

Constance H. Lau, President and CEO, Hawaiian Electric Industries
David Ige, Governor, State of Hawai'i
Rosalyn Baker, State Senator, County of Maui
Various Community Leaders

March 10, 2019

Aloha Governor Ige,

I am copying you on my appeal to Hawaiian Electric President and CEO Constance Lau, as this is a matter of public interest. Ms. Lau has been an inspirational leader and I have plenty respect for Hawaiian Electric Industries (HEI) and the three subsidiary energy companies (HECO, MECO and HELCO).

HECO hired me initially as a contractor to help ensure this service continues uninterrupted. After six months of exemplary performance, the company extended an offer to join their team.

I have a disability and doctors have prescribed various medications for my chronic pain. Most were counterproductive to my recovery and health. HEI fired me for my compassionate use of Medical Cannabis (MC).

The company has no written policy about MC. Their HR staff did not warn me when I inquired and the company does not drug screen the hundreds of contractors they employ. They hold prospective candidates to a flawed, failed and confusing national standard — ignoring the will of local people. They hold contractors to no standard at all.

As a professional athlete, I suffered major injuries and surgeries. Residents in the islands love sports and admire athletes who provide entertainment. While an unparalleled opportunity for competitors, we pay a high price for the damage done to our bodies.

Because of sports-related injuries, as 60-plus-year-old IT professional, I have consulted with numerous doctors to select an appropriate pain analgesic to protect my long-term health. I take medication at night prior bed to reduce pain and help me sleep. I never medicate before or during work.

HEI appears to be in violation of Hawaii Administrative Rules 9 regarding Disability Discrimination. On behalf of the state's 25,000 compassionate MC patients, I plea to end the bigotry over our health and medical decisions.

We seek a Father Damien, who devoted his life to assisting human beings also treated as "second-class" citizens. From 1866 through 1969, about 8,000 Hawaiians were sent to the Kalaupapa peninsula on Moloka'i for medical quarantine due to fear and ignorance about leprosy. Today, compassionate MC patients represent three times this number, while fear and ignorance remain equally high and irrational.

Chapter 378, HRS, prohibits any employer from discriminating in employment against individuals or persons because of a disability. HEI has denied me protections afforded in §12-46-187: Failure to make reasonable accommodation.

I notified company HR rep about my disability and treatment plan on February 14th. Pursuant to §12-46-187 (a): ... An employee does not have to specifically request a "reasonable accommodation," but must only let the employer know that some adjustment or change is needed to do a job because of limitations caused by a disability.

I notified the HR rep I was active on MC. She failed to inform me MC was not permitted. Prior to submitting to the mandatory drug screen, I alerted the medical staff at Straub of my MC treatment program.

On February 25, 2019, HEI terminated my employment due to use of compassionate MC. They labeled me a criminal who was engaged in illegal activity. The company demanded immediate return of my employee badge and booted me from the premises that day — as if I were a dangerous leper. Can you imagine the embarrassment, humiliation and damage to a professional reputation? Consider the destruction to our dedicated team and skilled manager — all of us had been training together for months!

As an IT professional, I'm rarely required to drug test. I sit at a desk 8-10 hours per day. I do not drive a company vehicle, operate heavy machinery or work with dangerous chemicals. I never come to work impaired or intoxicated.

The last time I submitted to a pre-employment drug screen was about three years ago. The company manufactured components for military Department of Defense projects and space missions for NASA. I provided IT support for the Parker Solar Probe scheduled to reach the Sun around 2025.

The company has five nuclear reactors on property, along with extensive stores of explosive chemicals and materials. Due to the close relationship to the federal government, we were designated a Department of Homeland Security Protected Facility. Similarly as I did with HECO, I notified HR of my medical disposition and provided my compassionate MC license. Although active for cannabis on the drug screen, the company classified my medical behavior as HIPAA-protected and not a concern to safety or security of the company.

I've made numerous requests to meet with HEI legal team. They refuse to speak with me and deny any discussion about accommodation. This appears to violate §12-46-187 (b): ... it shall be necessary for an employer or other covered entity to initiate an interactive process, after a request for an accommodation, with the person with a disability in need of the accommodation. I'm willing to seek alternative medications, if necessary.

Case law regarding compassionate MC is relatively clear. A company in Hawai'i might be justified following the federal Controlled Substances Act (CSA), but is not required. The Maine Supreme Court identified (June 14, 2018) a "positive conflict" between CSA and state compassionate MC. The court discussed at length penalties an employer "could face" for violating CSA. [2018 ME 77]

However, the Maine court warned employers they could no longer rely on "hypothetical" claims of federal interference or penalty to justify their adherence to CSA. This is an important limitation on §12-46-193 Defenses (4), Undue hardship: It may be a defense to a charge of not making reasonable accommodation that a requested or necessary accommodation would impose an undue hardship on the operation of the business.

Compassionate MC has been legal in the islands for 20 years. What example of penalty or federal interference can a company cite today?

Pursuant to §12-46-187, an employer or entity must demonstrate the accommodation would impose an undue hardship on the operation of its business. HEI may have been able to do this ten years ago. I'm not sure they can make a compelling argument today.

HEI is one of the preeminent companies in our state. Unfortunately, we shoulder the highest energy costs in the nation. This affects state government, education, business development and the financial security of every family across our vast 'Ohana.

I joined ranks with HECO last August. I estimate the company spent approximately \$1,000,000 to train myself and our team for our critical mission to upgrade the IT network supporting energy production in our state. The three energy companies remain in a vulnerable and unsafe status at this time. Urgency is required.

Our team just entered our company's "March Madness" season. We have trained for months. The Big Dance is starting and outdated company policy disqualified a starter for using a medication that has been legal in this

state for 20 years. Our group was understaffed previously. This irrational and misguided fealty to a broken federal standard is unwise.

Energy rates are primarily a function of labor and fuel costs. HEI threw away \$1,000,000 of taxpayer and ratepayer funds. The company claims they are afraid of CSA. I'm not aware of one rational person who can defend the government's designation of cannabis as a Schedule I substance — meaning no currently accepted medical use. Some 30 U.S. states, the District of Columbia, and the nation of Canada recognize numerous medical applications.

I pursued my PhD in health policy at the University of New Mexico. The state faces some of the highest rates of drug overdose in the nation. The university's Project ECHO and State Department of Health certified me as an opioid addiction specialist about 2009. I've been educating to reduce drug dependencies and overdose for a decade. I reject opioid pain medications.

HEI is on the Wrong Side of History in this important social discussion. Most Americans now live in states where marijuana is legal in some form. It also appears HEI is on the wrong side of the law.

Please be our modern Father Damien. As HEI claims, "We Are 'Ohana." All of us are dedicated to 'imi pono. Family members should treat each other righteously. They should not treat some members as second-class citizens. They should not encourage behavior that create addicts, which can result in overdose and death. Let's work together to end this bigotry and injustice.

Mahalo nui loa for your service to this land and people.

Sincerely,

Scott Goold

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