



EXECUTIVE CHAMBERS

HONOLULU

February 7, 2013

Dear Chair Hee, Vice-Chair Shimabukuro and Committee Members:

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

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 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



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 7, 2013
Rm. 016, 10:00 a.m.

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

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

Re: S.B. No. 535

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 which in part amends HRS Chapter 378, Part I, to prohibit harassment of domestic workers based on sex, gender, race, religion or national origin. However, the HCRC urges that the protections for domestic workers against discrimination be expanded to include 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 of domestic violence victim status. “Unequal terms and conditions of employment” includes harassment. However, the HRS § 378-1 definition of employment specifically excludes domestic workers, and the HCRC has therefore had to turn away even egregious sexual harassment complaints from domestic workers as non-jurisdictional.

The exclusion of domestic workers 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 domestic workers out of Title VII jurisdiction. The protection of the rights of domestic workers 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 the domestic workers to work in their homes for any reason, good or bad, even discriminatory reasons. However, once hired, domestic workers should have the same civil rights protections that the law affords all other employees in terms of employment, equal pay, non-discriminatory termination and freedom from harassment.

The HCRC therefore suggests that Sections 3 and 4 of SB 535 be amended to state:

"Employment" means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into. Employment does not include services by an individual employed as a domestic in the home of any person[~~;~~]; except as provided in section 378-2 (a) (9). [~~and (10).~~]

* * * * *

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

(9) For any employer to [~~engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature to a domestic worker when:~~

~~-(A) Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment;~~

~~-(B) Submission to or rejection of the conduct by an~~

~~individual is used as the basis for employment decisions affecting the individual; or~~
~~-(C) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment; or]~~discharge from employment, or otherwise to discriminate against any domestic worker in compensation or in the terms, conditions or privileges of employment.

~~[(10) For any employer to subject a domestic worker to unwelcome harassment based on gender, race, religion or national origin, where the harassment has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment.]~~

Thank you for consideration of the HCRC's recommendation.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



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Executive Director
Cathy Betts, JD

Email: DHS.HSCSW@hawaii.gov
Visit us at:
humanservices.hawaii.gov/hscsw/

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

February 7, 2013

Testimony in Support of SB 535

TO: Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor
February 7, 2013, 10:00 a.m., Room 016

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

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

The Commission supports SB 535, 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.¹

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.² 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 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

¹ 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.

² Ibid.

addition, close to 90% of workers in the survey who reported working overtime did not receive overtime pay.³ 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.⁴

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.

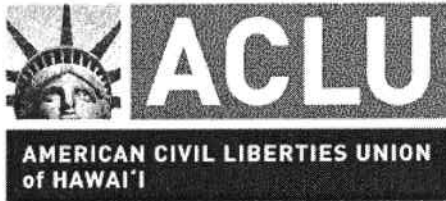
These issues exist across the country, and no doubt are occurring in Hawaii as well. In 2010, New York passed the first Domestic Workers Bill of Rights. In Hawaii, a Domestic Workers Bill of Rights is a start to ensure fair and equitable treatment for people who care for our children, our elderly, our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

³ 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.

⁴ Ibid.



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Thursday, February 07, 2013, 10:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Support of S.B. 535, Relating to Labor

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 535, Relating to Labor, which establishes rights for domestic workers that include protections for overtime compensation, paid days off, and nondiscriminatory environments. Because they aren’t currently entitled to legal protections that prohibit abuse, domestic workers are some of the most vulnerable employees in the United States.

S.B. 535 carefully details new protections and definitions to ensure that domestic workers are treated equally under Hawaii law. It distinguishes between employment on a “casual basis,” which is less than twenty hours a week and irregular or intermittent, and employment as a “domestic worker,” a person who does housekeeping, cares for a child, or acts as a companion for a sick, recovering, or elderly person. The purpose of defining these terms and distinguishing between them is to ensure that the latter is afforded the rights of other employees. These new rights include set hours of labor and mandatory compensation for overtime in addition to a minimum of twenty-four hours of consecutive rest in each calendar week and the provision of at least three days paid rest each calendar year. Importantly, S.B. 535 makes it illegal for employers to engage in sexual harassment of the domestic worker or to subject the employee to an intimidating, hostile, or offensive working environment based on gender, race, religion, or national origin.

It is our hope that the state of Hawaii will 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.

Because we recognize domestic workers’ struggle to overcome discrimination and to achieve human rights and dignity, we urge you to support S.B. 535. Thank you for this opportunity to testify.

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

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Chair Chair Hee and Members of the Committee on
Judiciary and Labor
February 5, 2013
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ACLU of Hawaii

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org