



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

February 27, 2024

To: The Honorable Kyle T. Yamashita, Chair,
The Honorable Lisa Kitagawa, Vice Chair, and
Members of the House Committee on Finance

Date: Tuesday, February 27, 2024
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 2463 H.D.1 RELATING TO THE WAGE AND HOUR LAW

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR strongly supports** this Governor's Package proposal. HB2463 HD1 proposes to amend the Wage and Hour Law, Chapter 387, Hawaii Revised Statutes (HRS), by deleting the exclusion from coverage for individuals guaranteed a monthly compensation of \$2,000 or more a month, from the definition of "employee" in § 387-1 Definitions.

A report¹ pursuant to S.R. 129 (SLH, 2023) provides a discussion of the exemptions under the Fair Labor Standards Act (FLSA) and Hawaii's Wage and Hour Law. The report makes the recommendation to remove the exemption for the guaranteed compensation exclusion from the definition of employee in § 387-1, especially as the FLSA does not contain an analogous provision.

II. CURRENT LAW

The definition of "employee" in § 387-1 excludes an individual who is employed at a guaranteed compensation totaling \$2,000 or more a month. These employees are not provided the protection of minimum or overtime wage rates. Their employers do not have to comply with recordkeeping provisions also designed to protect workers.

III. COMMENTS ON THE HOUSE BILL

The DLIR strongly supports this measure to provide more workers with protections afforded by the minimum wage rates, overtime rates, and recordkeeping requirements that exist for employers and employees covered under Chapter 387 and thereby promoting the health, efficiency, and well-being of Hawaii's workforce.

Without this amendment an employer could schedule an individual to work unlimited hours and pay the worker a guaranteed monthly compensation of \$2,000 without regard to additional compensation for overtime.

Moreover, the \$2,000 guaranteed monthly compensation for exemption is also less than an employee earning the current minimum wage of \$14.00 per hour and will be even lower when the minimum wage increases through 2028.

The DLIR notes that although the Legislature has frequently changed the minimum wage rate, it has not changed the level of the guaranteed compensation exemption correspondingly. Over the course of the last 82 years the guaranteed compensation level has changed nine times. Since the last time the guaranteed compensation level was raised to \$2,000 in 2002, the minimum wage rate has increased nine times with two more increases scheduled pursuant to § 387-2, HRS².

1 https://www.capitol.hawaii.gov/sessions/session2024/bills/DC136_.pdf

2 https://www.capitol.hawaii.gov/sessions/session2024/bills/DC136_.pdf

To: House Committee on Finance
Re: **HB 2463 HD1 – Relating to the Wage and Hour Law**
Hawai'i State Capitol & Via Videoconference
February 27, 2024, 2:00 PM

Dear Chair Yamashita, Vice Chair Kitagawa, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of HB 2463 HD1**. This bill amends the definition of "employee" in Hawai'i's wage and hour law by repealing the definition's categorical exclusion of any employee who receives guaranteed compensation totaling \$2,000 or more a month.

The categorical exclusion of any worker who receives guaranteed compensation totaling \$2,000 or more a month (or \$24,000 per year) from the definition of "employee" in our state's wage and hour law is a loophole that can enable employers to avoid paying our state's minimum wage.

This dangerous loophole needs to be closed, for the well-being of our state's workers, their families, and our state's finances.

Nearly half of children in Hawai'i live in households experiencing financial hardship. While almost 1 in 8 are in poverty, an additional 1 in 3 aren't officially poor but still don't earn enough to afford the basic life essentials.¹

According to the Department of Business, Economic Development and Tourism, a single parent with one child needed to earn nearly \$70,000 per year – or over \$5,800 per month – in order to be "self sufficient" in our state in 2022.²

When families don't earn enough to be self sufficient, then they are forced to rely on public benefits, at a cost to our state.

In addition, it is well established that the stresses of childhood poverty have both immediate and long-term effects on keiki's physical and mental health, behavioral self-control, academic achievement, and future earnings as adults.³

Mahalo for the opportunity to provide this testimony. Please pass this bill.

Thank you,

Nicole Woo
Director of Research and Economic Policy

¹ <https://www.auw.org/sites/default/files/pictures/ALICE-in-Focus-Children-Hawaii%20%283%29.pdf>

² https://files.hawaii.gov/dbedt/economic/reports/self-sufficiency/self-sufficiency_2022.pdf

³ <https://www.apa.org/pi/ses/resources/indicator/2014/06/childhood-poverty>



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

HEARING BEFORE THE HOUSE COMMITTEE ON FINANCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 308
Tuesday, February 27, 2024 AT 2:00 P.M.

To The Honorable Kyle T. Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair
Members of the Committee on Finance

OPPOSE HB2463 RELATING TO THE WAGE AND HOUR LAW

The Maui Chamber of Commerce **OPPOSES HB2463** which amends the definition of "employee" in Hawaii's wage and hour law by repealing the definition's categorical exclusion of any employee who receives guaranteed compensation totaling \$2,000 or more a month.

The Chamber notes that the cost of doing business in Hawaii is one of the highest in the United States. This bill drastically changes wage and hour laws. By repealing the definition's categorical exclusion of any employee who receives guaranteed compensation totaling \$2,000 or more a month, it means that anyone on salary would be subject to overtime and hourly rules – which goes against the customary concept of salaried employee. Salaried employees are generally exempt from overtime pay, while hourly workers receive additional pay for working beyond their regular hours. According to Forbes magazine "The greatest benefit of paying employees a salary is attracting more senior workers, who tend to expect a stable paycheck and benefits."

Again, please consider the high cost of doing business in Hawaii.

For these reasons, we **OPPOSE HB2463** and respectfully request it be deferred.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAII

HOUSE COMMITTEE ON FINANCE

FEBRUARY 26, 2024

HB 2463, HD1, RELATING TO THE WAGE AND HOUR LAW

POSITION: SUPPORT

The Democratic Party of Hawai'i **supports** HB 2463, HD1, relating to the wage and hour law. Pursuant to the “Economic Justice and Labor” section of the official Democratic Party of Hawai'i platform, the party believes “that the minimum wage should be a living wage on which a worker can not only survive, but thrive. We oppose all subminimum wage policies, including the tip credit.”

A living wage is a human right. Currently, the MIT Living Wage Calculator estimates a living wage in Honolulu to be \$22.76/hour for a single individual with no children. Similarly, according to the Department of Business, Economic Development, and Tourism, a single adult required an income of \$37,646 to achieve self-sufficiency in Hawai'i in 2020, while a single parent with one child required \$64,926. Adjusted for inflation, DBEDT's reporting shows that in 2022, a single minimum wage worker must earn at least \$19.36/hour to survive on our shores, a number that rises to \$19.94/hour for Honolulu.

Lawmakers responded to this economic strain by passing Act 114 in 2022, which gradually raised the state's minimum wage to \$18/hour by 2028. A technical correction is needed to fully effectuate this measure, however, and ensure that businesses are not able to subvert the minimum wage law that legislators passed last session—which established the highest state-level minimum wage rate in the

nation—by surreptitiously moving hourly workers into salaried positions that pay monthly earnings of less than the minimum wage rate.

Currently, the definition of employee that is contained in HRS §387-1 includes an exemption for employees who earn \$2,000 each month. That equates to an \$11.54/hour wage, which is already less than the state’s \$12/hour minimum wage. If left unchecked, this gap will only widen in the future. Thus, action is needed to close this loophole in Hawai’i’s wage and hour law and protect the financial security of low-income workers.

Mahalo nui loa,

Kris Coffield

Co-Chair, Legislative Committee

(808) 679-7454

kriscoffield@gmail.com

Abby Simmons

Co-Chair, Legislative Committee

(808) 352-6818

abbyalana808@gmail.com



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAI'I LABOR CAUCUS

HOUSE COMMITTEE ON FINANCE · FEBRUARY 26, 2024

HB 2463, HD1, RELATING TO THE WAGE AND HOUR LAW

POSITION: SUPPORT

The Democratic Party of Hawai'i Labor Caucus **supports** HB 2463, HD1, which amends the definition of "employee" in Hawai'i's wage and hour law by repealing the definition's categorical exclusion of any employee who receives guaranteed compensation totaling \$2,000 or more a month

A living wage is a human right. Currently, the MIT Living Wage Calculator estimates a living wage in Honolulu to be \$22.76/hour for a single individual with no children. Similarly, according to the Department of Business, Economic Development, and Tourism, a single adult required an income of \$37,646 to achieve self-sufficiency in Hawai'i in 2020, while a single parent with one child required \$64,926. Adjusted for inflation, DBEDT's reporting shows that in 2022, a single minimum wage worker must earn at least \$19.36/hour to survive on our shores, a number that rises to \$19.94/hour for Honolulu.

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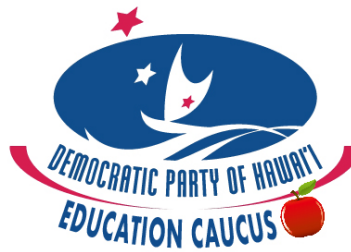
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Mahalo,

Jason Bradshaw

Chairperson, Democratic Party of Hawai'i Labor Caucus



HOUSE BILL 2463, HD1, RELATING TO THE WAGE AND HOUR LAW

FEBRUARY 26, 2024 · FIN HEARING

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports** HB 2463, HD1, relating to the wage and hour law, which amends the definition of "employee" in Hawai'i's wage and hour law by repealing the definition's categorical exclusion of any employee who receives guaranteed compensation totaling \$2,000 or more a month

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Kris Coffield · Chairperson, DPH Education Caucus · (808) 679-7454 · kriscoffield@gmail.com