

HB 409

RELATING TO LABOR.

LAB, FIN

HB409



Submit Testimony

Measure Title: RELATING TO LABOR.

Report Title: Stop-Work Orders; Enforcement

Description: Authorizes the Director of Labor and Industrial Relations or the Director's designee to issue a stop-work order to an employer, until the employer complies with Chapter 388, Hawaii Revised Statutes, relating to the payment of wages and other compensation.

Companion:

Package: None

Current Referral: LAB, FIN

Introducer(s): JOHANSON, HOLT

<u>Sort by Date</u>		Status Text
1/20/2017	H	Pending introduction.
1/23/2017	H	Pass First Reading
1/23/2017	H	Referred to LAB, FIN, referral sheet 2
2/6/2017	H	Bill scheduled to be heard by LAB on Thursday, 02-09-17 10:00AM 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, Hawaii Revised Statutes, is
2 amended by adding five new sections to part I to be
3 appropriately designated and to read as follows:

4 "§388-A Enforcement; staff. The director shall enforce
5 the provisions of this chapter. The director may employ
6 investigators, clerks, interpreters, and other employees as
7 necessary and may assign any employee of the department to
8 assist in the enforcement of this chapter.

9 §388-B Stop-work order; failure to observe; penalties. An
10 employer or employer representative who fails to observe a stop-
11 work order issued and served upon the employer pursuant to this
12 section shall be guilty of a misdemeanor punishable by
13 imprisonment not exceeding sixty days or by a fine not exceeding
14 \$10,000, or both. Both the employer and employer representative
15 who directed employees to work in violation of the stop-work
16 order shall be held in violation of this section. The director
17 may obtain injunctive and other relief from the circuit court to



1 enforce the provisions of this chapter. The stop-work order
2 shall be effective immediately upon service of the order.

3 §388-C Stop-work order; withdrawal; penalties remitted.

4 The director has the discretion to withdraw a stop-work order or
5 remit all or any part of a penalty if good cause is shown;
6 provided the employer in default complies with this chapter.

7 §388-D Enforcement; recovery of attorneys' fees and costs.

8 The court may award reasonable attorneys' fees and costs to the
9 department in an action brought by the department to enforce the
10 provisions of this chapter, including injunctive and other
11 relief from the courts to carry out the purpose of this chapter.

12 §388-E Stop-work order; protest. An employer may protest

13 a stop-work order by filing a written request for a hearing with
14 the director or the director's designee within twenty days of
15 the date of service of the stop-work order. The hearing shall
16 be held within five days from the date of filing the request.

17 The director or the director's designee shall notify the
18 employer of the time and place of the hearing by mail. At the
19 conclusion of the hearing, the stop-work order may be affirmed
20 or dismissed, and within twenty-four hours after the hearing,
21 the director or the director's designee shall issue their



1 decision in writing to all parties by registered or certified
2 mail."

3 SECTION 2. Section 388-10, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§388-10 Penalties. (a) Civil. Any employer who fails
6 to pay wages in accordance with this chapter without equitable
7 justification shall be liable to the employee, in addition to
8 the wages legally proven to be due, for a sum equal to the
9 amount of unpaid wages and interest at a rate of six per cent
10 per year from the date that the wages were due.

11 (b) Criminal. Any employer who does not pay the wages of
12 any of the employer's employees in accordance with this chapter,
13 or any officer of any corporation who knowingly permits the
14 corporation to violate this chapter by failing to pay wages of
15 any of its employees in accordance with this chapter, or any
16 employer or the employer's agent or any officer or agent of a
17 corporation who discharges or in any other manner discriminates
18 against any employee because the employee has made a complaint
19 to the employee's employer, or to the director, or to any other
20 person that the employee has not been paid wages in accordance
21 with this chapter, or has instituted or caused to be instituted



1 any proceeding under or related to this chapter, or has
2 testified or is about to testify in any such proceedings, or any
3 employer who wilfully fails to comply with any other
4 requirements of this chapter shall be fined not less than \$100
5 nor more than \$10,000 or imprisoned for not more than one year,
6 or punished by both fine and imprisonment for each such offense.

7 (c) In addition to any other penalties provided by this
8 chapter, an employer conducting business in violation of this
9 chapter may be subject to a stop-work order issued under section
10 388-B. The director or the director's designee, in addition to
11 any other administrative remedy, may issue and serve the
12 employer an order to stop work prohibiting the use of employee
13 labor by the employer until the employer is in compliance with
14 this chapter; provided that the stop-work order does not
15 compromise or imperil public safety, or the life, health, and
16 care of vulnerable individuals. The stop-work order shall also
17 prohibit the employer from continuing to provide services by
18 conducting business using the labor from another business,
19 contractor, or subcontractor.

20 An employee affected by a work stoppage shall be paid by
21 the employer for time lost during the work stoppage, the payment



H.B. NO. 409

1 of which shall not exceed ten days, pending compliance by the
2 employer."

3 SECTION 3. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 4. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.

9

INTRODUCED BY: Jan F. Johnson
Dan Hill

JAN 20 2017



H.B. NO. 409

Report Title:

Stop-Work Orders; Enforcement

Description:

Authorizes the Director of Labor and Industrial Relations or the Director's designee to issue a stop-work order to an employer, until the employer complies with Chapter 388, Hawaii Revised Statutes, relating to the payment of wages and other compensation.

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



Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

February 6, 2017

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
and members
House Committee on Labor & Public Employment
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Strong Support for HB409, Relating to Labor

Dear Chair Johanson, Vice Chair Holt, and members:

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Laborers' International Union of North America, Local 368; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

We **strongly support HB409**, which would authorize the Director of the Department of Labor and Industrial Relations ("DLIR") or the Director's designee to issue a stop-work order to an employer until the employer complies with Chapter 388, Hawai'i Revised Statutes, relating to the payment of wages and other compensation.

The Hawai'i Construction Alliance has been extremely concerned by the increasing problem of unscrupulous employers intentionally disregarding laws designed to protect Hawai'i workers. Unfortunately, it is far too common for employers in Hawai'i to devise schemes to enrich themselves by defrauding their workers.

Last summer, the U.S. Department of Labor ("USDOL") Wage and Hour Division found that a contractor renovating the Maile Sky Court hotel in Waikiki was misclassifying its workers as independent contractors, rather than employees. USDOL reported that the contractor "paid its workers fixed rates per day, without regard to how many hours they worked, and they worked more than 40 hours in a week. Workers on the project typically worked 10-hour days, 6 or 7 days per week." Over the course of the renovation project, the contractor defrauded at least \$185,688 in overtime alone from 95 workers, which included carpenters, laborers, painters, plumbers, and other tradespeople.

DLIR found numerous other violations by the same contractor, including failure to provide Prepaid Health Care, Temporary Disability Insurance, and Workers' Compensation coverage.

Although DLIR acted swiftly in thoroughly investigating this case, they lacked the ability to immediately stop work on the project for nonpayment or improper payment of wages. As a result, the contractor was able to continue working while the investigation went on – and was able to continue benefitting from their fraudulent scheme. This is a particularly acute problem in the construction industry, where projects sometimes take only a few months, while investigations into unlawful activity can stretch on much longer.

Thus, we strongly believe that the Department of Labor and Industrial Relations ought to be given another enforcement tool – the issuance of stop-work orders – to further deter unscrupulous employers and to ensure that all workers are paid a proper, dignified wage for their labor.

Stop-work orders would be a “last-resort” option for DLIR, but we believe that this type of tool will be effective in preventing workers from being taken advantage of.

We note that several other jurisdictions have the ability to issue stop-work orders to employers who do not pay proper wages. Examples of successful stop-work order powers include California (Cal. Labor Code §238.1) and Connecticut (Conn. Gen. Stat §31-76a).

By virtue of these jurisdictions’ abilities to issue stop-work orders for nonpayment or improper payment of wages, their workers enjoy more protections and greater dignity on the job site. We believe Hawai‘i workers deserve the same.

Therefore, we strongly request your committee’s **favorable action on HB409**.

Mahalo,

A handwritten signature in black ink that reads "Tyler Dos Santos-Tam". The signature is written in a cursive, flowing style.

Tyler Dos Santos-Tam
Executive Director
Hawai‘i Construction Alliance
execdir@hawaiiconstructionalliance.org

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

HOSUE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

HB 409 – Relating to Labor
Thursday, February 9, 2017
10:00 A.M.
State Capitol – Room 309

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

In an effort to ensure that employers pay all wages due to the employer's employees in accordance with Chapter 388, Hawaii Revised Statutes, we strongly support HB 409 and its efforts to authorize the Department of Labor and Industrial Relations Director or the Director's designee to issue a stop-work order prohibiting the continued use of employee labor until the employer complies with the law.

Under existing law, an employer who fails to pay wages in accordance with Chapter 388, Hawaii Revised Statutes, without equitable justification is liable for monetary penalties. However, monetary penalties alone do not always stop employers from continuing to work illegally. A stop-work order will incentivize employers to pay all wages due to the employer's employee and penalties owed to the department in a timely manner.

It's in the best interest of the State of Hawaii to stop the work of unscrupulous employers who are not paying wages due to their employees. We, therefore, respectfully request your support on HB 409.

About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.



SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 7, 2017

Testimony To: House Committee on Judiciary
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

Subject: H.B. 409 - RELATING TO LABOR.

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we do not support this bill as written. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We do however, support the intent of the bill and recognize that there are situations that a stop work order might in fact be needed. We are concerned however with the lack of any criteria or any procedure that would occur prior to the issuance of a stop work order. In other words, after a violation, are there any steps that DLIR must take prior to the issuance of a stop work order or can they immediately go forward to the stop work order?

We are particularly concerned with Section 388-10 (c) regarding the payment of time lost and we are not quite sure how that would be calculated. The work order becomes effective immediately upon service and then the employer has to pay for any time lost not to exceed ten (10) days. However, if work schedules for the following week have not yet been made up, how then does anybody know what the time lost will be?

We recognize that the stop work order could be an effective tool in curbing non-compliance with the payment of wages statute however, we also are fearful that a stop work order that was erroneously issued needs to have a cure process that can happen as quickly as it was issued. Therefore, some type of notification to the employer would seem to need to occur.

Based on the above, we cannot support this bill as it is written although we do believe that it may have some merit if it can be modified.

Thank you.



**Testimony to the House Committee on Labor & Public Employment
Thursday, February 9, 2017 at 10:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 409 RELATING TO LABOR

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

The Chamber of Commerce Hawaii ("The Chamber") would like to provide **comments** regarding HB 409, which authorizes the Director of Labor and Industrial Relations or the Director's designee to issue a stop-work order to an employer, until the employer complies with Chapter 388, Hawaii Revised Statutes, relating to the payment of wages and other compensation.

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 appreciate the intent of the bill to ensure that all companies are on the same playing field in abiding by the laws and rules of the state. At the same time, we have some concerns on the lack of specificity on how investigations would take place, and what is the burden of proof on the department on issuing the stop-work order. A clear due process structure needs to be clarified as the penalties are both monetary and imprisonment. We also would ask that the Director or their designee be given latitude to issue a stop-work order rather than the law mandating them to do so.

Please keep in mind that the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaint Office (RICO) has the ability to cite for unlicensed activity, including non-compliance with workers compensation insurance and order a project to cease and desist. The City and County of Honolulu also has a similar ordinance which allows them to order a project to be stopped if it is based on public health and safety.

Lastly, we have concerns while this bill has genesis in the construction industry; it applies to all business and could adversely affect many other companies and industries.

Thank you for the opportunity to testify.

holt1 - Joyleanne

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 5:28 PM
To: LABtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB409 on Feb 9, 2017 10:00AM*

HB409

Submitted on: 2/6/2017

Testimony for LAB on Feb 9, 2017 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	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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HB 409

Late testimony

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LATE

LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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LATE

LATE

February 9, 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: Thursday, February 9, 2017
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 409 Relating to Labor

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal adds a provision to the Payment of Wages and Other Compensation Law, chapter 388, Hawaii Revised Statutes (HRS), to allow the department to impose an administrative stop-work order for violations of the law.

The Department supports the intent of HB409 as tool to promote compliance with Hawaii's payment of wage laws and offers comments.

II. CURRENT LAW

There is no administrative stop-work order in the law. There is a provision that authorizes the court to issue an injunction against the employer for violations in section 388-9 and a provision for criminal penalties under section 388-10(b). Often the employer will be out of business or bankrupt before these provisions can be used.

III. COMMENTS ON THE HOUSE BILL

The Department supports the intent of HB409 as tool to promote compliance with Hawaii's payment of wage laws and offers the following comments:

- A stop-work order issued to an employer without a hearing will raise due

process concerns on the part of the employer. Many due process concerns could be addressed by holding employers strictly liable for providing policy information under section 388-7, HRS. In addition, the department could develop procedures and administrative rules to further address due process considerations and appeal rights. The Department has drafted preliminary language to address some of these issues (attached).

- A similar California law under workers' compensation holds employers in strict liability on both coverage and posting policy information and in this manner avoids due process issues. California's law has operated for seventeen (17) years without a single challenge to stop-work orders DLIR learned in discussions with California staff responsible for administering the stop-work provisions.
- The proposal, as drafted, gives the Department only five days to schedule a hearing, notify the parties, and hold the hearing, which is unrealistic and affords no one adequate time to prepare for the hearing. Requiring the Director to issue a written decision within 24 hours may be unduly burdensome.
- New section 388-A is redundant, as chapter 388 already has an enforcement provision at 388-9, HRS.

§388-A Notification of stop work order. (a) When the department, as a result of the department's own investigation, finds that a violation of this chapter or the administrative rules adopted under this chapter has been committed, the department shall issue a notification of stop-work order to the employer involved.

(b) A notification of stop-work order shall be final and conclusive unless within twenty days after a copy has been sent to the employer, the employer files a written notice of appeal with the director.

(c) A hearing on the written notice of appeal shall be held by a hearings officer appointed by the director pursuant to chapter 91.

Hearings on appeal shall be held within XX days of the notice of appeal and a decision shall be rendered by the hearings officer within YY days after the conclusion of the hearing, stating the findings of fact and conclusions of law.

§388-B Stop work order violation; penalties. Where the department finds that a violation of this chapter or the administrative rules promulgated under this chapter has been committed, the department shall assess a penalty of \$1,000 for each violation found.

§388-C Stop-work order; withdrawal; penalties remitted. In the absence of an appeal and within twenty days after a copy of the notification of stop-work order has been sent to the employer the director may withdraw or modify a notification of stop-work order or remit all or any part of a penalty assessed if good cause is shown; provided the employer in default complies with this chapter and the administrative rules adopted under this chapter.

§388-D Judicial review. (a) Any party to an appeal under this chapter may obtain judicial review of the decision on the appeal in the manner provided in chapter 91.

§388-E Enforcement of the notification of stop work order. The director may file in the circuit court in the jurisdiction in which the employer does business, a certified copy of the notification of stop-work order from which no appeal has been taken within the time allowed and the court shall render a

judgment in accordance with the notification of stop-work order and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom.

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Honolulu, HI 96819
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Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People

via Ca



February 9, 2017

TO: HONORABLE AARON JOHANSON, CHAIR HONORABLE DANIEL HOLT,
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR
AND EMPLOYMENT

SUBJECT: **COMMENTS AND SUGGESTED AMENDMENTS TO H.B 409
RELATING TO LABOR.** Authorizes the Director of Labor and Industrial
Relations or the Director's designee to issue a stop-work order to an employer,
until the employer complies with Chapter 388, Hawaii Revised Statutes, relating
to the payment of wages and other compensation.

Committee Hearing

DATE: February 9, 2017
TIME: 10:00 a.m.
PLACE: Room 309

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

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA has comments regarding S.B. 854, Relating to Labor regarding ensuring due process procedures are in place. While GCA appreciates the intent of this legislation and compliance with Section 388, HRS, the payment of wages and compensation, GCA requests that employers are afforded due process if accused of such nonpayment of such wages. Current law already allows for both civil and criminal penalties for nonpayment of wages.

H.B. 409, Relating to Labor, proposes to allow the Department of Labor and Industrial Relations (DLIR) to issue and serve on any employer, whether it be in construction or any other industry, an immediate order to stop work due to non-compliance with Section 388, proper payment of wages. The proposal lacks specifics on how DLIR would investigate such non-compliance or what burdens the DLIR may have to prove prior to issuing an order to stop work. **In regards to payment of wages, evidence including payroll records and proper hours worked would require review and verification prior to a finding of wrongdoing. How does the department intend to gather such information without some type of inquiry of the employer and without subpoenaing payroll records?** Whether such investigation is for non-compliance with workers compensation, temporary disability insurance or non-payment of wages, such evidence must be proven factual before such order to stop work is issued.

For these reasons, we respectfully request the Committee consider adding language that clearly articulates the standard the DLIR must satisfy *before* issuance of an order to stop work; provide an employer adequate notice or advance warning of such an allegation *before* an order to stop work is issued; allow an employer the ability to adequately respond and defend against such allegation *before* a stop work order is issued; and most importantly allow the employer to secure the place of employment for all employees and the public at large *before* issuance of a stop work order.

Thank you for the opportunity to present our views on this matter and for considering our requested language to ensure such enforcement mechanisms include proper safeguards for all parties involved.