keohokalole2-Nahelani

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 26, 2016 2:50 PM
To: LABtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1739 on Jan 29, 2016 10:00AM*

HB1739
Submitted on: 1/26/2016
Testimony for LAB on Jan 29, 2016 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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I support any law that protects the employee from employer abuse or any abuse. As while many corporations/organizations/agency's claim to have such laws in place, don't necessarily follow them. And as I've learned during my years of encounters with agency's meant to enforce those laws, that the internal policies of a corporation/organization/agency sound all well and good, but very little can be done to actually enforce those laws/conducts/etc. Mine were violated to the point of having someone access my cell phone, than even go so far as to change one of the numbers listed; go through my belonging without my permission (shouting about the amount of funds I have, or moving items from where I normally store them to another; etc.); share information from a personal account online that they shouldn't have had access to, for the wrong purpose – which was to again return to my neighborhood to continue harassing me; than violating my privacy at home while employed by my former employer and then afterwards, by coming to my neighborhood and bringing clients, to make comments about me. (Of course when reported, I than hear shouts of how nothing can be done, as they "were invited"/"live here" or "house sitting"/etc. because terroristic threatening to force someone to move from their location, and bringing other people to the neighborhood to assist is considered "legal" or the whole "prove it"/"proof is in the pudding"/"how come we weren't arrested then"/"trying to catch us"/etc. As the continued "I don't hear nothing"/"I don't see nothing"/etc. continue to occur – much like the fireworks issue)

With continued violations occurring daily, and while I contacted the departments that are supposed to uphold the laws and regulations, finding that 6-8 years later, the same misfeasance, nonfeasance, and malfeasance, that led to the apocryphal that is now my life – with daily issues of trying to debunk the apocryphal with those who are supposedly in the position to stop further actions, instead come to my neighborhood to shout items like "I taught you that word"; "debunk" with giggles; and how the word "apocryphal" is amusing to them, as that was the midnight party purpose and why they claim brought "everybody here" – with claims of how they brought half the island; "powerful" people – who in turn claim that they will ensure that this will never come to light, and that "you were never here" (where the you, are the people that I am very familiar with and associate with my former long time employer), and continue to be in my neighborhood on a near daily basis – with what I claim to be invasion of privacy/terroristic threatening/harassment/etc. with again an agency telling me that because it is shouted at me through the wall or commented at the back door is "indirect" and as such nothing will be done about it. That comments such as "depressed enough yet, don't you want to kill yourself" (this after the "we said we'd kill your dog and we did" and the lack of legal representation or agency's that were willing to assist); previous constant parties to "move", reportedly by the "co-op"/"VIP Guests" on a daily basis, with supposedly agency's stood by to ensure no physical altercations occurred or to assist in the harassment were present; shouts of "take away her job, and her bills will cause her to fall like a house of cards" – where an elderly woman seemed to have led the charge, as "we don't like your kind" and "we like the drug dealer" was shouted; along with "f**k the contract, I'm a police officer"; with a number of hostile comments of "move if you don't like it" (which I've since had repeated by others, as a "fix" or resolution, rather than arresting the harassers, as shouts of how they're too "powerful"/"famous"/etc. are partied over, along with how they will never be arrested or brought to justice – which this has been 8 years long, with numerous acts of malfeasance – the last being on how complaints filed didn't need to be notarized; actions I would assume would be a conflict of interest as they are related to the actions

that occurred here or the parties involved; etc.);red laser pointer on my dog, with later parties of “your dog wasn’t shot right” (though intimidation factors played a part – like the smell of gun smoke after the red laser light); the comments of how they brought various agency’s here at midnight and the people in power, who also partied and harassed; shouts of “we brought everybody you know” – with after submitting testimony about a lawyer who was originally brought here I presume as the first comment she made seemed to reflect a bit of hesitancy, later participated and even shouted about “counting” the number of times I used the restroom (which was a major party item – with for the past 3 years, a constant flow of such comments regarding any bathroom activity – though ongoing for over 8 yrs. With still former and a few current showing up) and then a female who decided to come to my neighborhood to also shout how she would recognize her voice anywhere after 10 pm., along with the more recent “proof is in the pudding” and “prove it” types.

As this has been over 8 years of trying to have those involved arrested; compensated for the adverse affects that it’s caused, as well as for property damage and possibly the theft of the camera that was in my bag – as shouts to that effect by a person I used to formally work with, and who has been to my neighborhood to shout that she did, and since returned on numerous if not a constant basis to be with the others of the former location and some clients, to explain the “whys” of; among a number of other infractions – which include not a week has passed, and yet again by the back door of my home, comments of how no one messes with my former employer’s employees at the back door – which my former employer’s employees were partying in my neighborhood from the time I was employed by them, to continued harassment years later when I am no longer employed by them. Same can be said for some of the people currently present, and they have left the company years prior to myself, yet still claim an affiliation and party over it. Which considering the comments shouted down while I was employed, and the final comment actually made (by none other than the harassment policy enforcement officer) while I still was, of how “harassment is a part of your job” – which explains while my shirt was lifted; chased after by a female into the back area; shoved; harassed, nothing was ever done.

And the results from that time, is the issue of “discretion” and how the ones in the position to assist have used that “discretionary” power to ensure this – so, instead I continue to have further explanations/parties of “not enough jail space for all of us”; supposedly someone within my former employers organization with not wanting to discharge their top employees for harassment/along with the entire bit on how many people would then have been unemployed; etc. which is where, I find discrimination/harassment/etc. to have no place in any aspect of an individual’s life, and see/hear about a number of laws put into place that are supposedly there to assist falling through the cracks of what is not in my opinion a very loose term of “legal” and the obligations that were placed on those to not only protect people from falling victim, but to also enforce the laws they create.

For example, during an “investigation” with one legal enforcement agency, there were midnight “investigations” conducted – a client of my former employer questioned; comments/claims of being someone who was sending me a letter from said agency and the contents – which were true; insinuations by a male, with the same first name as the companies rep, here at midnight claiming “we never formally offered you…” where constant parties of “money” or I should say the amount of – with

even the letter I sent to the agency in regards to it, were discussed next door. All by people I wouldn't recognize the voices of, except for one female. Though former/current employees and clients I was familiar with were present, though would have no authority over said amounts or actions – along with people claiming to be from a different institution were claiming to have the authority. Yet the former employer is not liable for said actions.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Labor & Public Employment
Friday, January 29, 2016 at 10:00 A.M.
Conference Room 309, State Capitol

RE: HOUSE BILL 1739 RELATING TO EMPLOYMENT

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") would like to **express concerns regarding** HB 1739, which prohibits employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal accounts.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

While we understand the reasoning behind the proposed bill, we have also seen instances where unnecessary laws create unintended consequences. The Chamber hasn't seen any empirical evidence that private employers routinely request access to applicant and employee personal social media.

There are legitimate exceptions at times to request and receive access to employees' personal social media pages. For example, law enforcement agencies have a public safety need to know who their representatives or potential employees are affiliating themselves with. And private companies may need to be able to investigate inter-office harassment claims that may stem from social media conversations. So, in terms of best practices, maybe a broad exception for workplace investigations to provide content in a personal account that is relevant to that investigation.

Thank you for the opportunity to testify.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

January 29, 2016
Rm. 309, 10:00 a.m.

To: The Honorable Mark Nakashima, Chair
Members of the House Committee on Labor & Public Employment

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1739

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai'i's laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai'i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

H.B. No. 1739, if enacted, will prohibit employers from requiring or requesting employees and potential employees to grant access to personal account usernames and passwords.

The HCRC supports the intent of H.B. No. 1739, with an amendment that expressly provides that nothing in the new section shall diminish the authority and obligation of an employer to investigate complaints, allegations, or the occurrence of sexual, racial, ancestry, or other harassment prohibited under chapter 378, part I.

Section 2 of the bill creates a new section in HRS chapter 378, including this paragraph (b)(3):

(b) Nothing in this section shall prevent an employer from:

* * * * *

(3) Requesting the employee to share specific content regarding a personal account for the purposes of conducting an investigation of allegations of employee misconduct under chapter 378 …

Current state and federal fair employment law, HRS Chapter 378, Part I, and Title VII of the Civil Rights Act of 1964, require employers, once on notice of discriminatory harassment in the workplace, to promptly investigate and take effective corrective action. Failure to investigate and take effective corrective action is a violation of law. An employer investigation of sexual, racial, or other prohibited discrimination could involve allegations of harassment via social media.

The proposed paragraph (b)(3) language above, states that nothing in the new section prevents an employer from requesting "specific content" relating to "employee misconduct" prohibited under chapter 378. That language does not address the HCRC's concern that nothing in the new law should diminish an employer's legal obligation to investigate and take corrective action on employee allegations of sexual or other prohibited harassment.

The HCRC requests that a new subsection be added, expressly providing:

> Nothing in this section shall diminish the authority and obligation of an employer to investigate complaints, allegations, or the occurrence of sexual, racial, or other harassment prohibited under chapter 378.

The HCRC requests that the new statutory protection established by H.B. No. 1739 be placed in a new part of chapter 378, rather than in part I of chapter 378, because the privacy rights protected by the new statute are different in kind from the protected bases (race, sex, ancestry, religion, sexual orientation, etc.) that fall under HCRC jurisdiction. Employment discrimination based on information obtained online (e.g., an applicant's or employee's race, ancestry, religion, marital status) is already prohibited under chapter 378, part I.

Testimony before the House Committee on Labor and Public Employment

H.B. 1739 -- Relating to Employment

Friday, January 29, 2016
10:00 AM, Conference Room 309

By Kelly McCanlies
Director, Privacy Programs
Hawaiian Electric Company, Inc.

Chair Nakashima, Vice-Chair Keohokaole, and Members of the Committee:

My name is Kelly McCanlies. I am the Director of Privacy Programs for Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities, Maui Electric Company and Hawaii Electric Light Company (hereinafter collectively referred to as "the Companies").

We support the intent of H.B. 1739, which seeks to protect employees' privacy in their online social interactions during the hiring process and throughout their employment. However, we request amendments to the bill to ensure that employers' cybersecurity is not compromised.

As currently written, this bill would limit sharing of cybersecurity data for analysis purposes with subject-matter experts, law enforcement, and cybersecurity vendors. This will impact routine monitoring functions and impair cybersecurity investigatory efforts.

The Companies utilize industry-standard cybersecurity tools to strengthen and protect the Companies' networks from cyberattack. These tools (which extend beyond firewalls and anti-virus) perform routine monitoring functions. The logs and other collected data is shared with third-party services for round-the-clock monitoring and for cybersecurity-specific analysis.

If employees choose to access their “Personal accounts” from within an employers’ network, current tools may inadvertently capture information on “Personal accounts” (as defined in HB 1739) in log files and as other data, including packet data of internet traffic across the Companies’ network. This data is sometimes retained for investigatory use in case of cybersecurity incidents.

We have the following concerns:

1. Username is often transmitted in clear text over the internet. Inadvertent capture is unavoidable.
2. Network protection and monitoring tools are more extensive than just firewalls and anti-virus. By calling out these two technologies, the bill artificially limits the scope of the bill.
3. It is an industry standard best practice to NOT allow alteration of computer log files. Bad actors in breach situations might attempt to erase or alter such logs as part of a cyberattack; so log alteration is a strong indicator of a compromised IT system. Therefore, these files are heavily protected to ensure authenticity. Any alterations, such as deleting of “Personal account” information would affect the data’s use in a forensic capacity and as evidence in any criminal proceeding of a cyberattack.

The following changes are recommended to keep the intent of the legislation without endangering employers’ networks.

Page 2 - 3

20 (c) If an employer inadvertently received the username~~,~~ and
21 password, or any other information that would enable the
1 employer to gain access to the employee or potential employee’s
2 personal account through the use of ~~an otherwise lawful virus~~
3 ~~scan or~~ network monitoring tools or firewalls on an ~~that monitors the~~ employer’s network or
4 employer-provided devices, then the employer is not liable for
5 having that information, unless the employer:
6 (1) Shares that information with anyone who uses that information to access the employee or potential employee’s personal account; or
7 (2) Uses that information to access the employee or
8 potential employee’s personal account.~~; or~~
9 ~~(3) Does not delete the information as soon as reasonably~~
10 ~~practicable.”~~

And stated earlier, we support the intent of the legislation in protecting employee privacy. We feel that the changes recommended above will satisfy the intent of the legislation, while not limiting cybersecurity protections or cybersecurity information sharing.

Thank you for the opportunity to testify.

Committee:	Committee on Labor & Public Employment
Hearing Date/Time:	Friday, January 29, 2016, 10:00 a.m.
Place:	Conference Room 309
Re:	Testimony from the ACLU of Hawaii in Support of H.B. 1739, Relating to Employment

Dear Chair Nakashima and Members of the Committee on Labor & Public Employment:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in support of H.B. 1739, which prohibits employers from demanding access to employees'/applicants' personal social media accounts (such as Facebook and Instagram).

A growing number of employers are demanding that job applicants and employees give employers their passwords to their private social networking accounts such as Facebook. This practice constitutes a significant invasion of privacy and may have a chilling effect on free expression. Social networking sites like Facebook allow for private messages between individuals; just as an employer should never be permitted to go to an employee's house and look through her personal letters, diary, and/or photographs, employers have no legitimate business interest in accessing an individual's communications sent electronically. Such a practice violates the employee's/applicant's privacy and the privacy of everyone with whom the individual has communicated, and chills the free expression of ideas.

Accessing an applicant's social media account using the applicant's password – rather than merely collecting publicly available information – may expose information about a job applicant (such as age, religion, ethnicity, or pregnancy) which an employer is forbidden to ask about. That can expose an applicant to unlawful discrimination and can subject an employer to lawsuits from rejected job candidates claiming such discrimination.

These types of practices also violate Facebook's own policies. Facebook's Statement of Rights and Responsibilities states under the "Registration and Account Security" section that Facebook users must make ten commitments to the company relating to the registration and maintenance of the security of the account. The Eighth Commitment states "You will not share your password, (or in the case of developers, your secret key), let anyone else access your account, or do anything else that might jeopardize the security of your account." https://www.facebook.com/terms#!/legal/terms. Thus, sharing one's password or access to one's account with potential or current employers violates these terms of agreement.

American Civil Liberties Union of Hawai'i
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H.B. 1739 does not change current law regarding background checks: prospective employers, including law enforcement officials, can still use the Internet to access public profiles of job candidates; this law merely prohibits access to private materials and communications.

Thank you for this opportunity to testify.

Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

American Civil Liberties Union of Hawai'i
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Written Statement of
Robbie Melton
Executive Director & CEO
High Technology Development Corporation
before the
House Committee on Labor & Public Employment
Friday, January 29, 2016
10:00 a.m.
State Capitol, Conference Room 309

In consideration of
HB1739
RELATING TO EMPLOYMENT.

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee on Labor & Public Employment.

The High Technology Development Corporation (HTDC) **supports** HB1739 which relates to employment. The bill clarifies that personal online accounts used exclusively for personal communications unrelated to any business purposes of the employer should remain private. With the ubiquitousness of online accounts, adding some privacy guidelines is very appropriate.

Thank you for the opportunity to offer these comments.

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UNITE HERE!
LOCAL 5 HAWAII

Eric Gill, Financial Secretary-Treasurer *Hernando Ramos Tan, President* *Godfrey Maeshiro, Senior Vice-President*

January 28, 2016

The Honorable Mark Nakashima, Chair
and Members
Committee on Labor & Public Employment
Hawaii State House of Representatives

TESTIMONY submitted on behalf of UNITE HERE! Local 5
Re: HB1739, Relating to Employment

Chair Nakashima and Members:

UNITE HERE Local 5 is a local labor organization representing 11,000 hotel, health care and food service workers employed throughout our State. We stand in strong support of HB1739, and ask for your Committee's support in advancing the measure.

HB1739 is designed to amend HRS 378 to include language that prohibits employers from requiring, requesting, or coercing employees and potential employees to provide access to their personal accounts – language that would strengthen the current statute.

The prevalence of smart phones and other devices has suddenly made it commonplace for people to communicate anytime and anywhere. Information of personal interest is at our fingertips. We should have a right to privacy and we must ensure that personal communication or interests does not undermine a person's ability to get and retain a job.

As a Union, we understand that it is our duty to look out for the interest of workers. Therefore, we appreciate any measure that takes a pragmatic and progressive approach to technology and the potential impact it has on working people. Employers already dictate what we do on the job - they should not be allowed to dictate what we do on our personal time.

All adults, whether union or non-union, need to work. We need the leaders of this state to pass legislation that protects our ability to be gainfully employed. Please move HB1739 forward.

Thank you

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The Twenty-Eighth Legislature
Regular Session of 2016

LATE

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
State Capitol, Conference Room 309
Friday, January 29, 2016, 10:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1739
RELATING TO EMPLOYMENT

The ILWU Local 142 **supports** H.B. 1739, which prohibits employers from requiring, requesting, or coercing employees or potential employees to provide access to their personal accounts.

In this age of social media, there is much concern about what an individual posts on social networking websites. Some of the postings may be inappropriate, causing an employer to have concerns about an employee's judgment. However, the law should not allow employers to require access to employee's personal accounts. What an employee does in his or her personal communications should be unrelated to business purposes and should not be required to be disclosed to the employer.

The ILWU urges passage of H.B. 1739. Thank you for the opportunity to provide testimony on this matter.

Late

House Committee on Labor & Public Employment
Hawaii State Capitol, Room 309
January 29, 2016; 10:00 AM
415 South Beretania St.
Honolulu, HI 96813

Written Testimony of Jim Halpert

on behalf of the

State Privacy and Security Coalition, Inc.

Dear Chair Nakashima, Vice Chair Keohokalole and Members of the Committee:

Thank you very much for the opportunity to testify on House Bill 1739 Relating to Employment.

The State Privacy & Security Coalition is comprised of 25 major technology and media companies and 6 trade associations representing companies in the technology, media and advetising sectors. While we support the idea of clearly defining the rules governing employer access to employee or potential employee personal accounts, narrow exceptions need to be included.

The amendments proposed along with this testimony are based on compromise social media privacy laws in Oregon[1] and Washington state,[2] which our Coalition developed with the national ACLU and state ACLUs in those states. Some version of these amendments has been included in almost every state employee social media law enacted since those two laws were passed.

First, an employer should be able to restrict misuse of accounts or services provided to employees for the employer's business purposes. This compromise exception is very important to allow Hawaii businesses to use services, such as those offered by Blue Coat Systems, that block access to phishing, malware, gambling, and pornography sites and may inadvertently collect login information that employees also use on social media sites.

Second, if an employer has specific information about an unauthorized transfer of their proprietary information, confidential information, or financial data to an employee's personal account, the employer must be able to investigate the claim. This compromise exception is crucial because it will enable Hawaii employers to implement data loss prevention programs to prevent leakage of sensitive data from their computer networks and devices. It will also support

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[1] OR. REV. STAT. § 659A.330 (2013), *available at* https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors659A.html.
[2] WASH. REV. CODE § 49.44.200 (2013), *available at* http://apps.leg.wa.gov/RCW/default.aspx?cite=49.44.200.

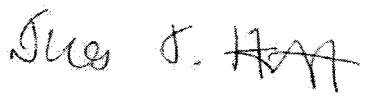
the screening of malicious Internet traffic flowing from employee accounts and employer-issued devices.

Finally, while we appreciate the addition of an exception for "otherwise lawful virus scan or firewall" technologies, this is too technology-specific and should instead apply to "the use of TECHNOLOGY that monitors the employer's network or employer provided devices for SERVICE QUALITY OR SECURITY purposes," subject to the conditions already in the bill on the use of the technology.

These exceptions are important to help this bill strike the appropriate balance of protecting employee privacy while leaving room for employer practices to protect employers' networks, systems, and proprietary information.

Please feel free to contact me if you have any questions or would like to discuss the Coalition's concerns in greater detail. Thank you for addressing this important issue; we would be happy to assist as the bill moves forward.

Respectfully submitted,



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