

**STATE OF HAWAII**  
**DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
<http://labor.hawaii.gov>

April 4, 2013

To: The Honorable Karl Rhoads, Chair,  
The Honorable Sharon E. Har, Vice Chair, and  
Members of the House Committee on Judiciary

Date: Thursday, April 4, 2012  
Time: 2:00 p.m.  
Place: Conference Room 325, State Capitol

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

**Re: S.B. No. 535 SD1HD1 RELATING TO LABOR**

DLIR strongly supports this proposal that will extend basic labor rights and protections to domestic workers. The Department requests a clarifying amendment and respectfully request that the date be made to effective upon approval.

The measure affords protections for domestic workers under wage and hour law (Chapter 387, Hawaii Revised Statutes (HRS)) as well as employment practices law (Chapter 378, Part 1 (HRS)). Many domestic workers are hired under a private agreement that does not afford the basic legal employment rights and protections that guarantee minimum wage or basic work conditions, such as overtime pay, or civil rights protections against abuse and harassment.

Domestic workers were exempted from the original Fair Labor Standards Act (FLSA, 1938), which was the last major piece of legislation passed in Franklin Delano Roosevelt's New Deal efforts. Domestic workers were exempted largely to procure Southern support of the FLSA. This proposal rectifies the exemptions provided for in Hawaii's laws, which developed and mirrored the federal law and provides for greater equality for domestic workers.

The Department requests that a clarifying amendment be inserted on Page 6, Line 6 after the sentence to read as follows:

"The term "companionship services" does not include services relating to the care

SB535 SD1HD1  
April 4, 2013  
Page 2

and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse."

Thank you for your consideration on this matter.



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

April 4, 2013  
Rm. 325, 2:00 p.m.

To: The Honorable Karl Rhoads, Chair  
Members of the House Committee on Judiciary

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

Re: S.B. No. 535, S.D.1, H.D.1

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.

The HCRC supports S.B. No. 535, S.D.1, H.D.1, which in part amends HRS Chapter 378, Part I, by extending the protection for domestic employees against discrimination in all employment practices except for hiring.

Under current law, the HCRC has jurisdiction over employment discrimination complaints involving the failure to hire, discharge and unequal terms, conditions and privileges of employment based on race, sex (including gender identity or expression), sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status. However, the HRS § 378-1 definition of “employment” specifically excludes domestics, and the HCRC has therefore had to turn away even egregious sexual harassment complaints from domestics as non-jurisdictional.

The exclusion of domestics from the definition of employment removes a growing segment of the workforce, substantial numbers of whom are women and immigrants, from the protections of our fair employment laws. While Title VII of the Civil Rights Act of 1964 does not provide for a domestic worker

exception, it only covers employers of 15 or more employees, effectively taking most domestics out of Title VII jurisdiction. The protection of the rights of domestics has become an issue of international and national concern, with the United States being a member of the International Labor Organization (ILO), which in 2011 adopted a Convention and Recommendation Concerning Decent Work for Domestic Workers, not yet ratified by the U.S.

The HCRC understands the interests of employers in being allowed to select and hire domestics to work in their homes for any reason, good or bad, even discriminatory reasons. However, once hired, domestics should have the same civil rights protections that the law affords all other employees in terms of equal pay, protection against discriminatory terms and conditions and termination, and freedom from harassment.

For wage and hour purposes, Sections 3 and 4 of S.B. 535, S.D.1, H.D.1, propose new HRS § 387-1 definitions of “domestic worker” and “casual basis” that exclude those who work on a casual basis - those whose “employment ... is irregular or intermittent, and ... not performed by an individual whose vocation is the provision of babysitting or companionship services or an individual employed by an employer or agency other than the family or household using the individual’s services.” The definitions also exclude those whose employment for all employers does not exceed twenty hours per week in the aggregate.

In contrast, the state fair employment statute that the HCRC enforces, HRS Chapter 378, Part I, uses a single definition of “employment” regardless of the number of hours, regularity of hours, or vocation (*i.e.*, without a “casual basis” exclusion). In order to maintain a consistent and uniform definition of “employment” in state fair employment law, the HCRC agrees with H.D.1, in which the term “domestic worker” is not used in Sections 1 and 2 of the bill to incorporate by reference the new HRS §387-1 definitions into HRS Chapter 378, Part I. The HCRC supports the H.D.1 use of the term “domestic” as used in the existing § 378-1 definition of “employment”. This will make it clear that all domestic employees (not just “domestic workers” as defined in the new § 387-1) are protected against all prohibited discriminatory practices under HRS Chapter 378, except for discriminatory hiring.

Thank you for your consideration.

April 2, 2013

**To: Senate Judiciary Hearing**

**From: Ai-Jen Poo, Executive Director, National Domestic Workers Alliance**

**RE: Testimony in Support of SB 535 Domestic Worker's Bill of Rights**

The National Domestic Workers Alliance supports SB 535 and looks forward to the great state of Hawai'i taking the lead on fundamental issues of workers' rights.

The National Domestic Workers Alliance advocates for rights, protection and recognition for domestic workers across the country. Our 39 membership-based affiliate organizations, located in 24 cities and 16 states, are greatly encouraged by the prospect of securing rights for domestic workers in Hawaii.

The nannies, housekeepers and elder caregivers of Hawaii are an under-recognized lynchpin in the state's economy. Their care for children and elders makes it possible for workers in a wide range of fields to pursue their occupations and professions without having to worry about the safety and wellbeing of their families. Domestic workers shoulder substantial responsibilities and work long hours in order to support their own families and contribute to their communities. Yet domestic workers are denied the employment rights and protections that most other workers take for granted. The absence of these rights, in both federal and state law, has a long and ignoble history, which we have the opportunity to rectify.

New York State passed the very first Domestic Workers Bill of Rights in 2010. The International Labor Organization adopted a convention on decent work for domestic workers in 2011. The tide is beginning to turn.

Sb 535 would substantially improve the lives of domestic workers by providing them with such basic rights such as minimum wage protections and overtime pay. The National Domestic Workers Alliance strongly believes that domestic workers deserve these rights, at a minimum, and that Hawaii has a unique opportunity to transform the conditions of work for a significant sector of the labor force.

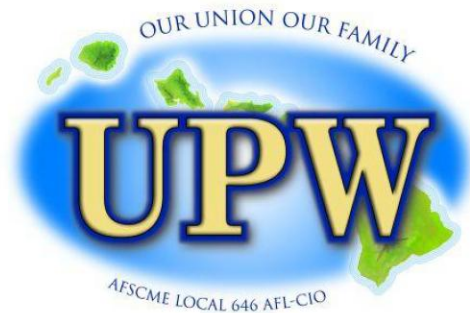
We look forward to your leadership on this significant piece of legislation.

Sincerely,

Ai-jen Poo, Executive Director

National Domestic Workers Alliance

**National Domestic Workers Alliance**  
330 Seventh Ave., 19<sup>th</sup> Floor, New York, NY 10001  
T: 646-360-5806/F: 212-213-2233



THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Seventh Legislature  
Regular Session of 2013

COMMITTEE ON JUDICIARY

The Honorable Rep. Karl Rhoads, Chair  
The Honorable Rep. Sharon E. Har, Vice Chair

DATE OF HEARING: Thursday, April 4, 2013  
TIME OF HEARING: 2:00 P.M.  
PLACE OF HEARING: Conference Room 325

**TESTIMONY ON SB535 SD1 HD1 RELATING TO BREASTFEEDING IN  
THE WORKPLACE**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports the intent of SB535 SD1 HD1, which establishes basic rights and protections for domestic workers.

Thank you for the opportunity to testify on this measure.

**Testimony In Support of SB 535 SD1 HD1: Relating to Labor  
Domestic Workers Bill of Rights  
April 3, 2013**

**Haeyoung Yoon, Senior Staff Attorney  
National Employment Law Project**

Hon. Karl Rhoads, Chair, and members of the Hawaii House Committee on Judiciary. Thank you for this opportunity to submit written testimony in support of SB 535, a law that would provide baseline protections for domestic workers. I submit this testimony on behalf of the National Employment Law Project (NELP).

NELP is a non-profit research and advocacy organization that works with community-based groups, state labor agencies, and worker advocates to ensure good jobs and economic security for our nation's workers. NELP is recognized as a national expert on wage and hour policies and labor standards enforcement. Throughout its 40-year history, NELP has been involved in efforts to defend and strengthen the workplace rights of domestic workers and to research working conditions in the domestic work industry. Our work in this field has shown that there is a vital need for the reforms SB 535 would bring to this crucial workforce.

**SB 535 Would Extend Baseline Protections to Domestic Workers and Would Establish Core Industry Standards.**

Exemptions in state labor and employment laws, including minimum wage and overtime protections, have left domestic workers with significantly fewer workplace rights than other workers in Hawaii. Gaps in federal law coverage, including the exemption of most in-home care workers from minimum and overtime laws and the exclusion of live-in domestic workers from overtime protection, make Hawaii domestic workers much more vulnerable to substandard wages and working conditions. Domestic workers' physical isolation in private homes and the intensely intimate conditions of their labor further subjects them to unique risk of abuse and exploitation.

The effect of this substandard coverage is made clear by the findings of NELP's landmark study of employment practices in low-wage industries in the U.S.'s three largest cities – New York City, Chicago, and Los Angeles. See Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities* (New York: Center for Urban Economic Development at UIC, National Employment Law Project and UCLA Institute for Research on Labor and Employment, 2009), available at <http://www.nelp.org/page/>



</brokenlaws/BrokenLawsReport2009.pdf?nocdn=1> The study revealed systemic and severe violations of employment and labor laws across core sectors of our economy, with domestic work standing out among the most unregulated and prone to violations – 66 percent of surveyed child care workers, many of whom work in private households, were not paid the minimum wage in the previous week and 87 percent of workers in private households experienced overtime violations.

These stark violations call out for meaningful core workplace standards for the industry. SB 535 would do exactly that, by extending minimum wage and overtime protections and protection from workplace discrimination that other Hawaiian workers already have.

With the introduction of SB 535, Hawaii joins a larger, national movement towards improved protections for domestic workers. New York passed the first ever Domestic Worker Bill of Rights in August 2010, erasing exemptions from workplace laws for domestic workers, creating a statutory right to overtime, and providing domestic workers with annual leave time and a weekly day of rest. Following New York's example, legislators in California, Illinois, and Massachusetts recently introduced legislation to provide similar protection for domestic workers in their states. Other states have eliminated or narrowed exclusions for domestic workers as part of broader efforts to win across-the-board increases in the state minimum wage rate. For example, in 2007 the Maine State Legislature amended the State Minimum Wage Act to make minimum wage and overtime protections applicable to domestic workers. Hawaii should join the growing wave of states that have recently moved to raise standards for domestic workers.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

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Executive Director  
Cathy Betts, JD

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Honolulu, HI 96813  
Phone: 808-586-5758  
FAX: 808-586-5756

April 4, 2013

**LATE**

Testimony in Support of SB 535, SD1, HD1

TO: Honorable Karl Rhoads, Chair  
Honorable Sharon Har, Vice Chair  
Members of the Committee on House Judiciary

FROM: Cathy Betts, Executive Director, Hawaii State Commission on the Status of Women

RE: SB 535, SD1, Relating to Labor: Domestic Workers Bill of Rights.

The Commission supports SB 535, SD1, Relating to Labor: Domestic Workers Bill of Rights. Domestic workers provide services for a family other than their own, within that family's home. Duties are as varied as the employment relationships between domestic workers and their employers, which makes the work difficult to categorize.

Domestic work can include cleaning, clothing care, shopping, cooking, childcare, caring for the sick or elderly, pet care, and many other tasks. Many domestic workers live in the home of the family for which they work; those who do not live in the family's home often work for several employers. Most domestic workers are hired without any contract or guarantee of minimum wage or protections—they are hired through a private agreement, and many individuals hiring domestic workers do not think of themselves as employers. Therefore, they may not think about their responsibility to provide their employees with a living wage and benefits. A domestic workers bill of rights can assist in setting standards for employers to follow.<sup>1</sup>

Domestic workers tend to be women, minorities, and immigrants, both documented and undocumented. This has numerous implications regarding work conditions, especially because most domestic workers are less educated and have less income than the households in which they work. Fear of loss of income and/or deportation for undocumented workers may increase the power differential between employer and employee and increase the likelihood of abuse and labor violations.<sup>2</sup> In Hawaii, 18.2% of our population was born in another country—there are domestic workers working in uncertain conditions.

In California, researchers found that domestic workers faced numerous challenges to receiving fair wages in accordance with state and federal laws. 11% of

<sup>1</sup> Appelbaum, L. (2010). WHY A DOMESTIC WORKERS BILL OF RIGHTS. UCLA Institute for Research on Labor and Employment, Research & Policy Brief. Accessed via [http://www.domesticworkers.org/sites/default/files/pdfs/ucla\\_report\\_cabor.pdf](http://www.domesticworkers.org/sites/default/files/pdfs/ucla_report_cabor.pdf).

<sup>2</sup> Ibid.

domestic workers received wages below the minimum wage, 3% received no wages, 16% of workers were either not paid or paid with a bad check. In addition, close to 90% of workers in the survey who reported working overtime did not receive overtime pay.<sup>3</sup> In Los Angeles County, nearly 75% of childcare workers and 35% of maids and housekeepers were paid at an hourly rate less than the minimum wage. Workers also reported problems receiving meal breaks, a lack of paid vacation and sick or maternity leave, and a lack of healthcare benefits.<sup>4</sup>

Domestic workers work long hours, without sleep, and are often injured on the job from lifting heavy objects and children, and doing hard physical labor while cleaning others' houses. Domestic workers are not guaranteed the basic protections guaranteed to other workers, and because they are often immigrants, the power differential makes it easy for them to be taken advantage of, with little recourse. Domestic workers can be invisible, because they work in others' homes, with no one watching.

These issues exist across the country, and no doubt are occurring in Hawaii as well. In 2010, New York passed the first Domestic Workers Bill of Rights. In Hawaii, a Domestic Workers Bill of Rights is a start to ensure fair and equitable treatment for people who care for our children, our elderly, our pets and our homes. Please pass SB 535, SD1, HD1.

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<sup>3</sup> Appelbaum, L. (2010). WHY A DOMESTIC WORKERS BILL OF RIGHTS. UCLA Institute for Research on Labor and Employment, Research & Policy Brief. Accessed via [http://www.domesticworkers.org/sites/default/files/pdfs/ucla\\_report\\_cabor.pdf](http://www.domesticworkers.org/sites/default/files/pdfs/ucla_report_cabor.pdf).

<sup>4</sup> Ibid.



*Eric Gill, Financial Secretary-Treasurer*

*Hernando Ramos Tan, President*

*Godfrey Maeshiro, Senior Vice-President*

Wednesday, April 3, 2013

Chairs and Committee Members  
Judiciary Committee  
Hawaii State Legislature  
State Capitol  
415 S. Beretania Street

***RE: Support of SB 535 Domestic Worker's Bill of Rights***

Chair Rhoads, Vice Chair Har, and Committee members:

UNITE HERE Local 5, a local labor organization representing nearly 10,000 hotel, health care and food service workers employed throughout the State, hereby registers our **support of SB 535 relating to the Domestic Workers Bill of Rights.**

Domestic workers work long and hard hours to provide care for others in order to support their own families while contributing to the local economy in Hawaii. From the plantation days to today's global economy, domestic workers continue to be denied the most basic employment rights and protections. Without these fundamental rights, we see the potential for an already vulnerable labor workforce to be exploited and lower the working standards for all workers. We have both the opportunity and responsibility to address this injustice and bring up the standard for all workers in Hawaii.

Our people are being pushed off our islands while so many of us can't afford homes. More and more of our local jobs go to mainland companies while locals struggle to earn a living wage. Our sick and elderly continue to be denied access to the care they need. Alongside other community leaders we have launched a new movement called Aikea. It is aimed at encouraging participation in our political system and encapsulates a growing need of putting power back into the hands of the people to reclaim Hawaii for our future. Our platform and vision affirms the need to promote and protect good jobs and the right of workers to organize themselves and bargain collectively.

SB 535 would improve the lives of domestic workers by providing for basic rights and protections such as minimum wage and overtime pay and against discrimination.

We applaud your effort to hear SB 535 and urge you to support the Domestic Workers Bill of Rights.

Thank you.

**SB535**

Submitted on: 4/1/2013

Testimony for JUD on Apr 4, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	Individual	Comments Only	No

Comments: I support passage of bill to all people who seek work were victims of domestic abuse

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**SB535**

Submitted on: 4/2/2013

Testimony for JUD on Apr 4, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Luke Sarvis	Individual	Support	No

Comments:

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EXECUTIVE CHAMBERS

HONOLULU

April 4, 2013

Dear Chair Rhoads, Vice-Chair Har and Committee Members:

My testimony is **IN SUPPORT of SB535 SD1 HD1.**

This is an important policy reform that will help close the gap between Domestic Workers and the rest of Hawaii's workforce. This will extend basic labor rights to a population that has been traditionally excluded from many of the fundamental protections most other workers enjoy under the federal labor law. Domestic workers are comprised of the nannies, cooks, babysitters and other caregivers whose labor allows households to function smoothly, thus contributing greatly to the larger community. Domestic Workers are an often hidden and easily-exploited labor force which needs protection.

This legislation follows national trends to provide DOMESTIC WORKERS basic labor protections. Similar legislation has been passed in New York State and is pending in California and other states as well. This legislation will shed light on the abuses that are rampant in this largely unregulated industry. Many of these workers are immigrants, women who toil behind closed doors in private homes, often suffering in silence. The nature of their jobs makes it difficult for them to organize and be noticed, much less win the protections they deserve.

SB535 SD1 HD1 will entitle workers to overtime pay, give them time for meals and rest breaks, provide civil rights protections against abuse and harassment and afford them the dignity of other workers.

My gratitude to all of you for responding to this vulnerable population of Hawaii's most hard-working citizens.

Sincerely,  
Nancie Caraway, Ph.D.  
First Lady of the State of Hawaii



**LATE**

**SB535**

Submitted on: 4/3/2013

Testimony for JUD on Apr 4, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dr. Christine T. Lipat, DC	Individual	Support	No

Comments: SB 535 would improve the lives of domestic workers by providing for basic rights and protections such as minimum wage and overtime pay and against discrimination. I applaud your effort to hear SB 535 and urge you to support the Domestic Workers Bill of Rights.

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**LATE**

**SB535**

Submitted on: 4/4/2013

Testimony for JUD on Apr 4, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Larry Tool	Individual	Support	No

Comments: Aloha Chairman Rhoads, Vice Chair Har and Distinguished Committee Members, I realize this is late but I wish to add my support of this bill, and associate myself with the comments submitted by Local 5. Protections for this segment of our workforce are long overdue, and the displacement of local workers by outside corporations should be a serious concern for state government. Thank you for your attention.

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**SB535**

Submitted on: 4/4/2013

Testimony for JUD on Apr 4, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Matthew LoPresti	Individual	Support	No

Comments:

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