

SB2366



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

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January 30, 2014

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

Date: Thursday, January 30, 2014
Time: 9:30 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 2366 Relating to Wage and Hour Law

I. OVERVIEW OF PROPOSED LEGISLATION

SB 2366 proposes to amend Section 387-1, Hawaii Revised Statutes, to increase the guaranteed monthly compensation to \$5,000 for exempting individuals from the minimum wage and overtime protections in the law.

The department strongly supports increasing the guaranteed amount of monthly compensation for exemption to minimum wage and overtime provisions, which would provide stronger protections for workers under the Hawaii Wage and Hour Law.

Furthermore, at a time when many are supporting an increase to the minimum wage, the DLIR suggests the protection provided by requiring a floor to protect salaried workers should simultaneously be raised. In fact, the last time this provision in the law was changed (Act 43, SLH 2002) it was due to an increase in the minimum wage.

II. CURRENT LAW

The Hawaii Wage and Hour Law was established to safeguard existing minimum wage and maximum hour standards to maintain the health, efficiency and general well-being of workers. Under the current definition of an "employee" in Section 387-1, HRS, an individual who receives a guaranteed compensation of \$2,000 or more per month is excluded from the requirements of the law. By paying a guaranteed compensation, employers who are subject to the State law may schedule such

individuals to work unlimited hours without being required to pay overtime compensation.

The current \$2,000 guaranteed compensation was enacted as Act 43 (SLH, 2002) when the minimum wage was \$5.75 per hour. Employers who are subject to the Fair Labor Standards Act ("FLSA"), which usually includes business with an annual dollar volume of at least \$500,000, would not be eligible for this type of exemption. This guaranteed salary exemption applies only to employers that are not subject to the FLSA.

Employers who are subject to the State minimum wage and overtime law are those employers who are exempt from the FLSA. These employers generally have annual dollar volumes of less than \$500,000, and do not engage in interstate commerce.

III. COMMENTS ON THE SENATE BILL

Due to the fixed amount of this compensation, increases in the minimum wage have steadily eroded the differences in the compensation such that the minimum salaried compensation is now closer to a covered employee making the current minimum wage of \$7.25 per hour.

Since the last change in this compensation twelve years ago in 2002, there has been a 30% increase in the Consumer Price Index (CPI). In 2013 dollars (the most recent calculations available, see Exhibit A), the \$2,000 would amount to \$2,590 dollars. Therefore, considering the length of time and increase in the CPI, an increase at this time is reasonable if this protection is to be updated infrequently.

The DLIR suggests policy makers consider a mechanism to maintain a consistent average wage proportion for the exemption to minimum wage and overtime protections. DLIR suggests amending 387-1(1) as follows:

(1) At a guaranteed compensation totaling [~~\$2,000~~] minimum wage times three-hundred twenty or more a month, whether paid weekly, biweekly, or monthly;

Three hundred twenty represents the current exemption amount (\$2000) divided by \$6.25, which was the minimum wage increase going into effect the last time this exemption was increased in 2002. In 2002, Act 43 was enacted into law to correct the inequity of keeping the guaranteed compensation at the same level when there was an impending increase in the minimum wage as appears to be the case during this legislative session. Moreover, this mechanism will ensure the guaranteed compensation would keep pace with increases in the minimum wage moving forward.

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\$ 2,000.00

in 2002

Has the same buying power as:

\$2,589.85

in 2013

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TO:
SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: January 30, 2014
TIME: 9:30am
PLACE: Conference Room 16

RE: SB2366

Position: Strong Opposition

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers and distributors of food and beverage related products in the State of Hawaii.

This bill would increase the minimum compensation requirement by 150%. This is an incredibly large and sudden increase.

Hawaii has one of the lowest unemployment rates in the country, and we pay substantially more than many other parts of the country for food. Food retailers generally operate at a profit margin of around 1 percent. For many it may simply not be possible to change their pay scales and budget around this kind of extreme and abrupt change. This is the kind of thing that can force businesses to downsize or even close their doors, which leaves people without jobs. In addition to which this will lead to increased labor costs which drive up the price of food.

Potentially costing jobs in the food industry and driving up the price of food is not the right choice for our state.

Please vote no on this measure.

Thank you for the opportunity to testify.