

SB234

Measure Title: RELATING TO RETAIL EMPLOYMENT.

Report Title: Retail Employer; Retail Employee; State Holidays; Wages;
Retaliatory Personnel Action Prohibition

Description: Requires a retail employer to pay a retail employee who works on a state holiday at a wage rate of three times the retail employee's regular wage rate and prohibits a retail employer from taking retaliatory personnel action against a retail employee for electing to not work on a state holiday.

Companion:

Package: None

Current Referral: CPN, JDL

Introducer(s): BAKER, GREEN

<u>Sort by Date</u>		Status Text
1/23/2015	S	Introduced.
1/23/2015	S	Passed First Reading.
1/23/2015	S	Referred to CPN, JDL.
1/30/2015	S	The committee(s) on CPN has scheduled a public hearing on 02-05-15 9:00AM in conference room 229.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 4, 2015

To: The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair, and
Members of the Senate Committee on Commerce and Consumer Protection

Date: Thursday, February 5, 2015
Time: 9:00 a.m.
Place: Conference Room 229, State Capitol

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

Re: S.B. No. 234 Relating to Retail Employment

I. OVERVIEW OF PROPOSED LEGISLATION

SB234 proposes to add a new section to Wage and Hour Law, chapter 387, Hawaii Revised Statutes (HRS), to increase the overtime compensation for retail workers from time and one-half to three times the regular rate for work performed on State holidays. The bill also provides job protection from retaliatory actions by an employer when a retail worker chooses not to work on a State Holiday.

The department supports the intent and offers comments.

II. CURRENT LAW

Chapter 387, HRS, Wage and Hour Law, requires employees who work more than 40 hours a week be paid one and one-half their regular rate for all hours over 40 in a work week. Chapter 388, HRS, Payment of Wages and Other Compensation Law, enables the department to take action if an employer has a written policy that provided overtime on certain days that was in excess of what the law provides in chapter 387 (the floor) was not paid as agreed.

I. OVERVIEW OF PROPOSED LEGISLATION

The department recognizes the growing trend of some establishments beginning the holiday season, which traditionally has begun the day after Thanksgiving,

on Thanksgiving. The department is empathetic towards those workers that are sacrificing cherished time with family and friends to earn a living.

Currently, chapter 387 only addresses whether or not the employer has provided overtime if the employee works more than forty hours. The proposal would provide overtime regardless of how many hours worked for employees working on State holidays.

As mentioned above, chapter 388 holds the employer to its written policy and allows employees to make complaints on their employers when the employer violates their own written policy.

The department notes that the definition of "retail establishment" is broad and ambiguous. The Department is concerned that carving out a specific category of worker may be considered unconstitutional as unequal treatment of other types of workers who also work on State holidays.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the Senate Committee on Commerce and Consumer Protection
Thursday, February 5, 2015 at 9:00 A.M.
Conference Room 229, State Capitol**

RE: SENATE BILL 234 RELATING TO RETAIL EMPLOYMENT

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 234, which requires a retail employer to pay a retail employee who works on a state holiday at a wage rate of three times the retail employee's regular wage rate and prohibits a retail employer from taking retaliatory personnel action against a retail employee for electing not to work on a state holiday.

The Chamber is the largest business organization in Hawaii, representing over 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.

SB 234 would place serious burden on employers by mandating this wage rate of three times a regular employee's wage for state holiday hours. It would substantially increase the cost to business. The mean hourly retail rate in Hawaii is anywhere from \$10-11 per hour. This would make the wage over \$30 per hour. Also, most businesses do not observe the state's holiday schedule and this bill mandates companies to do so, infringing on their internal operations.

Lastly, while we recognize the proliferation of holiday shopping hours, this is in part being met positively by consumers. Should this bill pass, it is possible that many consumers who want to shop on holidays will do so online rather than in person, reducing the economic activity in the state and possibly a reduction in tax revenues.

We ask that this bill be deferred. Thank you for the opportunity to testify.



Executive Officers:

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

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TO:
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: February 5, 2015
TIME: 9am
PLACE: Conference Room 229

RE: SB234

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 members work with their employees to create schedules and policies that work for both the employees and the business. This bill is restrictive and would replace Hawaii companies' tried and true policies with a one size fits all approach that does not take into account the needs of individual employees, specific businesses, or the economy as a whole.

This bill would create tremendous upheaval and administrative burden for businesses and employees alike. It would necessitate companies abandoning whatever policy they have in place, even policies which already include a large number of holidays paid at a premium rate, and even if the policy works well for employees. Tourism and travel are economically vital to Hawaii's economy and to many businesses and individuals. It would seem unfair and economically unwise to financially penalize businesses for staying open and fully staffed on certain holidays.

The people who are best suited to make choices about holiday schedules and holiday pay are employees and employers, as they are the ones that know what works for them. This bill is overly restrictive, administratively and financially burdensome for businesses, and does not make sense for Hawaii. For these reasons we ask that you defer this measure indefinitely.

Thank you for the opportunity to testify.



**Testimony to the Senate Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Thursday, February 5, 2015 at 9:00 a.m.
Conference Room 229, State Capitol**

RE: SENATE BILL 234 RELATING TO RETAIL EMPLOYMENT

Chair Baker, Vice Chair Taniguchi and Members of the Committee:

Retail Merchants of Hawaii (RMH) opposes SB 234, which would require a retail employer to pay a retail employee who works on state holiday at a wage rate of three times the retail employee's regular wage rate and prohibits a retail employer from taking retaliatory personnel action against a retail employee for electing to not work on a state holiday.

As the single largest generator of general excise tax in the State of Hawaii; employing nearly 25% of Hawaii's workforce and representing over 3000 storefronts throughout the State, **RMH strongly opposes SB 234.**

Employees in the United States receive an average of 7.6 paid Holidays, according to The Bureau of Labor Statistics in the category "all full time employees." Professional and technical employees average 8.5 paid holidays. Clerical and sales employees average 7.7 paid holidays. Blue collar and service employees have, on average, 7.0 paid holidays.

Federal law (5 U.S.C. 6103) establishes a specific holiday schedule for Federal employees. This law also designates the names of the paid holidays such as Veteran's Day which are observed by many public sector organizations and local/state governments. No current law exists in Hawaii requiring private sector business(s) to adhere to scheduled "State Holidays." The State of Hawaii honors 13 holidays, not including election years. The State of Hawaii does not require business(s) to follow this schedule, however, many retailers do celebrate the extra holidays by providing their employees holiday premium pay, alternative days off, flex hours and/or compressed work schedules.

In order to foster retail business growth in our State, we must find solutions to enhance opportunities for business(s) to stay afloat. Placing such a mandate on retailers will increase cost to employers, increase costs to consumers, affect future job growth and ultimately hurt the State's economy.

RMH appreciates the thought behind creation of this policy, however, respectfully ask each member to consider the detrimental consequences that will hinder our business(s) by the passage of this bill. We respectfully ask that you **OPPOSE SB 234.**

Thank you for the opportunity to provide testimony.

SB234

Submitted on: 2/4/2015

Testimony for CPN on Feb 5, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Wendy	ABC Stores	Oppose	No

Comments:

Statement of
Eric Ching
CC Repair & Maintenance Service Inc.
before the
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Thursday, February 5, 2015
9:00 a.m.
State Capitol, Conference Room 229

in consideration of
SB 234
RELATING TO RETAIL EMPLOYMENT

Good morning Chair Baker, Vice Chair Taniguchi, and Members of the Committee. My name is Eric Ching and I am a concerned resident and business owner who does business in Hawaii.

I oppose this bill because many retail outlets have lost business to online sales and what is proposed will make them even less competitive. As it is, extended store hours during the holidays accompanied by promotions and discount sales are now needed for them to retain their diminished market share.

With the unemployment rate near 4% in Hawaii, market forces require retailers to pay higher wages to compensate their workers and retain their services. In addition many employers already offer a premium pay for those working on holidays such as Christmas or Thanksgiving.

It would be wonderful if everyone had more holidays, however the reality is that this would not be feasible for the average employer. I will remember to thank those who provide excellent service the next time I go shopping.

Thank you for this opportunity to submit my comments.

TO: Members of the Committee on Commerce and Consumer Protection

FROM: **Natalie Iwasa**
Honolulu, HI 96825
808-395-3233

HEARING: 9 a.m. Thursday, February 5, 2015

SUBJECT: SB234 Holiday Wages for Retailers - **OPPOSED**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB234 which would require retail employers to pay employees three times their regular rate for working on state holidays. I oppose this bill.

The impetus for this bill appears to be the increase in the number of businesses that are opening early on traditional family holidays such as Thanksgiving. While I do not support businesses that open early for the "holiday season," increasing wages for all employers who are open on state holidays is not a good solution.

There are 13 state holidays. Some of those holidays are less important to consumers than other days, and people expect to be able to shop during those days. Increasing wages means increased payroll taxes, workers' compensation, TDI and benefits costs. Increasing wages threefold for all holidays will therefore likely increase consumer prices.

I therefore urge you to vote "no" on this measure.

SB234

Submitted on: 2/3/2015

Testimony for CPN on Feb 5, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Susan O'Donnell	Individual	Oppose	No

Comments: I am writing in opposition of SB234 wherein the Government wants to impose yet another hurdle on doing business in Hawaii. It is already a challenge to run a business here and requiring 3x wage rate across the board for all businesses who operate during a State Holiday may have had good intentions but the language is too broadly written and can end up hurting small businesses rather than big box retailers.

SB234

Submitted on: 2/3/2015

Testimony for CPN on Feb 5, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mariner Revell	Individual	Oppose	No

Comments: As a small business owner this law would greatly affect my business in a negative manner. With the minimum wage rate increasing it is hard enough to make payroll after the numerous expenses of disability insurance, health insurance, workers comp insurance, unemployment insurance not to mention taxes. This is all before operating expenses rent, advertising, utilities and inventory. 229 is not fair to retailers and will hurt numbers businesses by forcing them to close on holidays which they would otherwise be open. I straggly oppose this bill.

SB234

Submitted on: 2/4/2015

Testimony for CPN on Feb 5, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Fuller	Individual	Oppose	No

Comments: I strongly oppose this bill. I am a small business owner and as many could NOT support this bill for obvious reasons. 3 times the normal wages would be a great drain on all small business owners and would force them to stay closed on those days when in some cases would be a financial lose that could never be regained.