



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

830 PUNCHBOWL STREET, ROOM 321

HONOLULU, HAWAII 96813

www.labor.hawaii.gov

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

Email: dlir.director@hawaii.gov

February 6, 2018

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 6, 2018

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

From: Leonard Hoshijo, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 1629 RELATING TO EMPLOYMENT

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal adds a new chapter to Hawaii Revised Statutes (HRS), requiring retail, hospitality, or food services establishments of at least 500 employees to provide fourteen days notice to employees of their work schedule. If the employer fails to provide the notice then the employee is due time and half their regular rate for the work done without the notice and is paid one-half the regular rate for hours scheduled but not worked.

The measure also excludes cancelled shifts from closure due to public officials, or utility failures, provides a 10-hour rest period between shifts, and prohibits retaliation, authorizes an employer to create voluntary standby lists, and creates civil penalties.

The bill also requires DLIR to administer the new chapter.

The Department supports the intent of this measure that seeks to provide more stability in the lives of workers, but has some concerns regarding the impact to staffing and resources.

II. **CURRENT LAW**

There is no current law requiring employers to provide work schedules to employees within any time period. The work schedule has typically been the prerogative of the employer.

III. **COMMENTS ON THE HOUSE BILL**

Wage Standards Division (WSD) reports that worker inquiries do question the ability of an employer to make changes to their schedule, including last minute timing issues. Those last-minute scheduling inquiries include being taken off the schedule at the last minute as well as being added at the last minute. Those inquiries more often focus on being taken off the schedule at the last minute and fewer on being added at the last minute.

The definition of “employee” requires the counting of employees worldwide which would be extremely difficult as the DLIR may not have jurisdiction outside the State.

As drafted this new chapter creates another enforcement function to an already overburdened Wage Standards Division. The potential impact to staffing and resource levels may be significant. The Division already has significant backlogs, including for overtime and minimum wage and prevailing wages violations.

DLIR notes that Oregon recently passed a predictive scheduling measure that goes into effect on July 1, 2018, while enforcement is set to start on January 1, 2019, where many of the provisions are similar. Oregon is the only state with a statewide law and the Department suggests it may be helpful to see how the law operates in Oregon before enacting a similar measure in Hawaii.

<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB828>



1050 Bishop St. PMB 235 | Honolulu, HI 96813
P: 808-533-1292 | e: info@hawaiiifood.com

Executive Officers

Beau Oshiro, C&S Wholesale Grocers, *Chair*
John Erickson, Meadow Gold Dairies, *Immediate Past Chair*
Toby Taniguchi, KTA Superstores, *Vice Chair*
Lauren Zirbel, HFIA, *Executive Director*
Joe Carter, Coca-Cola Bottling of Hawaii, *Secretary / Treasurer*
Stan Brown, Acosta Sales & Marketing, *Advisor*
Paul Kosasa, ABC Stores, *Advisor*
John Shilf, Rainbow Sales & Marketing, *Advisor*
Barry Taniguchi, KTA Superstores, *Advisor*
Derek Kurisu, KTA Superstores, *Advisor*

TO:
Committee on Labor and Public Employment
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: Tuesday, February 6, 2018
TIME: 8:30am
PLACE: Conference Room 309

RE: HB 1629 Relating to Employment

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.

The people that are best able to determine schedules and scheduling practices within a business are the employees and employers of that business. Attempting to impose a one-size-fits all approach to the incredibly diverse group of businesses that this bill would affect is not the right choice.

The most recent recorded unemployment rate for Hawaii was 2%, the lowest rate ever recorded for any state. In this incredibly competitive employment environment businesses that want to retain great employees are highly motivated to accommodate the needs of their workers. This bill places rigid guidelines on businesses and employees that may not best meet the needs of either party. Hawaii's employers and employees need to have the freedom to find solutions and scheduling practices that work for them in the places that they work. For these reasons we urge you to vote no on this measure. We thank you for the opportunity to testify.



Tyler Roukema, Chairman – Outback Steakhouse **Kelii Gouveia, Incoming Chair** – Hula Grill
Hide Sakurai, Vice Chair – Diamond Dining **Dirk Koeppenkastrop, Secretary** – Il Gelato
Ben Dowling, Treasurer – Ocean House **Michael Miller, Past Chair** – Tiki's Grill & Bar

Gregg Fraser, Executive Director **Sunny Obrey**, Executive Assistant **Holly Kessler**, Director of Membership Relations

2017 - 18 Board of Directors:

Amanda Kullman-Kipp
Don Murphy
Eki Locke
Elisa Flores
Eron Read
Frank Nagamine
Gary Manago
Harold Watanabe
Jayson Lum
Jed Roa
Jetsun Dutcher
Kahau Manzo
Kim Kakuchi
Mark Noguchi
Michael Skedeleski
Michelle Brumblay
Nick Roschi
Pat Kashani
Paul Yokota
Rede Eder
Scott Mackenzie
Slade Neeley
Taryn Silva
Tom Jones

Allied Members:

Anne Lee
Biff Graper
Conrad Nonaka
Doug Harris
James Baloalao
Jason Wong
Jim Cremins
Matt Rose
Naomi Azama
Sharon Shigemoto

Advisory Board

Derek Conselva
Gerda Tom
Jon Muranaka
Jonathan Youngs
Justin Yoshino
Kehau Giles
Keith Kamisugi
Lisa Tomihama
Nenez Faleafine
Pono Chang
Ray L'Heureux
Richard Turbin
Victor Lim

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

From: Victor Lim, Legislative Chair
 Hawaii Restaurant Association

Subj: HB1629 Employment and Work Schedules

Date: February 2, 2018

The Hawaii Restaurant Association representing 3,500 restaurants here in Hawaii opposes HB1629 as it is written.

While we agree with providing employees an advance notice of a work schedule, providing a seven day work schedule before the first day of the work week is more realistic due to the volatile nature of our business.

Providing a new hire employee who is on a probationary period with an estimate as to how many hours that person might work in an average month is also not realistic.

In the restaurant industry where jobs are fairly routine, a ten hour rest between work shifts might not be necessary in comparison to other industries.

The additional compensation for work schedule changes as proposed in this bill is not only very steep, but it will be an administrative nightmare to keep track of all the nuances that employers might just not add additional employee when they could help everyone on a particular shift. This in turn would not allow additional hours of work to those that might want to work and make additional money. This is exactly what is happening at places where predictable scheduling had passed.

Instead of a win win for the employer and employee, the result is a lose lose.

We recommend that you please hold this bill and not pass it out. Thank you for giving us the opportunity to share our point of view.

Aloha.





HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting HB 1629 – Relating to Employment
House Committee on Labor & Public Employment
Scheduled for hearing at Tuesday, February 6, 2018, 8:30 AM, in Conference Room 309

Dear Chair Johanson, Vice Chair Holt, and members of the Committee:

Thank you for the opportunity to testify in SUPPORT of **HB 1629**, which would require certain employers to provide employees with advance notice of work schedules, as well as overtime pay for employees who work during certain rest periods between work shifts and if the employer gives no advance notice of work schedule. It also would authorize employers to create voluntary standby lists.

HB 1629 is intended to protect hourly workers from unpredictable, unstable work schedules, which lead to many negative consequences, both for workers and their families.

When employers assign shifts only a day or two in advance, or cancels them at the last minute, or wildly varies employees' hours from week to week, they create financial instability for workers and their families. This has a disproportionate effect on low-wage parents.

When a parent doesn't know how many hours she'll work in a given week and has no control over when those hours will be, it becomes extremely difficult for her to budget for expenses, go to school, hold a second job, establish consistent routines at home, or even regularly eat meals with her children.

Volatile schedules make it almost impossible for parents to access high-quality childcare and education programs, since most programs do not accommodate shifting schedules. As a result, children of parents with unstable work schedules often are not able to participate in the types of programs that could help them succeed in school. Studies suggest that erratic scheduling is linked to psychological stress in parents as well as behavioral problems and lower academic performance in children.

Therefore, fairer scheduling practices, such as those contained in HB 1629, can make a real positive difference in working families' lives. They would lead to more productive and committed employees as well as promote the well-being and future success of working parents and their keiki.

We appreciate your consideration of this testimony.

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

IBEW1260

‘A‘OHE HANA NUI KE ALU ‘IA

February 6, 2018

The Twenty-Ninth Legislature
Hawaii State House of Representatives
Committee on Labor

HB1629 - RELATING TO EMPLOYMENT

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, has advocated for all workers in the State of Hawaii for over seventy-five years and respectfully offers the following testimony in **STRONG SUPPORT** of House Bill 1629 (HB1629).

Employee's within many of Hawaii's industries are forced to accept abusive scheduling practices as a normal part of their work lives, leading to an inability to tend to family, education or health obligations in a predictable manner. Additionally, it is not uncommon for employees employed within these industries to hold multiple jobs, requiring coordination and planning to maintain a living income. When faced with unstable schedules, these employees are often forced to choose between losing one job or the other. Often, especially when dealing with unprincipled employers, the sole reason for schedule instability is cost savings and profit maximization at the expense of Hawaii's workers and their families.

Passage of HB1629 ensures stability of work and home lives for Hawaii's workers and their families, ultimately benefiting our communities as a whole by protecting our workers from what could be described, in many cases as nothing less than wage theft.

Mahalo for the opportunity to testify on this issue.

Respectfully,



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

HB-1629

Submitted on: 2/5/2018 8:24:45 AM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:



Randy Perreira
President

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Telephone: (808) 597-1441
Fax: (808) 593-2149

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 6, 2018

H.B. 1629 – RELATING TO
EMPLOYMENT

The Hawaii State AFL-CIO strongly supports H.B. 1629 which requires certain employers in the retail, hospitality, and food services to provide employees with advance notice of work schedules, authorizes an employer to create voluntary standby lists, requires overtime pay for employees who work during certain rest periods between work shifts and requires overtime pay if employer gives no advance notice of work schedule.

Many hourly low-wage workers are often notified of their work schedule the night before their shift begins or even the same day their shift begins. This is particularly difficult for single parents or workers required to work two or three jobs to make ends meet. H.B. 1629 simply allows for more stability allowing for workers to properly care for their children or successfully work more than one job to help get by in a high cost of living state. The Hawaii State AFL-CIO strongly urges the passage of H.B. 1629.

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Perreira".

Randy Perreira
President

HB-1629

Submitted on: 2/5/2018 11:34:21 AM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dirk Koeppenkastrop	IL Gelato Hawaii	Oppose	No

Comments:

To: Rep. Aaron Ling Johanson, Chair

Rep. Daniel Holt, Vice Chair

Members on Committee on Labor & Public Employment

Subject: HB1629 Employment and Work Schedules

Date: February 3, 2018

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 were no higher-level jobs as a chemist my wife and I started a small business here in Honolulu seven years ago.

We make all natural high quality gelato (ice cream) here in Hawaii and sell wholesale to restaurants and operate two small retail locations. We have approximately 50 employees and most of them part time. The proposed bill is challenging the existence of our gelato business.

In our gelato stores we offer work to high school students and unskilled workers who often have their first jobs with us. They come with little to no experience and need a lot of training and supervision, which we provide. This category of work also has its inherent problems with "no- shows" which is a challenge to manage and we cannot be penalized by paying higher wages to the staff who fills in.

While we agree with providing employees an advance notice of a work schedule, providing a seven day work schedule before the first day of the work week is more realistic due to the volatile nature of our business.

Providing a “new hire” employee who is on a probationary period with an estimate as to how many hours that person might work in an average month is also not realistic, as we do not know how fast they learn and can be utilized in our cafes and/or manufacturing process.

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 labor cost has been rising from minimum wage \$7.25 to \$10.10 in recent years and food costs in Hawaii are the highest of the nation. Our rents are the highest of the nation also. 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 lose our local customers. If payroll continues to increase so substantially we need to close our business, which would challenge our existence and we could no longer offer entry-level jobs to those young people.

For all the reasons above, we strongly oppose this bill. Thank you for allowing us to share our view.

Sincerely,

Dirk Koeppenkastrop, Ph.D.

Owner



**Testimony to the House Committee on Labor
Tuesday, February 6, 2018 at 8:30 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 1629 RELATING TO EMPLOYMENT

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

The Chamber of Commerce Hawaii ("The Chamber") opposes HB 1629, which requires employers in retail, hospitality and food service to provide employees with advance notice of work schedules. It also authorizes the employer to create voluntary standby lists, requires overtime pay for employees who work during certain rest periods and when no advance notice of work schedule is given.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ 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.

A key component to attract employees in industries such as retail, hospitality and food service is the flexibility in scheduling. Flexible scheduling is a benefit to both the employee and the employer. For example, the employee can choose to work around their changing school schedules and demands, while their children are in school or around another job's schedule.

An employer relies on flexible scheduling to meet the needs of a rapidly changing business environment including ramping up hours during peak seasons or special events, where at times changes to the schedule are necessary and unavoidable.

Scheduling is a complex process with many different data points being taken under consideration at the same time such as employee shift preference, sales forecasts, delivery schedules, employee breaks, payroll hours, and promotional events or anticipated swings in customer traffic. Eliminating the flexibility in scheduling will have a negative impact on both the employee and employer. Employees will have to give their availability much further out which may cause challenges for day care, school schedules or other outside commitments. Employers may be less likely to make changes to schedules, such as adding hours or accommodating last minute requests due to the overtime pay provision.

Every company is unique in their business processes and this proposal fails to contemplate those unique differences. One size does not fit all.

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

The Twenty-Ninth Legislature
Regular Session of 2018

HOUSE OF REPRESENTATIVES
Committee on Labor & Public Employment
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, February 6, 2018; 8:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1629
RELATING TO EMPLOYMENT**

The ILWU Local 142 supports the intent of H.B. 1629, which requires certain employers in the retail, hospitality, and food services to provide employees with advance notice of work schedules; authorizes an employer to create voluntary standby lists; requires overtime pay for employees who work during certain rest periods between work shifts; and requires overtime pay if employer gives no advance notice of work schedule.

The ILWU believes this piece of legislation can provide stability and enhance the quality of an employee's life. We believe it is only fair that a worker knows their schedule within a sufficient amount of time to facilitate the best possible outcome for the employee and employer.

We request, however, that H.B. 1629 be amended to add language exempting collective bargaining agreements from the fourteen-day notice requirement for schedules.

The ILWU urges passage of H.B. 1629 with our requested amendment. Thank you for the opportunity to share our views on this matter.



Testimony to the
House Committee on Labor & Public Employment
February 6, 2018
8:30 a.m.
State Capitol - Conference Room 309

RE: HB 1629 Relating to Employment

Aloha Chair Johanson, Vice Chair Holt and members of the committee:

On behalf of the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”), we are writing in opposition to HB 1629, relating to employment. This bill requires certain employers in the retail, hospitality, and food services to provide employees with advance notice of work schedules. It requires overtime pay for employees who work during certain rest periods between work shifts and it requires overtime pay if employer gives no advance notice of work schedule. We believe that this bill will have an immediate negative effect on the ability of many businesses to operate and, at a minimum, create a significant logistical burden on human resource management professionals.

Human resource management professionals are responsible for the alignment of employees and employers to achieve organizational goals. HR professionals seek to balance the interests of employers and employees with the understanding that the success of each is mutually dependent. SHRM Hawaii represents more than 800 human resource professionals in the State of Hawaii. We look forward to contributing positively to the development of sound public policy and continuing to serve as a resource to the legislature on matters related to labor and employment laws.

Mahalo for the opportunity to testify.



HB-1629

Submitted on: 2/5/2018 12:44:58 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nicole	IL Gelato Hawaii	Oppose	No

Comments:

Testimony Bill HB1629

To: Rep. Aaron Ling Johanson, Chair

Rep. Daniel Holt, Vice Chair

Members on Committee on Labor & Public Employment

From: Victor Lim, Legislative Chair

Hawaii Restaurant Association

Subject: HB1629 Employment and Work Schedules

Date: February 3, 2018

My name is Nicole Lueker and my husband and I own IL Gelato Hawaii. I am running our two Gelaterias where we sell our own gelato (ice cream) as well as homemade pastries, crepes, waffles etc.

Overall, we have approximately 50 employees and most of them are young students who work part time.

The proposed bill is challenging the existence of our gelato business.

In our gelato stores we offer work to high school students and unskilled workers who often have their first jobs with us. They come with little to no experience and need a lot of training and supervision, which we provide thoroughly and with passion. The skills our employees learn are valuable throughout their lives and gives them an opportunity to grow into 'professionals'. However, this category of work also has its inherent problems with "no- shows" which is an ongoing challenge. We cannot be penalized by paying higher wages to the staff who fills in.

While we agree with providing employees an advance notice of a work schedule, providing a seven day work schedule before the first day of the work week is more realistic due to the volatile nature of our business.

Providing a "new hire" employee who is on a probationary period with an estimate as to how many hours that person might work in an average month is also not realistic, as we do not know how fast they learn and can be utilized in our cafes and/or manufacturing process.

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 labor cost has been rising form minimum wage \$7.25 to \$10.10 in recent years and food costs in Hawaii are the highest of the nation. Our rents are the highest of the nation also. 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 continues to increase so substantially we need to close our business, which would challenge our existence and we could no longer offer entry-level jobs to those young people.

For all the reasons above, I strongly oppose this bill. Thank you for allowing me to share my view.

Sincerely,

Nicole Lueker

Co-Owner IL Gelato Hawaii

HB-1629

Submitted on: 2/5/2018 1:17:00 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary LaPrade	Quicksilver Charters	Oppose	Yes

Comments:

Boss Frog's Dive & Surf and its affiliates (the "Company") employ over a 100 people in Hawaii's tourism industry. We have a **very** complex work schedule. During a single work week, we have nearly 200 shifts we MUST fill.

Our managers endeavor to provide work schedules 14 days in advance. However, people get sick, people "no-show" and people have emergencies or injuries. Also, Hawaii has one of the lowest unemployment rates in the country, and people change jobs frequently. These issues occasionally result in "gaps" in the schedule that must be filled. Many employees actually elect to be "on call" in order to obtain additional shifts. Finally, our organization, along with many others, is seasonal, and less shifts are available during slow seasons.

Also, many people trade shifts and want the flexibility to come in to work. However, an employer would deny the employee that flexibility if it would result in an increase wages.

Keep in mind, all reasons for "gaps" are *completely outside of the control of the employer*. However, this bill is asking employers, no matter what their size, to bear the burden of these uncertainties. This bill does not take into consideration the unique dynamics of each organization. Also, the amount we pay our employees should be guided by the market and employee performance, not the will of employee special interest groups.

HB-1629

Submitted on: 2/5/2018 1:53:31 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jackie Moore-Andresen, PHR	Fair Wind Cruises	Oppose	No

Comments:

Rep. Aaron Ling Johanson, Chair

Rep. Daniel Hold, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, February 6, 2018

TIME: 08:30 a.m.

PLACE: Conference Room 309

TESTIMONY OF Fair Wind Cruises TO HB1629 Relating to Fair Scheduling

Aloha Rep. Aaron Ling Johanson, Chair; Rep. Daniel Holt, Vice Chair Committee on Labor & Public Employment:

My name is Jackie Moore-Andresen, PHR, Human Resources and Payroll Manager for Fair Wind Cruises **speaking in Strong Opposition to HB1629** defining and legislating fair scheduling.

Fair Wind Cruises is a family operated Ocean Tourism business operating on the Island of Hawaii for over 47 years. Like Fair Wind, many in the Ocean Tourism sector are family businesses which are locally owned and operated. Many have been in business for several decades and are an important and valued part of our respective communities. Many employ many individuals that are not related to the proprietors.

Ocean Tourism Businesses depend on the ebb and flow of both the tourist demand and the variances of weather conditions to determine their specific crew needs. Because of this it is very difficult if not impossible to determine whether one will have enough tourists to operate a specific activity ten days before that activity is scheduled, or if the weather will be suitable for that particular day. Because of this uncertainty many companies will publish a tentative schedule for their crews that give both an optimistic guess at what their crew needs will be as well as a lesser projection if that is warranted. They take into account specific days that the individual crew member would like to have free and try to not schedule them those days. The crew also have the ability to trade shifts with each other to accommodate their particular schedule needs. It would be almost impossible to guarantee that a specific trip would be operating on a specific day 10 days to two weeks out and that a certain number of persons would be employed that particular day. Additionally, the prospect of potentially having to pay time and a half pay to employees for no advance notice of schedule changes would seem over reaching and cause a hardship for small business owners that on a regular basis have changes due to employee illness, change in customer counts, and other scenarios that are out of their control often with little or no advance notice.

Fair Wind Cruises and other Ocean Tourism business are very capital and labor intensive with slim profit margins in good years and little or none in bad years. Yet they provide meaningful employment, good wages and benefits with solid career paths. For vessel staffing, this entails much training and mentoring from the employer and senior staff on the path to becoming a Dive Instructor, First Mate, Captain, Chief Engineer, Director of Operations, etc. In the current labor market there is already much upward wage pressure on all levels of staffing. Yet there are many entry level crew that are willing to apprentice and learn the skills of the seafaring trade if they can get the opportunity. If the Ocean Tourism companies which run these smaller charter boats, are saddled with this regulation it would have a massive downward shift in the per hour wage that they could afford to guarantee their staff as well as the entry level opportunities.

This "fair scheduling" policy will have a huge negative effect on the industry.

HB-1629

Submitted on: 2/5/2018 3:23:05 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Yardley	Wailea Golf LLC	Oppose	No

Comments:

HB1629 will place undue hardship on all companies but especially the hospitality industry will be unfairly affected. The work schedules of employees are based upon demand and if the demand is not there the hospitality companies bottom line depends on the ability to manage these overhead costs. If the revenue is not available to cover the overhead costs it places an undue burden on the company to maintain an expense it can not afford if the company cannot manage its overhead. Occupancy numbers at the hotels in the Wailea resort does not necessarily equate into similar golf rounds. The company plans to support the hotels in the resort based on a reduced volume of the hotels occupancy numbers but even then it is not a guarantee those rounds will materialize.. As a result, the company allows employees to volunteer to shorten their hours or, may request an employee leave for the day when there is no demand. This is a basic principle of matching revenue with expense and if the company is prevented from doing so then this will be a significant blow to the company. Please reconsider and do not pass this bill. Thank you.

HB-1629

Submitted on: 2/5/2018 2:45:01 PM

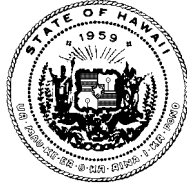
Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Kasper	Calypso Charters	Oppose	No

Comments:

HB 1629

**LATE
TESTIMONY**



LATE

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 5, 2018

TO: The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Labor & Public Employment

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 1629 – RELATING TO LABOR**

Hearing: Tuesday, February 6, 8:30 a.m.
Conference Room 309, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of this measure and offers comments.

PURPOSE: The purpose of the bill is to requires certain employers in the retail, hospitality, and food services to provide employees with advance notice of work schedules. Authorizes an employer to create voluntary standby lists. Requires overtime pay for employees who work during certain rest periods between work shifts. Requires overtime pay if employer gives no advance notice of work schedule.

Erratic and fluctuating work schedules are endemic to low wage work and most commonly experienced in retail, hospitality, and food service employment. According to the Economic Policy Institute, employees who make less than \$22,500 annually are most likely to have erratic schedules, which have direct and adverse effects on employees and a disparate impact on female workers and workers of color. These schedules are additionally associated with longer working hours, regardless of whether the position is salaried or hourly.

Unpredictable and fluctuating work schedules make arrangements for transportation, child care, and caregiving responsibilities difficult, thereby increasing work

family conflicts. The ability to predict one's work schedule impacts our First to Work clients, who are not yet economically stable and who may have various non work responsibilities to account for.

DHS has a large stake in ending poverty in Hawaii. DHS provides benefits and services to one in four Hawaii residents, or nearly 360,000 individuals, and provides medical insurance coverage for nearly one-half of Hawaii's children. DHS has the largest operating budget of any state department, approximately \$3.3 billion, to provide benefits and services relating to homelessness, education, employment, health care, child care, food security, protective services, and vocational rehabilitation.

Employment supports provided by DHS include cash assistance, child care subsidies, and transportation benefits; vocational rehabilitation supports from the Division of Vocational Rehabilitation (DVR); and higher education and other supports for former foster youth from the Social Services Division (SSD).

In 2016, DHS initiated its 'Ohana Nui effort by adopting a multigenerational approach to transform the way services are provided to individuals and families to improve outcomes and well-being. By providing programs and services that maintain a high level of service integration, quality, and intensity across multiple generations, DHS intends to reduce intergenerational poverty in the State, and the human and financial costs associated with poverty.

One of the key principles of the 'Ohana Nui approach is education and economic stability, as education is the foundation of economic opportunity. According to the American Public Human Services Association, meaningful and sustainable employment is the surest way to economic well-being for ourselves and our families. Having a job, enjoying the many benefits that come from work, providing for one's family, setting examples for our children, and looking forward to a secure retirement are among the top achievements we all aspire to. Moreover, gainful employment is one of our most essential building blocks for strong, healthy, and productive individuals and families, yet while the *minimum* wage in Hawaii is \$10.10, the *living wage* for a family of four (two adults – one working – and two children) in the City and County of Honolulu is estimated to be \$32.97, according to the Massachusetts Institute of Technology.

As part of the DHS mission to transform the way we deliver benefits and services, and as part of the Governor's package, DHS proposed HB2366/SB2793 which requires DHS to use an integrated and multigenerational approach to delivering human services to reduce the incidence of intergenerational poverty and dependence on public benefits.

Thank you for the opportunity to provide comments on this measure.



LATE

**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 6, 2018**

Re: HB 1629 Relating to Employment

Good morning Chair Johanson and members of the House Committee on Labor and Public Employment. 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 committed to supporting 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 HB 1629 Relating to Employment. This bill would require Employer's like retailers to provide employees with advance notice of work schedules, requires overtime pay for employees who work during certain rest periods between work shifts as well as overtime pay if employer does not give advance notice of a work schedule.

Many businesses schedule workers weekly, and yes worker schedules may vary significantly from week to week. For businesses it is often difficult and sometimes next to impossible to predict how many workers may be needed on specific days. This is bill would eliminate flexibility in the workplace for both employers and employees, deny employees the opportunity to work additional hours if desired, limit employers' ability to accommodate customer demands, and subject employers to unnecessary layers of penalties, investigative actions, and costly litigation.

Retailers are already operating on thin margins. 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.

Again mahalo for this opportunity to testify.



LATE

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

From: Michael Miller, Dir of Operations at Tiki's Grill & Bar

Subj: HB1629 Employment and Work Schedules

Date: February 1, 2018

We agree that we would all like to have a better quality of life for Hawaii's citizens. However, HB1629 is not the answer. The state government should not dictate operational schedules and cost measures to businesses. We oppose this bill in its current form.

Many companies, including ours, currently provide advanced notice of work schedules for 7 or more calendar days to our employees. As with many in the industry, we have continued to invest in technology with scheduling applications such as HotSchedules to give our employees flexibility and options. Employees are able to let us know their availability, and the app also allows them to trade schedules with co-workers online.

We want and need our employees to be happy and productive.

We need to be flexible and not handcuffed with more regulation so that we can help our employees live better lives, and at the same time provide the service that our customers demand. Here are a few **real life examples** where we need to be flexible with our staff.

1. Kela's dad calls from Queen's to say his daughter can't come in, her appendix has burst;
2. Zack calls in to say he wrecked his bike and needs to take the night off;
3. Jennifer calls in to say her car is dead on the Pali;
4. Sammi's grandmother just passed away and she needs fly to the mainland on Friday;
5. An employee talks to me saying he is checking himself into a drug treatment program;
6. The employee that I hired, who is doing well in the drug court program, has a lapse and goes to jail for the weekend until the judge can see him;
7. Kahn's daughter has a miscarriage while he is prepping food and he needs to leave;
8. J's kids get dropped off on Christmas day by his wife while he is working;
9. Hana pleads with me that she needs the next Tuesday night off to study for her finals;
10. The Bus is stuck in traffic, and an employee cannot make it in till much later;
12. Two employees have a complaint about each other and they are advised by HR not to work together during the same shift until it can be resolved;
13. D gets caught stealing and is fired so his shifts need to be covered; and
14. B is diagnosed with cancer and given 1 month to live, and his shifts need to be covered.



Here are a few examples of when guests' needs come first and we would need to call in a staff member or send someone home early:

1. A luau has suddenly closed for the night due to weather, and we are asked to take groups;
2. We have had water mains break and issues with gas lines;
3. Leaks from heavy rains have made us close off a dining area;
4. We have power outages;
5. We have a tour group that calls to say they did not make their flight;
6. We have heavy winds that make us close outside seating;
7. We have a wedding couple that calls off their wedding at the last minute; and
8. We get a call from someone you know saying they forgot to make reservations for their family dinner and we do our best to make it happen.

Flexibility in scheduling is a necessity for running retail, hospitality, and food services. Penalizing the businesses will only drive costs up, decrease customer service, hurt the employees, and put restaurants out of business.

We have a 2% unemployment rate in Hawaii. If someone feels they are not being treated right or fairly in any of these targeted industries, they can, and do, leave. Employees can walk across the street to get a job that treats them with dignity and respect. ***In fact, please send them to me, if they are honest and want to work!*** I can find them a good job with benefits, and if they have drive, passion, and are willing to work hard, there are many opportunities to move up in our industry and get more pay.

Mahalo for the opportunity to provide testimony.

Michael Miller / Director of Operations
michaelm@tikisgrill.com

HB-1629

Submitted on: 2/5/2018 4:13:44 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Bonnie Schoneberg		Oppose	No

Comments:

LATE

HB-1629

Submitted on: 2/5/2018 5:07:02 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Strahn	Maui Dive Shop	Oppose	No

Comments:

LATE

HB-1629

Submitted on: 2/5/2018 6:43:12 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Takaki		Oppose	No

Comments:

I am totally against HB1629 as it is onerous to every business. There are many reasons work schedules need to be changed at the last minute. These include illness of other employees, (especially during flu season); natural disasters such as lava flow and hurricane. Businesses do not like or anticipate rescheduling and it is a fact of business that unanticipated changes occur. Please do not make it burdensome and ultimately costly for businesses.

LATE



Before the House Committee on Labor & Public Employment

LATE

DATE: February 6, 2018

TIME: 8:30 a.m.

PLACE: Conference Room 309

Re: HB1629 Relating to Employment

Testimony of Melissa Pavlicek for NFIB Hawaii

Aloha Chair Johanson, Vice Chair Holt and members of the committee:

We are testifying on behalf of the National Federation of Independent Business (NFIB) in opposition to House Bill 1629, which requires certain employers in the retail, hospitality, and food services to provide employees with advance notice of work schedules. Authorizes an employer to create voluntary standby lists. Requires overtime pay for employees who work during certain rest periods between work shifts. Requires overtime pay if employer gives no advance notice of work schedule.

NFIB Hawaii opposes measures which do not adequately allow for flexibility and take into account the circumstances of individual small businesses. Please defer this bill.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 750 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

LATE

HB-1629

Submitted on: 2/5/2018 8:30:21 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James E. Coon	Ocean Tourism Coalition	Oppose	No

Comments:

HB1629 is written to impact just large companies, but we fear it could spread to smaller ones. The Ocean Tourism Coalition is comprised of over 300 small companies that must depend on the ebb and flow of both the tourist demand and the vagrancies of weather conditions as well as a plethora of other factors to determine their specific crew needs for any particular day. Because of this it is very difficult if not impossible to determine whether a specific trip will operate ten-14 days before that activity is scheduled, or if the weather will be suitable on that particular day. Because of this uncertainty, many companies will publish a tentative schedule for their crews a couple of weeks out that give both an optimistic guess at what their crew needs will be as well as a lesser projection if that is warranted. They take into account specific days that the individual crew member would like to have free and try to not schedule them those days. The crew also have the ability to trade shifts with each other to accommodate their particular schedule needs. **It would be almost impossible to guarantee that a specific trip would be operating on a specific day 10 days to two weeks out and that a certain number of persons would be employed that particular day.**

It is our opinion that this bill should not get passed. The free market should dictate the wages and scheduling of employees. However, if this committee is committed to taking the State down this path, then it is vital that the committee understand that the Ocean Tourism Industry is unique and that it would be virtually impossible to comply with rules designed for the retail and restaurant industry. We humbly suggest that the following language be included in HB1629:

“Excluded from this section are employers which utilize transportation equipment to provide scenic recreational entertainment, including dinner cruises, as classified in Subsector 487 of the North American Industry Classification System (NAICS).”

Sincerely,

James E. Coon, President OTC

HB-1629

Submitted on: 2/5/2018 8:58:39 PM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Miyahira	Business Strategies	Oppose	No

Comments:

I oppose HB1629. This bill serves to reduce a business' flexibility to respond to unanticipated surges in customer traffic. The ability to do so is especially important in retail, restaurant, and hospitality trades where this can occur. The cost of compliance with this proposed bill may be an increase in labor costs which will impact consumers directly, as well as require an employer to staff up unnecessarily. The cost of compliance could also have an opposite effect where employees might find themselves with fewer hours during normally slow periods. No one wins with this bill.

LATE

HB-1629

Submitted on: 2/6/2018 8:37:39 AM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Monica Toguchi	Highway Inn	Oppose	No

Comments:

LATE



5017 Lawai Road
Koloa, HI 96756
(808) 240-5100 phone
(808) 240-5320 fax

LATE

February 6, 2018

House of Representatives
State of Hawaii

Dear Representatives:

I am submitted testimony against HB 1629. The proposed timelines, overtime, fees and penalties would make it completely unrealistic to run a business in Hawai'i. Although tourism is responsible for one in three jobs in our State, we struggle with competition from less expensive destinations. This bill makes us less competitive.

Being penalized for changing a schedule based on a sick call (which cannot be predicted 14 days in advance) puts undue pressure on Hawai'i businesses. It seems the State would like to mandate set schedules for everyone—wouldn't we all. Hawaii Business Owners need to be flexible and need flexibility from their Employees.

It seems the State would like to mandate a very strict union contract upon all Employers, decrease the ability for someone to pick up extra shifts to increase their overall wages, and even fine Employers on top of a very restrictive bargaining contract.

We have always been pro-employee, but the rules outlined in HB 1629 make it unrealistic for any Manager to be able to schedule, to cover a sick call, or cover a last-minute guest request that might incur additional staffing or overtime. Hawaii prides itself on providing Ho`okipa, but this law will tie the hands of Employers, decrease customer service, and increase animosity between staff. Need to leave early for high school graduation? I'm sorry, you should have put that request in two weeks ago, now it's too late. We can't afford the additional wages and fines, and we won't be able to find coverage for your hours missed.

The additional wages in the proposed legislation contradict the very essence of an Employee who has an on-call shift. A fee to wait, a fee to work, and a fee if you work the day after you were on-call. Over 50% of my Employees have a second job, which requires flexibility and loyalty.

Employees stay at a business because they are treated well by their Employer and they have found a harmonious balance of exchanging time and talent for wages and job security. This is the way it should continue, not mandating additional hourly charges and creating an inflexible work force that will refuse to serve a guest if it is within a 14-day window.

Please strike down this bill and allow us to continue providing the service we are known for in Hawai'i.

Sincerely,

Deborah S. Crippen

Deborah S. Crippen
Director of Human Resources

HB-1629

Submitted on: 2/6/2018 9:10:23 AM

Testimony for LAB on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Antoinette M Davis	Activities & Attractions Association of Hawaii	Oppose	No

Comments:

LATE