



January 25, 2022

To: The Honorable Karl Rhoads, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the Senate Committee on Judiciary

Date: Tuesday, January 25, 2022
Time: 9:30 a.m.
Place: Via Videoconference

From: Anne Perreira-Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. 988 RELATING TO LABOR

I. OVERVIEW OF PROPOSED LEGISLATION

SB988 proposes to amend Chapter 388, Hawaii Revised Statutes (HRS), by adding a new section to prohibit unpaid internships except educational internships and establish guidelines for unpaid student internships under the Payment of Wages and Other Compensation Law.

The DLIR supports this measure as it effectively adds additional criteria in State law to determine whether the individual is an intern or an employee.

II. CURRENT LAW

There is no provision in State labor law regarding internships. Chapter 388, HRS, Payment of Wages and Other Compensation Law, is broad law about how and when wage agreements and payments are made by employers to their employees. Minimum wage and overtime pay provisions are under Chapter 387, HRS, Wage and Hour Law.

III. COMMENTS ON THE SENATE BILL

The language in this measure generally appears to come from the U.S. Department of Labor's guidelines on internship programs under the federal Fair Labor Standards Act (FLSA). See <https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships>.

The federal FLSA test for unpaid interns and students is used to determine whether interns and students who are working at for-profit businesses are entitled to minimum wage and overtime pay.

Where State labor laws are silent, the DLIR refers to the provisions in the FLSA for guidance. Historically, the DLIR uses this test for unpaid interns and students when it is necessary to determine whether an intern or student is, in fact, an employee. When the department determines that the individual is an employee, it uses Chapter 387 to determine whether minimum wages and overtime provisions have been violated.

The DLIR supports this measure as it adds additional criteria to determine whether the individual is an intern or an employee in Hawaii's law.