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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 7, 2017

February 14, 2017

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Karl Rhoads, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, February 14, 2017
Time: 9:00 a.m.
Place: Conference Room 016, State Capitol

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

Re: S.B. No. 425 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

SB425 adds a new section to the Payment of Wages and Other Compensation Law, chapter 388, HRS, requiring employers with 25 or more employees to provide their service workers of food establishments 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 proposed law applies only to employers with 25 or more employees, and to their service workers who are subject to the minimum wage and overtime provisions of the Fair Labor Standards Act. It excludes employers in non-profit groups providing recreation, education and childcare.

DLIR appreciates the intent of the measure and offers comments.

II. CURRENT LAW

There is no required paid leave in the current law.

III. COMMENTS ON THE HOUSE BILL

DLIR notes that if enacted as drafted this measure would have a nexus with current

Temporary Disability Insurance (TDI) law. Employers may provide TDI coverage in several ways:

1. Procuring statutory insurance to fund a TDI plan, or
2. Obtain approval from the Department for a self-insured plan, or
3. A combination of the two above.

The exact benefits of TDI plans vary depending on the plan procured by an employer and is subject to review and approval by the Department. Therefore, the exact impact of the measure is difficult to specify. Moreover, the method of providing TDI insurance coverage in tandem with the size of the employer creates a situation wherein the nexus between TDI coverage and this proposal is different for different employers:

- If the employer uses the statutory insurance to fund a TDI plan (26 weeks of benefits @58% of weekly wage subject to a maximum weekly benefit after a 1 week waiting period) then the bill would possibly require to establish a separate sick leave plan to account for and use the 40 hours for sick leave and the other domestic/sexual assault violence leave contemplated.
- If the employer is self-insured then leave in excess of 15 days from the first day can be utilized for leave contemplated by this bill. However, TDI sick leave applies only to medical conditions of the employee and does not extend to children, parents, etc.
- If the employer uses a combination of statutory insurance and self-insurance then it is difficult for DLIR to ascertain the impact and would need to scrutinize the sick leave plans submitted for approval to the Department in the proposal in conjunction with the employer's TDI coverage.

There also exists a nexus between the proposed provision and the Hawaii Family Leave Law §398 depending on size of the employer [100+ employees] and due to sexual assault/domestic violence the Hawaii Victims Leave Law §378-72 (50+employees).

Complaints concerning violations of this proposal would go to the Wage Standards Division under section 388-9, HRS. The current backlog of wage-related investigations in the Wage Standards Division, 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 assigned to the Division.

From: [Neil Ishida](#)
To: [JDLTestimony](#)
Subject: SB 425 Relating to paid off for service workers
Date: Friday, February 10, 2017 3:30:17 PM

To:
COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
From: ABC Stores
Neil Ishida, Director of Public Relations

RE: SB 425 RELATING TO LABOR (PAID TIME OFF FOR SERVICE WORKERS)
POSITION: OPPOSE

The public health side of this bill is already addressed under existing law, under the State of Hawaii's food safety code, enforced by the Department of Health. It is already illegal for employers to allow sick individuals to work in food service. All food service employees are aware that they are not to come to work when they are sick.

Also, full time employees already receive paid sick leave as an earned benefit. Mandating paid time off for part time would greatly increase costs to employers and result in unintended negative consequences. For many businesses this could mean that they would no longer be able to afford to employ as many people and would be forced to eliminate jobs.

Mahalo,
Neil Y. Ishida
Director of Public Relations
ABC Stores
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MAILING ADDRESS

P.O. Box 23404
Honolulu, Hawai'i 96823
www.adaaction.org

February 11 , 2017

TO: Honorable Chair Keith-Agaran and Members of the Judiciary Committee

RE: SB 425 Relating to Labor
Support for hearing on Feb. 14

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 425 as it would require employers with fifty or more employees to provide sick leave to service workers for specified purposes under particular conditions. Workers should not come to work sick. It is not good for themselves, their co-workers, or their employer's clients. If anything the organizations with less than fifty employees should be included. Does not every service worker deserve sick leave if they truly are sick?

Thank you for your consideration.

Sincerely,

John Bickel
President



**Testimony to the Senate Committee on Judiciary and Labor
Tuesday, February 14, 2017 at 9:00 A.M.
Conference Room 016, State Capitol**

RE: SENATE BILL 425 RELATING TO LABOR

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** SB 425, which requires certain employers with fifty or more employees to provide sick leave to service workers for specified purposes under certain conditions; defines the terms "service worker" and "employer".

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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 425, which requires certain 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.

Furthermore, we do not believe that any statutorily required sick policy should allow employees to have to carryover sick leave as this will create an undue administrative burden and create financial liability for companies.

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 provision provides a broader leave 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.

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



February 13, 2017

TIM VANDEVEER
Chair

MARGARET WILLE
SEAN SMITH
Legislative Committee Co-Chairs

SUPPORT FOR SB425
“RELATING TO LABOR”

Monday, February 13, 2017 9:00 pm State Capitol, Conference Room 016

Committee On Judiciary And Labor
Senator Gilbert Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Submitted on Behalf of the Democratic Party of Hawai'i

The Democratic Party of Hawai'i **supports** SB425 “Relating To Labor” the intent of which is to require that certain workers be able to earn up to 40 hours of sick leave per year. **SB425 is consistent with the DPH’s legislative priority for the 2017 Legislative Session to afford workers five days of sick leave per year.**

Respectfully submitted,

/s/ Tim Vandever (tim@hawaiidemocrats.org)
Chair of the Democratic Party of Hawai'i

/s/ Margaret Wille (margaretwille@mac.com)
/s/ Sean Smith (simashang@yahoo.com)
Legislative Committee Co-Chairs



02/13/17

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair & Senator Karl Rhoads, Vice Chair

RE: Opposed to SB425 Mandatory Sick Leave Pay for Food Service Workers

While Gyotaku is committed to providing a living wage and time off for our employee's health and family related issues, we strongly opposed mandatory sick leave pay for food service workers.

- The state health code already prohibits employees from working while ill.
- The cost to restaurant businesses would be a significant financial and administrative burden.
- The bill is unfair due to the disparity of business size and focus on only the food service industry.

With all due respect, we recommend that this bill not be passed.

Sincerely,

Thomas H Jones

President & CO-Owner

REI Food Service, LLC

d.b.a. Gyotaku Japanese Restaurants



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OUR MISSION

HCIA is a Hawaii-based non-profit organization that promotes modern agriculture to help farmers and communities succeed. Through education, collaboration and advocacy, we work to ensure a safe and sustainable food supply, support responsible farming practices and build a healthy economy.

TESTIMONY FROM BENNETTE MISALUCHA, EXECUTIVE DIRECTOR

In Opposition to SB 425

Relating to Labor

Requires certain employers with fifty or more employees to provide sick leave to service workers for specified purposes under certain conditions

SENATE COMMITTEE ON JUDICIARY AND LABOR

February 14, 2017, 9:00 a.m.

Conference Room 016

Chair Keith-Agaran and members of the committee:

The Hawaii Crop Improvement Association (HCIA) is a Hawaii-based non-profit organization that promotes modern agriculture to help farmers and communities succeed.

HCIA stands in **opposition to SB 425**, which requires certain employers with 50 or more employees to provide sick leave to service workers for specified purposes under certain conditions.

Our primary concerns are the increased costs to employers and the administrative burden that will be placed on employers to manage their employees and the benefits provided. We also believe such a bill will hurt job growth.

It is for these reasons that we ask that SB 425 be deferred.

Respectfully submitted,

Bennette Misalucha
Executive Director



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Lauren Zirbel, Executive Director

1050 Bishop St. PMB 235
Honolulu, HI 96813
Fax: 808-791-0702
Telephone: 808-533-1292

TO:
COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

DATE: Tuesday, February 14, 2017
TIME: 9:00 a.m.
PLACE: Conference Room 016

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

RE: SB 425 RELATING TO LABOR (PAID TIME OFF FOR SERVICE WORKERS)

Position: 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.

Under the State of Hawaii's food safety code, enforced by the Department of Health, it is already illegal for employers to allow sick individuals to work in food service. All food service employees are aware that they are not to come to work when they are sick. The public health side of this bill is already addressed under existing law.

This bill appears to have a circular contradiction problem in that it states that a temporary worker is not a worker who works for a food establishment yet states that it only applies to food establishments but not temporary workers?

On page 2 "Day or Temporary worker" is defined as: "An individual who works for another person for less than twenty hours per week, except for an individual who works for a food establishment." On page 3 line 13 "Service worker" is defined as: "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...”

We don't feel it is justified to change the definition of temporary worker to except food establishments, nor is it justified to single out food establishments for this onerous regulation of part time and temporary workers.

This bill will create a situation in which employers may have to track two different types of employees under the same business in different sick leave and paid time off accrual systems, their existing system and a system mandated under this bill for part time and temporary workers who are service workers. **This is an administrative nightmare and is completely unjustified given the lack of evidence that mandatory paid time off will improve any epidemiological issues. Food service epidemiological issues are very adequately addressed under the food safety code. We take food safety, and the safety of our customers very seriously.**

The vast majority of our member's foodservice employees are full time workers who have sick leave and paid time off.

This bill's proposed "one-size fits all" approach will hinder an employer's flexibility in providing sick leave and will result in additional costs, both directly and indirectly. Full time employees receive traditional paid sick leave as an earned benefit. Mandating paid time off for part time and hourly employees would greatly increase costs to employers and result in unintended negative consequences. For many businesses this could mean that they would no longer be able to afford to employ as many people and would be forced to eliminate jobs.

Small businesses are especially vulnerable to any increase in costs and **decreases in workforce flexibility**, especially those that operate on low margins such as retail grocers. A business with 51 employees is not a large business and **cost of tracking this mandate for all the part time employees would be significant**. Passage of this measure may also force many small employers to offset higher costs through lower wages to their employees, fewer work hours and pay raises, decreased discretionary benefits, or increased costs for consumers. Even worse, for those companies on the "tipping point," any increase may force them to close. **Many local businesses are on the brink of closing due to the increasing complexity and tremendous difficulty of complying with the seemingly endless list of federal and state regulatory requirements. This is especially true for the food industry, as we are one of the most tightly regulated industries in the world.**

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

In light of this, we respectfully request that this measure be held.

Thank you for the opportunity to testify.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
MARILYN LEE
AMY MONK
LISA ELLEN SMITH

Executive Director
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February 12, 2017

Comments regarding SB 425, Relating to Labor

To: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Members of the Senate Committee on Judiciary and Labor

From: Cathy Betts, Executive Director,
Hawaii State Commission on the Status of Women

Re: Comments Regarding SB 425, Relating to Labor

The Hawaii State Commission on the Status of Women supports the intent of SB 425 and would like to provide additional comments on how this bill could be strengthened. If passed, this bill would set a standard practice for allowing sick and safe leave for workers at establishments of 50 or more employees. Additionally, it would enable victims of domestic violence, sexual assault or stalking to participate in legal proceedings, receive medical treatment or counseling, or obtain other critical services, without fear that they may lose their job. A minimum of paid sick and/or safe leave would also allow victims to maintain some sense of safety and independence, without fear of retribution for asking for time off.

Maintaining a job can be extremely difficult for victims of violent crime. In 2009, the Department of Justice found that of the 79% of stalking victims who had a job, one in eight lost time from work. More than half of the victims surveyed lost five or more days from work.¹ In 2007, between 15.2% and 27.6% of those women surveyed lost a job due to abuse.² Allowing a minimum amount of paid time off is crucial for victims to recover from abuse. In one study, 23% of adults say they have been threatened with termination or fired for taking time off to take care of a sick family member.³

A lack of paid sick and safe leave has a detrimental affect on low-income women. Minority women continue to be paid less on average, and close to 2/3 of low wage workers do not have access to paid sick days. Having a paid leave policy increases worker loyalty, decreases turnover and ensures a healthy workforce. Ensuring a minimum amount of paid sick and safe leave is a sound public policy that benefits the community and the workplace.

The Commission does not support an employee carve out, which only applies to employers with *50 or more employees*. This excludes a large number of employees in Hawaii and prevents them from earning paid sick leave.

¹ Katrina Baum, U.S. Dep't of Justice, Bureau of Justice Statistics, *Stalking Victimization in the United States* (2009).

² TK Logan, et al. *Partner Stalking and Implications for Women's Employment*, J. INTERPERS. VIOLENCE 22(3): 268-291 (2007).

³ Tom W. Smith and Jibum Kim, *Paid Sick Days: Attitudes and Experiences*, Public Welfare Foundation (2010), available at <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.

This bill also excludes “day or temporary” workers who work less than 20 hours per week at a job. This would exclude a large number of non-food establishment service workers who still interact regularly with the public and still have a need for a minimum amount of paid sick leave. Compounding this problem: many low income women work multiple minimum wage part time jobs just to stay financially afloat. This exclusion would prevent certain female service workers from earning paid sick leave, even though they may be working more than 40 hours a week at various different service positions.

The Commission commends the language allowing eligible employees to take paid sick leave for a child and/or for activities relating to their status as a victim of family violence. This language enables victims of violence to participate in legal proceedings, receive medical treatment, counseling, or obtain other critical services. However, the bill only allows an employee to take leave for a child or spouse, which is not consistent with the leave permitted under our Hawaii Family Leave Law.¹ Adding parent and grandparent would enable employees at establishments of over 100 employees to take their paid sick leave during their HFLL and/or FMLA protected time (i.e. they would be able to take family leave and get paid).

Finally, the Commission suggests adding an anti-retaliation provision to this bill’s language. This would protect employees who are threatened or retaliated against for requesting to use their paid sick leave under the law. Thank you for this opportunity to provide comments on this measure.

¹ Hawaii Revised Statutes Sec. 398-2 (which additionally allows an employee to take *unpaid* leave for a parent or grandparent).

Testimony to the Senate Committee on Judiciary & Labor

February 14, 2017

9 a.m.

State Capitol – Conference Room

Re: SENATE BILL 425 RELATING TO LABOR

Committee on Judiciary & Labor: Chair Gilbert Keith-Agaran, Vice-Chair Karl Rhoads

POSITION: STRONGLY OPPOSE

My name is Monica Konanimakamae Toguchi Ryan, and I own a 70-year old family business, Highway Inn.

The proposal to have food service establishments with more than 50 individuals provide a sick leave structure simply adds even more financial burden to an industry sector that is NOT KNOWN for its high profitability and business longevity. The sector is already managing an externally induced shock in the form of increased costs through the minimum wage increase (that includes tipped servers and an overly conservative tip credit) and the increased costs wrought by the recent 9th circuit court rulings on tip pooling. Moreover market forces has already led competitive businesses to offer a form of paid-time-off for full-time employees to attract and retain staff.

Not only will businesses experience increased direct costs, there will also be increased indirect costs owing to the additional administrative burden to now manage accrued sick leave for every minute worked by virtually every worker. The end result to the Hawaii economy will be to incrementally shrink further the population of viable restaurants, and disincentivize small business-owners from growing over a certain number of employees, and therefore revenue, and the state's tax base. This bill will do nothing to elevate Hawaii's ranking from the bottom 5% of states in the U.S. in which to do business. It is likely to have the opposite effect.

Furthermore, this bill will prove virtually impossible to enforce successfully in a meaningful way, and it will lead to further burdening the department of labor and business owners, and their well-compensated lawyers trying to sort through disputes. Part time employees by their nature, work flexible schedules, often in addition to a full time job where they may already be covered by a sick leave or paid time off program. Moreover, It will prove very difficult for a company and a part time employee with no firm schedule to identify which days the employee was meant to work, beyond a day or two of the current week, thus the population of employees that will benefit from such a program **will be insignificant in proportion** to the resources spent administering this program thereby making it incrementally harder to be successful in managing a food service business which calls for managers to spend time in the kitchen and with customers and not sitting in an office doing paperwork.

I strongly oppose SB425 and believe that the increased cost and administrative burden to an industry already suffering from minimum wage increases should not be considered. Moreover it will likely be unenforceable in its current draft. Thank you for the opportunity to submit this testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB425 on Feb 14, 2017 09:00AM
Date: Friday, February 10, 2017 8:39:28 AM

SB425

Submitted on: 2/10/2017

Testimony for JDL on Feb 14, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dirk Koeppenkastrop	IL Gelato Hawaii	Oppose	Yes

Comments: My name is Dirk Koeppenkastrop and I am the founder and owner of IL Gelato Hawaii. I am a graduate from the University of Hawaii and as there are no higher-level jobs as a chemist my wife and I started a small business here in Honolulu six years ago. We make all natural high quality gelato (ice cream) here in Hawaii and sell wholesale to restaurants and operate two retail locations. We have approximately 45 employees and most of them part time. We have plans to grow and to expand our business so that we soon will have over 50 employees. The proposed Bill SB425 will highly impact our payroll cost. The proposed bill in addition to increasing minimum wage will challenge the existence of our gelato business. In our gelato factory and stores we offer entry-level jobs to unskilled workers. If wages and associated payroll cost -introduced through mandatory paid sick leave - will increase, we will have a problem to stay in business. We cannot pass additional cost to our customers. A scoop of ice cream at our store is \$3.75 and already considered to be too expensive for local families. We get a lot of comments via social media and Yelp reviews that we are too expensive. Our food costs in Hawaii are the highest of the nation. Our rents are the highest of the nation. Energy and insurance cost are higher than anywhere else. It is very difficult to operate a business in Hawaii. We cannot increase our scoop prices, as we would loose our local customers. If payroll costs continues to increase so substantially we need to close our business, which would challenge our existence and we could no longer offer employment. I strongly oppose to proceed with proposed bill SB425. Sincerely, Dirk Koeppenkastrop, Ph.D.

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**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 14, 2017
Re: SB 425 RELATING TO LABOR**

Good morning Chairman Keith-Agaran and members of the Senate Committee on Judiciary and Labor. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

The Retail Merchants of Hawaii strongly opposes SB 425 Relating to Labor. This bill would require employers to provide sick leave to employees.

Many business already have a paid sick leave policy in place, the duration of which, effective date of application and other specifics vary depending on the needs of the business and employer's resources. Employers are already mandated to provide Health Care Insurance. SB 425 would add another costly benefit to the list. It is important to note that in addition to the "sick leave" compensation the employer pays to the individual taking sick leave, the employer must likely has to pay the same compensation to another employee "filling in" for this individual.

Policy makers should be focusing in on eliminating obstacles to business growth, job creation and economic stability and not adding additional costs that employers cannot afford.

We respectfully ask that you hold this measure. Mahalo again for this opportunity to testify.

From: [Reid Higashi](#)
To: [JDLTestimony](#)
Subject: SB425 and SB107 - testimony
Date: Friday, February 10, 2017 5:04:05 PM

Senators,

Regarding senate bills SB425 and SB107, I am writing to oppose them both. The current sick leave that companies grant workers for earned time should be left to an employer to determine. The government does not need to step in and try to force these issues onto corporations. If an employee doesn't like the benefits provided by their employer, they may choose to change to a different employer who may provide better benefits. It's part of keep employers competitive amongst each other.

Minimum wage increases to \$12.25 and then \$15 is outrageous! Someone with no education is afforded a wage just because? A college graduate who invests in their education and racks up debt typically will make a little more than this. Why in the world would the minimum be raised to such a high amount? Why dilute the value of a good education, of hard work, of earning your pay? Higher minimum wages is not the solution to living in Hawaii. Invest all this money into our education system!!!! Stop harping on all the hard working teachers who teach our future in neglected dilapidated infrastructure. What a joke.

Senator Green, please stop with this non-sense of forcing higher minimum wages. You will only be raising the costs of everything else. How about looking into why prescription meds costs so much? How about look into why medical equipment is so costly? How about alleviating the responsibility of making hospitals/tax payers eat the costs of people who think the ER is a personal doctors appointment?

Thank you for your time.

Sincerely,

Reid Higashi