

# LATE TESTIMONY



Senator Clayton Hee, Chair  
Senator Maile Shimabukuro, Vice Chair  
Committee on Judiciary & Labor  
State Capitol, Honolulu, Hawaii 96813

HEARING      Tuesday, February 08, 2011  
                  9:00 am  
                  Conference Room 016

RE:      **SB1405, Relating to Meal Breaks for Employees**

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing almost 24% of the labor force.

**RMH strongly opposes SB1405**, which prohibits an employer who employs fifty or more employees from requiring its employees to work more than five continuous hours without a scheduled rest or meal period. This is an unnecessary interference in retail operations that will increase the cost of doing business in Hawaii.

Because retail is a highly competitive industry where superior customer service is tantamount to success, retailers have developed staffing schedules that ensure adequate floor coverage while providing ample rest/meal breaks for their associates. Mandating a single, specific standard requirement in an industry consisting of a variety of kinds of retail operations and categories would severely limit the retailer's flexibility to meet the particular needs of the operation and/or the personal individual needs of the employees. The result could be fewer rather than more rest options for employees.

The members of the Retail Merchants of Hawaii respectfully request that you hold SB1405. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

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The Twenty-Sixth Legislature  
Regular Session of 2011

THE SENATE  
Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

## **LATE TESTIMONY**

State Capitol, Conference Room 016  
Tuesday, February 8, 2011; 10:00 a.m.

### **STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1405 RELATING TO MEAL BREAKS FOR EMPLOYEES**

The ILWU Local 142 supports the intent of S.B. 1405, which prohibits an employer who employs fifty or more employees from requiring its employees to work more than five continuous hours without a scheduled rest or meal period.

Most employers provide some form of rest or meal break as a humane and sensible way to treat their employees and promote productivity. ILWU collective bargaining agreements provide for these breaks as do most union contracts. S.B. 1405 only applies to employers with 50 or more employees.

S.B. 1405 will require companies to provide a rest or meal period if an employee works more than five continuous hours. If the break cannot be provided during the time period, the employer must pay a penalty to the employee. However, concerns will be raised about rigid scheduling of the break. For example, if an employee is scheduled for a break at a time that a customer needs help from the employee, will the employee be encouraged to take the break and leave the customer to fend for himself? Or if the employee takes care of the customer and cannot take the break as scheduled, will the penalty apply? These are concerns that may need to be addressed before the bill is finalized.

Thank you for considering our comments.

## **LATE TESTIMONY**

**Testimony to the Senate Committee on Judiciary and Labor**

**Tuesday, February 8, 2011**

**10:00 a.m.**

**State Capitol - Conference Room 016**

**RE: SENATE BILL NO. 1405 RELATING TO MEAL BREAKS FOR EMPLOYEES**

Chair Hee, Vice Chair Shimabukuro, and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to Senate Bill No. 1405 relating to Meal Breaks for Employees.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

Senate Bill 1405 prohibits an employer who employs fifty or more employees from requiring its employees to work more than five continuous hours without a scheduled rest or meal period, unless a collective bargaining agreement otherwise contains provisions for employee meal breaks. The measure exempts employers who are the operators of a continuously operating facility that is regulated by an environmental permit, if an on-duty meal period is provided.

The Chamber believes the Bill is unnecessary and opposes the Bill for the following reasons:

First, the Bill will cause confusion and litigation regarding the calculation of overtime payments due to the unintended effect of altering current law on calculating employees' regular rate of pay for overtime purposes. For example, under FLSA, employers can exclude premium pay given for work on holidays or weekends when calculating the employee's regular rate of pay for overtime purposes. Under Hawaii law, if the bill passes, an employer would have to factor in premium pay in calculating the regular rate because the only method of calculating the regular rate of pay under Hawaii law is to take the total earnings for the period and divide by the number of hours worked.

Second, a meal break, we believe is unnecessary. Most employers already provide meal breaks, and in many cases provide meal breaks longer than 30 minutes.

Third, the bill will hurt employees who would rather work through their lunch or take shorter breaks in order to shorten their work day. Employers who currently operate ten hour shifts would be required to force employees to take an unpaid 30 minute meal break before the fifth and again before the tenth hour of work, thereby prolonging an already long work day.

Fourth, the bill will require employers to carefully monitor employees to ensure that they take meal breaks before 5 continuous hours of work have passed. To avoid paying this penalty, employers will have to send supervisors to every employee's cubicle and work location to make sure that employees have taken lunch breaks on time.

Finally, this bill imposes a significant administrative weight on employers, requiring them to create procedures to record meal breaks and to record whether a person elects to forego a meal break in order to obtain overtime pay. The bill may require employers to revise, rewrite or reprogram their payroll systems to recognize the one-half hour per day overtime allocation.

Hawaii's businesses are in the process of recovering from an economic stagnation. The Chamber firmly believes that the enactment of this mandate at this time will greatly hamper the efforts to improve the economic climate. Hawaii's business community is at a critical point -- where any additional mandates could mean the difference between continued existence or bankruptcy. As evidenced by recent media accounts, many local establishments, some of which have faithfully served consumers for generations, are going out of business.

Overall, this bill will significantly increase the cost of doing business in Hawaii. For these reasons, the Chamber opposes this measure. Thank you very much for the opportunity to testify.