



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 2, 2011

To: The Honorable Karl Rhoads, Chair
The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Labor & Public Employment
and Members of the House Committee on Economic Revitalization & Business

Date: Friday, February 4, 2011
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. No. 1316 Relating to Labor and Industrial Relations

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 1316 amends the Wage and Hour Law, Chapter 387, Hawaii Revised Statutes ("HRS"), by:

- Repealing paragraph (11) of the definition of "employee" that operates to delineate jurisdiction between federal and state standards on minimum wage and overtime between Hawaii law and the Federal Labor Standards Act ("FLSA") and therefore creates joint jurisdiction on these matters.
- Adding a new subsection (g) in Section 387-3, HRS which requires an employer to provide an unpaid meal break of not less than thirty consecutive minutes if an employee works more than five hours unless a collective bargaining agreement contains express provisions for employee meal breaks; and
- Amends Section 387-12(b), HRS, by imposes a penalty payable to affected employees in an amount equal to one and one-half hours for each thirty minute meal period not provided.

II. CURRENT LAW

Currently, the State of Hawaii takes jurisdiction where FLSA does not preempt.

Neither State nor federal law requires meal or other break periods. The Child Labor law is an exception, requiring at least a 30-minute break for 14 and 15 year old minors who work five continuous hours.

III. HOUSE BILL

The Department supports the intent of H.B. 1316 but has the following concerns:

1. Chapter 387, HRS, Wage and Hour Law, which this bill amends, currently excludes employers subject to the FLSA. The FLSA is the federal wage and hour law, which covers most of the larger employers; i.e., employers with annual gross income of \$500,000 or more and employees engaged in interstate commerce. The DLIR has a very good enforcement relationship with the U.S. DOL with clear jurisdiction outlined. However, repealing this exclusion will create confusion as to the jurisdiction on minimum wage and overtime.
2. This law does not consider the differences between rest and meal breaks and calls for "thirty consecutive minutes for a rest or bona fide meal period" (Lines 7 and 8, page 10). Rest breaks are considered to be breaks of between 10 to 20 minutes and is compensable time. Meal breaks are at least 30 minutes and not compensable if free and clear of all work. The DLIR recommends that rest breaks as contemplated by 29 Code of Federal Regulations section 785.18 not be included as unpaid break time and only bona fide meal period be included as in the citation 29 Code of Federal Regulations section 785.19 regarding meal breaks.
3. If consideration is given for the differences in rest and meal breaks, the amendment in the penalty section would need to be revised by deleting the word "rest".
4. If the intent is to provide an unpaid meal break to most non-exempt employees it may be more effective to add a new section under Chapter 388, HRS. There is not the same FLSA jurisdiction issues and if employee and employer wish to waive the break requirement there are already provisions in the law that require it to be in writing.
5. The Department is concerned it lacks resources to implement this amendment. Broadening the scope of the law, and requiring additional investigation requirements will further serve to increase an already over-burdened staff of five investigators

statewide who are responsible for conducting more than 700 investigations and responding to more than 22,000 inquiries annually.



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization & Business

State Capitol, Honolulu, Hawaii 96813

HEARING Friday, February 04, 2011
 9:00 am
 Conference Room 309

RE: HB1316, Relating to Labor and Industrial Relations

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

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.

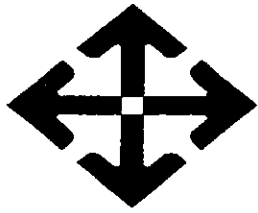
RMH strongly opposes HB1316 which requires that no employee be required to work more than five hours continuously without a scheduled interval of at least thirty consecutive minutes for a rest or bona fide meal period. This is an unnecessary interference in retail operations that will increase the cost 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 specific needs of the operation, the personal individual needs of the employees, and may even result in fewer rather than more rest options for employees.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB1316. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

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February 4, 2011

Testimony To: House Committee on Labor & Public Employment
Representative Karl Rhoads, Chair

House Committee on Economic Revitalization & Business
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons
President

Subject: H.B. 1316 – RELATING TO LABOR AND INDUSTRIAL RELATIONS

Chair Rhoads, Chair McKelvey and Members of the Joint Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business organization. We are opposed to this bill based not on its intent but because we believe it is unnecessary.

We are also not opposed to this bill because we think that employees should have to work forever without meal breaks however, we do find that the complaints in this area seem to be almost nonexistent; at least, we have not heard of any.

Secondly, most employers are aware of the fact that employees need periodic breaks from their work and they will accommodate this without requiring employees to work straight through if

for no other reason than productivity is better when employees are in good health and get the proper nourishment.

It is also quite common for employees to request that they work right through a meal period in order to take off early and this bill does not seem to allow for that or any other exception. In fact, we know of situations where employers, because of extreme circumstances have had to require their employees to work straight through without a break but then give them additional time off at the end of the day or reward them with some other type of bonus. Drivers stuck in traffic, construction crews with fifteen (15) minutes more needed to close a job instead of returning the next day, a retail salesperson in the middle of a sales transaction all come to mind as to situations where the employee delaying a break could be essential. To mandate as a requirement, particularly with a one and one half hour penalty provision, not only will work against the employer but we believe in many cases, will work to the employee's disadvantage as well.

We also note that on page 10, the bill provides that the meal break would not apply if there is a Collective Bargaining Agreement that contains expressed provisions about meal breaks. We believe that this should read instead that this entire bill does not apply where there exists a Collective Bargaining Agreement. It is up to the bargaining parties to address employee meal breaks and this is something that should be negotiated, not mandated.

Based on the above, we do not support this bill.

Thank you.

GOODSILL ANDERSON QUINN & STIFEL

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TO: Representative Karl Rhoads
Chair, Committee on Labor & Public Employment
Representative Angus L.K. McKelvey
Chair, Committee on Economic Revitalization & Business

FROM: Gary M. Slovin

DATE: February 2, 2011

RE: **H.B. 1316 – Relating to Labor and Industrial Relations**
Hearing: Friday, February 4, 2011 at 9:00 a.m. – 12:00 p.m., Room 309

Dear Chairs Rhoads and McKelvey and Members of the Committees on Labor & Public Employment and Economic Revitalization & Business:

I am Gary Slovin, testifying on behalf of Covanta Energy Corporation, the operator of HPOWER. I have been working on the subject of meal breaks on behalf of HPOWER for several years. In prior years, the bills dealing with meal breaks that have passed have included an exemption for facilities like HPOWER, which are subject to environmental regulations.

In its present form, H.B. 1316 does not include this exemption. The exemption for HPOWER and similar facilities is a very narrow one that will not affect a significant number of workplaces because very few facilities would fit within the exemption.

The problem that facilities like HPOWER present is that they are subject to various strict environmental regulations. Because of this, it is necessary to monitor the environmental performance of the facility on a 24-hours a day, seven-days a week basis. Its record of compliance is excellent, and that is accomplished not only by its sophisticated equipment, but also through the skills of an excellent and highly trained complement of local employees.

We respectfully request that H.B. 1316 be amended by inserting the following language at the end of subsection (g) on page 10:

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“This subsection shall not apply to any employer who is the operator of a continuously operating facility that is regulated by an environmental permit, provided that an on-duty meal period is provided.”

This language is the same that was included in the 2003 bill passed by the Legislature, with the addition of language that makes clear that an on-duty meal period must be permitted.

If you or any member of the joint Committees has any questions regarding the HPOWER operation, we would be happy to meet with you or your staff to discuss any questions you have, or any need for additional information you may have as well. Thank you for this opportunity to comment on this measure.

**Testimony to the House Committees on Economic Revitalization & Business
and Labor & Public Employment
Friday, February 4, 2011
9:00 a.m. – 12:00 p.m.
State Capitol - Conference Room 309**

**RE: HOUSE BILL NO. 1316 RELATING TO LABOR AND INDUSTRIAL
RELATIONS**

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and members of the committees:

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 House Bill No. 1316 HD1, relating to Employment.

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.

House Bill 1316 requires that no employee be required to work more than five hours continuously without a scheduled interval of at least thirty consecutive minutes for a rest or a bona fide meal period. It requires employers who do not provide a rest or meal break to employees to be liable to the employee affected in an amount equivalent to one and one-half hours for each thirty minute meal break the employee was not 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, and in particular small 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.