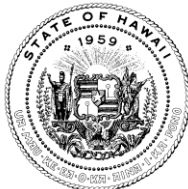


DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIO
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321

HONOLULU, HAWAII 96813

www.labor.hawaii.gov

Phone: (808) 586-8844 / Fax: (808) 586-9099

Email: dlir.director@hawaii.gov

March 23, 2016

To: The Honorable Della Au Belatti, Chair,
The Honorable Richard P. Creagan, Vice Chair, and
Members of the House Committee on Health

The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor and Public Employment

Date: Thursday, March 24, 2016

Time: 10:00 a.m.

Place: Conference Room 329, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

**Re: H.C.R. No. 107/H.R. 63 Requesting A Study to Determine Fair Wages For
Medical Marijuana Dispensary Support Staff Employees.**

I. OVERVIEW OF PROPOSED LEGISLATION

HCR107/HR63 asks DLIR to conduct a study to determine a fair wage for medical marijuana dispensary employees and to review and identify the necessary positions in medical marijuana dispensaries with the cooperation of the Department of Health.

The DLIR opposes this measure. DLIR notes that “fair wages” for any subset of the workforce has never been identified, with the exception of workers on public works projects (prevailing wage law). Identifying this new sector of the workforce as requiring extra protection represents a precedence in policy-making as no other group of workers, except those in public works, is afforded such treatment.

Further, DLIR’s research on the labor issues presented by this section of the workforce in other states indicates that unionization drives and safety and health issues appear to represent other significant issues arising with the development of this new industry.

II. CURRENT LAW

Workers in medical marijuana dispensaries are subject to the Wage and Hour Law, chapter 387, Hawaii Revised Statutes (HRS), which requires a minimum wage of \$8.50 per hour; in 2017, \$9.25 per hour; and in 2019 \$10.10 an hour. State law and the federal Fair Labor Standards Act (FLSA) will provide overtime protections.

There is no “fair” wage law in Hawaii.

Currently, the only private wages regulated by the DLIR are wages paid to laborers and mechanics working on public works jobs and being paid with public funds.

III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION

Workers in the new medical marijuana dispensary industry will be afforded all the protections offered by State and Federal labor laws. All medical marijuana dispensary employers have similar responsibilities to workers as in any other industry. The question for policy makers is whether these workers require special wage considerations compared to other workers and if the Legislature will allocate sufficient resources for the department to take on the additional responsibilities inherent in developing and administering provisions of the law for these workers. In essence, the intent of the resolution appears to lead to the department developing a prevailing wage rate schedule for this sector.

Regarding Wage and Hour law, there is an obligation to pay at least minimum wage and overtime after 40 hours in a workweek. “Fair” wages are distinguished from minimum wages as wages that afford a worker a certain standard of living that is relative to their jurisdiction. Hawaii has not enacted any “fair” wage laws.

DLIR’s research on this subsector in other states indicates that safety and health issues may present a greater concern for the medical marijuana dispensary industry than wages. OSHA recently fined New MexiCann in New Mexico for a total of twelve (12) serious violations to workplace health and safety for \$13,500 after two workers were severely burned in an explosion on July 23, 2015¹.

There are also numerous complaints before the National Labor Relations Board (NLRB) regarding unionization drives across the country. An October 2013 memo from the NLRB General Counsel makes clear, the NLRB has jurisdiction over this industry, notwithstanding its illegality under federal law². As such, the new industry will not fall under chapter 377 (HRS), which is the State’s employment law and for which matters are quasi-adjudicated by the Hawaii Labor Relations Board.

For these reasons, DLIR opposes this measure.

¹ https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1084945.015,
https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1080217.015

² http://www.managementmemo.com/files/2014/08/01_CA_104979_10_25_13_.pdf



Hawaii's Voice for Sensible, Compassionate, and Just Drug Policy

TO: HOUSE COMMITTEES ON HEALTH AND LABOR

FROM: PAMELA LICHTY, M.P.H., PRESIDENT

DATE: MARCH 24, 2016, 10:00 A.M., ROOM 329

RE: H.C.R. 107 REQUESTING A STUDY TO DETERMINE FAIR WAGES FOR MEDICAL MARIJUANA DISPENSARY SUPPORT – **SUPPORT**

Good afternoon, Chairs Belatti and Nakashima, Vice Chairs Creagan and Keohokalole, and members of the Committees. My name is Pam Lichty and I'm President of the Drug Policy Action Group (DPAG), the government affairs arm of the Drug Policy Forum of Hawaii.

The Drug Policy Action Group is in general support of this resolution. We must admit, however, that this whole topic is terra incognita for all of us in Hawaii - so it's hard to know what to say.

Certainly there will be many job opportunities when the medical marijuana dispensaries open their doors this summer – after more than 15 years of anticipation. And it should be helpful for a study to identify the range of required positions. The entire industry is new, the job market is new, and it seems to us a good idea to look at what other jurisdictions are doing on the issues of employee wages and benefits. We know that some of the dispensary workers elsewhere have joined unions and I would anticipate that would happen here as well.

We are all well aware of the cost of living in Hawaii. And the licensees are going to want to attract the best possible employees for this new industry. This is an excellent time, it seems to us, to look at the whole range of labor issues that might surface in this literally unprecedented new industry.

If The Department of Labor is willing and able to conduct the study called for in this resolution, it should prove helpful to employers and employees alike in this fledgling industry which holds so much promise for Hawaii.

Mahalo for hearing this resolution and for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 22, 2016 2:33 PM
To: HLTtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HCR107 on Mar 24, 2016 10:00AM*

HCR107

Submitted on: 3/22/2016

Testimony for HLT/LAB on Mar 24, 2016 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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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