

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR



SCOTT T. MURAKAMI
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

**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

January 31, 2019

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Stacelynn K.M. Eli, Vice Chair, and
Members of the House Committee on Labor and Public Employment

Date: Thursday, January 31, 2019
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

From: Scott T. Murakami, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 232 RELATING TO MINIMUM WAGE

I. OVERVIEW OF PROPOSED LEGISLATION

HB232 amends the definition of a "Qualified community rehabilitation program" under Section 103D-1001, Hawaii Revised Statutes (HRS), by repealing the reference to section 387-9, HRS. This measure also repeals the provision in section 387-9(a)(2), HRS, for employment of persons at wages lower than the statutory minimum wage.

DLIR provides [comments](#).

II. CURRENT LAW

Section 103D-1001, HRS, provides for preference in procurement for a bona fide "qualified community rehabilitation program," which means a nonprofit community rehabilitation program for persons with disabilities that meets certain requirements. One of the requirements is that the nonprofit be certified by the DLIR under section 387-9, HRS, relating to the employment of persons with disabilities.

Section 387-9, HRS, allows both persons and clients with intellectual disabilities to be paid at subminimum rates, the latter at sheltered workshops, under special certificates issued by the Director for a period stated in the special certificates.

III. COMMENTS ON THE HOUSE BILL

Currently there are six sheltered workshops with an active special certificate permitting the payment of wages lower than the statutory minimum wage to clients with intellectual disabilities. Currently, these sheltered workshops collectively employ seventy-three individuals under these special certificates.

Prior to issuing a special certificate to the sheltered workshop, DLIR reviews the employer's time records, payroll records, and time study information to determine whether the employer is complying with wage laws and certifying the proposed wages are commensurate with the individual's productivity. Generally, a special certificate is valid for one year and a renewal application is filed annually.

DLIR notes that the measure removes the need for a special certification of a qualified community rehabilitation program by the Director as set forth in §103D-1000(5). Further, the elimination of 387-9(a)(2) would also likely result in the U.S. DOL not issuing certificates for subminimum wages.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
PRINCESS VICTORIA KAMAMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

January 31, 2019

The Honorable Representative Ling Johanson, Chair
House of Representatives Committee on Labor and Public Employment
Thirtieth Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Ling Johanson and Members of the Committee:

SUBJECT: HB 0232 - Relating to Minimum Wage

The State Council on Developmental Disabilities **SUPPORTS HB 0232**. The purpose of this bill is to include persons with disabilities under the minimum wage requirements.

People with intellectual and developmental disabilities (IDD) constitute the segment of our society that is least employed. People with IDD often face a daunting task in securing employment. They can be employed in the community and should earn competitive wages. They should be supported to make informed choices about their work and careers and have access to the resources to seek, obtain, and be successful in competitive integrated employment.

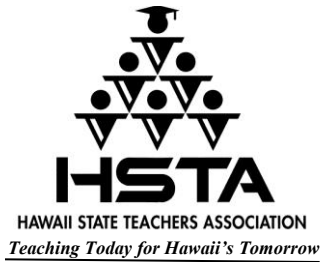
The State Council on Developmental Disabilities is committed to increasing competitive employment for individuals with IDD by:

- Fading out sub-minimum wage jobs.
- Collaborate to provide training and technical assistance to service providers for the purpose of expanding and improving their capacity to provide supported employment, customized employment, and other supports and services that will enhance opportunities for integrated employment consistent with best, promising, and emerging practices.
- Support the DOH Developmental Disabilities Division to fully implement the Medicaid Home and Community-Based Services (HCBS) waiver program and State Medicaid plan Section 1915(i) option to promote competitive integrated employment.

Thank you for the opportunity to submit testimony in **support of HB 0232**.

Sincerely,

Daintry Bartoldus
Executive Administrator



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President

Osa Tui Jr.
Vice President

Logan Okita
Secretary-Treasurer

Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

RE: HB 232 – RELATING TO THE MINIMUM WAGE

THURSDAY, JANUARY 31, 2019

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Johanson and Members of the Committee:

The Hawaii State Teachers Association **supports HB 232**, relating to the minimum wage.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Minimum wage workers in the islands must complete 116 hours of work per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom, which amounts to working 20 hours a day with no days off all year. That's impossible for anyone, especially for individuals with disabilities.

It is unacceptable, then, that we allow disabled individuals to be paid a subminimum wage. Many of these individuals were once special education students, who were guaranteed a free and appropriate education under the Individuals with Disabilities Education Act and promised a life filled with opportunities to realize their full potential. Yet, written in 1938, the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by permitting employers to pay disabled workers less than the federal minimum wage. This provision is echoed in HRS §387-9, but is based on the mistaken idea that disabled employees are less productive than their able-bodied colleagues. Many employment programs have come about since the mid-20th Century to assist people with disabilities in acquiring and using essential job skills.

A subminimum wage disrespects the contributions of disabled workers. Research shows that the subminimum wage model costs more, while inspiring lower rates of productivity. After more than seventy-five years of demonstrated failure, it is time to invest in more effective models of employment that are successful at advancing the workplace prospects of disabled individuals who were previously—and egregiously—thought to be unemployable.

We believe that lawmakers have a moral responsibility to eliminate the subminimum wage for all workers, regardless of disability, so that everyone is treated equally under the law. We urge you to amend this measure to do just that.

To ensure that our special needs children receive equal economic opportunities upon entering the workforce, the Hawaii State Teachers Association asks your committee to **support** this bill.

HB-232

Submitted on: 1/29/2019 8:09:37 PM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Hawaii Association of the Blind	Hawaii Association of the Blind	Support	No

Comments:

Don Thomson

First Vice President of the Hawaii Association of the Blind

The Hawaii Association of the Blind strongly opposes arbitrary discrimination against anyone or any group. Obviously we oppose this discrimination against blind people. To the best of our knowledge, Hawaii does not have any workshops which would allow for paying a blind worker less than minimum wage. This situation does exist nationally. We believe that it would be a nice gesture if not a safeguard measure to pass this bill and we are glad it has been introduced.



January 30, 2019

Committee on Labor and Public Employment
Representative Aaron Ling Johanson, Chair
Representative Stacelynn K.M. Eli, Vice Chair
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Representatives Johanson & Eli:

The National Down Syndrome Society, the leading human rights organization for all individuals with Down syndrome, supports the passage of HB 232 to end the payment of subminimum wages to workers with ALL disabilities.

By ending subminimum wage, this bill would recognize that workers with disabilities have the potential to succeed in integrated, meaningful, competitive employment settings and will get paid real wages for real work. Currently Maryland, New Hampshire, Vermont and Alaska have similar legislation in place.

With over 375 affiliate groups spanning across all 50 states, NDSS works tirelessly on the federal and state levels to break down barriers and create opportunities for individuals with Down syndrome to be included in all aspects of society and fulfill their hopes and dreams. Individuals with Down syndrome are working, getting married and integrating into their communities now more than ever. They deserve to be paid a fair wage.

We envision a world in which all people with Down syndrome have the opportunity to enhance their quality of life, realize their life aspirations and become valued members of welcoming communities. We hope that Hawaii will end sub-minimum wages, and we thank you for your leadership regarding this important piece of legislation.

Sincerely,

A handwritten signature in black ink that reads "Ashley Helsing". The signature is written in a cursive style with a large, looped "A" and "H".

Ashley Helsing
Director of Government Relations
National Down Syndrome Society
AHelsing@ndss.org
202-766-2407

Brandon Young
980 Maunawili Rd.
Kailua, Hawaii 96734
Phone: 808-351-6676

Email Address: young.brandon4@gmail.com

1/29/2019

Representative Aaron Johanson

Testimony in Support of HB 232

My name is Brandon Young and I am testifying in support of House Bill 232. I am in support of ending the payment of sub minimum wages for people with disabilities. It is ironic that in a legislative session where we are pushing to increase the minimum wage for “regular people” in our state, that there are entities that are allowed to pay people with disabilities much lower than the current minimum wage. It is time for this practice to end. I am unable to come and testify in person on Thursday morning, but I would like to speak to you on this matter. I believe that there are other bills this session that have similar language and I assume that one of these bills will move forward during this session. Feel free to contact me if you have any questions.

Brandon Young

The Thirtieth Legislature
Regular Session of 2019

THE HOUSE

Committee on Labor & Public Employment
Representative Aaron Ling Johanson Chair
Representative Stacelynn K.M. Eli, Vice Chair
State Capitol, Conference Room 309
Thursday, January 31, 2019; 9:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 232
RELATING TO MINIMUM WAGE**

The ILWU Local 142 **supports** H.B. 232, which includes persons with disabilities under the minimum wage requirements.

The ILWU Local 142 supports all workers earning the same minimum wage regardless of their condition and hope this issue can be resolved between the various stakeholders.

Thank you for the opportunity to offer testimony on this measure.



HB 232, RELATING TO THE MINIMUM WAGE

JANUARY 31, 2019 · HOUSE LABOR COMMITTEE ·
CHAIR REP. AARON LING JOHANSON

POSITION: Support.

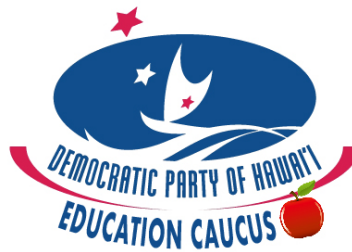
RATIONALE: IMUAlliance supports HB 232, relating to minimum wage, which includes persons with disabilities under the state's minimum wage requirements.

A living wage is a human right. According to the Department of Business, Economic Development, and Tourism, a single adult required an income of \$32,957 to achieve self-sufficiency in Hawai'i in 2016, while a single parent with one child required \$56,157. At our current statewide minimum wage rate of \$10.10 per hour, however, a full-time employee earns only \$21,008 annually. Moreover, the National Low Income Housing Coalition's Out of Reach 2018 report estimates that a minimum wage worker would have to work 109 hours per week to afford a one-bedroom rental home at fair market rent, which is the equivalent of nearly three full-time jobs.

It is unconscionable, then, that state and federal laws include a loophole allowing disabled individuals to be paid less than the minimum wage. Current labor laws unjustly prohibit workers with disabilities from reaching their full vocational and socioeconomic potential. Written in 1938, Section 14(c) of the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by empowering the Secretary of Labor to grant Special Wage Certificates to employers, permitting them to pay disabled workers less than the federal minimum wage. This provision, mirrored in Hawai'i Revised Statutes §387-9, is based on the immoral assumption that disabled employees are less productive than their able-bodied coworkers. Successful employment models have

emerged in the last seventy-five years to assist people with significant disabilities in acquiring the job skills needed for competitive work, giving lie to the theoretical framework for paying disabled employees a subminimum wage.

The subminimum wage model is an affront to the economic contributions of disabled workers. Data shows that less than 5 percent of the 400,000 workers with disabilities in segregated subminimum wage workshops will transition into competitive integrated work. Moreover, research shows that the subminimum wage model costs more, while promoting less productivity. In fact, workers paid a subminimum wage often must unlearn the habits they acquire in such workshops in order to obtain and carry out meaningful employment, which they repeatedly prove able to do. It is poor policy to reward failed programs with wage exemptions. After more than seven decades of the abhorrent subminimum wage practice, it is time to invest in proven, effective job models for disabled workers—such as “supported” or “customized” employment—that successfully advance positive, competitive, and integrated employment outcomes for individuals once deemed to be unemployable. Disabled workers deserve to be paid what they’ve earned, not discriminated against and cast into financial hardship.



HOUSE BILL 232, RELATING TO MINIMUM WAGE

JANUARY 31, 2019 · HOUSE LABOR COMMITTEE ·
CHAIR REP. AARON LING JOHANSON

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus supports HB 232, relating to minimum wage, which includes persons with disabilities under the state's minimum wage requirements.

A living wage is a human right. According to the Department of Business, Economic Development, and Tourism, a single adult required an income of \$32,957 to achieve self-sufficiency in Hawai'i in 2016, while a single parent with one child required \$56,157. At our current statewide minimum wage rate of \$10.10 per hour, however, a full-time employee earns only \$21,008 annually. Moreover, the National Low Income Housing Coalition's Out of Reach 2018 report estimates that a minimum wage worker would have to work 109 hours per week to afford a one-bedroom rental home at fair market rent, which is the equivalent of nearly three full-time jobs.

It is unconscionable, then, that state and federal laws include a loophole allowing disabled individuals to be paid less than the minimum wage. Current labor laws unjustly prohibit workers with disabilities from reaching their full vocational and socioeconomic potential. Written in 1938, Section 14(c) of the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by empowering the Secretary of Labor to grant Special Wage Certificates to employers, permitting

them to pay disabled workers less than the federal minimum wage. This provision, mirrored in Hawai'i Revised Statutes §387-9, is based on the immoral assumption that disabled employees are less productive than their able-bodied coworkers. Successful employment models have emerged in the last seventy-five years to assist people with significant disabilities in acquiring the job skills needed for competitive work, giving lie to the theoretical framework for paying disabled employees a subminimum wage.

The subminimum wage model is an affront to the economic contributions of disabled workers. Data shows that less than 5 percent of the 400,000 workers with disabilities in segregated subminimum wage workshops will transition into competitive integrated work. Moreover, research shows that the subminimum wage model costs more, while promoting less productivity. In fact, workers paid a subminimum wage often must unlearn the habits they acquire in such workshops in order to obtain and carry out meaningful employment, which they repeatedly prove able to do. It is poor policy to reward failed programs with wage exemptions. After more than seven decades of the abhorrent subminimum wage practice, it is time to invest in proven, effective job models for disabled workers—such as “supported” or “customized” employment—that successfully advance positive, competitive, and integrated employment outcomes for individuals once deemed to be unemployable. Disabled workers deserve to be paid what they've earned, not discriminated against and cast into financial hardship.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

RE: HB 232 – RELATING TO THE MINIMUM WAGE

THURSDAY, JANUARY 31, 2019

MITZIE HIGA, LEGISLATIVE CHAIR
DEMOCRATIC PARTY OF HAWAII LABOR CAUCUS

Chair Johanson and Members of the Committee:

The Democratic Party of Hawaii Labor Caucus **supports HB 232**, relating to the minimum wage.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Minimum wage workers in the islands must complete 116 hours of work per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom, which amounts to working 20 hours a day with no days off all year. That's impossible for anyone, especially for individuals with disabilities.

It is unacceptable, then, that we allow disabled individuals to be paid a subminimum wage. Many of these individuals were once special education students, who were guaranteed a free and appropriate education under the Individuals with Disabilities Education Act and promised a life filled with opportunities to realize their full potential. Yet, written in 1938, the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by permitting employers to pay disabled workers less than the federal minimum wage. This provision is echoed in HRS §387-9, but is based on the mistaken idea that disabled employees are less productive than their able-bodied colleagues. Many employment programs have come about since the mid-20th Century to assist people with disabilities in acquiring and using essential job skills.

A subminimum wage disrespects the contributions of disabled workers. Research shows that the subminimum wage model costs more, while inspiring lower rates of productivity. After more than seventy-five years of demonstrated failure, it is time to invest in more effective models of employment that are successful at advancing the workplace prospects of disabled individuals who were previously—and egregiously—thought to be unemployable.

We believe that lawmakers have a moral responsibility to eliminate the subminimum wage for all workers, regardless of disability, so that everyone is treated equally under the law. We urge you to amend this measure to do just that.

To ensure that our special needs children receive equal economic opportunities upon entering the workforce, the Hawaii State Teachers Association asks your committee to **support** this bill.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

RE: HB 232 – RELATING TO THE MINIMUM WAGE

THURSDAY, JANUARY 31, 2019

MITZIE HIGA, LEGISLATIVE CHAIR
DEMOCRATIC PARTY OF HAWAII LABOR CAUCUS

Chair Johanson and Members of the Committee:

The Democratic Party of Hawaii Labor Caucus **supports HB 232**, relating to the minimum wage.

Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Minimum wage workers in the islands must complete 116 hours of work per week to afford a modest one-bedroom apartment at fair market value and 139 hours per week to afford a two-bedroom, which amounts to working 20 hours a day with no days off all year. That's impossible for anyone, especially for individuals with disabilities.

It is unacceptable, then, that we allow disabled individuals to be paid a subminimum wage. Many of these individuals were once special education students, who were guaranteed a free and appropriate education under the Individuals with Disabilities Education Act and promised a life filled with opportunities to realize their full potential. Yet, written in 1938, the Fair Labor Standards Act (FLSA) discriminates against people with disabilities by permitting employers to pay disabled workers less than the federal minimum wage. This provision is echoed in HRS §387-9, but is based on the mistaken idea that disabled employees are less productive than their able-bodied colleagues. Many employment programs have come about since the mid-20th Century to assist people with disabilities in acquiring and using essential job skills.

A subminimum wage disrespects the contributions of disabled workers. Research shows that the subminimum wage model costs more, while inspiring lower rates of productivity. After more than seventy-five years of demonstrated failure, it is time to invest in more effective models of employment that are successful at advancing the workplace prospects of disabled individuals who were previously—and egregiously—thought to be unemployable.

We believe that lawmakers have a moral responsibility to eliminate the subminimum wage for all workers, regardless of disability, so that everyone is treated equally under the law.

To ensure that all of our workers receive equal economic opportunities, we ask your committee to **support** this bill.

HB-232

Submitted on: 1/28/2019 7:40:14 PM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Please pass this important bill, the sub-minimum wage is not acceptable in the Aloha State.

Mahalo,

Michael Golojuch, Jr.
Chair
LGBT Caucus of the Democratic Party of Hawaii

HB-232

Submitted on: 1/28/2019 7:42:24 PM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michele Golojuch	Individual	Support	No

Comments:

I stand in support of this bill! No matter who you are or what your job is you should never have to work without being paid at the least minimum wage.

HB-232

Submitted on: 1/29/2019 3:27:06 AM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Gonce	Individual	Support	No

Comments:

HB-232

Submitted on: 1/29/2019 8:03:05 PM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Frank DeGiacomo	Individual	Support	No

Comments:

m

House Labor & Public Employment Committee

Aaron Ling Johanson (Chair)

Stacelynn Ichiyama (Vice Chair)

Linda Ichiyama

Lisa Kitagawa

Angus L.K. McKelvey

Sean Quinlan

Kyle T. Yamashita

Lauren Matsumoto

Re: HB 232

Hearing: January 31, 2019

9:30 am

Conference Room 309

State Capitol

415 South Beretania St.

Dear Rep. Aaron Johanson, chairman and co-chairman Rep. Stacelynn Ichiyama

Thank you for the opportunity to testify on this bill.

I am Sylvia K.S. Ching and am in support of HB 232. Persons with disabilities, who work in qualified community rehabilitation programs, should be included under the minimum wage requirements in the State of Hawaii. The present law excludes them from the minimum wage requirements. This discriminates against disabled people and promotes abuses in the wages paid. Without wage protections, disabled people have been and potentially could be paid far less than what their labor and services are worth. This promotes other employment abuses such as being yelled at and being made to produce at unreasonable rates. All reflecting a disrespect for the disabled individual. This is detrimental to their rehabilitation and recovery. Disabled people find it difficult to live in Hawaii when paid sub minimum wages. Hawaii, as we all know, is an expensive place to live and someone who makes very low wages, finds it much more difficult than people who are paid at least a minimum wage..

Let's treat people with disabilities with respect and nurture the dignity we all deserve. Do not allow them to be paid sub minimum wages. Please pass HB 232.

Sylvia Ching phone no. 523-1798

HB-232

Submitted on: 1/30/2019 8:25:51 AM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nate Hix	Individual	Support	Yes

Comments:

If people within the sub minimum wage community want the same rights and protections as everybody else, who are we to deny them that opportunity?

HB-232

Submitted on: 1/29/2019 7:03:34 PM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Individual	Comments	Yes

Comments:

Last session we expressed concerns about the potential unintended consequences that could ensue if the sub minimum wage was eliminated. We continue to have some concerns. That said, conceptually we do believe that the goal should be to move in the direction set forth by the bill. In order to assess the impact we would like to see some analysis of exactly who are the individuals currently enrolled in these programs. Are they individuals in a time limited training program? Are they "working" in a position that has paid them the sub minimum wage for many years? What in fact are their productivity levels in terms of measuring their likelihood of obtaining competitive employment? Who are the current holders of these certificates? Are they bona fide training programs? Are they of limited duration or are they in perpetuity? That is a key factor and the legislature may want to consider differentiating between time limited training and entities where the "trainee" never "graduates".

We think it would be best to understand exactly what the individual facts are so that a clear decision can be made. We also think it may be useful to look at the experience of the small number of states that have eliminated these programs. Have those individuals obtained gainful employment or have they ended up in a day program or are they literally staying at home? We also note that at the federal level there is currently a proposal to eliminate the 14C certificates. While we have no idea if this will actually pass and are not necessarily suggesting that Hawaii should wait for federal action, it is illustrative that that bill calls for a very gradual phase out of the program. If the legislature were inclined to move forward, it might want to look to that federal proposal for potential guidance as to how to best proceed.

We do believe this is an important issue and are happy to work with the Committee if it chooses to advance this measure to further define what action would be best for the Legislature to pursue.

LATE



O`ahu County Committee on Legislative Priorities (OCCLP)

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Stacelynn K.M. Eli, Vice Chair

DATE: Tuesday, January 31, 2019

TIME: 9:30 a.m.

PLACE: Conference Room 309, State Capitol

RE: HB 232 Relating to Minimum Wage

Aloha mai kakou Chair Johanson, Vice Chair Eli, and Members of the Committee on Labor & Public Employment:

The O`ahu County Committee on Legislative Priorities (OCCLP) of the Democratic Party of Hawai`i (DPH) hereby submits its testimony in **SUPPORT of HB 232 relating to Minimum Wage**.

HB 232 provides for the inclusion of persons with disabilities under the minimum wage requirements.

Mahalo for taking the time to consider HB 232 which addresses one of the most pressing civil rights issues of today in Hawai`i. In our state, people with disabilities do not currently receive the protection of minimum wage laws, and we respectfully request that exemptions allowing employers to pay them subminimum wages be eliminated. They deserve equal protection. Additionally, we do not want any of our tax dollars going to any employer who exploits people.

Employers who exploit people with disabilities by paying them subminimum wages argue that their employees are simply not productive enough to be worthy of the minimum wage. They assume that workers with disabilities are inherently less productive; as a result, everything that happens thereafter is contaminated by low expectations and follows a self-fulfilling prophecy.

In a sheltered workshop, people with disabilities are essentially guaranteed employment, but they are not guaranteed minimum wage. It is supposed to be training, but people almost never transition out of subminimum-wage work environments. This overwhelming failure rate is frequently framed as an inherent consequence of the disabilities themselves, but properly

trained rehabilitation professionals contend that it is a product of low expectations and lack of proper interventions.

These employers claim that they pay people according to productivity, but they do not. Sheltered workshop wages are forecasted by a speed test every six months. The productivity assessment is forward-looking rather than backward-looking. In a job where people are truly paid according to productivity, their pay for a given day is based on how productive they were that day, not on an arbitrary speed test that was performed six months beforehand.

When we put people in subminimum-wage sheltered workshops, their productivity is assessed without regard to their individual talents. At best, their productivity is only assessed in the context of the work that the sheltered workshop has pre-selected as 'appropriate for people with disabilities.' For example, if a sheltered workshop does not employ computer programmers, they have little incentive to assess the employee for his or her ability to be a computer programmer. This practice prevents people from reaching their real potential. Their productivity is a function of the suffocating environment known as the subminimum-wage sheltered workshop.

The sheltered workshop system takes people and systematically tells them that they're not as good as the rest of the workforce. The workshops claim that they are focused on the individual, but civil rights must apply to all individuals. Some of the employers argue that the jobs are not primarily for pay, that they are primarily for fulfillment and feelings of importance in the world. It is not difficult in one of these institutions to keep people believing that they are not good enough to reach for competitive jobs, since they do not prepare them to function in a competitive job setting.

These tax-exempt non-profits collect charitable donations, and they advertise themselves as doing charitable work; however, they are not required to do right by their employees. They can eat up government contracts and grants while disability benefits pay the employees' real costs of living. This allows the employees to stay on disability benefits for the rest of their lives while the *corporate welfare queens* avoid paying real wages. There is no incentive to innovate and compete. They say they're market-driven and that they must increase their bottom line in order to be around for the next day, but they are not innovating. These employers have no incentive to pay their workers a minimum wage, and they have incentives to keep their workers unproductive. They profit immensely from keeping workers unproductive, and they have financial incentives to keep them earning subminimum wages. Edward Lazear, a Stanford economist and the father of personnel economics, teaches us that, in order to be most effective, a productivity incentive must be given to the highest levels of management because management creates the environment where productivity happens. These predatory employers demonstrate exactly why he is right.

Nobody is going to be thrown out on the street when we end this practice unless it is a political stunt by the employers to attempt to protect their sister institutions on the mainland. If people with disabilities want another kind of day program (a broad category), those already exist. If a person wants to go to a sheltered workshop and volunteer, they have every ability to do that. If a person with a disability wants to do an internship with or without a stipend, they can still do

that. If a person is going to work for pay, that person should be protected by minimum wage laws.

Hawaii is an Employment First State. In 2016, the Employment First State Leadership Mentor Program offered this Vision Statement:

“Through Employment First partnerships, people with disabilities shall have access to competitive integrated employment. Moreover, employment in the community is the first service option for individuals with disabilities.”

The following state leaders signed the Employment First State Leadership Mentor Program:

- Allicyn C.H. Tasaka, Executive Director, Workforce Development Council
- Linda Chu Takayama, Director, Department of Labor and Industrial Relations
- Leslie Wilkins, Chair, State Workforce Development Council
- David DeLuz, Jr., Chair, Hawaii County Workforce and Development Board
- Pankaj Bhanot, Director of Human Services, Department of Human Services
- Deborah Miyao, Acting Adult Education Director, State of Hawaii, Department of Education
- Virginia Pressler, MD, Director of Health, State of Hawaii, Department of Health
- Waynette K.Y. Cabral, Executive Administrator, Developmental Disabilities Council
- Patricia A. Morrissey, PhD, Director, Center on Disability Studies, University of Hawaii

According to a 2011 press release from the US Department of Labor, the Hawaii Department of Labor and Industrial Relations received \$2,923,674 in federal Disability Employment Initiative funding to transition workers with disabilities out of subminimum-wage sheltered workshops. Critics of this bill may argue that we do not have the supports in place to get our people out of subminimum wage sheltered workshops. We do. If the people who should be providing quality services to people with disabilities are falling short, we should not continue to maintain low expectations for them. If we keep the bar low, we will always get poor results. If we continue to allow them to offload people with disabilities into subminimum-wage sheltered workshops, they will continue to do it, even though it contradicts our Employment First agreement.

Organizations of people with disabilities, both locally and nationally, have called for the end of subminimum wages for workers with disabilities. The people who are subject to this exploitation DO NOT want this exploitation to continue. Please allow them to speak for themselves. The organizations of people with disabilities, not their custodial service providers and not third-party agencies, are the experts on their own needs and wants.

This movement has gained much support. At the federal level, both Congresswoman Colleen Hanabusa and Congresswoman Tulsi Gabbard cosponsored legislation in the last Congress to end the practice of paying subminimum wages to workers with disabilities throughout the country. The Oahu County Democrats passed resolutions at the County Convention in 2017 and 2018 calling for the end of subminimum wages for workers with disabilities and the end of public partnerships with such predatory employers. Later in 2018, the

Democratic Party of Hawaii and the Honolulu City Council passed similar resolutions. The Democratic National Committee has made it part of their platform, as well, and so has the Republican National Committee.

The academic research is clear; subminimum wage employment just does not work. Rob Cimera's research demonstrates that sheltered workshops make people less productive than they were before they entered the workshops. Sheltered employment is demonstrated to cost more than supported employment. Supported employment sometimes involves a third-party subsidizing the employee's wage. Supported employment otherwise involves job coaching and other supportive services to help get the employee up to speed to be a truly competitive employee. It can be difficult for a governing body to imagine paying part of someone's wage in the beginning, but they eventually transition off that program, largely because they are in an environment with real-world expectations. Then, they need not depend on disability welfare benefits. The Department of Human Services included Supported Employment in its budget proposal earlier this month, so that superior service should not disappear.

Some people think that subminimum wages are only being paid in special, segregated work environments. The reality, though, is that the entities holding these special wage certificates can act as subcontractors for other businesses. Consider the story of a woman who works as a dishwasher at a large restaurant chain, and she is paid subminimum wages. The restaurant subcontracts with the sheltered workshop, which keeps most of her paycheck and usually gives her about \$2.00 per hour. She can do the work as well as the able-bodied employees next to her, but it remains legal to pay her less because of her disability. In an integrated setting, doing real work, she is still getting paid subminimum wages. It continues right under our noses.

People with disabilities want to be treated like first-class citizens in Hawaii and have the same rights as other people to work to earn the things they need. They want to reach their full potential. People with disabilities are human beings, and they deserve to be paid like it. They should not have to live their entire lives depending on disability welfare benefits because these corporate welfare queens refuse to pay them like their able-bodied counterparts "for their own good."

Some agencies have recommended that we disembowel this initiative by limiting the payment of subminimum wages to only workers with intellectual disabilities. This thinking must be corrected. It is easy to diagnose anyone with a simple intellectual disability in order to continue qualifying them for subminimum wages. It furthermore demonstrates no understanding of equality nor aloha spirit. If a minimum wage is going to exist, it must apply to everyone, or it is not really a minimum wage.

The State of Hawaii has already become an Employment First State with a full Leadership Mentor Program. We have already set up the support structures to serve and empower people with disabilities. The organizations of people with disabilities have spoken, and they want to eradicate the payment of subminimum wages in Hawaii. The only opposition we have faced comes from the employers which exploit them and the agencies which are paid to monitor the exploitation. They have heard all the arguments against this bill for many decades, and they just keep coming back again to ask for it.

We respectfully request that you treat people with disabilities the way they want to be treated. Low expectations are the true obstacles between people with disabilities and their dreams. Their disabilities are not what hold them back; it is low expectations and custodial policies like the subminimum wage.

For these reasons, the OCCLP supports and urges the passage of HB 232 out of the Committee on Labor & Public Employment.

Mahalo nui loa
Me ka `oia`i`o

/s/ *Melodie Aduja*

Melodie Aduja

Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i

Ph. (808) 258-8889

Email: legislativepriorities@gmail.com

LATE

Representative Aaron Ling Johanson, Chair
Representative Stacelynn K.M. Eli, Vice Chair
Committee on Labor and Employment

Rona Fukumoto, President and CEO, Lanakila Pacific

Thursday, January 31, 2019

Comments for HB 232, Relating to Minimum Wage

Lanakila Pacific would like to provide comments in regards to HB 232 that seek to repeal the provision in HRS 387-9 authorizing a special certificate to be issued by the Hawaii State Department of Labor and Industrial Relations (DLIR), to allow wages lower than the applicable minimum wage for people with disabilities.

Lanakila Pacific is one of the qualified community rehabilitation programs utilizing a special minimum wage under HRS 387-9 based on the current language “of individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury”. Lanakila Pacific agrees with the intent of the bill which seeks to eliminate discriminative language, which generalizes disability, thus allowing for otherwise able and qualified potential employees to be paid a sub minimum wage. Having said that we would like to request that consideration be given to time limited training programs for people with disabilities to remain within the scope of the current law. We ask that the legislature consider distinguishing between a trainee in a time limited vocational training program and an employee.

Training programs provide an intervention that gives people who need a longer training period an option for earned income through a special minimum wage. Trainees in these programs are allowed to exercise informed choice, and training programs are required to follow the strict guidelines of the federal 14c certificate.

As federal law changes and the 14c certificate is phased out, there will be appropriate programs attached to the law which may replace the need for current training models. Lanakila Pacific has already embarked on efforts to identify best practices and transition to other models of service; however, hands-on work in the four areas we specialize in, food service, custodial, grounds maintenance and printing and embroidery, is still a very useful tool for securing competitive - at or above minimum wage - employment upon graduation from our training program. The sub minimum wage paid to our trainees enhances their training experience and provides added incentive to increase productivity, as they are assessed four times a year for raises.

Currently the law allows for “learners” to utilize the sub minimum wage certificate. If “learners” covers persons with or without disabilities in any training program it would allow for trainees to develop the skills necessary for transition to integrated competitive employment. If so, Lanakila Pacific would be happy to support this bill.

LATE

HB-232

Submitted on: 1/30/2019 4:16:34 PM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments:

Fully support persons with disabilities who are performing like work as others with receiving equal wages. They should be compensated for their abilities, not their disabilities.

LATE

HB-232

Submitted on: 1/31/2019 9:29:37 AM

Testimony for LAB on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Khara Jabola-Carolus	Hawai'i State Commission on the Status of Women	Support	Yes

Comments: