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STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD  
830 PUNCHBOWL STREET, ROOM 434  
HONOLULU, HAWAII 96813  
TELEPHONE 586-8610/ FAX 586-8613  
E-MAIL [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov)

To: The Honorable Mark M. Nakashima, Chair,  
The Honorable Mark J. Hashem Vice Chair,  
Members of the House Committee on Labor & Public Employment

The Honorable Clift Tsuji, Chair  
The Honorable Gene Ward, Vice-Chair  
Members of the House Committee on Economic Development & Business

Date: Friday, March 15, 2013  
Time: 11:00 a.m.  
Place: Conference Room 309, State Capitol

From: Sesnita Moepono, Board Member  
Hawaii Labor Relations Board (HLRB)

**Re: S.B. No. 535, SD1 Relating to Labor**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The purpose of this bill is to establish rights for domestic workers. The bill also directs the Department of Labor and Industrial Relations (DLIR) to report on the feasibility and practicality of allowing domestic workers to organize for the purposes of collective bargaining. The HLRB will confine its remarks to Sections 1, 2 and 7 of the bill.

**II. CURRENT LAW**

Currently, domestic workers are not included in any collective bargaining law in Hawaii or under the National Labor Relations Act.

**III. COMMENTS**

HLRB supports the intent of this bill and has the following recommendations.

Sections 1 and 2 amend Hawaii Revised Statutes (HRS) Chapter 377 which governs collective bargaining in Hawaii. Since section 7 of the bill asks for a

report on the feasibility and practicality of allowing domestic workers to organize for the purposes of collective bargaining. HLRB believes it to be premature to amend HRS Chapter 377 when domestic workers do not have collective bargaining rights in Hawaii. To effectuate the intent of these sections, HLRB suggests including these amendments in other sections in the HRS pertaining to the wage laws.

As stated previously, section 7 of the Bill requests the DLIR to submit a report to the 2014 Legislature on the feasibility and practicality of allowing domestic workers to organize for the purposes of collective bargaining

The Director of DLIR has asked the HLRB to assist DLIR with this study in the event this request is enacted. As HLRB has mentioned in other testimonies, HLRB would not be able to add to its current workload. Therefore, on behalf of HLRB, I contacted and discussed this study request with Mrs. Joyce Najita, Director of the Industrial Relations Center (IRC), who has the background and expertise to conduct such a study (as noted below). Unfortunately, IRC has a very small staff of 2 and estimates that \$50,000 would be needed to complete this study.

The IRC was established in 1970 in the College of Business Administration at University of Hawaii - Manoa. The IRC's research has been published in special reports, serials and monographs. Other notable work products resulting from IRC research activity include: Roberts' Dictionary of Industrial Relations, 4<sup>th</sup> ed. (BNA Books, 1994). The IRC also provides technical expertise and assistance to public and private groups wishing to explore topics and issues related to collective bargaining or industrial relations. The IRC responds to queries by the Legislature, labor unions, and employers from the private and public sectors, arbitrators, mediators, the Hawaii Labor Relations Board, the media, and the general public on labor relations matters.

In summary HLRB makes the following recommendations to amend the bill:

1. Move the amendments in sections 1 and 2 of this bill from HRS Chapter 377 to the sections in HRS on wages.
2. Change Section 7 by replacing DLIR to IRC and appropriate \$50,000 to the IRC to conduct a report on the feasibility and practicality of allowing domestic workers to organize for the purposes of collective bargaining.

Mahalo a nui loa for giving us the opportunity to testify on this bill.



# HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 15, 2013  
Rm. 309, 11:00 a.m.

To: The Honorable Mark M. Nakashima, Chair  
Members of the House Committee on Labor & Public Employment

The Honorable Clift Tsuji, Chair  
Members of the House Committee on Economic Development & Business

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

Re: S.B. No. 535, S.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.

In its original form, S.B. No. 535 amended HRS Chapter 378, Part I, to prohibit harassment of domestic workers based on sex, gender, race, religion or national origin. The HCRC supports S.B. No. 535, S.D.1, which in part amends HRS Chapter 378, Part I, by extending the protection for domestic workers not only against discriminatory harassment, but 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.

S.B. 535, S.D.1, proposes new HRS § 377-1 definitions of “domestic worker” and “casual basis” that effectively 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 suggests that the term “domestic worker” not be used in Section 4 of the bill to incorporate by reference the new HRS §377-1 definitions into HRS Chapter 378, Part I. Instead, the HCRC suggests using

the term “domestic” as it is 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 § 377-1) are protected against all prohibited discriminatory practices under HRS Chapter 378, except for discriminatory hiring.

The HCRC suggests that Section 4 of S.B. No. 535, S.D.1 be amended to read:

**378-2 Discriminatory practices made unlawful; offenses defined.** (a) It shall be an unlawful discriminatory practice:

\* \* \*

(9) For any employer to discharge from employment, or otherwise to discriminate against any domestic [worker] in compensation or in the terms, conditions or privileges of employment because of the individual’s race, sex, including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability of marital status.

Thank you for consideration of the HCRC’s suggestion and recommendation that this change be incorporated into an amended H.D.1.

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

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Cathy Betts, JD

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March 13, 2013

Testimony in Support of SB 535

TO: Honorable Mark Nakashima, Chair  
Honorable Mark Hashem, Vice Chair  
Members of the House Committee on Labor and Public Employmen

Honorable Clift Tsuji, Chair  
Honorable Gene Ward, Vice Chair  
Members of the House Committee on Economic Development and  
Business

FROM: Annie Hollis, BA, MSW candidate (2013)  
Hawaii State Commission on the Status of Women, practicum student

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 also frequently exposed to verbal and physical abuse. 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, Domestic Workers Bill of Rights.

Annie Hollis, BA, MSW candidate (2013)

Hawaii State Commission on the Status of Women, Practicum Student

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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.



Committee: Committee on Labor & Public Employment and Economic Development  
& Business  
Hearing Date/Time: Friday, March 15, 2013, 11:00 a.m.  
Place: Conference Room 309  
Re: Testimony of the ACLU of Hawaii in Support of S.B. 535, S.D.1, Relating  
to Labor

Dear Chairs Nakashima and Tsuji and Members of the Committees:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 535, S.D.1, which establishes rights for domestic workers that include protections for overtime compensation, paid days off, and nondiscriminatory work environments. Domestic workers are some of the most vulnerable employees in Hawaii because the law doesn’t afford them the same legal protections as other workers.

Domestic laborers are amongst the most undervalued and under-regulated industries in the U.S. – a legacy of slavery, Jim Crow, and the undervaluation of “women’s work.” In the contemporary context, domestic workers (who are almost all immigrant women of color) routinely face low pay and long hours, and are denied health care and sick leave. Too often they endure racial/ethnic discrimination, physical and other forms of abuse, and many find themselves the victims of human trafficking and modern-day slavery.

S.B. 535, S.D.1 seeks to ensure that domestic workers are protected under Hawaii law similar to those protections that most other workers have enjoyed for decades. Hawaii could follow in the footsteps of New York, whose former Governor David Paterson signed the United States’ first Domestic Workers Bill of Rights in 2010. By supporting the protection and rights of all employees, New York ensured that over 200,000 nannies, in-home caregivers, housekeepers, and other domestic laborers are guaranteed reasonable work hours, overtime pay, one day of rest each week, paid vacation days, and protection against workplace harassment and discrimination.

We urge you to support S.B. 535, S.D.1. in recognition of domestic workers’ struggle to overcome discrimination and to achieve human rights and dignity.

Thank you for this opportunity to testify.

Sincerely,  
Laurie A. Temple  
Staff Attorney and Legislative Program Director  
ACLU of Hawaii

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawaii'i 96801  
T: 808-522-5900  
F: 808-522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
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Chairs Nakashima and Tsuji and Members of the Committee on  
Labor & Public Employment and Economic Development & Business  
March 15, 2013  
Page 2 of 2

*The American Civil Liberties Union (“ACLU”) is our nation’s guardian of liberty – working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.*

American Civil Liberties Union of Hawaii  
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March 12, 2013

**To: Representative Mark Nakashima, Chair  
Representative Mark J Hashem, Vice Chair  
CC: Representative Roy Takumi**

**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 overtime pay, meal and rest breaks and, for live-in workers, adequate sleep. 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

Sincerely,

A handwritten signature in black ink, appearing to read 'Ai-jen Poo', with a stylized, cursive script.

Ai-jen Poo

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

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 14, 2013 12:19 PM  
**To:** LABtestimony  
**Cc:** leealdrige@msn.com  
**Subject:** Submitted testimony for SB535 on Mar 15, 2013 11:00AM

**SB535**

Submitted on: 3/14/2013

Testimony for LAB/EDB on Mar 15, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lee Aldridge	Individual	Oppose	No

Comments: I wish to thank the LAB/EDB Committees for the opportunity to testify on SB 535. I OPPOSE SB 535. I am categorically opposed to the addition of any groups of workers, people, employees, etc. being permitted to organize into new collective bargaining units.

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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 13, 2013 5:06 PM  
**To:** LABtestimony  
**Cc:** ndavlantes@aol.com  
**Subject:** \*Submitted testimony for SB535 on Mar 15, 2013 11:00AM\*

**SB535**

Submitted on: 3/13/2013

Testimony for LAB/EDB on Mar 15, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Davlantes	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 14, 2013 9:07 AM  
**To:** LABtestimony  
**Cc:** lukesarvis@gmail.com  
**Subject:** \*Submitted testimony for SB535 on Mar 15, 2013 11:00AM\*

**SB535**

Submitted on: 3/14/2013

Testimony for LAB/EDB on Mar 15, 2013 11:00AM in Conference Room 309

<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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 14, 2013 9:19 AM  
**To:** LABtestimony  
**Cc:** wctanaka@gmail.com  
**Subject:** Submitted testimony for SB535 on Mar 15, 2013 11:00AM

**SB535**

Submitted on: 3/14/2013

Testimony for LAB/EDB on Mar 15, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wayne Tanaka	Individual	Support	No

Comments: I strongly support this measure. Domestic workers dedicate their careers to taking care of our families and our homes, keeping our surroundings clean, nurturing our children, and contributing to our economy and well-being in unique and often arduous ways. We should therefore do what we can to take care of them, and ensure basic levels of legal protection commensurate with any other job. This bill will ensure that our domestic workers can maintain a basic standard of living and may prevent the unscrupulous few from exploiting those individuals dedicated to supporting the lives and well-being of others. Mahalo a nui for the opportunity to support this measure.

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**LATE TESTIMONY**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 14, 2013 4:41 PM  
**To:** LABtestimony  
**Cc:** pam@omidyar.org  
**Subject:** Submitted testimony for SB535 on Mar 15, 2013 11:00AM

**SB535**

Submitted on: 3/14/2013

Testimony for LAB/EDB on Mar 15, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pam Omidyar	Individual	Support	No

Comments: Not submitting testimony at this time but I support this bill. Mahalo.

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**LATE TESTIMONY**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, March 15, 2013 1:15 AM  
**To:** LABtestimony  
**Cc:** annsfreed@gmail.com  
**Subject:** Submitted testimony for SB535 on Mar 15, 2013 11:00AM

**SB535**

Submitted on: 3/15/2013

Testimony for LAB/EDB on Mar 15, 2013 11:00AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S. Freed	Hawai`i Women's Coalition	Support	No

Comments: The Hawai`i Women's Coalition is in strong support of this important bill designed to ensure the same basic labor rights that other workers in our state enjoy. We applaud the legislature for hearing this bill and ask that the Committee on Labor move this bill along. Ann S. Freed Co-Chair Hawai`i Women's Coalition 808-623-5676

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