

HB 1434

RELATING TO LABOR
LAB, JUD, FIN

HB1434



Submit Testimony

Measure Title: RELATING TO LABOR.

Report Title: Employment; Labor; Family Leave; Sick Leave; Food Establishment Workers

Description: Requires employers of twenty-five or more food establishment workers to provide the workers with paid time off for illness and preventive medical care of the worker and the worker's spouse and children and for treatment arising from domestic violence or sexual assault.

Companion:

Package: None

Current Referral: LAB, JUD, FIN

Introducer(s): JOHANSON, BELATTI, C. LEE, LUKE, NAKASHIMA, SAIKI

<u>Sort by Date</u>		Status Text
1/25/2017	H	Introduced and Pass First Reading.
1/30/2017	H	Referred to LAB, JUD, FIN, referral sheet 6
2/3/2017	H	Bill scheduled to be heard by LAB on Tuesday, 02-07-17 9:00AM in House conference room 309.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT

RELATING TO LABOR.

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

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

4 "§388- Paid sick leave; food establishment workers. (a)

5 As used in this section:

6 "Child" means an individual who is:

7 (1) Younger than eighteen years of age and is:

8 (A) A biological, adopted, foster, or step-child of a
9 service worker;

10 (B) A legal ward of a service worker; or

11 (C) An individual for whom a service worker stands in
12 loco parentis; or

13 (2) Eighteen years of age or older and is:

14 (A) Incapable of self-care because of a mental or
15 physical disability; and

16 (B) An individual for whom a service worker stands in
17 loco parentis.



1 "Day or temporary worker" means:

2 (1) An individual who works for another person for less
3 than twenty hours per week; or

4 (2) An individual who works:

5 (A) On a per diem basis; or

6 (B) On an occasional or irregular basis for only the
7 time required to complete such work, whether the
8 individual is paid by the person for whom work is
9 performed or by an employment agency, as defined
10 in section 373-1.

11 "Employer" has the same meaning as in section 388-1, but
12 shall refer to employers of twenty-five or more individuals in
13 food establishments in the State in any one quarter in the
14 previous year, which shall be determined on January 1, annually.

15 The term "employer" excludes any nationally chartered
16 organization exempt from taxation under section 501(c)(3) of the
17 Internal Revenue Code, as amended, that provides recreation,
18 child care, or education services.

19 "Family violence" has the same meaning as in section 571-2.

20 "Food establishment" means:



1 (1) Any place or portion thereof maintained, used, or
2 operated for the purpose of storing, preparing,
3 serving, manufacturing, packaging, transporting, or
4 otherwise handling food at the retail or wholesale
5 level;

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

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

13 "Service worker" means an employee of a food establishment,
14 excluding a day or temporary worker, who is paid on an hourly
15 basis, or is not exempt from the minimum wage and overtime
16 compensation requirements of the Fair Labor Standards Act of
17 1938 and the regulations promulgated thereunder, as amended.

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

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



1 (b) An employer shall provide paid sick leave annually to
2 each of the employer's service workers. The paid sick leave
3 shall be earned, beginning January 1, 2018, or the date
4 thereafter upon which the service worker commences employment,
5 as follows:

6 (1) At a rate of at least one hour of paid sick leave for
7 each forty hours actually worked; and

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

10 A service worker shall be entitled to carry over up to forty
11 hours of unused earned paid sick leave from the current calendar
12 year to the following calendar year; provided that no service
13 worker shall be entitled to carry over more than an aggregate of
14 eighty hours of earned sick leave.

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

17 (1) If the service worker was hired before January 1,
18 2018, upon the completion of six hundred eighty hours
19 of work from January 1, 2018; or

20 (2) If the service worker was hired on or after January 1,
21 2018, upon the completion of six hundred eighty hours



1 of work from the date of hire, unless the employer
2 agrees to an earlier date.

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

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

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

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

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

17 (e) An employer shall pay each service worker for paid
18 sick leave at a pay rate equal to the greater of either the
19 normal hourly wage for that service worker, or the minimum wage
20 under section 387-2 for the pay period during which the employee
21 used paid sick leave. For any service worker whose hourly wage



1 varies depending on the work performed by the service worker,
2 the "normal hourly wage" shall mean the average hourly wage of
3 the service worker in the pay period prior to the one in which
4 the service worker used paid sick leave.

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

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

12 (1) For a service worker's:

13 (A) Illness, injury, or health condition;

14 (B) Medical diagnosis, care, or treatment of a mental
15 illness or physical illness, injury, or health
16 condition; or

17 (C) Preventative medical care; or

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

19 (A) Illness, injury, or health condition;



1 (B) Medical diagnosis, care, or treatment of a mental
2 or physical illness, injury, or health condition;
3 or

4 (C) Preventative medical care.

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

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

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

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

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

18 (i) Unless an employee policy or collective bargaining
19 agreement provides for the payment of earned fringe benefits
20 upon termination, no service worker shall be entitled to payment



1 of unused earned sick leave under this section upon termination
2 of employment.

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

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

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

9 (3) Preempt or override the terms of any collective
10 bargaining agreement effective before January 1, 2018.

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

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

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

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



1 (1) The entitlement to sick leave for service workers, the
 2 amount of sick leave provided to service workers, and
 3 the terms under which sick leave may be used; and
 4 (2) That the service worker has a right to file a
 5 complaint with the department of labor and industrial
 6 relations for suspected violations of this section by
 7 the employer.

8 Employers may comply with this section by displaying a poster
 9 that contains the information required by this subsection and
 10 that is posted in a conspicuous place, accessible to service
 11 workers, at the employer's place of business."

12 SECTION 2. This Act does not affect rights and duties that
 13 matured, penalties that were incurred, and proceedings that were
 14 begun before its effective date.

15 SECTION 3. New statutory material is underscored.

16 SECTION 4. This Act shall take effect on January 1, 2018.

17

INTRODUCED BY:

Julia A. Ruddy
[Signature]

[Signature]
[Signature]
[Signature]
[Signature]



H.B. NO. 1434

Report Title:

Employment; Labor; Family Leave; Sick Leave; Food Establishment Workers

Description:

Requires employers of twenty-five or more food establishment workers to provide the workers with paid time off for illness and preventive medical care of the worker and the worker's spouse and children and for treatment arising from domestic violence or sexual assault.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

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CYD HOFFELD
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February 6, 2017

Testimony in Support, HB 1434, Relating to Labor

To: Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair
Members of the House Committee on Labor and Public Employment

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

Re: Testimony in Support of Intent, HB 1434, Relating to Labor

The Hawaii State Commission on the Status of Women supports the intent of HB 1434 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 25 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 *25 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 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 testimony in support of paid sick and safe leave.

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

IBEW1260

‘A‘OHE HANA NUI KE ALU ‘IA

February 7, 2017

The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

HB1434 - RELATING TO LABOR

Chair Johanson, Vice Chair Holt and Members of the Committee,

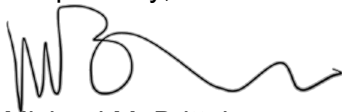
The International Brotherhood of Electrical Workers Local Union 1260, AFL-CIO (IBEW1260), represents more than 3500 members, at over 40 companies, covered by 37 collective bargaining agreements, working throughout the State of Hawaii and respectfully offers the following testimony in **STRONG SUPPORT** of House Bill 1434 (HB1434).

While our members are fortunate enough to be covered by a collective bargaining agreement providing in many cases generous amounts of paid sick leave, many of Hawaii's workers, over forty percent, are not afforded the same benefit. As a result, these workers are required to choose between providing for their families and working while sick or enduring a loss of income to recuperate.

Support of HB1434 will allow these workers, many of whom are low-income earners, the ability to stay at home and recover without loss of income. Additionally, children of working families who are ill will be able to remain home being cared for by their parents. IBEW1260 encourages this committee to support HB1434 as paid sick days will improve the quality of life for many families ultimately leading to a healthier Hawaii.

Mahalo for the opportunity to provide testimony on this issue.

Respectfully,



Michael M. Brittain
Asst. Business Manager
IBEW1260 / AFL-CIO



Randy Perreira
President

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Telephone: (808) 597-1441

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The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 7, 2017

H.B. 1434 – RELATING TO LABOR

The Hawaii State AFL-CIO strongly supports H.B. 1434 which requires employers of twenty-five or more food establishment workers to provide the workers with paid time off for illness and preventive medical care of the worker and the worker's spouse and children and for treatment arising from domestic violence or sexual assault.

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 percent 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 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 H.B. 1434 will provide 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

holt1 - Joyleanne

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 9:26 AM
To: LABtestimony
Cc: rswindell@bridgedeck.org
Subject: *Submitted testimony for HB1434 on Feb 7, 2017 09:00AM*

HB1434

Submitted on: 2/6/2017

Testimony for LAB on Feb 7, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Swindell	IOMM&P	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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Date: Tuesday, February 7, 2017

Time: 9:00 AM

Place: Conference Room 309

To: House Committee on Labor and Public Employment
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

Re: Support for HB1434 Relating to Collective Barring

Thank you for the opportunity to testify. The Graduate Student Organization of the University of Hawai'i at Mānoa (GSO) supports the passage of HB1434 which requires employers of twenty-five or more food service workers to provide workers paid time off for illness, the medical care of family members, and treatment resulting from domestic violence and sexual assault.

Many Graduate Students work in food service position, often in addition to teaching and research positions. Working multiple jobs often leads to illness. Leaving an illness untreated can often lead to long term health problems and loss of productivity. Enabling workers to take a sick day when they are ill will provide them with the time to recover to full health, prevent the unnecessary spread of disease, and increase productivity. For these reasons, we respectfully recommend passage of HB1434.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

February 7, 2017

H.B. 1434 - RELATING TO LABOR

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1434, which requires employers of twenty-five or more food establishment workers to provide employees with paid time off for illness.

We represent more than 27,000 public-sector employees who enjoy the benefit of paid sick leave for healthcare. No employee should be forced to choose between their well-being and their job. Taking time off to care for one's illness not only protects the employee, but also protects their families, colleagues, and customers by reducing the chances of spreading illness. Providing employees with a few days of paid sick leave is an investment that not only supports the employee, but our community as a whole.

Thank you for the opportunity to testify in support of H.B. 1434.

Respectfully submitted,

Randy Perreira
Executive Director

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 12:11 PM
To: LABtestimony
Cc: annsfreed@gmail.com
Subject: Submitted testimony for HB1434 on Feb 7, 2017 09:00AM

HB1434

Submitted on: 2/6/2017

Testimony for LAB on Feb 7, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments: Aloha Chair Johanson and members, The Coalition supports the intent of this bill as we have in the past, with the proviso that all employers of any size should be providing this to their employees. It costs far less to provide this type of support to an employee than to either train a new one or pay medical bills resulting from employees coming to work sick or being forced to neglect illness in a family member in favor of paying the rent. Please pass this bill and amend it to include all employers. Ann S. Freed, Co-Chair, Hawaii Women's Coalition.

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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To: Rep. Aaron Ling Johanson, Chair
 Rep. Daniel Holt, Vice Chair
 Members of the House Committee on Labor & Public Employment

From: Victor Lim, Hawaii Restaurant Association

Subj: HB1434 Paid Sick Leave for Food Establishment Workers

Date: February 4, 2017

The Hawaii Restaurant Association representing about 3,500 restaurants with about 90,000 food service jobs here opposes HB 1434 for singling out our industry to provide sick leave while the rest of the industries are not affected.

This will cause undue hardship on an industry well known for low margins and high mortality rates causing many to go under. This is following a very tough year here in Hawaii in 2016 with the Hep. A outbreak that affects everyone in our state.

With the implementation of the Department of Health's Restaurant Sanitation Grading System this past two years, health and sanitation awareness and standards in our Hawaii restaurants are at an all time high in relation to other industries in Hawaii.

The provision in the bill allowing a service worker to carry over unused sick leave from one calendar year to another is also problematic because most of the businesses do not have a cushion of employees where if one or two is out for a long period of time, will make it quite impossible for some to be able to schedule staff to service customers.

We strongly recommend that you do not pass this bill out of committee and thank you for allowing us to share our view.

Aloha.

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1050 Bishop St. PMB 235
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TO: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Tuesday, February 7, 2017
TIME: 9:00 AM
PLACE: Conference Room 309

RE: HB 1434 RELATING TO LABOR (PAID TIME OFF FOR FOOD ESTABLISHMENT 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.

The vast majority of our foodservice employees are full time workers who have sick leave.

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, especially those that 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 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.

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.



**Testimony to the House Committee on Labor & Public Employment
Tuesday, February 7, 2017 at 9:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1434 RELATING TO LABOR

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **strongly opposes** HB 1434, which requires employers of twenty-five or more food establishment workers to provide the workers with paid time off for illness and preventive medical care of the worker and the worker's spouse and children and for treatment arising from domestic violence or sexual assault.

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 HB 1434, which requires employers to provide paid sick leave to food establishment 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.

holt1 - Joyleanne

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 1:27 PM
To: LABtestimony
Cc: csdp@kyd-inc.com
Subject: *Submitted testimony for HB1434 on Feb 7, 2017 09:00AM*

HB1434

Submitted on: 2/6/2017

Testimony for LAB on Feb 7, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Carmelita Phillips	Individual	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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Aloha:

My name is Jozette Montalvo, and I am writing in opposition of HB 1434, which requires certain employers to provide sick leave to service workers for specified purposes under certain conditions.

I am the Human Resources Director for the Minit Stop Convenience Stores. While I live on the island of Maui, we have sixteen stores throughout the islands of Maui and Hawaii.

This bill would add tremendous cost to our organization, costs which eventually would need to be passed onto our customers in the form of higher prices. In addition to this, this bill creates tremendous additional administrative burdens on employers already administratively taxed to comply with all other laws that we are mandated to follow. We already have measures in place to provide “leaves” to our employees and we comply with leave laws such as the Family Medical Leave Act, as well as the Hawaii Family Leave Law. An additional “leave” law is not necessary.

Keeping our Convenience Stores fully staffed is already a challenging feat. Incentivizing employees to stay home with pay, will further hinder our ability to adequately staff our stores.

For the aforementioned reasons, I kindly ask that you vote **NO** on HB 1434.

My contact information is listed below:

Jozette Montalvo
385 Hukilike Street, Suite 102
Kahului, Hi 96732
Phone: 9808) 270-2852, email: jmontalvo@hawaiipetroleum.com

Mahalo!

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holt1 - Joyleann

From: mailinglist@capitol.hawaii.gov
 Sent: Monday, February 6, 2017 4:44 PM
 To: LABtestimony
 Cc: bryan@lhawaii.com
 Subject: Submitted testimony for HB1434 on Feb 7, 2017 09:00AM

HB1434

Submitted on: 2/6/2017

Testimony for LAB on Feb 7, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
BRYAN ANDAYA	L & L Franchise, Inc.	Oppose	No

Comments: Please do not single-out the restaurant industry. We have one of the thinnest margins and highest failure rates of any industry. The current job market dictates that to keep employees and to be able to recruit employees, we provide benefits covered in this bill and even more. This bill is not needed at this time. Thank you.

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HB 1434

LATE TESTIMONY

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Testimony to the House Committee on Labor & Public Employment

February 7, 2017

9 a.m.

State Capitol – Conference Room 309

Re: House Bill 1434 RELATIONG TO LABOR

Committee on Labor & Public Employment: Chair Aaron Ling Johanson, Vice-Chair Daniel Holt

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 25 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.

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 successfully enforce this rule 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. Competitive businesses already offer a form of paid-time-off for full-time employees.

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. 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, and the population of employees that will benefit from such a program will be insignificant *in proportion* to the resources spent administering this program and opportunities lost by making it harder to be successful in managing a food service business.

I strongly oppose HB1434 and believe it should not be progressed. Thank you for the opportunity to submit this testimony.

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holt1 - Joyleanne

From: mailinglist@capitol.hawaii.gov
 Sent: Monday, February 6, 2017 10:38 PM
 To: LABtestimony
 Cc: lho@hawaiipublicpolicy.com
 Subject: *Submitted testimony for HB1434 on Feb 7, 2017 09:00AM*

HB1434

Submitted on: 2/6/2017

Testimony for LAB on Feb 7, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Melissa Pavlicek	NFIB Hawaii	Oppose	Yes

Comments:

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Testimony to the House Committee on
Labor & Public Employment
February 7, 2017 at 9:00 a.m.
State Capitol - Conference Room 309

RE: HB 1434 Relating to Labor

Aloha members of the Committee:

We are Cara Heilmann and John Knorek, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii.

We are writing to respectfully **oppose** HB 1434, which requires certain employers with twenty-five or more employees to provide sick leave to service workers for specified purposes under certain conditions. We feel this measure is unduly burdensome for these small employers and has the potential to cause potential conflicts with paid and unpaid leave requirements.

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 because of the implementation challenges and administrative burden it would impose, and for the potential of unintended conflict with other leave laws.

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.



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The Twenty-Eighth Legislature
Regular Session of 2017

HOUSE OF REPRESENTATIVES
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, February 7, 2017; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1434
RELATING TO LABOR**

The ILWU Local 142 **supports** H.B. 1434, which requires employers of twenty-five or more food establishment workers to provide the workers with paid time off for illness and preventive medical care of the worker and the worker's spouse and children and for treatment arising from domestic violence or sexual assault.

H.B. 1434 will allow service workers employed by a food establishment to earn up to five days of paid sick leave each year to be used for his or her own illness or disability or to take care of a spouse or child who is ill or in need of treatment. The law will allow a maximum of ten days of paid sick leave to be accumulated. The law will also allow paid sick leave to be used by victims of domestic violence and sexual assault.

Providing paid leave for a worker's own illness or disability is a humane employment practice that fosters loyalty and productivity among employees while creating a healthful environment for employees as well as customers of the employer. The current law mandating Temporary Disability Insurance (TDI) is a means of providing paid leave for workers to address their own illnesses, but TDI starts only after a week of illness. TDI also pays 58% of wages for a maximum of 26 weeks.

H.B. 1434 proposes this benefit for food establishment workers because, in most cases, they are covered only by TDI, which requires a one-week waiting period, and cannot take time off when they come down with a cold or flu. These workers often handle food in the kitchen or while serving customers and run the risk of exposing customers and co-workers with possibly contagious illnesses. With this proposed benefit, food establishment workers may take one or two days off to recuperate from a minor but contagious illness, without worrying about loss of pay. In turn, the employer can be assured that illnesses will not be spread through the food establishment.

We have three concerns about the current bill.

First, H.B. 1434 exempts employers who offer sick leave or other paid leave that is substantially equivalent to the leave provided under the bill or offer a sick leave policy approved by the Director of DLIR. We are concerned that some employers who now offer good sick leave policies may terminate those policies and instead offer TDI and the limited benefit provided for in H.B. 1434. The law should not allow employers to opt for the cheaper alternative.

Second, the new law should not jeopardize the Temporary Disability Insurance law, which has been in effect for more than 40 years and has served us well. Some safeguards may need to be considered.

Third, the provisions in H.B. 1434 allowing paid leave to care for spouses and children may be in conflict with the current family leave law that allows accrued and available sick leave to be used for family leave purposes. The current law, as enacted in 2003 (Act 44), should not be jeopardized by the new benefit under H.B. 1434.

Even without the provision for workers to care for spouses and children, H.B. 1434 will provide a much-needed benefit for food establishment workers who currently have no paid leave for a short-term illness. Coverage should be extended to other workers, who also have only TDI to rely on, but that may be for another bill.

The ILWU urges passage of H.B. 1434 with amendments as suggested by our concerns. Thank you for the opportunity to offer testimony on this measure.



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TO: HAWAII STATE LEGISLATURE

Re: HB1434

Dear Sirs/Madame,

My name is Jon Miyabuchi and I am the Vice President and General Manager for Minit Stop Stores. Minit Stop is a chain of convenience stores that sell fuel, convenience store items, and a robust food service program. Each of our locations has a full kitchen and produces our food service items on-site, fresh, throughout each day. We employ many entry level employees, and this proposed bill, HB1434 would be very detrimental and harmful to our business and will hurt the entry level employee it is attempting to help.

WE ARE OPPOSED TO THIS BILL.

While this bill seems like a good idea on paper, the hard truth and reality is that it is not. This bill will negatively impact businesses that hire mostly entry level employees like restaurants, QSRs (Quick Service Restaurants), fast food establishments, retail, convenience stores, mom & pop locations, etc. It will increase the cost of doing business to an unsustainable level and it will raise prices for consumers in a state that is already one of the most expensive to live in.

We, the people of Hawaii who must deal with one of the highest living costs in the U.S. and who are struggling to make ends meet, will find our cost of living increase to an untenable level. The vicious cycle the people of Hawaii are caught up in now to make ends meet will only get worse and more than likely begin to spiral out of control.

Businesses like the ones mentioned above create and sustain entry level jobs for members of the population that are just starting to enter the work force. These jobs are not meant to be permanent, life-long, career positions. These jobs are transitional in nature, and if you look deeper at the industries named above, you will find that a high turnover rate is the norm (in many cases more than 100% turnover).

This bill is attempting to increase benefits to entry level positions. If the labor costs are artificially inflated due to regulations and laws like these, we will be forced to select candidates that have the skills and experience that merit higher compensation levels or eliminate these positions altogether through automation or other means. With less entry level positions available many employees without skills, degrees, diplomas, prior work history, or comparable experience would not get the opportunity to start their careers here in Hawaii.

Businesses will be forced to pass on these higher costs onto the consumer, while at the same time reducing the number of entry level positions. Work opportunities for unskilled, untrained, or inexperienced employees will become scarce, which will in turn create an unemployable demographic.

This bill will force companies to look at options other than employing entry level workers. If you want a peek into this future, look no further than what companies like Amazon and McDonald's are already experimenting with. Amazon with its fully automated convenience stores experiment require no employees. McDonald's is testing automated kiosk ordering which, if successful, will greatly reduce their workforce eliminating the need for high numbers of entry level workers. Industry-wide adoption of such practices will soon follow. This is the future and the passage of this bill will only hasten its arrival.

Hawaii is already one of the most difficult places to operate a business in the U.S. and the cost of living in paradise is nearly unsustainable. Don't create an impossible situation for the engine and drivers of our economy—the small to medium-sized business.

This bill is a bad idea. I personally am opposed to it and our company is opposed to it.

Sincerely,



Jon Miyabuchi
Vice President Retail Operations/G.M.
Minit Stop Stores
jmiyabuchi@minitstop.com

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holt1 - Joyleanne

From: mailinglist@capitol.hawaii.gov
 Sent: Monday, February 6, 2017 3:59 PM
 To: LABtestimony
 Cc: mlopes@hscadv.org
 Subject: Submitted testimony for HB1434 on Feb 7, 2017 09:00AM

HB1434

Submitted on: 2/6/2017

Testimony for LAB on Feb 7, 2017 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Marci Lopes	Hawaii State Coalition Against Domestic Violence	Support	No

Comments: Thank you for your ongoing efforts to make victims of domestic violence safe.

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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DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LATE

LINDA CHU TAKAYAMA
DIRECTOR
LEONARD HOSHIO
DEPUTY DIRECTOR

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Email: dlir.director@hawaii.gov

LATE

February 7, 2017

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 7, 2017
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 1434 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

HB1434 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. The Hawaii Temporary Disability Insurance (TDI) Law, chapter 392, Hawaii Revised Statutes (HRS), provides wage replacement benefits to an eligible employee unable to work due to the employee's own nonindustrial illness or injury. Some employers use sick leave as part or all of the TDI benefit.

III. COMMENTS ON THE HOUSE BILL

Temporary Disability Insurance (TDI) plans can also use sick leave however the requirements for TDI are different (eligibility, benefit amount, benefit duration, reasons for leave, etc.). Due to these differences, employers may find it difficult to craft and administer a sick leave plan that complies with all requirements and the Department may also have issues in approving the sick leave plan to meet both statutes.

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. Purchasing an insurance policy from an insurance company, or
2. Obtaining approval from the Department for a self-insured plan which may include sick leave, or
3. A combination of the two above.

The exact benefits of TDI plans vary depending on the plan purchased by an employer. Therefore, the exact impact of the measure is difficult to specify but could include a duplication of benefits or other issues. 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 (after a one week waiting period, 26 weeks of benefits at 58% of weekly wage subject to a maximum weekly benefit) then the bill would possibly require the employer 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 with benefits payable from the first day, then leave in excess of three weeks may 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, HRS, depending on size of the employer [100+ employees] and due to sexual assault/domestic violence the Hawaii Victims Leave Law §378-72, HRS (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.