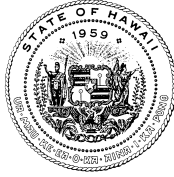


**SB1405**



NEIL ABERCROMBIE  
GOVERNOR

DWIGHT Y. TAKAMINE  
INTERIM DIRECTOR

AUDREY HIDANO  
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
Email: [dllr.director@hawaii.gov](mailto:dllr.director@hawaii.gov)

February 4, 2011

To: The Honorable Clayton Hee, Chair  
and Members of the Senate Committee on Judiciary and Labor

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

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

**Re: S.B. No. 1405 Relating to Meal Breaks for Employees**

**I. OVERVIEW OF PROPOSED LEGISLATION**

S.B. 1405 amends the Wage and Hour Law, Chapter 387, Hawaii Revised Statutes ("HRS"), by adding a new subsection (g) in Section 387-3, HRS which requires employers with 50 or more employees to provide employees 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 or employees work at a location with an environmental permit.

**II. CURRENT LAW**

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. SENATE/HOUSE BILL

The Department supports the intent of S.B. 1405 but has the following concerns:

1. 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 2 and 8, page 7). 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.
2. 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. Except for minimum wage and overtime for agriculture workers, Chapter 387, HRS, generally applies where FLSA does not have jurisdiction, which usually means small business. Chapter 388, HRS does not have FLSA jurisdictional issues so a new section in Chapter 388, HRS may be more effective. Many states that require breaks also allow mutual agreement of employee and employer to waive the break requirement. Chapter 388, HRS already requires these types of conditions of employment be in writing.
3. 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.



February 8, 2011

**TESTIMONY BEFORE THE SENATE COMMITTEE ON  
JUDICIARY AND LABOR  
ON SB 1405 RELATING TO MEAL BREAKS FOR EMPLOYEES**

Thank you Chair Hee and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

HTA requests an exception from this bill for employees whose regular duties require them to be on the road. Our concern is not a policy issue as motor carriers do provide meal breaks to their employees, but is a concern rooted in operational realities.

Drivers of commercial vehicles cannot stop and park their tractor trailers, trucks, buses, etc., for any appreciable length of time, anywhere. There simply is no space for this to occur, or they are chased away by property and store owners for taking up too much space, or by police authority for obstructing traffic.

The nature of the job offers drivers the opportunity for multiple short breaks, during which time meals and refreshment may be consumed. The drivers are paid for the short periods of time taken. These quick breaks also mean the drivers get done with their runs faster and get home earlier.

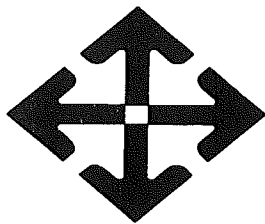
Requiring a 30 minute break would mean returning to the terminal to legally park their vehicles without adversely impacting the public. This would add anywhere from 1½ to 3 hours to the work day, add much to our congestion problem, and the driver would not be paid for the break.

In transportation, there are so many mitigating factors in timing a run: weather delays, equipment breakdown, loading and unloading delays, and traffic delays. Trying to schedule 30 consecutive minutes places an unreasonable expectation on our industry, a burden on public parking, a burden on traffic, and a burden on the drivers.

The vast majority of negative comments to this provision come from drivers themselves.

An amendment would be in paragraph (g), on page 7 at the end of line 8 stating, "This paragraph shall not apply to an employer who is a motor carrier as defined in chapter 286-201."

Thank you.



# The Hawaii Business League

Century Square 1188 Bishop St., Ste 1003 Honolulu, HI 96813-3304  
Phone: (808) 533-6819 ♦ Facsimile: (808) 533-2739

February 8, 2011

Testimony To: Senate Committee on Judiciary and Labor  
Senator Clayton Hee, Chair

Presented By: Tim Lyons  
President

Subject: S.B. 1405 – RELATING TO MEAL BREAKS FOR EMPLOYEES.

Chair Hee and Members of the 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 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.



February 7, 2011

Sent to: [JDLTestimony@Capitol.hawaii.gov](mailto:JDLTestimony@Capitol.hawaii.gov)

[www.itoen.com](http://www.itoen.com)

Testimony to the Committee on Judiciary and Labor  
Tuesday, February 8, 2011  
Conference Room 016

ITO EN (USA) INC.  
125 PUUHALE ROAD  
HONOLULU, HI 96819  
TEL 808 847 4477  
FAX 808 841 4384

Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

ITO EN (NORTH AMERICA) INC.  
45 MAIN STREET, SUITE 3A  
BROOKLYN, NY 11201  
TEL 718 250 4000  
FAX 718 246 1325

RE: SB1405 Relating to Meal Breaks

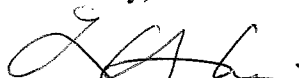
Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

I am opposed to this bill because it will require my company to engage in costly supervision of employee to ensure that meal breaks are taken in a timely manner. The bill also makes no provision for employees who choose to waive their 30 minute meal break.

Our company, ITO EN (USA) Inc., is located in Kalihi. We employ 70 workers and have been doing business in Hawaii since 1987. Our employees perform a wide-range of jobs, often with minimal supervision – merchandising, delivering our products, manufacturing and warehousing. Employees are encouraged and scheduled to take rest breaks and meal breaks during the day, but cannot be constantly watched that they take it at precise times. At times employees request to take a later break, or skip their break so they may finish their work and leave at an earlier time, sometimes to go to work at a second job or to tend to family needs. Some positions, such as merchandising and delivering, already have many opportunities while they are waiting at their accounts to take breaks to enjoy meals and refreshments on paid time, sometimes these wait times can last longer than 30 consecutive minutes.

For these reasons, ITO EN (USA) INC. strongly opposes this bill.

Sincerely,

  
Leighton Horiuchi  
President





**ITO EN**

February 7, 2011

Sent to: [JDLTestimony@Capitol.hawaii.gov](mailto:JDLTestimony@Capitol.hawaii.gov)

[www.itoen.com](http://www.itoen.com)

Testimony to the Committee on Judiciary and Labor  
Tuesday, February 8, 2011  
Conference Room 016

ITO EN (USA) INC.  
125 PUUHALE ROAD  
HONOLULU, HI 96819  
TEL 808 847 4477  
FAX 808 841 4384

Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

ITO EN (NORTH AMERICA) INC.  
45 MAIN STREET, SUITE 3A  
BROOKLYN, NY 11201  
TEL 718 250 4000  
FAX 718 246 1325

RE: Opposition to SB1405 Relating to Meal Breaks

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

I opposed this bill because it will require our supervisors and managers to closely monitor employees to ensure that meal breaks are taken in a timely manner. The bill makes no provision for employees who choose to waive their 30 minute meal break.

Our company, ITO EN (USA) Inc., is located in Kalihi. We employ 70 workers and have been doing business in Hawaii since 1987. Our employees perform a wide-range of jobs, often with minimal supervision – merchandising, delivering our products, manufacturing and warehousing. We already have a company policy that provides employees with 30 minute meal breaks and short rest breaks. Managers encourage their employees to take rest breaks and meal breaks during the day, but cannot constantly watch that they take it at precise times. Often employees want to take a later break, or skip their break so they may finish their work and leave at an earlier time, sometimes to go to work at a second job or to tend to family needs. Some positions, such as merchandising and delivering, already have many opportunities while they are waiting at their accounts to take breaks to enjoy meals and refreshments on paid time, sometimes these wait times can last longer than 30 consecutive minutes. In particular, our flat bed and tractor trailer delivery drivers have no public parking places where they may stop their vehicles for 30 minutes for a break. This would require the vehicles to return to our yard and then go back out on the road to complete a delivery, possibly behind schedule. Many of our accounts have set receiving hours, and drivers would have a difficult time meeting those delivery windows if required to return to the yard to take break.

For these reasons, I strongly oppose this bill.

Sincerely,

Wendy Chuck

Human Resources Manager