

LATE TESTIMONY

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GOVERNOR

DWIGHT TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR



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HAWAII LABOR RELATIONS BOARD
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February 6, 2013

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

Date: Friday, February 8 2013
Time: 10:0 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 535 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

The purpose of this bill is to establish rights for domestic workers. Directs DLIR to report on feasibility of allowing domestic workers to organize for the purposes of collective bargaining.

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

The Board supports the intent of this bill and has the following recommendations.

Section 7 of the Bill requests the Department of Labor and Industrial Relations 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

On behalf of the Board, I contacted and discussed this study request with the Joyce Najita, Director of the Industrial Relations Center (IRC), who is very

interested in taking the lead in 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, 4th 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.

The Board suggests amending the bill by requesting the IRC to conduct the feasibility and practicality study and hold the amendments pertaining to Chapter 377, Hawaii Revised Statutes, until the study is completed.

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



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February 6, 2013

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

Date: Thursday, February 7, 2013
Time: 10:00 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 535 Relating to Labor

The DLIR presumes the intent of the measure is to afford more protections under Hawaii's labor laws for domestic workers. If so, the department has the following recommendations:

1. The apparent intent of section 1 and section 2 is to limit the exemption from minimum wage and overtime for domestic workers. DLIR suggests deleting those sections and instead amending § 387-1, Hawaii Revised Statutes (HRS), in the following manner:

(3) ~~(In domestic service in or about the home of the individual's employer or as)~~ As a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
2. DLIR defers to the Hawaii Civil Rights Commission and supports the Commission's suggested language regarding sections 3 and 4 of the proposal.
3. Section 5 of the proposal amends Workers' Compensation law unnecessarily as current law provides for only very limited exemptions. DLIR recommends deleting this section from the proposal as section 386-1, HRS, excludes from the definition of employment the following types of domestic workers:
 - "Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed

calendar quarter of the preceding twelve-month period;”

- “Domestic, in-home and community-based services for persons with developmental and intellectual disabilities under the Medicaid home and community-based services program;” (Act 158, SLH 2012)
 - “Domestic services, which include attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, or when provided through state-funded medical assistance to individuals ineligible for Medicaid, when performed by an individual in the employ of a recipient of social service payments.” (Act 157, SLH 2012)
4. Amend section 6 as in #1 above to limit the exemption from minimum wage and overtime for domestic workers. DLIR notes that this would make the state enforcement of wage and hour law regarding domestic workers different than federal enforcement of the Fair Labor Standards Act (FSLA). Enforcing provisions in state wage and hour laws, that do not exist in federal law, complicates enforcement. Although DLIR believes that the number of domestic workers in Hawaii is relatively low, should the department receive numerous complaints or if other complications arose, DLIR would likely seek favorable consideration from the legislature for additional resources.
 5. Section 7 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 department concurs with the Hawaii Labor Relations Board (HLRB), that considering current resource limitations and uncertainties due to the so-called “fiscal cliff”— it may be more prudent to seek another entity to undertake the proposed study. DLIR is 87% federally funded and the generally funded programs do not have the capacity or expertise to take on this additional responsibility at this time.

DLIR understands that HLRB has communicated with the Industrial Relations Center (IRC), which is willing to undertake a study. DLIR will support the IRC's efforts in this effort.