to .0899	0.5	0.7	1.2	1.6	2.0	2.6	3.2	3.8	Less than 0.20	H
.0700 to .0799	0.7	0.9	1.4	1.8	2.2	2.8	3.4	4.0		
.0600 to .0699	0.9	1.1	1.6	2.0	2.4	3.0	3.6	4.2		
.0500 to .0599	1.1	1.3	1.8	2.2	2.6	3.2	3.8	4.4		
.0300 to .0499	1.3	1.5	2.0	2.6	3.0	3.6	4.2	4.8		
.0000 to .0299	1.7	1.9	2.4	3.0	3.4	4.0	4.6	5.2		
-.0000 to -.0499	2.1	2.3	2.8	3.4	3.8	4.4	5.0	5.4		
-.0500 to -.0999	2.5	2.7	3.2	4.0	4.4	5.0	5.4	5.4		
-.1000 to -.4999	2.9	3.1	3.6	4.6	5.0	5.4	5.4	5.4		
-.5000 to -.9999	3.4	3.6	4.2	5.2	5.4	5.4	5.4	5.4		
-1.0000 to -1.4999	4.1	4.2	4.8	5.4	5.4	5.4	5.4	5.4		
-1.5000 to -1.9999	4.7	4.8	5.4	5.4	5.4	5.4	5.4	5.4		
-2.0000 and less	5.4	5.4	5.4	5.4	5.4	5.4	5.4	5.4		

**APPENDIX B**  
**Annual Data from 1970**

**LABOR FORCE DATA**  
unadjusted

Year	<i>Hawaii</i>			<i>U.S.</i>
	Employment	Unemployment	Total Unemployment Rate	Total Unemployment Rate
1970	305,650	15,900	4.9%	4.9%
1971	313,450	23,350	6.9%	5.9%
1972	324,050	26,950	7.7%	5.6%
1973	338,350	26,250	7.2%	4.9%
1974	345,350	29,650	7.9%	5.6%
1975	351,100	31,850	8.3%	8.5%
1976	370,000	40,000	9.8%	7.7%
1977	388,000	31,000	7.3%	7.1%
1978	388,000	32,000	7.7%	6.1%
1979	395,000	26,000	6.3%	5.8%
1980	418,000	21,000	4.9%	7.1%
1981	427,000	24,000	5.4%	7.6%
1982	430,000	31,000	6.7%	9.7%
1983	442,000	30,000	6.5%	9.6%
1984	445,000	27,000	5.6%	7.5%
1985	452,000	27,000	5.6%	7.2%
1986	468,000	24,000	4.8%	7.0%
1987	494,000	20,000	3.8%	6.2%
1988	502,000	16,000	3.1%	5.5%
1989	511,000	13,000	2.5%	5.3%
1990	527,000	15,000	2.8%	5.6%
1991	557,750	16,000	2.8%	6.8%
1992	557,450	26,650	4.6%	7.5%
1993	560,900	25,100	4.3%	6.9%
1994	545,000	35,150	6.1%	6.1%
1995	542,650	33,800	5.9%	5.6%
1996	555,750	37,850	6.4%	5.4%
1997	556,650	38,050	6.4%	4.9%
1998	557,200	37,150	6.2%	4.5%
1999	559,600	33,200	5.6%	4.2%
2000	566,150	25,250	4.3%	4.0%
2001	564,200	27,150	4.6%	4.7%
2002	557,450	24,750	4.2%	5.8%

Source: Labor Force Data Book; LOIHI web page ([www.loihi.state.hi.us](http://www.loihi.state.hi.us))

**APPENDIX B continued**

**INSURED UNEMPLOYMENT AND EMPLOYMENT  
COVERED BY THE UC FUND**

Year	Insured Unemployment		Employees Covered by the Fund	
	Rate	Average Weekly Claims	Number	% change
1970	2.4%	6,124	221,498	
1971	3.9%	10,789	225,633	2%
1972	4.8%	12,737	231,338	3%
1973	3.7%	10,527	246,201	6%
1974	4.2%	12,443	252,421	3%
1975	5.2%	16,939	255,772	1%
1976	6.3%	19,427	258,485	1%
1977	4.7%	14,998	267,018	3%
1978	3.4%	10,569	285,172	7%
1979	2.7%	9,798	302,404	6%
1980	2.9%	10,740	309,424	2%
1981	3.0%	11,681	311,997	1%
1982	3.5%	13,411	306,395	-2%
1983	3.5%	12,919	309,752	1%
1984	2.9%	11,104	317,669	3%
1985	2.6%	9,696	328,268	3%
1986	2.2%	8,548	337,832	3%
1987	1.7%	7,045	358,801	6%
1988	1.5%	6,452	371,952	4%
1989	1.1%	5,041	393,693	6%
1990	1.1%	5,547	416,341	6%
1991	1.5%	7,909	415,883	0%
1992	2.2%	11,520	415,275	0%
1993	2.5%	12,721	409,338	-1%
1994	2.9%	14,752	406,316	-1%
1995	3.0%	15,324	402,645	-1%
1996	3.0%	14,854	401,001	0%
1997	2.7%	13,356	400,817	0%
1998	2.5%	12,605	398,354	-1%
1999	2.2%	10,684	401,109	1%
2000	1.7%	8,413	414,768	3%
2001	2.0%	11,545	416,770	0%
2002	2.4%	11,979	414,417	-1%

Source: Unemployment Insurance Fact Book

Note: Insured unemployment data includes private industry, state and county governments, and nonprofit organizations; it also includes extended benefits for 1971, 1972, 1975 through 1978, and 1980. Employment data is for private industry only.

**APPENDIX B continued**

**WEEKLY BENEFIT AMOUNT AND AVERAGE DURATION**

Year	Weekly Benefit Amount		Average Benefit Duration (weeks)
	<i>Maximum</i>	<i>Average</i>	
1970	\$79	\$58	15.0
1971	\$86	\$63	18.3
1972	\$90	\$66	19.9
1973	\$93	\$68	16.0
1974	\$98	\$72	16.2
1975	\$104	\$76	16.4
1976	\$112	\$84	18.9
1977	\$120	\$89	16.4
1978	\$126	\$91	16.2
1979	\$134	\$93	13.5
1980	\$144	\$103	13.7
1981	\$157	\$114	14.2
1982	\$169	\$124	14.8
1983	\$178	\$123	15.8
1984	\$188	\$136	14.8
1985	\$194	\$134	14.6
1986	\$200	\$140	14.3
1987	\$212	\$150	13.4
1988	\$223	\$162	13.5
1989	\$239	\$170	12.0
1990	\$256	\$189	11.4
1991	\$275	\$206	13.0
1992	\$306	\$235	14.8
1993	\$322	\$246	17.6
1994	\$337	\$259	17.4
1995	\$344	\$262	16.0
1996	\$347	\$261	17.8
1997	\$351	\$259	17.1
1998	\$356	\$258	16.4
1999	\$364	\$266	16.5
2000	\$371	\$273	15.4
2001	\$383	\$282	12.8
2002	\$395	\$280	19.2
2003	\$407		
2004	\$417		

Source: Unemployment Insurance Fact Book

Note: Data are for all claim programs, including federal programs.

## APPENDIX B continued

### HAWAII UNEMPLOYMENT COMPENSATION FUND

*(in millions of \$)*

Year	Taxes	Interest	Benefits	Fund Balance
1970	\$13.6	\$ 2.1	\$14.7	\$44.1
1971	\$15.3	\$ 2.1	\$28.3	\$33.3
1972	\$22.0	\$ 1.4	\$30.9	\$25.8
1973	\$24.6	\$ 1.2	\$26.7	\$25.0
1974	\$26.5	\$ 1.1	\$35.3	\$17.3
1975	\$39.4	\$ 0.7	\$52.0	\$ 5.3
1976	\$48.8	\$ 0.1	\$66.1	-\$11.9
1977	\$63.3	\$ 0.0	\$50.2	\$ 1.3
1978	\$73.6	\$ 0.6	\$38.3	\$37.2
1979	\$68.9	\$ 3.3	\$31.4	\$78.0
1980	\$58.2	\$ 7.0	\$42.6	\$100.6
1981	\$53.4	\$ 9.9	\$57.5	\$106.3
1982	\$54.9	\$11.5	\$71.1	\$101.6
1983	\$70.9	\$11.5	\$61.0	\$123.0
1984	\$67.8	\$13.4	\$63.4	\$140.9
1985	\$60.2	\$15.7	\$54.3	\$162.5
1986	\$65.4	\$12.9	\$49.3	\$191.5
1987	\$75.1	\$24.0	\$42.6	\$248.0
1988	\$51.3	\$22.5	\$44.2	\$277.7
1989	\$64.0	\$25.6	\$35.4	\$331.9
1990	\$79.5	\$31.3	\$45.0	\$397.7
1991	\$55.2	\$26.8	\$76.0	\$403.8
1992	\$40.9	\$41.7	\$129.6	\$356.7
1993	\$67.0	\$25.5	\$145.4	\$303.9
1994	\$77.0	\$19.6	\$171.6	\$228.9
1995	\$150.0	\$15.7	\$180.4	\$214.2
1996	\$152.4	\$14.9	\$173.3	\$208.2
1997	\$144.2	\$14.7	\$154.2	\$212.9
1998	\$136.8	\$15.1	\$143.3	\$221.5
1999	\$134.1	\$15.7	\$124.1	\$247.2
2000	\$138.9	\$17.8	\$96.9	\$307.0
2001	\$106.3	\$21.1	\$136.1	\$298.2
2002	\$134.6	\$24.2	\$152.7	\$304.3

Source: ETA2112, UI Financial Transaction Summary, Unemployment Fund

## APPENDIX B continued

### RATIO OF CURRENT TO ADEQUATE RESERVE FUND

Rate Year	High Cost Rate	Total Wages	Adequate Reserve Fund	Current Reserve Fund	Ratio of Current to Adequate Reserve	Rate Schedule in Effect	Fund Solvency Contribution Rate
1970	1.75%	\$1,184,552,472	\$31,094,502	\$43,936,906	1.41	II	
1971	1.75%	\$1,431,300,051	\$37,571,626	\$46,163,790	1.23	II	
1972	1.75%	\$1,560,306,438	\$40,958,044	\$36,349,934	0.89	I	
1973	2.02%	\$1,643,467,385	\$49,797,062	\$28,304,965	0.57	I	
1974	2.02%	\$1,821,684,864	\$55,197,051	\$27,420,364	0.50	I	
1975	2.02%	\$2,015,606,435	\$61,072,875	\$20,073,147	0.33	I	
1976	2.18%	\$2,247,956,108	\$73,508,165	\$10,730,152	0.15	-	
1977	2.86%	\$2,389,822,190	\$102,523,372	-\$7,426,119	-0.07	-	
1978	2.86%	\$2,578,562,218	\$110,620,319	\$5,992,114	0.05	-	
1979	2.86%	\$2,859,429,314	\$81,779,678	\$39,159,914	0.48		+1.6%
1980	2.86%	\$3,314,556,620	\$94,796,319	\$80,341,186	0.85		+0.8%
1981	2.86%	\$3,769,977,490	\$107,821,356	\$104,980,243	0.97		+0.4%
1982	2.86%	\$4,111,362,943	\$117,584,980	\$112,290,817	0.95		+0.4%
1983	2.86%	\$4,292,985,503	\$122,779,385	\$106,708,377	0.87		+0.8%
1984	2.86%	\$4,498,499,775	\$128,657,094	\$127,176,245	0.99		+0.4%
1985	2.86%	\$4,801,506,793	\$137,323,094	\$147,004,681	1.07		0.0%
1986	2.86%	\$5,037,888,349	\$144,083,607	\$166,408,163	1.15		0.0%
1987	2.76%	\$5,500,278,375	\$151,807,683	\$195,095,469	1.29		0.0%
1988	1.94%	\$6,093,516,291	\$118,214,216	\$246,416,114	2.08		-0.5%
1989	1.68%	\$6,864,348,520	\$115,321,055	\$274,840,914	2.38		-0.5%
1990	1.68%	\$7,756,988,055	\$130,317,399	\$334,252,180	2.56		-0.5%
1991	1.68%	\$8,753,700,993	\$147,062,177	\$401,647,674	2.73		-0.5%
1992	1.68%	\$9,561,673,898	\$240,954,182	\$411,119,192	1.71	A	
1993	1.66%	\$9,996,218,073	\$248,905,830	\$370,277,128	1.49	B	
1994	1.49%	\$10,315,548,416	\$230,552,507	\$315,881,780	1.37	B	
1995	1.65%	\$10,384,936,463	\$257,027,177	\$241,892,817	0.94	D	
1996	1.73%	\$10,401,361,958	\$269,915,343	\$226,972,601	0.84	D	
1997	1.78%	\$10,391,160,430	\$277,443,983	\$222,340,367	0.80	D	
1998	1.78%	\$10,554,781,603	\$281,812,669	\$226,036,037	0.80	D	
1999	1.78%	\$10,782,123,532	\$287,882,698	\$233,020,224	0.81	D	
2000	1.78%	\$11,025,705,500	\$294,386,337	\$256,407,449	0.87	D	
2001	1.78%	\$11,661,028,670	\$311,349,465	\$313,480,166	1.01	C	
2002	1.78%	\$12,294,711,901	\$328,268,808	\$317,703,649	0.97	C*	
2003	1.78%	\$12,412,503,464	\$331,413,842	\$309,477,079	0.93	D	
2004	1.78%	\$13,070,239,827	\$348,975,403	\$352,679,746	1.01	C	

*Rate year:* year during which rate schedule or Fund Solvency Rate is in effect.

*High Cost Rate:* highest benefit cost rate (benefits as a percent of total wages) in the last ten years.

*Total Wages:* for last four calendar quarters ending June 30 of calendar year prior to rate year.

*Adequate Reserve Fund:* from 1970 through 1978, and from 1992 adequate reserve equals 1.5 times high cost rate times total wages. From 1979 through 1991, adequate reserve equals high cost rate times total wages.

*Current Reserve Fund:* Unemployment Compensation Fund assets on November 30 of calendar year immediately preceding rate year.

*Rate Schedule in Effect:* Effective July 1, 1974 through March 31, 1975 all employers' tax rates were increased by 0.5%, up to a maximum of 3.0%; from April 1975 through the end of 1976, all employers paid 3.0% tax rate; for 1977 and 1978 all employers paid 3.5% tax rate. \*For 2002, schedule C remained in effect due to special legislation.

**APPENDIX B continued**

**UNEMPLOYMENT INSURANCE TAX RATES**

Year	Tax Rates (Percent of Taxable Wages)			Taxes as a Percent of Total Wages
	Minimum	Maximum	Average	
1970	0.4%	3.0%	1.2%	0.8%
1971	0.4%	3.0%	1.4%	1.0%
1972	0.8%	3.0%	1.9%	1.3%
1973	0.8%	3.0%	1.8%	1.2%
1974	0.8%/1.3%	3.0%	1.9%	1.2%
1975	1.3%/3.0%	3.0%	2.6%	1.7%
1976	3.0%	3.0%	2.9%	1.9%
1977	3.5%	3.5%	3.5%	2.4%
1978	3.5%	3.5%	3.5%	2.4%
1979	1.8%	4.5%	2.8%	1.9%
1980	1.0%	4.5%	2.1%	1.4%
1981	0.6%	4.5%	1.8%	1.2%
1982	0.6%	4.5%	1.8%	1.3%
1983	1.0%	4.5%	2.3%	1.6%
1984	0.6%	4.5%	1.9%	1.3%
1985	0.2%	5.4%	1.6%	1.1%
1986	0.2%	5.4%	1.7%	1.2%
1987	0.2%	5.4%	1.7%	1.2%
1988	0.0%	5.4%	1.3%	0.6%
1989	0.0%	5.4%	1.3%	0.9%
1990	0.0%	5.4%	1.3%	0.9%
1991	0.0%	5.4%	1.3%	0.5%
1992	0.0%	5.4%	0.6%	0.4%
1993	0.0%	5.4%	1.0%	0.7%
1994	0.0%	5.4%	1.1%	0.8%
1995	0.2%	5.4%	2.2%	1.6%
1996	0.2%	5.4%	2.1%	1.5%
1997	0.2%	5.4%	1.9%	1.4%
1998	0.2%	5.4%	1.8%	1.3%
1999	0.2%	5.4%	1.7%	1.2%
2000	0.2%	5.4%	1.7%	1.2%
2001	0.0%	5.4%	1.1%	0.8%
2002	0.0%	5.4%	1.2%	0.8%
2003	0.2%	5.4%	1.7% <i>est</i>	1.2% <i>est</i>
2004	0.0%	5.4%	1.2% <i>est</i>	0.8% <i>est</i>

Source: ES-202

Note for 1974 and 1975: Minimum tax rate was 0.8% until July 1, 1974 then all employers' rates were increased by 0.5%, up to a maximum of 3.0%. The additional 0.5% was in effect until April 1, 1975 when all employers' rates became 3.0%.

Note for 2002: Tax Schedule C remained in effect by special legislation.

**APPENDIX B continued**

**TOTAL AND TAXABLE WAGES**

Year	Total Wages	% change	Taxable Wages	% change	% Taxable of Total Wages	Taxable Wage Base
1970	\$1,518,727,161		\$1,032,646,028		68%	\$5,500
1971	\$1,588,451,281	5%	\$1,101,177,779	7%	69%	\$6,000
1972	\$1,707,659,488	8%	\$1,171,863,417	6%	69%	\$6,300
1973	\$1,935,415,073	13%	\$1,310,016,575	12%	68%	\$6,500
1974	\$2,129,778,886	10%	\$1,418,777,880	8%	67%	\$6,800
1975	\$2,319,971,771	9%	\$1,537,695,558	8%	66%	\$7,300
1976	\$2,471,414,660	7%	\$1,634,221,510	6%	66%	\$7,800
1977	\$2,669,873,342	8%	\$1,890,965,749	16%	71%	\$9,300
1978	\$3,084,161,546	16%	\$2,153,653,091	14%	70%	\$9,800
1979	\$3,551,357,801	15%	\$2,443,433,910	13%	69%	\$10,400
1980	\$3,934,930,405	11%	\$2,689,241,050	10%	68%	\$11,200
1981	\$4,227,065,294	7%	\$2,921,073,895	9%	69%	\$12,200
1982	\$4,349,032,222	3%	\$3,030,663,748	4%	70%	\$13,100
1983	\$4,599,981,090	6%	\$3,198,088,181	6%	70%	\$13,800
1984	\$4,891,168,412	6%	\$3,430,347,509	7%	70%	\$14,600
1985	\$5,245,375,308	7%	\$3,661,947,705	7%	70%	\$15,100
1986	\$5,686,112,648	8%	\$3,922,702,338	7%	69%	\$15,600
1987	\$6,402,054,956	13%	\$4,391,057,014	12%	69%	\$16,500
1988	\$7,192,157,365	12%	\$3,314,009,708	-25%	46%	\$8,700
1989	\$8,130,492,059	13%	\$5,518,167,643	67%	68%	\$18,600
1990	\$9,237,628,172	14%	\$6,226,942,266	13%	67%	\$19,900
1991	\$9,599,527,870	4%	\$3,342,374,834	-46%	35%	\$7,000
1992	\$10,155,519,160	6%	\$7,042,429,428	111%	69%	\$22,700
1993	\$10,291,898,574	1%	\$7,251,815,678	3%	70%	\$23,900
1994	\$10,309,424,610	0%	\$7,394,972,486	2%	72%	\$25,000
1995	\$10,320,158,899	0%	\$7,411,024,845	0%	72%	\$25,500
1996	\$10,443,561,580	1%	\$7,420,054,226	0%	71%	\$25,800
1997	\$10,675,517,263	2%	\$7,483,098,627	1%	70%	\$26,000
1998	\$10,899,921,524	2%	\$7,560,072,702	1%	69%	\$26,400
1999	\$11,180,959,288	3%	\$7,748,893,876	2%	69%	\$27,000
2000	\$11,945,344,421	7%	\$8,209,730,134	6%	69%	\$27,500
2001	\$12,299,179,723	3%	\$8,455,669,862	3%	69%	\$28,400
2002	\$12,701,746,952	3%	\$8,701,690,997	3%	69%	\$29,300
2003						\$30,200
2004						\$31,000

Source: Wages from ES-202

## APPENDIX B continued

### CHARGED AND NONCHARGED BENEFITS

*(in millions of \$)*

Year	Total Benefits	Charged Benefits	% of Total	Noncharged Benefits	% of Total
1970	\$14.7	\$8.8	60%	\$5.9	40%
1971	\$27.9	\$18.2	65%	\$9.7	35%
1972	\$28.0	\$18.2	65%	\$9.8	35%
1973	\$26.3	\$15.7	60%	\$10.6	40%
1974	\$34.9	\$21.3	61%	\$13.7	39%
1975	\$47.0	\$30.1	64%	\$16.8	36%
1976	\$57.5	\$43.1	75%	\$14.4	25%
1977	\$45.1	\$44.3	98%	\$0.9	2%
1978	\$36.0	\$35.6	99%	\$0.4	1%
1979	\$30.5	\$30.2	99%	\$0.3	1%
1980	\$40.7	\$40.2	99%	\$0.5	1%
1981	\$56.7	\$56.1	99%	\$0.6	1%
1982	\$70.5	\$69.9	99%	\$0.6	1%
1983	\$60.9	\$59.7	98%	\$1.2	2%
1984	\$62.4	\$61.8	99%	\$0.6	1%
1985	\$53.9	\$53.4	99%	\$0.5	1%
1986	\$48.4	\$47.8	99%	\$0.6	1%
1987	\$43.6	\$36.6	84%	\$7.0	16%
1988	\$44.1	\$35.3	80%	\$8.8	20%
1989	\$35.4	\$26.9	76%	\$8.5	24%
1990	\$44.2	\$30.9	70%	\$13.3	30%
1991	\$76.5	\$56.6	74%	\$19.9	26%
1992	\$129.1	\$101.7	79%	\$27.4	21%
1993	\$144.8	\$105.9	73%	\$38.9	27%
1994	\$170.5	\$137.9	81%	\$32.6	19%
1995	\$178.9	\$148.0	83%	\$30.9	17%
1996	\$171.7	\$145.5	85%	\$26.2	15%
1997	\$153.8	\$131.5	85%	\$22.3	15%
1998	\$142.4	\$121.9	86%	\$20.5	14%
1999	\$123.2	\$104.4	85%	\$18.8	15%
2000	\$96.1	\$79.6	83%	\$16.4	17%
2001	\$132.9	\$109.9	83%	\$22.9	17%
2002	\$144.7	\$120.0	83%	\$24.6	17%

Source: ETA-204, Experience Rating Report  
Includes regular program benefits only; does not include extended benefits

## APPENDIX C

### Benefits Not Charged to Employer Accounts

The following types of unemployment insurance benefits are not charged to individual employer's unemployment insurance accounts:

- a. Benefits paid to a claimant based on wages from an employer from whom the claimant voluntarily quit work without good cause<sup>15</sup>;
- b. Benefits paid to a claimant based on wages from an employer from whom the claimant was discharged for misconduct connected with work;
- c. Benefits paid to a claimant based on wages from an employer from whom the claimant left work voluntarily for a good cause that was not attributable to the employer;
- d. Benefits paid to an individual who during that individual's base period earned wages for part-time employment with an employer, are not charged to that employer if the employer continues to employ the individual to the same extent while the individual is receiving benefits as during the individual's base period;
- e. Benefits paid to an individual for the period that individual is enrolled in and is in regular attendance at an approved training course;
- f. One-half of Extended Benefits (the other half of EB is financed with federal unemployment tax funds)<sup>16</sup>;
- g. Benefits paid to an individual who qualifies to receive benefits by meeting the minimum earnings and employment requirements only by combining the individual's employment and wages earned in two or more states<sup>17</sup>;
- h. Benefits overpaid to a claimant as a result of ineligibility or disqualification, unless the overpayment resulted from the employer's failure to furnish information as required;
- i. Benefits paid to an individual based on wages from an employer from whom the individual is separated as a direct result of a major disaster.<sup>18</sup>

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<sup>15</sup>Benefits described in a, b, and c were chargeable from July 15, 1976 through October 4, 1986.

<sup>16</sup>EB was chargeable from January 1, 1985 through October 4, 1986.

<sup>17</sup>Benefits described in g and h became nonchargeable from July 15, 1976.

<sup>18</sup>Effective from September 13, 1992.

**APPENDIX D**  
**The Hawaii Unemployment Compensation Fund**  
**and Economic Conditions: 1970 to the Present**

- 1970** The 1970s began with a low IUR (Insured Unemployment Rate) of slightly above 2% and high fund reserves in excess of \$40 million.
- 1971** Unemployment increased throughout 1971 in the aftermath of the Mainland recession, and due partly to a lengthy dock strike in the second half of the year. The Extended Benefits program was initiated allowing an additional 13 weeks of unemployment insurance benefits to be paid to claimants who exhaust their 26 weeks of regular benefits during periods of high unemployment. Hawaii paid extended benefits from October 1971 through December 1972. Increasing unemployment and additional benefits paid out under the Extended Benefits program caused benefit outgo to increase and the fund balance to decline.
- 1972** The fund continued to decline as additional dock strikes and continuing Extended Benefits payments caused benefit outgo to remain high.
- 1973** Unemployment decreased slightly causing the fund balance to remain relatively level.
- 1974** The IUR began to climb again as Mainland recessionary conditions started affecting Hawaii.
- 1975** Hawaii began a new Extended Benefits period beginning in February 1975 as unemployment continued to increase. This EB period continued until March 1978 (except for a short break in the program during August 1977).
- 1976** The IUR reached a peak of 7% in the first half of 1976. During the 1974 through 1976 period the fund balance was drastically reduced by the unprecedented high level of unemployment and corresponding high benefit outgos. The fund was depleted in 1976. Benefits continued to be paid during the year through the use of \$22.5 million in federal loans to the fund.
- 1977** The economy began to improve slightly, although construction strikes caused unemployment to temporarily increase at the end of 1977 and early 1978. In order to rejuvenate the fund, tax rates, which had been gradually increasing during the 1970s, were set at a uniform rate of 3.5% for 1977.
- 1978** The flat 3.5% tax rate continued to be in effect. As the economy improved, the IUR steadily declined until it leveled off at about 3% during the second half of the year. With the increased income and declining outgo, the fund balance was brought out of its negative levels and the federal loan was repaid late in 1978.
- 1979** Varied tax rates for employers (experience rating) was reinstated; this caused fund income to decline slightly from the high 1978 level. Benefits remained relatively low, resulting in a further increase in the fund balance to \$78 million by the end of 1979.
- 1980** Employer tax rates were again decreased based on the healthy fund reserves. Although Hawaii's unemployment remained low, an Extended Benefits period was triggered on by high national unemployment. This EB period was from July 1980 to January 1981. Fund income exceeded outgo and reserves reached \$100.6 million by the end of 1980.
- 1981-1984** Unemployment was very stable with the IUR fluctuating only between 2.5% and 3.5%, weathering airline, construction, and other strikes occurring during this time. The fund balance was kept at about the adequate reserve level throughout the period
- 1985** Tax schedules were adjusted to include a maximum tax rate of 5.4% in order to allow employers to continue to receive full tax credits under the Federal Unemployment Tax Act (FUTA).
- 1986-1987** The tourism and construction industries were in a boom period resulting in declining unemployment and a growing fund balance.

## APPENDIX D continued

- 1988** The high fund balance resulted in the triggering of a negative Fund Solvency Rate for the first time. Also, a one-year special law provision cut the Taxable Wage Base to 50% of the statewide average annual wage.
- 1989** Unemployment continued to decline with the IUR reaching an all time low of 0.96% in December 1989. The fund continued to be more than twice the adequate reserve level allowing the negative 0.5% Fund Solvency Rate to remain in effect.
- 1990** Despite Mainland recessionary conditions, Hawaii tourism and construction continued to do well through 1990. Although a hotel strike during March caused a temporary rise in unemployment, the average IUR for the year remained level with 1989.
- 1991** The Persian Gulf War triggered a slowdown in March as tourist traffic declined dramatically and unemployment jumped. Mainland recessionary conditions began affecting Hawaii's economy as unemployment remained high through the year especially in the construction and tourism related industries. A one-year special provision cut the taxable wage base to \$7,000.
- 1992** A new tax schedule system was implemented and the lowest tax schedule (A) was in effect for 1992. Hurricane Iniki hit the islands in September 1992 resulting in major damage and high unemployment on Kauai. Mainland and Japanese recessionary conditions continued to weaken the tourist and construction sectors. The end of year fund balance declined from the previous year for the first time since 1982. Emergency Unemployment Compensation (EUC) benefits were paid to claimants from November 1991 through April 1994. These benefits, paid to claimants who exhausted their regular state benefits, were 100% federally funded.
- 1993-1994**  
Tax schedule B was in effect for 1993 and 1994, keeping the average unemployment tax rate at a low 1%. At the same time the tourism and construction sectors remained sluggish causing large benefit payouts from the fund.
- 1995-1998**  
The economy remained flat from 1995 through 1998, with benefit levels declining slightly each year. The fund balance stabilized at around \$210 million and tax schedule D stayed in effect from 1995 through 1998.
- 1999-2000**  
The economy was on the rise with insured unemployment dropping below 2% and the fund balance reaching \$300 million levels, triggering tax schedule C for 2001.
- 2001-2002**  
In the aftermath of terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001, the number of unemployed increased and the fund balance began to drop. Special legislation provided Hawaii claimants exhausting regular benefits between September 11, 2001 and June 30, 2002 with 13 weeks of additional benefits and kept tax schedule C in effect for calendar year 2002. A special federally funded program, Temporary Extended Unemployment Compensation (TEUC) also provided an additional 13 weeks of benefits to claimants, effective from March 10 to December 31, 2002.
- 2003**  
The federal TEUC program was extended to December 31, 2003 with a transition period for the continuation of payments to individuals, who have balances as of the end of December, to March 31, 2004. Effective from April 20, 2003 through December 28, 2003, displaced airline and related workers who exhaust their 26 weeks of regular benefits may receive up to 39 weeks of additional federally funded TEUC-A benefits.

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# Wage Standards Division

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*Carole Hara, Acting Administrator*

*Wayne Ichikawa, Acting Administrator*

*Andrei Soto, Acting Administrator*

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# Wage Standards Division

*Carole Hara, Acting Administrator*

*Wayne Ichikawa, Acting Administrator*

*Andrei Soto, Acting Administrator*

## Overview

The Wage Standards Division (WSD) administers and enforces labor laws relating to prevailing wages and hours on public construction projects; minimum wage and overtime and payment of wages; work injury termination; child labor; family leave; and lie detector tests. The division's mission is to administer these laws to insure workers are afforded their lawful rights and benefits relative to wages, to safeguard against unlawful employment practices, and to continuously improve services to customers.

## Key Accomplishments

***Compliance Branch:*** The Compliance Branch conducts statewide investigations for compliance with payment of wage, wage and hour, wages and hours of employee on public projects, family leave, and lie detector laws. In fiscal year 2002-2003, the branch completed 615 investigations and found over \$446,000 in back pay for 403 workers.

Pursuant to Chapter 104, Hawaii Revised Statutes (HRS), Wages and Hours of Employees on Public Works Law, the branch completed 46 investigations of state and county construction projects and found over \$121,000 in back wages for 148 laborers and mechanics. Twenty violation notices were issued, resulting in assessments of over \$26,900 in penalties.

***Hearings Branch:*** The Hearings Branch conducts hearings on complaints filed for unlawful suspension or termination due to a work injury and on appeals filed under Chapter 104 and the Hawaii Family Leave Law. During the fiscal year 2002-2003, the branch conducted 72 hearings and pre-hearing conferences.

The branch participates in the Hearings Officer Training Committee, which promotes continuous training for hearings officers. This year, the committee presented a workshop on implementing Act 76, relating to mediation of contested case hearings. Sixty hearings officers attended the training.

***Intake and Certification Branch:*** The Intake and Certification Branch processed the filing of 665 complaints and over 22,400 inquiries. The branch, also responsible for child labor certification and investigations and special minimum wage and pay exception certifications, processed 10,443 child labor certificates, 23 child labor variances and 18 pay exception requests, and conducted 35 child labor investigations.

***Outreach Initiatives:*** In an ongoing effort to educate employers and youth workers and promote voluntary compliance with WSD laws, the Intake and Certification Branch conducted child labor certification information sessions at 11 high schools, including two career fairs for Kaimuki and Pearl City High Schools. They also serviced 428 enrollees in various training classes and workshops including a seminar hosted by the Hawaii Employers Council on Act 44, relating to the Hawaii Family Leave Law. The branch also collaborated with Kahuku High School to provide child labor certification assistance training and promote WSD's services to minors for work permits.

In the area of theatrical variances, the branch worked very closely with movie and television production companies to issue certification of minors for employment under extremely tight time constraints in the following films on location in Hawaii: "50 First Kisses", "The Break", "ER" (television episode) and "Even Stevens" (television episode).

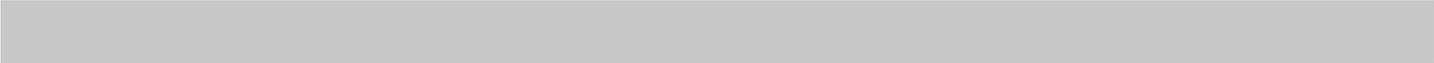
During the 2003 legislature, Chapter 298, HRS, Hawaii Family Leave Law, was amended by Act 44, to require employers who provide sick leave to permit employees to use up to ten days of their accrued and available sick leave for family leave purposes. This included purposes such as the birth or adoption of an employee's child, or, to care for a child, parent, spouse or reciprocal beneficiary with a serious health condition. The amendment became effective July 1, 2003 and proved to be a challenge to implement by employers. The WSD diligently assisted employers, business groups and various agencies to determine application and compliance of the amended law. In an effort to clarify the amendment, the division developed a comprehensive Information Sheet and Frequently Asked Questions document further help employers. This information is available at [www.dlir.state.hi.us](http://www.dlir.state.hi.us).

## **Continuous Improvement Initiatives – 2003-2004**

***Website Development:*** The WSD looks forward to the development of their website in 2004. This effort is being worked on in conjunction with the DLIR's overall plan to redesign the department's current website and tie all division and attached agency websites together. The site will provide better access to general and program information and forms and eventually on-line capabilities for users.

***Outreach Initiatives:*** The WSD plans to increase their efforts to participate and conduct educational forums to promote voluntary compliance of the division's laws and to refine partnerships with other agencies and states to enhance its investigation and hearings processes. The group will also continue its outreach efforts in working with the state's schools to further awareness of child labor laws and requirements for youth workers.





# Workforce Development Council



*E. Micheal Boughton, Chairman*  
*Sybil Kyi, Executive Director*



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# Workforce Development Council

*E. Micheal Boughton, Chairman*  
*Sybil Kyi, Executive Director*

## Overview

The 31-member Hawaii Workforce Development Council (WDC) is the State’s advisory commission on employment and the workforce. It is also the State Workforce Investment Board that assists the Governor as required by the Workforce Investment Act (WIA) of 1998. The Council is responsible for the State Workforce Development Strategic Plan and the State WIA plan, continuous improvement of workforce development, and related reports and public information. As it plans, recommends, and oversees Hawaii’s workforce development policy, the Council’s goal is to develop a skilled, competitive, self-sufficient workforce.

Recommendations on state policies and funding priorities can be found in the reports, “Hawaii’s Workforce System: Actions and Alignments” and “Year Three Implementation of the Workforce Investment Act”.

## Key Accomplishments

### *Customer Service:*

*State Employers Evaluation Study:* In early 2003, WDC contractor, OmniTrak Group Inc., evaluated the One-Stop Centers’ activities with existing and potential employer customers. A survey of 1,202 companies across all four counties was conducted to assess and compare the levels of satisfaction, expectations and foreseeable workforce needs among the community employers at large, users of WIA services, and employers who engage in training activities.

The study found that while Hawaii businesses are characterized as being very small, the One-Stop Centers’ customers are larger employers. Based on the findings, the WDC has recommended that One-Stop Centers broaden their business strategies and market to increase the number of small to medium-sized companies with growth prospects. The evaluation also found that employer demand is greatest for financial information to support training and recruitment. Businesses also expect knowledgeable service especially in terms of referring qualified candidates and a customer-orientation reflected in friendly service and a willingness to help.

*Workforce Investment Act Customer Satisfaction Survey:* Employer customer satisfaction was evaluated and Hawaii's statewide American Customer Satisfaction Index (ACSI) score for WIA employer customers resulted in 70.87, which is above the performance target of 68. The greatest concern on the part of employers was the quality of applicants referred to employers. However, although many suggested better screening, others believe that the quality of applicants reflect the overall worker pool and is beyond the control of One-Stop Center personnel. The most common concerns of the employer customers fell into the following categories: applicants not qualified/over-qualified; pool of applicants small, or, no referrals; applicants unprepared for interviews (i.e., dress, grooming, knowledge of job and industry).

Participant customer satisfaction was also measured and although the response rate (57.71 percent) fell short of the required 70 percent, Hawaii's statewide ACSI score for WIA participants resulted in 81.09, far exceeding the target objective of 70. 84% of those who participated in the evaluation had positive comments about WIA services. The most mentioned concerns of the group fell into the following categories: reduction in funded services and lack of resources to meet specific needs as a result of reduced funding; few, or, no job referrals; inadequate counseling/inexperienced counselors; inadequate training/instructions.

These valuable survey results have been helpful in formulating strategic plans and activities to improve the overall effectiveness of workforce development initiatives.

### **Outreach Initiatives**

*Persons with Disabilities:* WDC partnered in two Vocational Rehabilitation grants – one to teach WIA and other youth service providers how to effectively work with youth with disabilities; the other to improve accessibility to One-Stop Centers.

*Training for Small Businesses:* WDC contracted with the Small Business Development Center (SBDC) to train rural small businesses on how to keep their incumbent employees skilled. In all, 10 small businesses on Hawaii (four of them in East Hawaii) and 15 small businesses in Leeward Oahu received this training. SBDC held three workshops on “WHY TRAIN? – Developing Your Workforce to Improve Productivity and Increase Profits,” and followed up with customized consulting to four firms in West Hawaii and six in Leeward Oahu.

*Technical Assistance to WIA Youth Providers:* In June 2003, the WDC Youth Committee, the local workforce investment boards and their youth councils, and the State Office of Youth Services conducted, “Practices that Pay Off for Youth”, in each county for front-line workers. Two presenters were sent by the Annie E. Casey Foundation and the National Youth Employment Coalition to deliver “Engaging and Retaining Youth” and “Follow-up and Retention – 99 Strategies for Success.” Seventy five agencies were represented by 210 attendees.

*Work-based Learning Experiences:* WDC prepared a short video, Career-Based Learning Experience, to get more employers to provide project-based learning experiences during non-school hours for WIA youth, students and teachers.

*WIA Incentive Awards:* WDC implements the incentive award policy for regional cooperation and local coordination, based on Baldrige criteria. This year, WDC

supported a Baldrige coach who conducted workshops in each county on the Baldrige principles. This was followed by customized assistance to each local workforce investment board, covering how to write a Baldrige assessment, constructing an implementation plan, and addressing specific issues.

## **Continuous Improvement Initiatives – 2003-2004**

***Increase Focus on Target Clusters:*** WDC’s membership in the state SkillsNet consortium, contribution to curriculum development, and past coordination of industry skill standards development, led to the Council’s focus in 2003-2004 on preparing the workforce for identified industry clusters. SkillsNet implements and expands the skills management and job profiling system. The WDC Executive Director serves on the advisory boards to develop educational/occupational skills in the Forestry and Communities Initiative, Honolulu School-to-Work Consortia, Health and Travel Career Academies, and the Millennium Workforce Initiative which focused on occupations in the technology industry cluster. The Executive Director also serves on the advisory board of the Jobs Summit, which targets the immediate training and recruitment needs of the construction and maritime industries.

WDC is working with DLIR’s Research & Statistics Office, the Department of Business, Economic Development & Tourism (DBEDT), Hawaii’s Community Colleges, Enterprise Honolulu, and the local Workforce Investment Boards to define and agree on industry clusters to be targeted. The Council will use an industry “dashboard” and results of various employer assessments to recommend how resources can be invested to prepare and update the workforce for the state’s economic vision.

A group of WDC members will identify and examine policy alternatives to promote the increased participation in postsecondary education by under prepared working youth and adults. With DBEDT Deputy Director, Ray Jefferson, as the Hawaii Team Leader, they will use a National Governors’ Association (NGA) planning grant of \$50,000 to work with peer grantees in five other states.

***Customer Service and Satisfaction:*** The Council will continue to scope and oversee the evaluation studies required by the WIA. A study of the delivery of WIA youth services, which will recommend improvements in collaborative delivery, service strategies, and monitoring, will be completed by April 2004. Also, an evaluation study related to job seekers is slated to be completed by July 2004.

***Outreach Initiatives:*** The Council will publish information for policy-makers and planners in the three-part *2004 Governor’s Report on Workforce Development in Hawaii*. The WDC website will continue to maintain communication and comprehensive links with the public and all stakeholders. The Council will also coordinate with local workforce investment boards to provide statewide branding for One-Stop Centers, workforce development and WIA.

With a \$109,555 grant from the U.S. Department of Education, the Council houses the Hawaii Career Resources Network, which develops sites and provides training in Internet and Portfolio Career Kokua. The Network also provides career resource information to the community and supports professional development of career educators. The Council will seek to increase business sector participation in providing work-based learning opportunities to WIA youth participants and students.

## Hawaii Workforce Development Council

### Members

Todd Apo	Vice-President, Ko Olina Community Association
Marcia Armstrong	UHPA; Med. Lab. Tech. Program Dir., KCC (Labor)
Gladys Baisa	Exec. Dir., Maui Economic Opportunity, Inc.
Jeff Bloom	President & Owner, CTA
E. Micheal Boughton	President, Options Technology Company, Inc.
Mamo Cummings	President, Kauai Chamber of Commerce
Susan Doyle	Vice-President & COO, Aloha United Way
Willie Espero	Hawaii State Senator
Mike Fitzgerald, Incoming Chair	President & CEO, Enterprise Honolulu
Signe Godfrey	President, Olsten Staffing Services
Erwin Hudelist	President, Hagadone Printing
Alan Ito	Sr. Vice-President, Product Development, Convergence CT
Michael Kahikina	Member, Hawaii House of Representatives
Wayne Kishida	Labor Representation
Stephen Metter	CEO, MW Group
Scott Nishimoto	Member, Hawaii House of Representatives
Darnney Proudfoot	Manager, Kauai Island Utility Cooperative
Norman Sakamoto	Hawaii State Senator
Darrel Tajima	Director of HR, Meadow Gold Dairies
James G. Westlake, Vice Chair	Ret. Exec. Dir., HI Construction Industry Association
Winona Whitman	E&T Program Administrator, ALU LIKE, Inc.
Gregg Yamanaka	President & Chief Learning Officer, TeraBiz

### Ex-Officio Members

Linda Lingle, Governor  
Alan Arakawa, Maui Mayor  
Jeremy Harris, Honolulu Mayor  
Nelson B. Befitel, DLIR Director  
Dr. Evan S. Dobelle, UH President  
Patricia Hamamoto, Superintendent  
Lillian Koller, DHS Director  
Ted Liu, DBEDT Director

### Designees

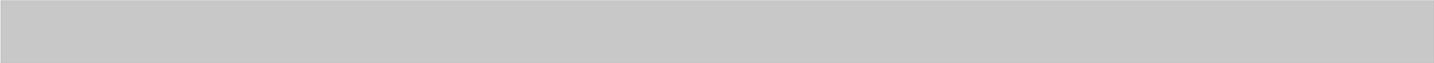
Lester Nakamura  
JoAnn Inamasu  
Rolanse Crisafulli  
James Hardway  
Michael Rota  
Katherine Kawaguchi  
Garry Kemp  
Robert Shore

### Staff

Sybil Kyi, Executive Director  
Dorothy Bremner, Employment Analyst  
Jeannie Kuan-Yee Chan, Employment Analyst  
Carolyn Weygan-Hildebrand, Employment Analyst  
Audrey Yasutake, Secretary



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# **Workforce Development Division**

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*Elaine Young, Administrator*





# Workforce Development Division

*Elaine Young, Administrator*

## Overview

The Workforce Development Division (WDD) plans, directs, coordinates and implements a statewide, customer-driven workforce development system that delivers employment and training services to job applicants, workers and industries. WDD provides a free referral and placement service that links qualified job seekers with employers.

The WDD develops and maintains partnerships with the private sector, including labor organizations, employers, and economic development agencies to identify emerging employment trends, technological advances, declining industries and economic issues. The division develops workforce development grant proposals in coordination with state and county agencies to apply for federal, state and other funds to carry out employment and training program activities and services such as the School to Work Opportunities Grant and One-Stop Career Centers.

The division collaborates with educators, interested employers and labor unions to identify basic skills and qualifications of all workforce entrants. They help to plan and develop career-based learning and industry skill standards in targeted industries.

They are also involved in strategically planning for economic dislocations of workers in declining industries. They work closely with employers, labor organizations, and local workforce investment boards to make appropriate services available to dislocated workers through the use of rapid response teams.

## Key Accomplishments

### *Client Services:*

*One-Stop Centers for Workforce Assistance (One-Stop Centers):* Through the One-Stop Centers system, employment and training providers who are linked electronically and/or co-located at one site, provide an integrated array of labor exchange and Workforce Investment Act (WIA) services to business and job seeking customers. Approximately 2,600 employers and over 48,000 jobseekers have been served by the programs represented in the system.

*America's One-Stop Operating System (AOSOS)* is the electronic network that connects all One-Stop Centers throughout the islands. Over 48,000 individuals who received services from Hawaii's One-Stop Centers during the period July 1, 2002 to June 30, 2003, were registered in AOSOS. Through AOSOS links to America's Job Bank, the largest Internet site for job listing and job search, employers received nationwide exposure for their job openings, and jobseekers were able to search for positions both in Hawaii and nationwide. Over 15,000 job openings were listed through AOSOS.

*Resource rooms* equipped with computers that allow access to the Internet, job information, resume writing, word processing, spreadsheet software and links to important Internet Web sites on career and labor market information, and a multitude of business equipment were made available to the public at no cost.

*Wagner Peyser Labor Exchange:* The WDD administers a labor exchange service which is the foundation of the One-Stop Centers for the Workforce Assistance system. More than 48,000 jobseekers and 2,600 employers utilized this no cost service during 2002-2003. In addition to assisting employers with their recruitment efforts and jobseekers with their job search activities, division staff also processed over 2,000 Work Opportunity Tax Credit eligibility determination requests.

*WIA Job Training Services:* Through the WIA, the division provided remedial education, job training, and employment assistance to low-income adults, youth, and dislocated workers. Over 12,000 people in target population groups were targeted in fiscal year 2003. By developing the skills of unemployed, under-employed, and economically disadvantaged individuals, WIA helped to meet current and future labor market demands.

*WDD Adult Programs* trained 3,335 low-income individuals for placement in private sector jobs. Participants received classroom training in basic or occupational skills, work experiences, and on-the-job training. Youth Programs provided employability enhancement training for 2,775 youth between 14-21 years of age. The Dislocated Worker Program provided re-training and placement services for 3,991 workers who were laid-off or terminated due to economic down-turn.

*WIA Special Programs:* The WDD administered federal funds for the Samoan Training and Employment Program. The program serviced unemployed, under-employed, or economically disadvantaged Samoans residing in Hawaii. Services included assessment, career counseling, classroom training in occupational and basic skills, work experience, and job search assistance. Approximately 1,500 participants received job training through this program.

*The Innovative Employment and Training Program for Asian Immigrants and Pacific Islanders* developed and implemented employment and training services for this target population. Culturally sensitive approaches were used to help participants achieve their career goals, including upward mobility.

*Employment and Training Fund (ETF):* The ETF continued to address the training needs of businesses in Hawaii. During this fiscal year, the ETF was able to serve 616 businesses and provide training for 2,220 individuals.

The purpose of the ETF is “to assist employers and workers through innovative programs, including, but not limited to, business specific training skills, upgrade training, new occupational skills, management skills, and support services to improve the long-term employability for Hawaii’s people.” To carry out this purpose, the fund operates two basic programs:

- Employer Referral (Micro Program)
- Statewide and Countywide Training Grant Program (Macro Program)

Under the Employer Referral Program, the fund enabled training for 2,028 individuals who participated in 3,239 classes. Some of the courses most requested by these individuals include basic, intermediate, and advanced courses in the more popular computer applications, such as word processing, spreadsheets, database, and presentations, computer-aid design (CAD), desktop publishing, local area networking (LAN), programming, and Internet/web page design.

Under its Statewide and Countywide Training Grants Program, the ETF funded a training project called, “The Aging Institute of Hawaii”. This program was designed to address the need for properly trained workers to care for Hawaii’s rapidly aging population. 120 participants from 25 employers, and 40 self-employed individuals attended the training.

ETF also implemented several changes necessitated by Act 248, SLH 2002, which included internal policy and procedural changes that affected the Micro program’s registration and enrollment procedures for employers and their workers.

*Apprenticeship Program:* Apprenticeship is a long-term job training lasting from one to five years. In most cases, private industry assumes the cost through full time on the job training combined with classroom/shop instruction at a community college. This method of training has resulted in a constant flow of highly skilled workers for Hawaii’s industries. In fiscal year 2003, a total of 3,206 apprentices in Hawaii were registered.

*JobHelp Store (JHS):* The JobHelp Store was designed to enable newly arrived unemployed, under-employed, or economically disadvantaged Pacific Islanders or Asian immigrants to find jobs and become economically self sufficient. Approximately 275 eligible immigrants were provided assistance in skills assessment, career counseling, training in occupational and basic skills, and English as a Second Language, and job searching.

*Veterans Programs:* The WDD operated several veterans programs including the Local Veterans Employment Representative (LVER) program and the Disabled Veterans Outreach Program (DVOP). During the year, over 4,000 eligible veterans received counseling, testing, and job search assistance, development and placement services. In addition, 196 eligible veterans were provided training through the Veterans Workforce Investment Program (VWIP). Of this total, 102 were placed in jobs.

*Senior Community Service Employment Program (SCSEP):* The SCSEP employs low-income persons, age 55 and older, in part-time community service jobs. Three hundred eighty seniors were employed through this program during the year.

*Partnership with Department of Human Services:* A partnership with the State Department of Human Services enabled the WDD to provide services to welfare recipients in the FIRST-TO-WORK program in all counties and to Food Stamp program recipients on Hawaii and Kauai. The FIRST-TO-WORK program served 1,175 individuals of whom 765 were placed in jobs. The Food Stamp program served 370 individuals with 106 participants being placed in jobs.

***Outreach Initiatives:***

Job fairs were excellent opportunities for job seekers and employers to address mutual workforce needs. The WDD worked with its partners, businesses and other service agencies to sponsor job fairs in various counties. On Oahu, three job fairs were held which drew over 9,000 job seekers. On Kauai, over 500 job seekers attended an island job fair while the Hilo WDD office coordinated a fair that drew hundreds of participants.

Cruise ship industry recruitment efforts were conducted in each county by the WDD to fill 1,500 job vacancies with Norwegian Cruise Lines (NCL). Initial recruitment efforts produced 500 new hires with NCL.

Business relationships continued to expand. The WDD partnered with the various Chambers of Commerce and other business associations to acquaint their members with the new products and services offered in the One-Stop Centers. On Kauai, the WDD partnered with the Kauai Chamber of Commerce to conduct “Business After Hours” meetings with Chamber member businesses and to showcase One-Stop Center services. On Hawaii, a workforce forum with 13 employers was conducted. These meetings were important in fostering communication with employers to improve services for them and job seekers. Other examples of successful partnership efforts include working with the Drug Task Force Community Re-Integration program and participating in the annual North Hawaii Community Forum.

Rapid Response services assisted employers with workers due to be terminated. During 2002-2003, the division provided services to 80 employers throughout the state and traveled as far as Johnston Island to provide orientation to employees.

## **Continuous Improvement Initiatives 2003-2004**

***Outreach Initiatives:*** The WDD will continue to deliver on its mission to provide needed training, skills development and support to Hawaii’s workforce and successfully administer the various programs under its jurisdiction. Through expansion of relationships and partnerships with business associations, the division anticipates a highly active year as the state prepares for the increasing demand for workers in the building and housing construction and cruise ship industries. The WDD is also preparing to implement a federal Work Incentive Grant which was recently awarded to the division to improve services to persons with disabilities.

***Website Development:*** The WDD looks forward to the development of their website in 2004. This effort is being worked on in conjunction with the DLIR’s overall plan to redesign the department’s current website and provide better access to general and program information.





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# Workforce Development Division

## The Employment and Training Fund Program

### Executive Summary

Pursuant to Act 68, Session Laws of Hawaii (SLH) 1991, the Legislature established the Employment and Training Fund (ETF), which is funded by an employment and training fund assessment and administered by the Department of Labor and Industrial Relations (DLIR). The ETF program serves the training needs of the community by simultaneously addressing economic development and workforce development, which is critical to the continued viability and growth of the State.

The purpose of the ETF program is to assist employers and workers through innovative programs to include, but is not limited to, business-specific training, skills upgrade training, new occupational skills, and management skills training to improve the long-term employability of Hawaii's people. There are two ways in which employers and employer groups can access ETF funds: 1) Statewide and Countywide Training Grants (macro) and 2) ETF's Employer Referral Program (micro).

ETF awards macro (organizational/community levels) grants to business associations and consortia to develop customized training projects that address industry training needs of businesses in the state. These grants provide "seed money" for innovative education and training curricula and program design. The grant purposes are ambitious and demanding. Each plan must include, but is not limited to: a needs assessment; project guidelines; marketing and delivery plan; and a self-sufficiency component to ensure the continuation of training beyond the grant period. Business and industry consortia are required to provide cash and/or in-kind contributions to strengthen their commitment to the project. Approximately 18,653 individuals have been trained through the macro program.

ETF has also been addressing the training needs at the micro (individual) level through its *Employer Referral* Program. Unlike the macro program, these individual employers are not required to submit a comprehensive plan to develop new training curricula, program design, and instruction. They are able to register their workers for training classes offered by ETF approved vendors to upgrade their capabilities to meet the competitive demands of the workplace. To date, approximately 58,717 individuals have been trained through the micro program.

In prior years, eligible employers and employees who accessed the micro program were able to obtain funding assistance without a matching or nominal contribution; however, funds were limited to a course cap not to exceed \$500. For years, there has been an upward trend in the number of participants being served through the *Employer Referral Program*. In Program Year (PY) July 1, 1995 through June 30, 1996, ETF funded the training of 1,119 participants. In 1996, the legislature requested program administrators to direct more of ETF's services and resources to the counties. As a result, the demand for training assistance grew to a sixteenfold increase; by PY 2000-2001, attendance levels peaked to 18,576 participants. This huge demand for training services identified the type of job skills most needed by Hawaii's businesses forging a stronger connection between workforce development and economic needs.

Although previous legislation (Act 197/SLH 2000) lowered the ETF assessment rate from .05 to .01 percent of taxable wages, which meant that the program had to operate with an eighty percent reduction in funding, lawmakers still recognized the importance of workforce training as it serves to help keep Hawaii's workforce competitive and employed at the cutting edge of their chosen profession and occupations. Extensive testimony was submitted to the 2001-2002 Legislature supporting the continuation of ETF and restoration of the .05 percent assessment. However, lawmakers found that small businesses, which generally cannot afford training costs, have accessed the ETF to their advantage. Therefore, to establish a fair and equitable policy, lawmakers looked at establishing a nominal cost for users of the ETF to offset the effects of lowering the ETF assessment rate.

Other states like Florida and California have legislatively mandated a fifty percent in-kind contribution towards training costs. To balance the responsibilities and partnership between the state and business sectors, Hawaii's legislators followed similar guidelines. The intent was to develop a collaborative approach in workforce preparation and strengthen and improve workforce policies and programs that meet Hawaii's job market needs.

On July 1, 2002, Act 248 was signed into law, thereby making ETF permanent. Moreover, Act 248 now requires employers who access ETF funds for training to contribute up to fifty per cent of the cost of assistance to ETF, thus changing the permissive sharing of costs to a mandatory contribution.

This past program year (PY 2002-2003) has been a challenging year for ETF. The threats of terrorism, high unemployment, and a stagnant economy have had a profound effect on the demand for workforce training. This report presents an overview of ETF, describes the restructuring of the ETF program necessitated by the passage of Act 248, examines the impact of the required 50 percent employer contribution and possible reasons for the decline in attendance levels, and provides information on the users of the program, and the number of course enrollments for the year.

## Overview

*What is ETF?* In 1991, the Hawaii State Legislature created the Employment and Training Fund Program as a way to improve the competitiveness of Hawaii's labor force in a global economy. ETF provides funding assistance to Hawaii's business community. Unlike federal job training programs that serve only individuals who face employment barriers, ETF is able to provide businesses the opportunity to upgrade the skills of the workforce from entry-level to top management. Training allows workers to acquire job skills necessary to keep pace with local, national, and international competitors.

ETF's purpose is to "assist employers and workers through innovative programs, including, but not limited to, business specific training, upgrade training, and new occupational and management skills training to improve the long-term employability of Hawaii's people."

Funds are generated through an employer assessment collected together with unemployment insurance contributions. Presently, the assessment rate is .01 percent of employers' taxable wages.

During the 1999 legislative session, the State Legislature exempted ETF training services from procurement code requirements under Chapter 103D and Chapter 103F, Hawaii Revised Statutes, to make the delivery of training readily accessible and the awarding of grants more timely. The practical result of this action has been to enable participants to select from a wide range of authorized training vendors. ETF now has 24 approved public and private training providers. These vendors were selected through a request-for-proposal (RFP) process.

*Why ETF?* The ETF program was created as part of a national movement that swept the country in the 1980's. Our nation's leaders, particularly at state and local levels, were concerned about the United States workforce's ability to compete in the international economic arena. Government and business leaders across the country have recognized the value of state-funded, business training programs such as ETF.

Investing in human capital to improve productivity and the nation's quality of goods and services became a top priority. To enhance economic development or to attract new industries, 47 states, including Hawaii, enacted legislation to create over 60 training programs targeted to businesses. All of these states believe that such training programs help them to become economically competitive. The spending for such customized training in 1998 was \$593M. These budgets vary in size and the funding mechanisms can differ. Even with restrictive budgets, states have often found creative ways to subsidize the training of incumbent workers. Research has shown that customized training programs, or incumbent-worker programs, are usually funded by one of three sources (Moore, et al 2003): a) a special tax associated with Unemployment Insurance (UI), b) general revenues, or c) bond financing. Governors across the country recognize that "America's economic future depends on the strengths of our workforce. Our businesses need skilled workers to continue producing goods and services marked by innovation, knowledge, and quality - characteristics that give U.S. firms a competitive edge in the global marketplace (National Governor's Association, 2002)." States like Hawaii have realized the

importance of investing in human capital and its connection to economic vitality. Although there is little published research on state-funded training programs, it is becoming a growing interest across the country (Moore et al 2003). About twelve states have programs similar to Hawaii in that they are supported by employer assessments through the unemployment insurance system.

*Who is Eligible?* Since it is funded by assessments from the private sector, ETF serves industry groups, business associations, business consortia, individual businesses, and nonprofit corporations. Government agencies must partner with businesses on grant proposals. However, ETF, as set forth in its statutes, also serves individuals who are unemployed and not otherwise eligible for federally funded employment and training programs.

*How Does One Access ETF Funds?* Employers and employer groups can access ETF funds by applying for assistance from the following two programs:

1. *Statewide and Countywide Training Grants.* ETF provides grants for customized education and training projects that meet industry needs. The grant purposes are ambitious and demanding. The funding must serve as a catalyst, providing “seed” money for innovative education and training curricula and program design. Grants are awarded through the RFP process.
2. *Employer Referral Program.* Employers can refer their employees to existing short-term, noncredit training courses, such as those offered at the community colleges and other approved public and private training vendors. The program is open to all within a company: owners, managers, supervisors, and workers. ETF will pay 50 percent of the assistance for any course taken that meets ETF eligibility criteria.

*Who is the primary target population being served by ETF?* Serving the training needs of small businesses is a high priority for ETF and the program continues its success in serving this target group. This is true for both the Employer Referral Program and the Statewide and County Grant Program. For example, ETF’s grant application packet cites “serving small businesses” as one of the most important selection criteria in awarding grants.

A major reason for focusing on this group is the high proportion of small businesses in Hawaii. Many small business owners cannot afford to send themselves or their employees to training. Training can be expensive, especially when on company time. During training, an employee is not producing goods or delivering services. On the other hand, many large companies have in-house training programs or, because of economies of scale, are in a better financial position to purchase training services.

In the past, businesses could rely upon on-the-job training to bring their workers to desired productivity levels. This is less true today as the nature of doing business has changed. Technological advances have streamlined operations at every level of management. Even small businesses must rely on technology for their everyday operations, whether they be cell phones, personal computers, product scanners, or e-mail and the Internet. Through ETF, employers are able to provide themselves and their workers the ability to keep pace with their competitors, who today span the globe.

## ETF Provides Training Services to Hawaii's Counties

When the 1996 Hawaii State Legislature extended the ETF program another five years, it requested program administrators to direct more of ETF's services and resources to the counties. In response, ETF distributed funds to the counties using a formula based on the proportion of total wages generated by each county and expanded the Employer Referral Program activities. This legislative initiative has been particularly successful. The ETF program is today statewide in scope and serves rural and isolated areas such as Molokai; Hana, Maui; Waialua, Oahu; Waimea, Kauai; and Waiakoloa, Hawaii.

ETF personnel at branch and local offices continue to market ETF. Presentations to business and professional groups, labor organizations, and community-based organizations, describing the benefits of the program are conducted throughout the state. They promoted ETF through the media, such as newspapers, radio, and newsletters published by business and professional associations. They were also involved in sponsoring or participating in business/industry expositions.

Branch and local offices are located on all major islands. On Oahu, there are three local offices: Honolulu, Kaneohe, and Waipahu/Kapolei. On the Big Island, there are offices in Hilo and Kailua-Kona. On Maui, offices are located in Wailuku and Kaunakakai, Molokai. The Kauai office is located in Lihue.

ETF's priorities for Hawaii have remained consistent over the past several years. The program encourages continuous efforts in the following areas:

- Serve small businesses, helping to train their personnel as they have to adjust to changes in technology, consumer tastes, and the economy. Over the years, ETF awarded funds to many projects targeting small businesses; this is a deliberate policy. Serving small businesses is an important criteria used when deciding grant awards. ETF also targets this group in its *Employer Referral Program*; small businesses represent over seventy percent of all the businesses served by ETF.
- Support economic development initiatives and industry expansion. The State Administration has targeted forestry and aquaculture as being promising industries for either economic development or expansion. ETF funded several projects in these areas in past years as well as two other promising industries with good potential for growth--aviation (pilot training) and fashion.
- Develop voluntary certification programs that incorporate national and state skill standards into training curricula. ETF has awarded grants to projects that lead to national or state certification in the retail, restaurant, tourist, and landscape industries. Several of these projects have been nationally recognized.

## Spotlighting ETF (Macro) Training Projects

### *The Aging Institute of Hawaii*

Hawaii is the third most rapidly aging state in the nation. The State Executive Office of Aging claims that in the decade of the nineties, the number of Hawaii residents age 60 or over grew by 52.5 percent, while the total population grew by only 14.9 percent. While most elderly adults are active and healthy, some will require various types of assistance, ranging from transportation assistance, meal preparation, or total care. The result is increased demand for workers who are trained to serve the elderly population.

The Hawaii County of Aging (HCOA) conducted a survey on training needs which showed that 77 percent of the respondents believed that there was an inadequate supply of properly trained workers in the field. The survey also indicated that 79 percent believed that there were not enough education and training opportunities available in their communities for their staff.

To address this problem, HCOA applied for and was awarded an ETF grant, which funded the Aging Institute of Hawaii. HCOA used the grant to develop a training course composed of five modules on the following topics: definition of aging; getting and staying healthy; understanding disease and disability; successful caregiving; and death and dying.

Through the Aging Institute of Hawaii, HCOA was able to offer six training sessions in Hilo and Kona. The project trained 120 participants from 25 employers and also 40 self-employed individuals.

### *The Employer Referral (Micro) Program*

Employers can refer their employees to existing short-term, noncredit training courses, such as those offered at community colleges and other approved public and private training vendors. The program is open to all within a company: owners, managers, supervisors, and workers. ETF will pay 50 percent of the assistance for any course taken that meets ETF eligibility criteria.

Twenty-four (24) of ETF's authorized training vendors deliver a wide array of training opportunities through the micro program. Given the increasing importance of technology in the workplace, it is not surprising that computer-related courses are the most requested by business. For example, of the 3,239 registrations, 2,095 participants enrolled in this particular training category. This represents 65% of all enrollments in the various training courses funded by ETF. Some of the courses in demand by Hawaii's employers include: basic, intermediate, and advanced courses in the more popular computer applications, such as word processing, spreadsheets, data base, and presentations. In addition, computer-aid design (CAD), desktop publishing, local area networking (LAN), programming, and Internet/web page design. Other popular courses requested by employers/employees were in the areas of soft training, business/managerial, food safety, health, human services, travel, and transportation/vehicle training.

During PY 2002-2003, approximately 2,028 participants registered for 3,239 classes; averaging 1.60 classes per participant. On Hawaii, ETF funded a total of 436 classes; on Kauai, 286; on Maui, 317; and on Oahu, 2,200 classes. For the previous program year (2001-2002), the average number of classes taken was 2.25 classes per participant.

### ***Small Businesses Benefit from ETF-Funded Training Services***

In PY 2002-2003, ETF served 616 businesses. These include 39 employers on Kauai, 109 on the Big Island, 86 on Maui, and 382 on Oahu. The majority of employers (82%) served were from small businesses (0-249 employees). Of the number of businesses served, 798 or 54% of the businesses had 49 employees or fewer and 342 or 23% had 10 employees or fewer.

A total of 1,293 employees from small businesses (0-249 employees) accessed ETF funds for skill training. This population represents 64% percent of the total 2,028 individuals trained.

### ***New Directions - Act 248, SLH 2002***

During PY 2002-2003, ETF was required to implement several changes necessitated by Act 248, which included internal policy and procedural changes that affected the Micro program's registration and enrollment procedures for employers and their workers.

In a short period of time, the ETF program accomplished a large number of tasks to ensure training services continue uninterrupted while the provisions of the new Act were implemented.

- Developed a new fee collections system to implement the new requirement mandating a 50 percent cash contribution of the ETF assistance under the *Micro* program.
- Updated its administrative rules to incorporate changes set forth in the new legislation and to improve program operations.
- Executed 19 supplemental training vendor agreements to extend the existing contracts until new agreements were executed.
- Issued a request-for-proposal (RFP) for training vendors and executing (24) new Agreements with them that incorporated provisions of the new law.
- Restructured ETF's enrollment and fiscal procedures, developed new forms, wrote program instructions for participants, developed new procedural manuals for staff, established money collection procedures, and amended ETF's policies and procedures.
- Conducted training sessions for ETF managers, supervisors, counselors, and training vendors on the new system being implemented.

In prior years, the general trend for the Employer Referral Program or "*Micro* Program" has shown continual increases in the number of participants served each year. The huge demand for training services over the past decade is indicative that members of Hawaii's business community realize how critical it is for Hawaii to invest in training in order to keep pace with international competitors and constant technological change. However, the pattern did not hold true this past program year 2002-2003; instead the number of participants and the number of classes has declined. The *Executive Summary* section addressed Act 248 touched on some of the

extenuating factors that may have likely affected these reductions as well as the provisions of Act 248/SLH 2002, which now requires employers to contribute 50 percent of the training assistance.

Since the tragic events of September 11<sup>th</sup>, attendance levels were already facing a downward trend. At the halfway point in PY 2001-2002, ETF started to see the numbers drop. ETF served only 8,966 participants, which was 52 percent less than the previous program year. In the aftermath of 9/11, thousands of workers in the tourism, transportation, and retail industry were laid off or placed on unpaid furlough. By November 2001, the unemployment rate rose to a high of 5.4 percent with 32,400 unemployed individuals. Most of these laid off workers were furloughed and partial unemployment claimants, which meant they were still attached to their companies. As such, these workers were not eligible for the federal Dislocated Worker program, unless they were first terminated from their job or given notice of their separation. ETF was the only program in Hawaii that had the flexibility and funding to meet the training needs of these furloughed workers. Continuing challenges such as the Iraq War, SARS epidemic, and a stagnant economy did not significantly impact Hawaii's unemployment levels as it did on the mainland; however, ETF attendance levels continued to drop to 2,028 participants, which is 69 percent less than the previous year.

This significant reduction may be due to the fact that prior to July 1, 2002, eligible employers were able to obtain funding assistance at *no cost* to them if the tuition did not exceed the course cap of \$500; the employer paid any excess beyond the cap. In addition to the requirement to pay 50 percent of the assistance, other possible reasons include delays needed to adopt interim collection procedures and an interim registration process until new agreements were executed with training providers and a newly designed administrative system was in place. Through an RFP process, twenty-four vendors were selected and agreements were executed to provide training services to ETF participants in January 2003. During the first and second quarter of PY 2002-2003 the ETF program was responsible for collecting directly from the employer the 50 percent contribution. Once the new contracts were executed in January 2003, the vendors assumed this responsibility.

In prior years, the University of Hawaii Community Colleges (UHCC) served the greatest number of participants. However, the UHCC, which is ETF's largest vendor, did not execute their contracts until April 2003, thus the number of enrollments for this period was lower due to the later start-up time as the chart below indicates. In the third quarter, the funds spent were significantly lower due to the lack of training services provided by the UHCC's; in the fourth quarter the data starts to show an increase in funds spent once their agreement was executed and activities resumed.

***Micro Program Expenditures for Training Services: PY July 1, 2002 - June 30, 2003***

<b>PY 2002-2003</b>	<b>1<sup>st</sup> QTR/Jly 02</b>	<b>2<sup>nd</sup> QTR/Oct 02</b>	<b>3<sup>rd</sup> QTR/Jan 03</b>	<b>4<sup>th</sup> QTR/Jun 03</b>
Kauai	\$ 10,236.44	\$ 4,342.36	\$ -	\$ 9,954.50
Maui	\$ 16,129.18	\$ 16,177.00	\$ 2,291.66	\$ 3,496.06
Hawaii	\$ 16,107.46	\$ 14,956.76	\$ 5,438.48	\$ 16,429.58
Oahu	\$ 55,669.19	\$ 103,540.48	\$ 36,632.10	\$ 40,758.65
<b>Total</b>	<b>\$ 98,142.27</b>	<b>\$ 139,016.60</b>	<b>\$ 44,362.24</b>	<b>\$ 70,638.79</b>

Other possible reasons extend beyond the ETF program itself. For example, according to recent statistics the statewide unemployment rate in August 2003 was 4.4 percent, a slight increase from 4.3 percent in July 2003. In contrast, the national unemployment rate was 6.0 percent in August. According to the department's Office of Research and Statistics, since October 2002, Hawaii's unemployment rate has been at least one and one-half percentage points lower than the national employment rate. July 2003, marked the fourth consecutive month of a labor force expansion, growing by 2.9 percent. By August 2003, there were 581,000 employed and 26,900 unemployed, for a total statewide labor force of 607,800. Previously in September 2001, the statewide labor force was 596,450, with 564,000 employed and 32,400 unemployed. Today's low unemployment rates coupled with job increases may lead employers to demand more from their workers, thereby putting more of their resources into wages and directly related expenses, keeping workers at the job site rather than sending them to training.

The Department of Business and Economic Development & Tourism (DBEDT) forecast for total wage and salary jobs in the state has been increased from 1.9 percent to 2.1 percent for 2003 due to stronger than expected job growth over the second quarter (DBEDT Quarterly Forecast, 9/5/03). Although the tourism, transportation, and retail industries remain weak because of slow international arrivals, recent forecasts by the Council on State Revenues show economic conditions in Hawaii should improve. Accordingly, booming construction and real-estate markets will propel Hawaii's economy to 4.7 percent growth this year, state economists say (Honolulu Advertiser, 9/23/03). The military is preparing to begin \$150 million in major construction projects, including housing renovations on some of its bases. It is unclear as to the number of jobs it will create, but the DBEDT forecast predicts job growth at 1.3 percent in 2004 depending on world events and the strength of the Mainland economy (Ibid). This would mean that as jobs increase, upgrading the job skills of Hawaii's workers become vital to meeting job market needs and economic expansion.

The department's Workforce Development Division is charged with developing a skilled and competitive workforce that promotes a diverse and prosperous economy by providing Hawaii with the most effective employment and training services. Unlike federal programs designed to provide training assistance to those individuals who face employment barriers, the ETF is designed to serve incumbent workers.

The National Governors Association has conducted a year long effort helping governors develop economic strategies for a global marketplace. They advocate the need to redefine workforce policies by forging partnerships with the private sector and with educators. A shortage of skilled workers can constrain the productive capacity of key industries and jeopardize the quality of services in others. As baby boomers retire and fewer new workers enter the labor market, it weakens a state's ability to compete in the global economy and leaves a smaller, less educated, and experienced workforce to sustain the market (NGA, 2002).

## **Program Year 2002 -2003, ETF FUNDING**

The following table describes ETF funding for PY 2002-2003. ETF funds are maintained in a special fund. Any portion unexpended at the close of each fiscal year remains in the special fund.

### **Program Year 2002-2003**

Total Revenue:	\$ 975,328
Expenses:	
Administrative	\$ 232,273
Grant Expenditures	\$2,368,362
Total Expenses:	\$2,600,635
Net Revenue:	(\$1,625,307)
Cumulative Funds	
Net Resources	\$ 2,061,005.00
Grant Funds Encumbered	\$ 1,366,130.00
<b>Fund Balance</b>	<b><u>\$ 694,875.00</u></b>

## **APPENDIX I: ETF Strategic Plan Overview: Directions for ETF**

In 1996, the Department of Labor and Industrial Relations (DLIR) set forth its overall focus for the Employment and Training Fund (ETF) program for the next five years. Implementing the plan took the program into several new directions based on input from the community and policy makers and trends in the economy and the population.

The first change was the integration of ETF into the department's workforce development system. DLIR's Workforce Development Division (WDD) was created by consolidating the Office of Employment and Training Administration, the Employment Service Division, and the Apprenticeship Division. ETF assisted in carrying out the mission and goals of DLIR's Workforce Development Strategic Plan. The ETF plan describes in more detail how the program accomplishes its vision, mission, and goals set forth below.

### **State Workforce Development Strategic Plan**

- Vision:** A globally competitive and skilled workforce which promotes and nurtures a diverse and prosperous economy while preserving the special quality of life in Hawaii.
- Mission:** Develop a skilled workforce that meets the needs of business and industry, enhances workplace productivity, and increases opportunities for employment.
- Goal #1:** Establish and foster collaborative relationships to plan and implement comprehensive workforce and economic development policies.
- Goal #2:** Improve the productivity of work places in Hawaii.

The second change in direction was the institution of a more structured, streamlined, and efficient method of awarding grants. A simplified application and process facilitated a faster turnaround from the receipt of a proposal to the awarding of a contract.

The third change was the increased emphasis on involving local communities in identifying needs, establishing priorities, planning, and operating programs. This involved greater employer participation. DLIR's Workforce Development Division has branches in each county, with staff who are familiar with local needs and problems. Each branch relies on local advisory committees to assist ETF in identifying workforce training needs.

The final change was to increase communication with the public, particularly industry and businesses on how ETF can benefit their firms and employees. ETF conducted applicant workshops and informational campaigns as part of that effort.

To achieve the above priorities and goals, ETF is guided by ten principles:

1. Maximize return of investment by aggregating demand and leveraging resources;
2. Promote and achieve self-sufficiency of capacity building efforts;

3. Be customer driven;
4. Be committed to excellence;
5. Involve stakeholders (e.g. business, education and training, government, etc.) that mirror the makeup of the community;
6. Build partnerships to integrate services and eliminate redundancy;
7. Develop performance-based outcomes and measures;
8. Plan for both long and short term impact;
9. Be proactive in meeting community needs; and
10. Continuously improve.

### **The Employment and Training Fund Strategic Plan**

#### **WDD Strategic Plan Goal 1: Establish and foster collaborative relationships to plan and implement comprehensive workforce and economic development policies.**

- Objective A:** To assist in planning and operating its programs, ETF will establish county advisory committees that represent all segments of the economy and have a vested interest in developing a skilled and proficient workforce.
- Strategy 1 Assure that county advisory committee memberships mirror the community in terms of economic sectors and geographic areas (rural and urban).
- Strategy 2 Assess on a regular basis with input from the committees, the types of skills, knowledge, attitudes, and behaviors employees need to be successful in the work place.
- Strategy 3 Rely on committee advice in designing an ETF delivery system that best meets the identified needs, taking into consideration the economic development outlook for the area.
- Objective B:** ETF shall work towards expanding and enhancing the linkages between training service providers and employers in order to improve and streamline the program's operations.
- Strategy 1 Work on developing cooperative relationships among employers and training providers to facilitate development of specific, short-term training opportunities.
- Strategy 2 Promote the efficient operation of ETF by pooling and leveraging resources, aggregating demand for training services, and consolidating, and streamlining operations.

- Strategy 3 Incorporate ETF into the State’s One Stop Center. Integrate its operations with the other One-Stop partners.
- Strategy 4 Simplify and streamline ETF’s intake, assessment, and service delivery.
- Strategy 5 Evaluate ETF’s application and review process periodically to ensure that it is user-friendly and easy to understand and assures accountability.

**WDD Strategic Plan Goal 2: Improve the productivity of work places in Hawaii.**

**Objective A:** Align ETF project decisions with opportunities generated by economic development and diversification activities.

- Strategy 1 Encourage employers, particularly new and expanding businesses, to use Hawaii’s workforce as the primary source for employees.
- Strategy 2 Keep abreast of projected growth in new industries, economic development and diversification initiatives, and other important data and information that may have significant impact on the labor force and the economy.
- Strategy 3 Survey businesses to ascertain economic conditions in Hawaii—booms and downturns—and the impact on training needs and hiring.

**Objective B:** Identify and improve the skills, qualifications, and behaviors of workers in the labor force to increase the competitiveness of individual employees and business firms in the international marketplace.

- Strategy 1 Identify employer requirements for their workforce to plan and design more effective and relevant education and training programs.
- Strategy 2 Work closely with employers and other organizations to learn about and keep informed of changing work duties and requirements resulting from reengineering, changing technology, and best practices.
- Strategy 3 Gather assessment (e.g. pre and post tests) and follow-up information on ETF participants; analyze data to determine training effectiveness and areas of needed program improvement.

**Objective C:** Market the ETF program so that workers, employers, and the larger community are able to take advantage of available services and become aware of the benefits of the program in improving Hawaii’s workforce.

- Strategy 1 Develop outreach programs such as applicant workshops to inform employers of the availability of funding for needed training services.
- Strategy 2 Develop a variety of effective promotional materials to inform the community of the value and the accomplishments of the ETF program.



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# Report on Non-General Fund Information

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**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations

Date: 12/012003

Prepared by: Francis Kagawa

Phone: 586-8887

Name of Fund: Special Compensation Fund (WC)

Legal-Authority: Chapter 386 - 151, HRS

Fund Type (MOF): Special Fund (B)

Approp. Acct. No. S-302-L

**Intended Purpose:**

To pay benefits to injured workers for second injuries, uninsured, and insolvent employers, benefit adjustments, attendant services, and concurrent employment.

**Current Program Activities:**

Payment of workers' compensation benefits, litigation costs, audit fees, and legal services through the Department of Attorney General.

<b>Financial Data</b>		
	FY 2003	FY 2004
Beginning Cash Balance	18,544,054	23,589,380
Beginning Encumbrances		15,101
Revenues	22,677,030	
Expenditures	(17,631,704)	
Transfers (List Each Transfer by JV# and Date)		
Net Total Transfers	0	
Amount Derived from Bond Proceeds		
Ending Cash Balance	23,589,380	
Amount Required for Bond Covenants as of 7/1/03		
Amount held in Certificates of Deposit, Escrow Accounts, or Other Investments as of 7/1/03		

Form 37-47

**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations

Date: 10/20/03

Prepared by: Francis Kagawa

Phone: 586-8887

Name of Fund: Special Fund for Disability Benefits (TDI)

Legal-Authority: Chapter 392 - 61, HRS

Fund Type (MOF): Special Fund (B)

Approp. Acct. No. S-303-L

Intended Purpose:

To pay TDI benefits for disabilities resulting from non-work related injuries or illnesses:  
to individuals who become disabled when unemployed, and  
to employees of bankrupt or non-complying employers.

Current Program Activities:

Payment of temporary disability insurance benefits.

<b>Financial Data</b>		
	FY 2003	FY 2004
Beginning Cash Balance	7,825,604	8,056,802
Beginning Encumbrances		
Revenues	285,019	
Expenditures	(53,821)	
Transfers (List Each Transfer by JV# and Date)		
Net Total Transfers	0	
Amount Derived from Bond Proceeds		
Ending Cash Balance	8,056,802	
Amount Required for Bond Covenants as of 7/1/03		
Amount held in Certificates of Deposit, Escrow Accounts, or Other Investments as of 7/1/03		

**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations

Date: 10/20/03

Prepared by: Francis Kagawa

Phone: 586-8887

Name of Fund: Premium Supplementation Fund (PHC)

Legal-Authority: Chapter 393 - 41, HRS

Fund Type (MOF): Special Fund (B)

Approp. Acct. No. S-308-L

**Intended Purpose:**

To pay premium supplementation to qualified employers and payment of health care expenses to eligible employees of non-complying or bankrupt employers.

**Current Program Activities:**

Payment of premium supplementation and health care expenses.

<b>Financial Data</b>		
	FY 2003	FY 2004
Beginning Cash Balance	3,434,484	3,482,161
Beginning Encumbrances		
Revenues	123,885	
Expenditures	(76,208)	
Transfers (List Each Transfer by JV# and Date)		
Net Total Transfers	0	
Amount Derived from Bond Proceeds		
Ending Cash Balance	3,482,161	
Amount Required for Bond Covenants as of 7/1/03		
Amount held in Certificates of Deposit, Escrow Accounts, or Other Investments as of 7/1/03		

**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations

Date: 10/20/03  
Prepared by: Ricco Racela  
Phone: 586-8902

Name of Fund: Unemployment Insurance Trust Fund  
Legal-Authority: Chapter 383 - 385, HRS  
Fund Type (MOF): Special Fund (B)  
Approp. Acct. No. S-312-L, S-313-L

Intended Purpose:  
"All contributions pursuant to this chapter shall be paid into the fund and all compensation and benefits payable pursuant to this chapter shall be paid from the fund."

Current Program Activities:  
Includes activities related to collection of employer contributions and the payment of unemployment insurance benefits.

<b>Financial Data</b>		
	FY 2003	FY 2004
Beginning Cash Balance	296,883,841	313,689,815
Beginning Encumbrances		
Revenues	194,449,596	
Expenditures	(177,643,622)	
Transfers (List Each Transfer by JV# and Date)		
Net Total Transfers	0	
Amount Derived from Bond Proceeds		
Ending Cash Balance	313,689,815	
Amount Required for Bond Covenants as of 7/1/03		
Amount held in Certificates of Deposit, Escrow		
Accounts, or Other Investments as of 7/1/03		

**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations

Date : 10/17/03  
Prepared by: Ricco Racela  
Phone: 586-8902

Name of Fund: Special Unemployment Insurance Administration Fund

Legal Authority: Chapter 383-127 HRS  
Fund Type (MOF): Special Fund (B)  
Approp. Acct. No.: S-314-L

Intended Purpose: Payment of refunds, interest, and expenditures deemed necessary in the administration of this chapter for which no allocations of federal administration funds have been made.

urrent Program Activities: Administration of the Unemployment Insurance program

<b>Financial Data</b>		
	FY 2003	FY 2004
Beginning Cash Balance	312,053	185,688
Beginning Encumbrances		
Revenues	517,592	
Expenditures	(643,957)	
Transfers (List Each Transfer by JV# and Date)		
Net Total Transfers	0	
Amount Derived form Bond Proceeds		
Ending Cash Balance	185,688	
Amount Required for Bond Covenants as of 7/1/03		
Amount held in Certificates of Deposit, Escrow		
Accounts or Other Investments as of 7/1/03		

Form 37-47

**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations

Date: 10/20/03

Prepared by: Roy Umehira

Phone: 586-8903

Name of Fund: Employment and Training Fund

Legal-Authority: Chapter 383-128, HRS

Fund Type (MOF): Special Fund (B)

Approp. Acct. No. S-318-L

Intended Purpose:

Current Program Activities:

To provide grants and subsidies to public and private agencies and non-profit corporations for employment, education, and training services.

- (A) Programs to create a more diversified job base for businesses,
- (B) Programs where there are critical skill shortages in high growth industries,
- (C) Programs to retrain unemployed workers,
- (D) Programs for individuals who do not qualify for federal or state programs,
- (E) Programs for individuals to improve career employment prospects.

Financial Data		
	FY 2003	FY 2004
Beginning Cash Balance	3,705,889	2,080,582
Beginning Encumbrances		
Revenues	975,328	
Expenditures	(2,600,635)	
Transfers (List Each Transfer by JV# and Date)		
Net Total Transfers	0	
Amount Derived from Bond Proceeds		
Ending Cash Balance	2,080,582	
Amount Required for Bond Covenants as of 7/1/03		
Amount held in Certificates of Deposit, Escrow Accounts, or Other Investments as of 7/1/03		

Form 37-47

**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations      Date: 10/20/03  
Prepared by: Francis Kagawa  
Phone: 586-8887

Name of Fund: Occupational Safety & Health Training & Assistance  
Legal-Authority: Chapter 396 - 4 (c) (3), HRS  
Fund Type (MOF): Special Fund (B)  
Approp. Acct. No. S-319-L

Intended Purpose: Where appropriate, the department shall undertake programs in training and consultation with employers and employees as a means of encouraging voluntary compliance with occupational safety and health standards and rules.

Current Program Activities:

- (A) Occupational safety and health training programs.
- (B) Department-sponsored safety and health conferences, and
- (C) Additional state consultants (occupational safety and health advisors) to assist employers, unions, and employees.

<b>Financial Data</b>		
	FY 2003	FY 2004
Beginning Cash Balance	1,003,732	323,138
Beginning Encumbrances		321,195
Revenues	745,959	
Expenditures	(188,948)	
Transfers (List Each Transfer by JV# and Date)		
JM 1283                      09/25/02	(500,000)	
JM 6634                      06/24/03	(737,669)	
JS 6248                      06/24/03	6,648	
JM 7099                      06/30/03	(6,584)	
Net Total Transfers	(1,237,605)	
Amount Derived from Bond Proceeds		
Ending Cash Balance	323,138	
Amount Required for Bond Covenants as of 7/1/03		
Amount held in Certificates of Deposit, Escrow Accounts, or Other Investments as of 7/1/03		

**Report on Non-General Fund Information**  
for Submittal to the 2004 Legislature

Department: Labor and Industrial Relations

Date: 10/20/03  
Prepared by: Francis Kagawa  
Phone: 586-8887

Name of Fund: Boiler and Elevator Safety Revolving Fund  
Legal-Authority: Chapter 397-5.5, HRS  
Fund Type (MOF): Revolving Fund (W)  
Approp. Acct. No. S-320-L

Intended Purpose: To provide inspection services for boilers, pressure systems, and elevators and kindred equipment.  
(sunset date: June 30, 2003)

Current Program Activities:

- (A) Issue "permit to operate" boilers, pressure systems, and elevators and kindred equipment, and
- (B) Issue certificates of inspection for amusement rides.

<b>Financial Data</b>			FY 2003	FY 2004
Beginning Cash Balance			1,616,103	535,354
Beginning Encumbrances				532,755
Revenues			937,091	
Expenditures			(884,509)	
Transfers (List Each Transfer by JV# and Date)				
	JM	1283	09/25/02	(500,000)
	JM	7099	06/30/03	(633,331)
Net Total Transfers			(1,133,331)	
Amount Derived from Bond Proceeds				
Ending Cash Balance			535,354	
Amount Required for Bond Covenants as of 7/1/03				
Amount held in Certificates of Deposit, Escrow				
Accounts, or Other Investments as of 7/1/03				



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# Reports on House Concurrent Resolutions

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STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 Punchbowl Street, Room 321  
Honolulu, Hawaii 96813

January 6, 2004

TO: Honorable Robert Bunda  
President of the Senate

Honorable Calvin K. Y. Say  
Speaker of the House of Representatives

FROM: Nelson B. Befitel, Director *Nelson B. Befitel*  
Department of Labor and Industrial Relations

SUBJECT: House Concurrent Resolution 43 – Requesting the exploration of options for redesigning the benefit levels of “A” status plans under Hawaii’s Prepaid Health Care Act.

I. OVERVIEW OF RESOLUTION

House Concurrent Resolution 43 (“Resolution”) proposes that the Department of Labor and Industrial Relations (DLIR), together with health care plan contractors, “explore options for redesigning the benefit levels of “A” status plans” defined under Hawaii’s Prepaid Health Care Act for plans approved under section 393-7(a) Hawaii’s Prepaid Health Care Act (“PHC Act”).

II. CURRENT STATE LAW

A prepaid health care plan qualifies under the PHC Act if it provides for health care benefits equal to, or medically reasonably substitutable for, the benefits provided by one of two types of plans that have the largest number of subscribers (known as the prevalent plans) in the State and considering the types and quantity of benefits as well as limitations on reimbursability, including deductibles, and required amounts of co-insurance. These plans are referred to herein as “A” Status Plans, as they are approved under section 393-7(a), HRS.

III. RESPONSE TO RESOLUTION

After the 2003 legislative session, the DLIR requested a formal opinion from the Attorney General in regards to the possibility of redesigning the “A” status plan. Specifically, the DLIR requested a legal opinion on the following:

- (1) Whether the Director has the authority to determine that a proposed plan -- that is not the prevalent plan -- “qualifies” as an “A” Status Plan. If so, how should the Director make that determination? What factors should the Director consider?
- (2) Specifically, in determining whether HMSA’s proposed “80/20 Plan” qualifies as an “A” Status Plan, what factors must the Director consider?<sup>1</sup>
- (3) Whether the Director can redesign benefit levels of “A” Status Plans, without comparing them to the benefits of the “prevalent” plan.<sup>2</sup>

The Attorney General responded to the DLIR’s request with a written opinion dated June 19, 2003. In summary the Attorney General stated that the statute authorizes the Director to determine whether a plan qualifies as an “A” Status Plan, and such determination is to be made in consideration of all factors set forth in section 393-7(a), including that the “extent of the health care benefits provided by a prepaid healthcare plan...shall be equal or equivalent to the benefits provided by prepaid healthcare plans of the same type which are prevalent in the State. This applies to the types and quantity of benefits as well as to limitations on reimbursability and to required amounts of co-insurance.”

In response to what factors the Director should consider in determining if HMSA’s proposed “80/20 Plan” would qualify as an “A” Status Plan, the Attorney General responded that “other plans can meet the requirements of the Prepaid Healthcare Law if they ‘provide for healthcare benefits equal to, or medically reasonably substitutable for, the benefits provided by’ the prevalent plan. The Director, with the advice of the Prepaid Health Care Advisory Council, determines whether plans qualify as “A” Status Plans by considering whether ‘the healthcare benefits are equal to, or medically reasonably substitutable for, the benefits provided by ‘ the prevalent plans and also by considering the “types and quantity of benefits as well as...limitations on reimbursability, including deductibles, and ...required amounts of co-insurance.”

Question #3 poses the question of whether the Director can “redesign” benefit levels of “A” Status Plans, without comparing them to the benefits of the “prevalent” plans. (The legislature had asked that the Director and health care plan carriers explore options for “redesigning” benefit levels for “A” Status Plans.) To clarify, the Director does not “redesign” benefit levels; only approves or disapproves. However, in response to question #3, the Attorney General reiterated, “...plans must be compared with and measured against the most prevalent plans in order to qualify as “A” status plans. There is no room for “redesigning” the benefit levels of “A” status plans without regard to the prevalent plans”.

The DLIR has shared this opinion with Hawaii’s health care plan providers to assist them in exploring options and designing alternative plans that would qualify as “A” Status Plans.

<sup>1</sup>H.C.R. No. 43 notes that at one time the prevailing plan was an 80% plan before benefits were increased to 90% the past several years. Ensuing discussions have centered on whether an 80% plan could qualify as an “A” Status Plan.

<sup>2</sup>H.C.R. No. 43 provides that the Director and Hawaii health plan carriers explore options under the current language of the PHC Act to “redesign benefit levels for ‘A’ status plans[.]”

#### IV. CONCLUSION

The Prepaid Health Care Advisory Council reviews plans seeking approval under section 393-7(a) of the PHC Act then makes a recommendation to the Director for approval or non-approval. The Director makes the final determination as to whether a plan qualifies as an "A" status plan only after insuring that the plan provides for health care benefits equal to, or medically reasonably substitutable for, the benefits provided by one of the two prevalent plans and considering the types and quantity of benefits as well as limitations on reimbursability, including deductibles, and required amounts of co-insurance.

LINDA LINGLE  
GOVERNOR



MARK J. BENNETT  
ATTORNEY GENERAL

RICHARD T. BISSEN, JR.  
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
LABOR DIVISION  
425 QUEEN STREET  
HONOLULU, HAWAII 96813  
Telephone: (808) 586-1450  
Fax: (808) 586-1376

June 19, 2003

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DIRT  
2003 JUN 20 P 2:43

The Honorable Nelson B. Befitel  
Director of Labor and Industrial Relations  
830 Punchbowl St., Rm. 321  
Honolulu, HI 96813

Dear Mr. Befitel:

Re: Interpretation of Section 393-7(a), Hawaii Revised Statutes, of the Hawaii Prepaid Health Care Act

By memorandum dated June 9, 2003, you requested our advice on various aspects of section 393-7(a), Hawaii Revised Statutes, in the context of exploring ways to reduce health care costs borne by employers. Specifically, you asked the following questions:

- (1) Whether the Director has the authority to determine that a proposed plan – that is not the prevalent plan – “qualifies” as an “A” Status Plan. If so, how should the Director make that determination? What factors should the Director consider?
- (2) Specifically, in determining whether HMSA’s proposed “80/20 Plan” qualifies as an “A” Status Plan, what factors must the Director consider?
- (3) Whether the Director can redesign benefit levels of “A” Status Plans, without comparing them to the benefits of the “prevalent” plan.

In summary, we believe the statute clearly and unambiguously authorizes the Director to determine whether a plan qualifies as an “A” status plan, and such determination is to be made by considering all the factors set forth in section 393-7(a). Further, the Director may not redesign an “A” status plan without regard to the prevalent plans.

The Prepaid Health Care Act was passed in 1974 based on an extensive study and recommendations by Dr. Stefan A. Riesenfeld in 1971. *See* S. Riesenfeld, Prepaid Health Care in Hawaii (Legislative Reference Bureau, Report No. 2, 1971). One of the basic principles underpinning Dr. Riesenfeld’s recommendations was that the “level of benefits should conform with the prevailing community standards.” *Id.* at 48. Dr. Riesenfeld therefore proposed that the legislation read as follows: “The extent of the health care benefits provided by a prepaid health care plan . . . shall be equal or equivalent to the benefits provided by prepaid health plans of the

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same type which are prevalent in the State. This applies to the types and quantity of benefits as well as to limitations on reimbursability and to required amounts of co-insurance.” Id. at 72-73. The Legislature adopted very similar language, now found in section 393-7(a), which provides as follows:

A prepaid health care plan shall qualify as a plan providing the mandatory health care benefits required under this chapter if it provides for health care benefits equal to, or medically reasonably substitutable for, the benefits provided by prepaid health plans of the same type, as specified in section 393-12(a)(1) or (2),<sup>[1]</sup> which have the largest numbers of subscribers in the State. This applies to the types and quantity of benefits as well as to limitations on reimbursability, including deductibles, and to required amounts of co-insurance.

The director, after advice by the prepaid health care advisory council, shall determine whether benefits provided in a plan, other than the plan of the respective type having the largest numbers of subscribers in the State, comply with the standards specified in this subsection.

HRS § 393-7(a).

In adopting this language, the Legislature expressed the following intention:

The health benefits standards for the required coverage are stated in flexible terms related to existing health care prepayment plans in the State that are acceptable to a large segment of the public and are reasonable and medically sound. The bill is not intended to lock-in the kinds of health benefits provided under prepaid health care plans but rather to encourage the development of medically more desirable combinations of health care benefits and the inclusion of new types of health care benefits. The overall criteria to be used in determining whether a given prepaid group health care plan qualifies under the proposed law is a matter of whether it is acceptable to a large segment of the public and provides for sound, basic hospital, surgical, medical, and other health care benefits at a premium commensurate with the benefits included, taking proper account of the limitations, co-insurance features, and deductibles specified in the plan.

Stand. Comm. Rpt. No. 71, Haw. S.J. at 679, 680 (1973). Further, the Legislature stated,

<sup>1</sup> There are two types of prevalent plans: (1) a plan which obligates the prepaid health care plan contractor to furnish the required health care benefits, and (2) a plan which obligates the prepaid health care plan contractor to defray or reimburse the expenses of health care. HRS § 393-12(a).

The required health care benefits are tied to the kind of health plans that have already been developed and found satisfactory by the general community, with flexibility provided as to the specific benefits on the basis of medically reasonable substitutions.

Conf. Comm. Rpt. No. 2-74, Haw. S.J. at 746 (1974). Thus, it is clear, from the language of the statute itself, as well as the legislative history, that the most prevalent health care plans, which are plans having the "largest numbers of subscribers in the State," provide the measuring stick for other acceptable plans.

Thus, other plans can meet the requirements of the Prepaid Health Care law if they "provide[] for health care benefits equal to, or medically reasonably substitutable for, the benefits provide by" the prevalent plan.<sup>2</sup> The Director, with the advice of the Prepaid Health Care Advisory Council, determines whether plans qualify as "A" status plans by considering whether "the health care benefits are equal to, or medically reasonably substitutable for, the benefits provided by" the prevalent plans and also by considering the "types and quantity of benefits as well as . . . limitations on reimbursability, including deductibles, and . . . required amounts of co-insurance." These factors should be considered for any plan, including HMSA's proposed "80/20" plan.

As the discussion of the law above demonstrates, plans must be compared with and measured against the most prevalent plans in order to qualify as "A" status plans. There is no room for "redesigning" the benefit levels of "A" status plans without regard to the prevalent plans. Unfortunately, amendments cannot successfully be made to chapter 393 to change the requirements for health care plans because, as you know, such amendments would be subject to preemption by the federal Employee Retirement Income and Security Act (ERISA), unless Congress grants Hawaii a broader exemption from ERISA preemption.

Very truly yours,

  
Frances E. H. Lum  
Deputy Attorney General

Approved:

  
Mark J. Bennett  
Attorney General

<sup>2</sup> Such plans are known as 7(a) or "A" status plans. It should be noted that health care plans can also meet the requirements of the Prepaid Health Care law under section 393-7(b), referred to as 7(b) or "B" status plans.

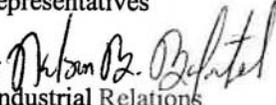


STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 Punchbowl Street, Room 321  
Honolulu, Hawaii 96813

January 6, 2004

TO: Honorable Robert Bunda  
President of the Senate

Honorable Calvin K.Y. Say  
Speaker of the House of Representatives

FROM: Nelson B. Befitel, Director   
Department of Labor and Industrial Relations

SUBJECT: House Concurrent Resolution 92 – Requesting the Department of Labor and Industrial Relations, in conjunction with Hawaii’s health plans, to explore options for providing medical savings accounts and high deductible health plans to Hawaii’s business under Hawaii’s Prepaid Health Care Act.

I. OVERVIEW OF RESOLUTION

House Concurrent Resolution 92 (“Resolution”) proposes that the Department of Labor and Industrial Relations (DLIR), together with health care plan contractors, address several questions regarding medical savings account (“MSAs”) and high deductible plans options as they relate to the requirements of Hawaii’s Prepaid Health Care Act (“PHC Act”).

On September 25, 2003, the DLIR sent letters with the Resolution attached, to six health care contractors currently marketing approved health care plans requesting their comments and recommendations on the ten questions posed in the resolution. Two responded in writing, two responded by telephone and had no comments and two did not respond at all. This report consists of summaries of the contractors’ responses, as well as DLIR’s analysis and opinion on MSAs.

II. CURRENT STATE LAW

Under the current law, new plans are compared against the plans that have the largest number of subscribers in the State. As specified in the PHC Act, health care plans may qualify as group plans either under §393-7(a) or §393-7(b) depending on the level and types of benefits that each plan offers. Plans that offer benefits equal to or better than the prevalent plans or are medically reasonably substitutable for the benefits provided by the prevalent plan, are approved under §393-7(a). Otherwise, plans that provide for sound basic hospital, surgical, medical, and other health care benefits that are more limited than

those provided by the prevalent plans are approved under §393-7(b). Employers who purchase 7(b) type plans must contribute at least one-half of the cost of the medical coverage for their employees' dependents coverage.

The Insurance Division of the Department of Commerce and Consumer Affairs ("DCCA") administers Chapters 431, 432 and 432D, HRS, which regulate the insurance industry, and mutual benefit societies and health maintenance organizations, respectively. Health care contractors are required to be licensed by the Hawaii State Insurance Commissioner before they can submit health plans to the DLIR for review and approval.

### III. CURRENT FEDERAL LAW

Congress started the medical savings accounts (MSA) as a pilot project under the Health Insurance and Portability and Accountability Act (HIPAA) of 1996. The program had a sunset date of December 31, 2003, and was limited to self-employed and small employers. It has been argued that these constraints, as well as others, have led to low enrollment in MSAs. The program was capped at 750,000 accounts, however, as of November 2002, the National Journal reported that "only about 100,000 people" had signed up nationwide.

MSAs are savings accounts to which the employer or employee makes deposits, but not both. For calendar year 2003, the annual deductibles for an individual purchasing a plan must be at least \$1,700 and at most \$2,500, and for a family, at least \$3,350 and at most \$5,050. The MSA must be used in conjunction with a high deductible plan whereby the annual out-of-pocket expenses paid for covered benefits cannot exceed \$3,350 for an individual or \$6,150 for family coverage.

Under this law, the individual or employer can deposit up to 65% of the highest annual deductible allowed for an individual plan and 75% of the highest deductible allowed for a family plan. MSA funds are tax free, grow tax free and can be withdrawn tax free as long as it is used for medical purposes as allowed by law. Otherwise, funds used for non-health purposes face tax penalties.

The President of the United States recently signed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (H. R. 1). This act confirms the Congress and President's commitment to MSAs. The DLIR will be closely studying this new law to see how it can benefit Hawaii's consumers.

### IV. RESPONSE TO THE RESOLUTION INQUIRIES

.. How will DLIR qualify MSAs under the PHC Act when it requires first dollar coverage?

The DLIR via the PHC Advisory Council reviews plans to ensure they conform to the requirements of the PHC Act. The PHC Advisory Council reviews all plans submitted by employers and makes a recommendation for their approval or disapproval to the Director who makes the final determination. A high-deductible health plan offered in conjunction with an MSA may qualify under the PHC Act provided the employer funds

the MSA. When seeking medical services, if a major portion of the high deductible were to be paid out of the MSA, the members (i.e., employees) could incur an acceptable deductible amount or possibly no deductible if no medical services or minimal medical services, not exceeding the MSA deposit amount, were needed for the year.

2. Will there be guidelines on what services have first dollar coverage and will mandated health care benefits be included? (For example, with a high deductible plan, the first \$1,750 of dialysis services may not be covered.)

As far as benefits are concerned, MSA plans would not be treated any differently than any other plan covered under the PHC Act. Plans that come before the PHC Advisory Council are compared against the standards of the prevalent plan. In addition, plans must comply with the insurance law mandates.

3. Why will MSAs be successful in Hawaii when nationally enrollment has been low and are mostly purchased by sole proprietors and not employers?

The administration believes that MSAs can be successful in Hawaii. As pointed out earlier, the low enrollment in MSAs has been attributed to the limitations and sunset date placed on MSAs by Congress in 1996. However, Congress has addressed those limitations in MSAs as part of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (H. R. 1). Recent congressional action represents a strong endorsement of the concept of MSAs.

The new law establishes what will be called health savings security accounts and health savings accounts (together "health savings accounts"). These health savings accounts ("HSAs") will be authorized effective January 1, 2004. The health savings account program is designed to ease the economic impact of high-deductible health insurance plans by providing a tax incentive to employers and employees who fund special savings accounts to pay those high deductibles. More importantly, it is designed to encourage employees to help control costs, if employees don't use the money in their HSAs, it may be rolled over or ultimately kept by the employee for long-term care or retirement health expenses while earning interest, tax-free. It is also portable should the employee move to another company.

Under the new legislation, employees and employers will be able to deduct money they contribute to health savings accounts. The money that employees withdraw from the accounts to pay for health expenses is tax exempt. In addition to doctor's visits and medical treatment, the money can be used for prescription drugs, retiree health insurance, long-term care insurance, COBRA continuation coverage, health insurance for the unemployed, and other qualified medical expenses--including some dental and vision coverage. If employees do take money out of their HSAs to be used for a purpose other than health expenses, those funds would be treated as taxable income and be subject to a 10 percent excise tax.

The success of an MSA or HSA plan will depend upon the market. What MSAs provide is another option for employers and employees in funding their health care costs. We

hope the introduction of MSAs will increase competition in the insurance health care industry, which may lower the costs of health care costs borne by employers.

4. How will MSAs help control health care cost trends from an individual and employer perspective?

Since MSA participants are allowed to keep any of their remaining balance in their MSA account at year-end, and may either choose to let it build up in their MSA account or spend it (after taxes) for purposes other than medical expenses, MSAs effectively put people in charge of their own health care dollars. The advantage of placing the responsibility of medical funds on the user motivates people to become more responsible in how they utilize health care services. The lower health care costs are seen as people assume responsibility for taking care of their health and decide how to best spend their money. People will be less apt to go to a doctor for trivial health issues that can be addressed at home.

The risk of adverse selection is directly related to the product and who is best served by that product. Theoretically, the costs of health plans should reflect the different costs of health services utilized by the members who lead healthy lives and those who do not. Whether a member is physically fit or practices preventive medicine correlates directly with the medical expenses incurred. High-deductible plans may gain popularity among the young and healthy since those plans would not only help reduce the premium and the health costs as a whole but also encourage members to change their lifestyle to a healthier one.

From an employer perspective there could be more cost shifting than cost savings. Employees will have more to pay at the point of receiving care while employers will have smaller upfront costs since premiums will probably be lower. The high deductible amount, therefore, must be taken into consideration when examining the cost savings of lower premiums.

Whether MSAs will be successful in controlling health care cost will depend on whether employers choose to enroll in such plans. The cost of a health plan with high deductibles may be as low as almost half of the premium for a regular group plan. The high-deductible plans may also be viewed as an affordable alternative to sole proprietors, independent contractors and part-time workers who are not subject to the PHC Act and currently uninsured.

5. Is there a potential risk to the viability of other prepaid health care plans if MSAs are offered as an option by having a disproportionate number of healthier individuals enroll in MSAs?

Some of Hawaii's current health plan providers believe MSAs may result in "risk segmentation." In general, those who opt for MSA plans consider themselves to be in good health and don't expect using a large amount of health care services. If these healthier individuals remove themselves from the overall risk pool, the premiums for those who need more comprehensive policies will likely increase.

Whether such plans affect the viability of other health plans will depend on the acceptance by the DLIR of their benefit structure and the subsequent marketing of such plans. Adverse selection by employees could occur if an MSA is offered along with comprehensive plans. Healthier people may opt for the plan with the lower premium and higher cost sharing.

6. Will MSAs increase the risk of adverse selection and actually increase health care costs for the majority of Hawaii's citizens?

It depends on whether the MSA is offered with other non-MSA plans. The younger and healthier population would find the MSA product more appealing and the population that utilizes more services would remain with their current traditional coverage. Consequently, individuals who need more comprehensive coverage may see premiums increase. Also, employees may opt, at first, for an MSA plan, but then switch later to a traditional plan when more medical services are needed.

7. Will individual consumers end up paying considerably high prices for their health care services (physicians and hospitals) because they will be unable to control costs like health plans do?

Individuals with MSA plans would pay the cost of health care services in full until the deductible is satisfied. During this period, these consumers would not reap the benefits of cost savings provided by contracts that traditional plans have with network providers. There may also be the added cost of startup and annual fees charged by the institution that handles the trust associated with the MSA program.

However, if Kaiser were to offer this type of plan, their member rates would apply uniformly because the mutually exclusive relationship between Hawaii Permanente Medical Group and Kaiser Health Plan does not require annual negotiations of fees for various services.

8. Would this type of prepaid health plan play a role in encouraging employers to provide coverage to part-time workers and for those who are currently uninsured?

MSA plans could provide a lower cost alternative for part time workers who are currently uninsured. Although the premium cost may be lower than comprehensive plans, the consumer must still have monetary resources to pay for health care services at the point services are received. However, all agree that the lower premium cost may be attractive and prompt employers with part time employees to offer such a plan.

9. Will contributions that employers make to fund the MSAs be a deductible business expense? How much will employers be required to contribute?

The federal tax code provides that the funding of MSA is a business expense. In regards to how much the employer or employee can contribute, the federal law allows an individual to deposit 65% of the highest annual deductible and a family to deposit 75% of the highest annual deductible. The highest deductible for an individual is \$2,500, so up to \$1,625 ( $\$2,500 \times .65$ ) can be deposited into the MSA. For a family plan, the

highest deductible is \$5,050, so \$3,787.50 ( $\$5,050 \times .75$ ) can be deposited into the MSA. The remaining deductibles that must be met before the plan starts paying would be \$875 for single coverage and \$1,262.50 for family coverage. More out of pocket expenses may be required if the stop-loss provision is greater than the maximum deductibles.

If a health care contractor or an employer were to submit an MSA plan for approval, within the framework of the current PHC Act, high-deductible health plans may qualify as group plans under §393-7(b) only if the employers fund 100% of the MSAs. This may become a financial burden for some employers.

10. Would a state MSA operate differently from a federal MSA? What would be the differences?

The State incorporated the federal tax code with regard to MSAs; therefore, the State would follow the federal guidelines. However, if federal legislation is not passed to extend the MSA program, no MSAs can be set up after December 31, 2003.

#### V. CONCLUSION

The availability of MSA plans may prove to be especially attractive to self-employed individuals and small employers and their employees as high-deductible health insurance policies will be less expensive than conventional health insurance coverage. Concerns have been raised that there may be a risk of people putting off care to save money, or not having enough resources to cover costs involved in high deductible plans. However, these concerns have not been substantiated.

Further, there are built-in safeguards in the current law to ensure that MSAs meet the requirements of the PHC Act. For example, the PHC Act requires the DLIR director, upon the advice of the PHC Advisory Council, to assure that each health care plan meets the mandates of the PHC Act.

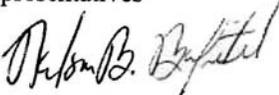


STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 Punchbowl Street, Room 321  
Honolulu, Hawaii 96813

December 28, 2003

TO: The Honorable Robert Bunda  
President of the Senate

The Honorable Calvin K.Y. Say  
Speaker of the House of Representatives

FROM Nelson B. Befitel, Director 

SUBJECT: Requesting the Departments of Labor and Industrial Relations and Health conduct a study relating to the occupational and health risks of county refuse collection workers.

OVERVIEW OF RESOLUTION

House Concurrent Resolution 182 ("Resolution") proposes that the Department of Labor and Industrial Relations ("DLIR"), together with the Department of Health ("DOH") and the Administrator of the Employees' Retirement System ("ERS") conduct a study to compare the occupational risks associated with county refuse collection workers with those of other county occupations including firefighters, police officers, and certain investigators and water safety officers as specified under section 88-74, Hawaii Revised Statutes.

The Resolution further requests the DLIR and DOH to recommend whether county refuse collection workers should enjoy the same "retirement preferences" as those occupations under section 88-74, Hawaii Revised Statutes.

II. CURRENT LAW

Under the current law, refuse collectors are not covered under section 88-74, HRS.

III. RESPONSE TO RESOLUTION

The DLIR does not have the resources or expertise to conduct the requested study. We understand the DLIR has never conducted such a study for any industry. Accordingly, the DLIR is unable to recommend whether or not county refuse collection workers should enjoy "retirement preferences" under section 88-74, HRS.

However, the DLIR would like to transmit a report on the jobs hazards in the waste industry conducted by U.S. Department of Labor. This report is presented verbatim, which may be viewed on the U.S.D.O.L. website at <http://www.bls.gov/iif/oshwc/cfar0030.txt>.

## **CF AR CWC 6/99 Job Hazards in the Waste Industry**

### **Job Hazards in the Waste Industry**

#### **DINO DRUDI**

Dino Drudi is an economist in the Office of Safety, Health and Working Conditions, Bureau of Labor Statistics. Mark Zak, in the same office, assisted with data development.  
Telephone: (202) 606-6175  
E-mail: [Drudi\\_D@bls.gov](mailto:Drudi_D@bls.gov)

Until recently, relatively little research has focused on hazards in the waste industry, even though refuse collection is a "high-hazard" job with a fatality rate 10 times that of all workers. This article uses special analytical techniques to delve into the hazards confronting waste industry workers.

The waste industry is increasingly the focus of public attention as more refuse is recycled, incinerated, and buried in landfills-sometimes after being transported great distances. Yet, to date, relatively few research results have been published on the hazards affecting waste industry workers.<sup>/1</sup> Because of the character of the work, hazards abound for refuse collectors, refuse truckdrivers, and other waste industry workers. In fact, during the 1992-97 period, refuse collectors were identified as holding one of the most dangerous jobs in the United States.

Two essential functions make up the waste industry: (1) Refuse collection and disposal, and (2) recycling. These two functions are spread over four Standard Industrial Classification (SIC) codes.<sup>/2</sup>

These four industries accounted for 499 (1.3 percent) of the 37,875 occupational fatalities reported to the Bureau of Labor Statistics' (BLS) Census of Fatal Occupational Injuries (CFOI) since its inception in 1992.<sup>/3</sup>

Until recently, research has tended to ignore these fatalities, largely because these four SICs are so widely dispersed throughout the SIC system they were not recognized as a single integrated economic activity.<sup>/4</sup> Refuse systems and the waste industry activities in local trucking without storage can involve recycling, however, they usually involve refuse collection and disposal. Wholesale durable scrap and waste materials, and recovery of nonferrous metals from scrap metal and dross-the waste industry aspect of secondary smelting and refining-almost exclusively involve recycling.

The following tabulation shows the distribution of fatality cases for 1992-97 within these industries.

SIC	Industry	Number of fatalities
	Total fatalities	499
334	Secondary smelting and refining of nonferrous metals	25
4212	Local trucking without storage	64
4953	Refuse systems	223
5093	Wholesale durable scrap and waste materials	187

## Refuse Collection and Disposal

### Local trucking without storage

Establishments in this industry furnish trucking or transfer services without storage in a single locale for freight generally weighing over 100 pounds. This industry includes waste industry functions such as local carting of debris and local collecting and hauling of refuse without disposal, as well as a wide range of functions outside the waste industry (such as baggage transfer, contract bulk mail hauling, local furniture moving without storage, log trucking, farm to market hauling, and local hauling of live animals). Local government agencies and private companies which collect refuse, but turn it over to another agency or firm for disposal, are also classified in this industry. In addition, some local trucking without storage activities—such as rental of trucks with drivers for local use—might fall within the waste industry depending upon the cargo being hauled.

**Fatal injuries.** This industry provides an analytical challenge because it covers a variety of activities, some relevant to the waste industry and some not. While it is impossible, given current data limitations, to break out the nonfatal injuries and illnesses in the waste industry, the fatality data are sufficiently detailed to support some analysis. As the following tabulation shows, from 1992-97, the 64 waste industry fatalities in local trucking without storage were distributed primarily among only a few occupations.

Occupation	Number of fatalities	Percent
Total/1	64	100
Refuse collectors	39	61
Truckdrivers	17	27
Nonconstruction laborers	6	9

/1There were two additional fatally injured workers in other occupations.

These 64 cases accounted for about one-tenth of the total number of fatalities in this industry. The private sector accounted for 58 of the 64 fatalities; highway vehicle incidents and workers on the ground being struck by vehicles each accounted for about one-third.

### Refuse systems

Establishments in this industry are primarily engaged in the collection and disposal of refuse by processing or destruction, or in the operation of incinerators, waste treatment plants, landfills, or other disposal sites. Only fatality data are available for this industry.

During 1992-97, nearly three-quarters of the 223 refuse systems workers suffering fatal job injuries were either refuse collectors (69 fatalities), truckdrivers (63 fatalities), or nonconstruction laborers (30 fatalities). Truckdriver fatalities predominated in the private sector, outnumbering refuse collector fatalities 55 to 46, while the opposite was true in the public sector where refuse collector fatalities outnumbered truckdriver fatalities 23 to 8.

As the following tabulation shows, there were 149 fatalities in which refuse workers were struck by vehicles or mobile equipment, killed in crashes and other highway incidents involving vehicles they were operating, or mangled by equipment or objects.

	Number of fatalities	Percent
Total	223	100
Workers struck by vehicle, mobile equipment	66	30
Highway transportation crashes and other incidents	58	26
Caught in or compressed by equipment or objects	25	11
Other	74	33

These 149 cases comprise two-thirds of the 223 refuse systems fatalities.

### Refuse collection, a deadly occupation

Collecting refuse has long been known to be dirty, strenuous work. Less well known is that it is also among the most deadly occupations. Special analysis of this occupation using combined data from both local trucking without storage and refuse systems was conducted because 108 of the 132 fatally injured refuse collectors during 1992-97 worked in local trucking without storage (39) and in refuse systems (69).

These 108 fatally injured refuse collectors comprise 38 percent of the 286 fatal occupational injuries in these two industries. Truckdrivers suffered 80 fatalities and nonconstruction laborers 36, which, respectively, comprise 28 and 12 percent of the total. Although the private sector employs about two-fifths of refuse collectors,<sup>5</sup> it accounts for three-quarters of all refuse collector fatalities. (See tabulation.)

	Total	Private sector	Public sector
Total			
Number	108	81	27
Percent	100	75	25
Local trucking without storage			
Number	39	35	4
Percent	36	32	4
Refuse systems			
Number	69	46	23
Percent	64	43	21

As the following tabulation shows, the annual number of refuse collector fatalities in refuse collection and disposal from 1992 through 1997 ranged from a low of 14 in 1993 to a high of 24 in 1995. For refuse collectors overall, it similarly ranged from a low of 18 in 1993 to a high of 29 in 1995.

Year	Total	Refuse collection and disposal
1992-97	132	108
1992	20	17
1993	18	14
1994	23	16
1995	29	24
1996	21	18
1997	21	19

**Risk.** During 1992-97, the number of workers annually employed as refuse collectors ranged from 43,000 to 55,000, of whom 132 suffered fatal occupational injuries. Because of annual variability in the number of fatalities and employment, data for these 6 years were combined to mitigate the effects of these fluctuations and assure a more meaningful measure of the risk of on-the-job fatality. Using the combined data for all industries, a fatality rate of 46 deaths per 100,000 workers was computed.<sup>6</sup> This rate-10 times the overall on-the-job fatalities rate-puts this occupation among the "high-hazard" jobs identified by BLS.<sup>7, 8</sup>

A fatality rate of 46 deaths per 100,000 workers means that, on average, each year during this 6-year period, 1 out of 2,189 refuse collectors suffered a fatal job injury. Stated differently, this means that there would be 20 fatal injuries per 1,000 refuse collectors over a 45-year working lifetime.<sup>9</sup>

**Event.** Refuse collection invariably involves jumping off and on trucks, carrying trash containers, and walking on streets, alleys, and parking lots. Refuse collectors often have to collect from both sides of a street; they work in close proximity to large collection vehicles that stop and start frequently. Sometimes these vehicles obscure them, which both inhibits their ability to spot approaching traffic, and blocks them from the view of approaching drivers.<sup>10</sup> Not surprisingly, vehicles inflict most fatal injuries involving refuse collectors, for example, being run over by the refuse truck or struck by a passing vehicle, sometimes after falling from the truck.

**Nonfatal injuries and illnesses.** Not all occupational injuries are fatal. The Bureau's annual Survey of Occupational Injuries and Illnesses, which excludes government employees and self-employed individuals, estimates that an average of 2,162 refuse collectors suffered nonfatal job injuries and illnesses each year from 1992 through 1997, the most recent year for which data are available. Cuts, lacerations, punctures, bruises, and contusions-usually minor injuries requiring a median of only a few days for recovery-account for 18 percent of all cases involving refuse collectors during this time span. In contrast, fractures-which account for 3 percent of such cases-usually require several weeks to recuperate before returning to work. Sprains, strains, and muscle tears account for 48 percent of cases-a proportion slightly higher than that for all private sector employment. Recuperation time for this kind of injury is close to that for all private sector

employment, about 5 or 6 days. Overall, nonfatal injuries to refuse collectors require a median of 6 workdays for the worker to recover and return to work—only slightly above the 5-day median for private industry workers overall. While the nonfatal injury experience facing refuse collectors might seem surprising, given this occupation's high fatality rate, it is one of many examples that illustrate how the characteristics of fatal injuries for a particular occupation may differ quite markedly from the corresponding nonfatal ones./11

Overexertion—predominantly in lifting—is the leading cause of nonfatal injury or illness for refuse collectors, accounting for almost a third of the cases, closely followed by being struck by, striking against, or being compressed in equipment or objects.

Due to the lifting and carrying refuse collection involves, containers are the leading source of injury or illness, accounting for about one-third of the cases. Contact with surfaces, such as streets, sidewalks, alleys, and parking lots, accounts for about one-sixth of all cases (most were the result of falls); free body movement (such as cumulative trauma from jumping on and off trucks day-after-day) for about one-eighth; and vehicles for about one-ninth of all cases.

## **Recycling**

### **Secondary smelting and refining of nonferrous metals**

Establishments are classified in secondary smelting and refining of nonferrous metals if they are primarily engaged in recovering nonferrous metals and alloys from used scrap and dross or in producing alloys from purchased refined metals. No direct smelting from ore occurs in this industry. The portion of this industrial activity involved in the recovery of nonferrous metals and alloys from used scrap and dross is part of the waste industry. Producing alloys from purchased refined metals is not unless the purchased refined metals are used in combination with the used scrap or dross. Secondary smelting and refining of nonferrous metals includes waste industry functions such as detinning of cans and other scrap, recovering silver from used photographic film, and reclaiming zinc dust. Other secondary smelting and refining activities—such as aluminum ingot extrusion and brass refining—could fall within the waste industry depending upon the extent to which scrap or recovered materials are used./12

**Fatal injuries.** The secondary smelting and refining of nonferrous metals industry experienced 25 fatalities from 1992-97. Most of these fatalities were the result of workers being struck by objects or caught in equipment, being exposed to harmful substances, or from assaults and violent acts. Operators, fabricators, and laborers incur almost one-half of these fatalities; precision production, craft, and repair workers account for over one-quarter.

**Nonfatal injuries and illnesses.** In 1997, 16,200 wage and salary workers were employed in private sector secondary smelting and refining of nonferrous metals establishments. Job injuries and illnesses requiring more than first aid were sustained by 3,200 of these workers. Over one-quarter (900) of these workers were afflicted severely enough to be absent from the job for at least 1 day beyond the day of injury.

The total case incidence rate for this industry is 18.9, meaning there were just under 19 injuries or illnesses for every 100 full-time equivalent employees. These cases include those involving lost workdays beyond the day of injury, loss of consciousness, medical treatment beyond first aid,

or restriction of work or motion. This rate is 26 percent higher than the rate for the primary metal industry, almost twice that for manufacturing, and over 2 1/2 times that for all private sector industry. The lost workday case rate for days-away-from-work cases—meaning the injury or illness was sufficiently incapacitating that the employee was absent from work for at least 1 day—is 5.4 (1 1/2 times the corresponding rate for primary metals, 2 1/4 times the manufacturing rate, and over 2 1/2 times the all private sector industry rate). This lost workday case rate (5.4) for days away from work cases means that, for every 1,000 full-time equivalent employees, there are 54 cases severe enough to require the worker to lose 1 or more days of work beyond the day the injury occurred. Similar patterns were evident in previous years.

Sprains, strains, and muscle tears comprise one-third of the lost workday cases in this industry (a smaller share than the two-fifths for the private sector), and it is the industry's largest injury or illness category. Cuts, lacerations, punctures, bruises, and contusions account for about one-sixth of all cases, much like the rest of the private sector. However, heat burns, which comprise over one-eighth of the cases, are over seven times more prevalent than in the private sector overall.

#### **Wholesale trade in scrap and waste materials**

Establishments in this industry are primarily engaged in the assembling, breaking up, sorting, and wholesale distributing of scrap and waste materials. This industrial activity involves recycling a wide variety of materials, such as automobiles crushed for scrap; plastic, paper, and glass recycling; scrap iron, steel, and other metals; and rags and other textile waste.

**Fatal injuries.** Only fatality data are available for this industry. During 1992-97, 187 workers died of occupational injuries in this industry, all but a few of whom were in the private sector where wholesale trade employment is concentrated. The 62 nonconstruction laborer fatalities account for one-third of the total fatalities in this industry, and the 22 sales supervisor and proprietor fatalities account for about one-ninth.

Workers in this industry confront a wider range of deadly hazards than other waste industry workers. The following tabulation shows the events that caused the greatest number of fatalities.

Event	Number of fatalities	Percent
Total/1	187	100
Struck by object	42	22
Caught in equipment or object	36	19
Fires and explosions	24	13
Worker struck by vehicle, mobile equipment	19	10
Homicides	16	9

/1 There were 50 additional cases distributed among other events.

Targeting safety efforts may be difficult because of the variety of materials handled by the workers in this industry and the wide range of hazards they face.

#### **Conclusion**

Although data limitations pose challenges to research into occupational hazards in the waste industry, close inspection of existing data might assist industry safety specialists in designing

initiatives to prevent injuries and decrease hazards. Combining data for many years, moreover, may yield surprising results as occupations, such as refuse collector, whose hazardousness might otherwise be overlooked, emerge as "high-hazard" occupations worthy of safety professionals' attention.

1 James D. Englehardt, Huren An, Judy A. Bean, and Laura E. Fleming, Florida Center for Solid and Hazardous Waste Management, Solid Waste Management Health and Safety Risks: Epidemiology and Assessment to Support Risk Reduction (Gainesville, FL: Florida Center for Solid and Hazardous Waste Research, March 31, 1999), p. xiv.

2 Standard Industrial Classification (SIC) Manual 1987 (Washington, DC: Office of Management and Budget).

3 Data for this article are drawn from two primary sources: The Bureau of Labor Statistics' annual Census of Fatal Occupational Injuries (CFOI), which covers all occupational injury fatalities in the United States, and the Bureau's annual Survey of Occupational Injuries and Illnesses (SOII), which covers nonfatal injuries and illnesses in the private sector, except for the self-employed.

Data for fatal occupational illnesses are not available from the CFOI. Data for nonfatal occupational injuries and illnesses are not available at the 4-digit industry level from SOII for local trucking without storage, refuse systems, and wholesale trade in scrap metal and waste materials. Fatality data for local trucking without storage include only those cases associated with the waste industry.

4 The industries which constitute the waste industry are taken from a trade magazine special report: Ruhan Memishi, "Safety Doesn't Always Come First in Waste," Waste News, (Akron, OH: Crain Communications, Inc.; Volume 4, Issue 17, September 7, 1998), pp. 1, 13-25.

5 Employment data are derived from the Current Population Survey (CPS). According to CPS data for 1992-97, the public sector accounts for three-fifths of refuse collector employment, nearly all in local government. The private sector accounts for the remaining two-fifths, with self-employed refuse collectors about one-tenth of the private sector total. Refuse collecting is a male-dominated field, with women accounting for only a few percent of total employment. Whites account for about three-fifths of refuse collectors, and blacks account for almost all of the remaining two-fifths. Hispanics, who may be of any race, account for about one-tenth of refuse collectors.

6 The fatality rate represents the number of fatal occupational injuries per 100,000 employed workers and is calculated as follows:

$(N/W) \times 100,000$  where

N = the number of fatal work injuries, and

W = the number of employed workers, based on annual average estimates of employed civilians 16 years of age and older, CPS, 1992-97.

7 Other high risk occupations include fishers, timber cutting and logging workers, airplane pilots and navigators, structural metal workers, extractive workers, water transportation workers, public transportation attendants such as flight attendants, construction laborers, and taxicab drivers. For

a discussion on calculating occupational fatality rates, see Guy A. Toscano and Janice A. Windau, "Profile of Fatal Work Injuries in 1996," *Compensation and Working Conditions*, Spring 1998, pp. 37-44.

8 A special study of refuse collectors in Florida during 1993-97, using workers' compensation data, reached conclusions broadly consistent with the Bureau's. This study, for example, also found Florida refuse collectors have a very high fatality rate. See Englehardt, An, Bean, and Fleming, *Solid Waste Management Health and Safety Risks*, p. xvii.

9 The lifetime risk for a specific industry or occupation is calculated using the following equation proposed by the Occupational Safety and Health Administration in 1995:

WLTR =  $[1-(1-R)^y] \times 1,000$  where

WLTR = working lifetime risk

R = probability of a worker having a work-related fatal injury in a given year, and

y = years of exposure (for purposes of this study, 45 years)

Because of labor turnover and other factors, the risk should be expressed on a per 1,000 worker basis. Therefore, to derive the number of fatal occupational injuries per 1,000 workers the formula is multiplied by 1,000. Refuse collectors' annual fatality rate of 46 per 100,000 employment was inserted into the formula as follows:

$[1-(1-0.00046)^{45}] \times 1,000 = 20$  fatalities per 1,000 employment over a 45-year working lifetime. For more thorough explanations of the methodology used to derive this statistic, see David E. Fosbroke, Suzanne M. Kisner, and John R. Myers, "Working Lifetime Risk of Occupational Fatal Injury," *American Journal of Industrial Medicine* (Vol. 31, 1997), pp. 460-61; Dino Drudi, "Fishing for a Living Is Dangerous Work," *Compensation and Working Conditions*, Summer 1998, pp. 6-7; and Eric Sygnatur, "Logging Is Perilous Work," *Compensation and Working Conditions*, Winter 1998, pp. 8-9.

10 Englehardt, An, Bean, and Fleming, *Solid Waste Management Health and Safety Risks*, p. xvii.

11 For a fuller discussion of this phenomenon, see Katharine G. Abraham, William L. Weber, and Martin E. Personick, "Improvements in the BLS Safety and Health Statistical System," *Monthly Labor Review*, April 1996, pp. 3-12.

12 Other metal industries, such as SIC 3312, Steel Works, Blast Furnaces, and Rolling Mills, also use recycled metal, although in a more incidental fashion than in secondary nonferrous metals.