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February 26, 2015

To: The Honorable Jill N. Tokuda, Chair,  
The Honorable Ronald D. Kouchi, Vice Chair, and  
Members of the Senate Committee on Ways and Means

Date: Friday, February 27, 2014  
Time: 9:00 a.m.  
Place: Conference Room 211, State Capitol

From: Elaine N. Young, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. No. 129, S.D. 1 Relating to Employment**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB129 SD1 adds a new section to the Wage and Hour Law, chapter 388, Hawaii Revised Statutes (HRS), requiring employers with 50 or more employees to provide their service workers a maximum of 40 hours of paid leave to be used for the service worker's personal illness, caring for a sick child or spouse, or are victims of domestic violence or sexual assault. The proposal excludes employers in manufacturing classifications and non-profit groups providing recreation, education and childcare.

The department supports the intent of the measure and offers comments. Further, this measure does not apply to state service workers so there will not be any fiscal impact to the State as an employer, however, there will be a fiscal impact to the DLIR for taking on additional responsibilities without sufficient personnel to enforce the law.

**II. CURRENT LAW**

There is no required paid leave in the current law.

**III. COMMENTS ON THE SENATE BILL**

SB129 SD1 adds a new section to the Payment of Wages and Other

Compensation Law, chapter 388, HRS, and requires employers of service workers to provide up to 40 hours a week of paid sick leave, for the employee's own illness, to take care of their child or spouse, or for absences needed a result of being a victim of family violence or sexual assault.

The proposed law applies only to employers with 50 or more employees, and to their service workers who are subject to the minimum wage and overtime provisions of the Fair Labor Standards Act. The measure excludes employees of manufacturers and non-profit employers who provide a combination of recreation, education and childcare.

One concern would be if paid leave is provided for the service workers' own illness, how does that work in concert with the Workers' Compensation Law and the Temporary Disability Insurance (TDI) law? Would the paid leave be reimbursed to the employer if the disability is found to be compensable under the Workers' Compensation or TDI laws?

The amended bill adds an exemption for employers with an approved sick leave plan. For the employer to keep the approval of its TDI plan that utilizes sick leave, the employer must provide sick leave that meets the minimum TDI requirements and the sick leave can be used only for the employee's own disability. If the leave can be used for other reasons, the plan may no longer meet TDI requirements.

A possible solution is to clarify the exemption to further state that the employee can use only the sick leave that is in excess of the minimum TDI requirements for purposes other than the employee's own disability, and to make the related change to the TDI law in chapter 392.

Complaints concerning violations of this section would go to the Wage Standards Division under section 388-9, HRS. The current backlog of wage-related investigations in the Wage Standards, which stems from loss of investigators in the 2009 reduction in forces (RIF), is projected to be at least two years. Restoring the Labor Law Enforcement Specialist positions lost in that RIF is essential to practical and timely enforcement of the law and any new responsibilities.



Friday, February 27, 2015

Relating to Senate Bill 129 Senate Draft 1  
Testifying in Strong Support

Aloha, Chair Tokuda, Vice-Chair Kouchi and Members of the Senate Committee on Ways and Means,

The Democratic Party of Hawaii **strongly supports SB129 SD1 Relating to Labor**, which requires certain employers to provide sick leave to service workers for specified purposes under certain conditions and defines service workers and employers.

The State's temporary disability insurance (TDI) provides benefits to all workers employed in the state at a little more than half of their wages starting at the eighth day of a disability, up to 26 weeks.

For low-income families, a few days without income can mean they can't buy groceries, or can't make their rent. While TDI is a good program, it isn't workable if an employee is forced to stay home from work for just two or three days because of a short-term illness, like a cold or the flu, food poisoning, etc. Creating a requirement for employers to provide some paid sick leave for their employees will ease the lives of so many individuals and families.

While opponents to this type of measure will argue that it will hurt businesses, there is an abundance of evidence showing that is simply not the case. In places where a paid sick leave law is in place, employers have experience no loss of profits. What's more, employees will likely show greater loyalty to their employers if given paid sick leave, which is good for business.

For these reasons, we urge you to act favorably on this bill.

Mahalo for the opportunity to testify,  
And The Legislation Committee of the Democratic Party of Hawaii



# HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Randy Perreira  
President

The Twenty-Eighth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Ways and Means

Telephone: (808) 597-1441  
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Testimony by  
Hawaii State AFL-CIO  
February 27, 2015

## S.B. 129, S.D. 1 – RELATING TO HEALTH

The Hawaii State AFL-CIO strongly supports the purpose and intent of S.B. 129, S.D. 1; however, we recognize the need for some changes to the bill and, therefore, strongly support the adoption of the proposed S.D. 2 language that we have provided with our testimony.

Many union members working in Hawaii are fortunate to have access to paid sick days. Even a number of employers that do not have a collective bargaining agreement offer generous paid sick days to their employees and we commend them for providing such benefits. Regrettably, not all workers are provided access to paid sick days. In fact, according to the National Partnership for Women and Families, over 170,000 Hawaii workers or nearly 43% of the state's private-sector workforce are not able to take paid sick days when they are ill or when their children are ill. As a result, countless employees attend work while sick as many of the 170,000 workers are low-wage service sector workers living paycheck-to-paycheck. This, however, can be changed for the better.

Supporting S.B. 129, S.D. 1 will provide workers and workers who need it the most with a few paid sick days a year. Children who are sick will finally be able to stay at home and recover and sick employees will finally have the opportunity to regain their health allowing them to return to work at full productivity. And most importantly, the spread of illness will be greatly reduced among co-workers, school children and the general public. Hawaii will become a healthier state, a more productive state and of course a state that recognizes the impact of how contagious the flu or other diseases can be to Hawaii residents. A small number of paid sick days a year can go a long way to improving the quality of life for many.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira  
President

RELATING TO LABOR.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Chapter 388, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§388- Paid sick leave; service workers. (a) As used in this section:**

"Child" means an individual who is less than eighteen years of age that is:

- (1) A Bbiological, adopted, foster, or step-child of a service worker;
- (2) A Elegal ward of a service worker; or[FHB1]
- (3) A child of a service worker who stands in loco parentis to the

child who is:

- (A) An individual who is born alive and less than eighteen years  
of age; or
- (B) Eighteen years of age or older and incapable of self-care  
because of a mental or physical disability.

"Day or temporary worker" means:

(a)-an individual who works for another person for less than twenty hours in a week except for an individual who works for a food establishment[FHB2]; or

(b) an individual who works:

- (1) On a per diem basis; or

(2) As an occasional or irregular basis for only the time required to complete such work, ~~work.~~ who performs work for another, whether the individual is paid by the person for whom work is performed or by an employment agency, as defined in section 373-1. ~~, who works:~~

~~(1) On a per diem basis, or~~

~~(2) As an occasional or irregular basis for only the time required to complete such work.~~

"Employer" shall have the same meaning as in section 388-1, but shall refer to employers who employ fifty or more individuals in the State in any one quarter in the previous year, which shall be determined on January 1, annually. The term "employer" excludes:

~~(1) Any business establishment classified in sector 31, 32 or 33 in the North American Industrial Classification System; or~~

~~(2) Any ~~any~~nationally chartered organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended, that provides ~~all~~any of the following services: recreation, child care, and education.~~

"Family violence" shall have the same meaning as in section 571-2.

"Food establishment" means:

(1) Any place or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing,

packaging, transporting, or otherwise handling food at the retail or wholesale level;

(2) Any place used for cleaning food equipment or utensils in support of another food establishment; or

(3) Any operation that is conducted in or in conjunction with a mobile, stationary, temporary, or permanent facility, or location where food is served or provided to the public, with or without charge, regardless of whether the food is consumed on or off the premises.

"Service worker" means an employee, including an employee of a food establishment, excluding a day or temporary worker, who is paid on an hourly basis, or is not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act of 1938 and the regulations promulgated thereunder, as amended.

"Sexual assault" means any sexual offense under part V of chapter 707.

"Spouse" means a person who is lawfully married to another person under the laws of the State or is in a civil union.

(b) An employer shall provide paid sick leave annually to each of the employer's service workers. The paid sick leave shall be earned as follows:

(1) Beginning January 1, 2016, or the date thereafter on which the service worker commences employment;

(2) At a rate of at least one hour of paid sick leave for each forty hours actually worked[FHB3]; and

(3) In one-hour increments up to a maximum of forty hours per calendar year.

A service worker shall be entitled to carry over up to forty unused earned hours of paid sick leave from the current calendar year to the following calendar year, but no service worker shall be entitled to use— carry over more than an aggregate of eighty hours of earned sick leave in any calendar year[FHB4] .

(c) A service worker shall be entitled to the use of earned paid sick leave, as follows:

(1) If the service worker was hired prior to January 1, 2016, upon the completion of the six-hundred-eightieth hour of employment from January 1, 2016; or

(2) If the service worker was hired on or after January 1, 2016, upon the completion of the service worker's six-hundred-eightieth hour of employment from the date of hire, unless the employer agrees to an earlier date.

A service worker shall not be entitled to the use of earned paid sick leave if the service worker did not work an average of ten or more hours a week for the employer in the most recent complete calendar quarter.

(d) An employer shall be deemed to be in compliance with this section if:



(1) The employer offers any sick leave or other paid leave, or combination of other paid leave, that may be used for the purpose of subsection (g); and is earned at a greater rate as described in subsection (b); or

(2) The employer has a sick leave policy approved by the director.

For the purposes of this subsection, "other paid leave" may include paid vacation, personal days, or paid time off.

(e) An employer shall pay each service worker for paid sick leave at a pay rate equal to the greater of either the normal hourly wage for that service worker, or the minimum fair wage under section 387-2 for the pay period during which the employee used paid sick leave. For any service worker whose hourly wage varies depending on the work performed by the service worker, the "normal hourly wage" shall mean the average hourly wage of the service worker in the pay period prior to the one in which the service worker used paid sick leave.

(f) Upon the mutual consent of the service worker and employer, a service worker who chooses to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed, shall not use earned paid sick leave.

(g) An employer shall permit a service worker to use the paid sick leave earned under this section for the following purposes:

(1) For a service worker's:

(A) Illness, injury, or health condition;

(B) The medical diagnosis, care, or treatment of a mental illness or physical illness, injury, or health condition; or

(C) Preventative medical care; or

(2) For a service worker's child's or spouse's:

(A) Illness, injury, or health condition;

(B) The medical diagnosis, care, or treatment of a mental illness or physical illness, injury, or health condition; or

(C) Preventative medical care.

(h) If a service worker is a victim of family violence or sexual assault, an employer shall permit a service worker to use the paid sick leave earned under this section for the following purposes:

(1) For medical care or psychological or other counseling for physical or psychological injury or disability;

(2) To obtain services from a victim services organization;

(3) To relocate due to the family violence or sexual assault; or

(4) To participate in any civil or criminal proceedings related to or resulting from the family violence or sexual assault.

(i) Unless an employee policy or collective bargaining agreement provides for the payment of earned fringe benefits upon termination, no service worker shall be entitled to payment of unused earned sick leave under this section upon termination of employment.

(j) Nothing in this section shall be construed to:

(1) Prevent employers from providing more paid sick leave than is required under this section;

(2) Diminish any rights provided to any employee or service worker under a collective bargaining agreement; or

(3) Preempt or override the terms of any collective bargaining agreement effective prior to January 1, 2016.

(k) A termination of a service worker's employment by an employer shall constitute a break in employment. If that service worker is subsequently rehired by the employer following a break in employment, the service worker shall:

(1) Begin to earn sick leave in accordance with this section; and

(2) Not be entitled to any unused hours of paid sick leave that had been earned prior to the service worker's break in service unless agreed to by the employer.

(1) An employer shall provide notice to each service worker of the following information:

(1) The entitlement to sick leave for service workers, the amount of sick leave provided to service workers, and the terms under which sick leave may be used; and

(2) That the service worker has a right to file a complaint with the department of labor and industrial relations for suspected violations of this section by the employer.

Employers may comply with this section by displaying a poster in a conspicuous place, accessible to service workers, at the

employer's place of business that contains the information  
required by this subsection."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 7, 2059.

**Report Title:**

Labor; Sick Leave; Service Workers

**Description:**

Requires certain employers to provide sick leave to service workers for specified purposes under certain conditions. Defines service workers and employers. Effective January 7, 2059. (SD1)  
*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



Executive Officers:

John Schilf, RSM Hawaii - Chair  
Derek Kurisu, KTA Superstores - Vice Chair  
Lisa DeCoito, Aloha Petroleum – Treasurer  
John Erickson, Frito-Lay – Secretary  
Lauren Zirbel, Executive Director

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Telephone : 808-533-1292

TO:  
COMMITTEE ON WAYS AND MEANS  
Senator Jill N. Tokuda, Chair  
Senator Ronald D. Kouchi, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION  
Lauren Zirbel, Executive Director

DATE: Friday February 27, 2015  
TIME: 9am  
PLACE: Conference Room 211

RE: SB129

Position: Strongly Oppose

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.

Our employers understand that employees will require occasional leave from work due to a legitimate sickness or other reasons, and generally accommodate and work with them.

This “one-size fits all” approach, however, will hinder an employer’s flexibility in providing this benefit and result in additional costs, direct and indirect. Traditionally paid sick leave is a benefit that is earned by full time employees. Providing this type of benefit to part time and hourly employees greatly increases the cost to employers of providing these types of jobs. For many businesses this could mean that they can no longer afford to employ as many people and will have to eliminate much needed jobs. This would be an unnecessary mandate placed on businesses among others that already exist.

Small businesses are especially vulnerable to any increase in costs, especially those who operate on low margins. Passage of this measure may also force many small employers to offset higher costs through lower wages to their employees, fewer work hours, less pay raises, decreased discretionary benefits, and higher health care costs, or even increased costs for

consumers. Even worse, for those companies on the “tipping point,” any increase may force them to close shop.

Moreover, for employers that already provide the benefit, this measure adds another layer of administrative burden. Many small businesses do not have the human resources capacity or additional resources to keep up with the regulatory requirements.

At a time when the State is placing an emphasis on jobs and the economy, this measure and any other mandate that creates perceived or real additional costs, will undermine those efforts, hinder economic progress and entrepreneurial activity, and deter business investment in our State.

The passage of this measure and other cost burdens would be unfortunate and devastating for Hawaii’s economic climate.

In light of this, The Hawaii Food Industry Association respectfully requests that this measure be held.

Thank you for the opportunity to testify.

**SB129**

Submitted on: 2/26/2015

Testimony for WAM on Feb 27, 2015 09:00AM in Conference Room 211

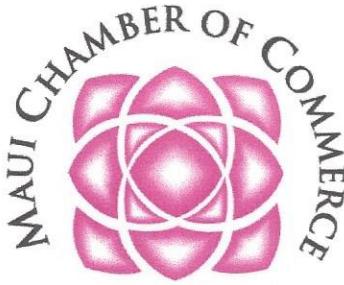
<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Randall Francisco	Kauai Chamber of Commerce	Oppose	No

## 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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OUR BUSINESS IS MAUI BUSINESS

**TESTIMONY IN OPPOSITION OF SB129 HD1  
RELATING TO LABOR**

TO THE SENATE COMMITTEE ON WAYS AND MEANS

Hawaii State Capitol, Conference Room 211  
February 27, 2015  
9:00 A.M.

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Maui Chamber of Commerce **strongly opposes** SB 129 SD1, which requires certain employers to provide sick leave to service workers for specified purposes under certain conditions. The Maui Chamber of Commerce works on behalf of our members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We believe in creating a strong economic environment that supports job growth while also protecting our environment and preserving our quality of life. We support the "triple bottom-line" view of sustainability: economy, environment and social well-being.

We are opposed to SB 129 SD1, which requires employers to provide paid sick leave to service workers. This is another mandated benefit that will increase the cost to employers and could severely hurt job growth. In addition, it will put the burden of managing the accumulation and usage of sick leave as written by this bill on the employer. Many small companies do not have a large administrative staff to help manage this new benefit. 95% of our members are small businesses with 25 employees or less. They are still treading water after the recession and if we keep adding weights on them, they won't survive. We need to encourage the growth of our small businesses, not add more burdens on their backs.

Sick leave is generally a benefit for the employee to take care of their own health. Many employers are quite generous with sick leave benefits but this bill provides a broader leave mandate which will only provide additional burdens to employers and may reduce benefits and compensation in other ways. While most workers utilize their sick leave only when ill, there is a percentage of workers who abuse this benefit. CareerBuilder.com reported that 1 in 4 workers consider sick leave to be vacation time. This bill would make it very difficult for employers to manage their employees and the benefits provided.

Thank you for the opportunity to testify on this measure.

Sincerely,

Pamela Tumpap  
President



## **Before the Senate Committee on Ways and Means**

DATE: Friday, February 27, 2015

TIME: 9:00A.M.

PLACE: Conference Room 211

### **Re: SB 129 SD 1 Relating to Labor**

#### **Testimony of Melissa Pavlicek for NFIB Hawaii**

We are testifying on behalf of the National Federation of Independent Business (NFIB) in opposition to SB 129 SD 1 relating to Labor. NFIB Hawaii respectfully **opposes** this measure.

SB 129 SD 1 requires certain employers to provide sick leave to service workers for specified purposes under certain conditions. The measure further defines service workers and employers.

When it comes to employers providing paid sick time to their employees, we believe that government should not intrude in the employer/employee relationship. Many small employers are already flexible in accommodating employee needs.

The National Federation of Independent Business is the largest advocacy organization representing small and independent business in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

Mahalo for your consideration.



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Testimony to the Senate Committee on Ways and Means  
Friday, February 27, 2015 9:00 a.m.  
State Capitol - Conference Room 211

RE: SENATE BILL NO. 129 SD1 RELATING TO LABOR

Aloha Chair Tokuda, Vice Chair Kouchi, and members of the committees:

We are Melissa Pannell and John Knorek, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents nearly 1,000 human resource professionals in the State of Hawaii.

We are writing to respectfully **oppose** SB 129 SD1, which requires certain employers to provide sick leave workers for specified purposes under certain conditions.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: human capital. We truly have our employers' and employees' interests at heart. We respectfully oppose this measure for the implementation challenges and administrative burden it would impose and for the potential of unintended consequences, including conflicts with other laws and requirements and existing employer-provided leave policies and costs.

We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it. Thank you for the opportunity to testify.



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840



**Testimony to the Senate Committee on Ways and Means  
Friday, February 27, 2015 at 9:00 A.M.  
Conference Room 211, State Capitol**

**RE: SENATE BILL 129 SD1 RELATING TO LABOR (REVISED)**

Chair Tokuda, Vice Chair Kouchi, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **strongly opposes** SB 129 SD1, which requires certain employers to provide sick leave to service workers for specified purposes under certain conditions.

The Chamber is the largest business organization in Hawaii, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We are opposed to SB 129 SD1, which requires employers to provide paid sick leave to service workers. This is another mandated benefit that will increase the cost to employers and could severely hurt job growth. In addition, it will require a huge burden on companies to manage the accumulation and usage of sick leave as written by this bill. Many small companies do not have a large administrative staff to help manage this new benefit.

Also, employers provide sick leave so workers can recover from a health illness or injury. Many employers are quite generous with sick leave benefits. If companies are not allowed to manage their employee's usage of sick leave, it may lead to abuse. This may cause some companies to reduce sick leave time or switch to a PTO system, which will reduce the time a worker may take for vacation and sick leave. For those with a serious health problem, that is a serious negative.

Just as important, we also oppose the reasons for which workers may utilize sick leave that are beyond the employee's health. Sick leave is generally a benefit for the employee to take care of their own health. This bill provides a broader leave mandate which will only provide additional burden to employers and may reduce benefits and compensation in other ways.

While most workers utilize their sick leave only when ill, there is a percentage of workers who abuse this benefit. CareerBuilder.com reported that 1 in 4 workers consider sick leave to be vacation time. This bill would make it very difficult for employers to manage their employees and the benefits provided.



# Chamber *of* Commerce HAWAII

*The Voice of Business*

Finally, please keep in mind that Hawaii was ranked by CNBC as the 49<sup>th</sup> best state to do business in the country. Hawaii employers cannot afford this new mandate with all the other cost increases and mandates on the books and being considered this session.

We respectfully ask that this bill be held in committee. Thank you for the opportunity to testify.