



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

March 21, 2024

To: The Honorable Scot Z. Matayoshi, Chair,
The Honorable Andrew Takuya Garrett, Vice Chair, and
Members of the House Committee on Labor & Government Operations

Date: Thursday, March 21, 2024
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.C.R. 68 / H.R. 53 REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO CONVENE AN INTERAGENCY ENFORCEMENT TASK FORCE TO COMBAT THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION.

The **DLIR supports the intent** of this measure, suggests amendments, and defers to the other entities named in the resolution regarding their participation. Worker misclassification occurs when an employer treats individuals as independent contractors when they are employees. The DLIR administers programs designed to increase the economic security, physical and economic well-being, and productivity of workers and recognizes there exists substantial non-compliance with the laws it administers.

Over time repeated cuts and limited restoration of capacity has significantly degraded the capacity of the department to administer its laws to both protect workers and help ensure a level playing field for employers. The following table reflects numbers of generally funded positions for some of the department's divisions involved in enforcement activities:

Program	FY1993-94	FY2023-24
HIOSH	56	18
Wage Standards	33	19
Disability Compensation	135	87

The DLIR suggests the following amendments:

- The DLIR Director serve as Chairperson,

- The task force identifies the number and type of positions required to restore the capacity of the DLIR to meaningfully administer its existing laws,
- Reduce the scope of the task force by deleting on pages 4-5 subparagraphs (5), (7), and (8), and
- Consider narrowing the scope to include an industrial sector as opposed to all industrial sectors i.e., the whole economy.

Testimony of
Pacific Resource Partnership

House Committee On Labor & Government Operations
Representative Scot Z. Matayoshi, Chair
Representative Andrew Takuya Garrett, Vice Chair

HCR 68/HR 61—Requesting the Department of Labor and Industrial Relations to Convene an Interagency Enforcement Task Force to Combat the Underground Economy and Employee Misclassification
Thursday, March 21, 2024
10:00 A.M.

Aloha Chair Matayoshi, Vice Chair Garrett, and Members of the Committee:

Pacific Resource Partnership (PRP) is a nonprofit organization that represents the Hawai'i Regional Council of Carpenters, the largest construction union in the state with approximately 6,000 members, in addition to more than 250 diverse contractors ranging from mom-and-pop owned businesses to national companies.

PRP writes in **support** of HCR 68/ HR 61 with a proposed amendment. **We are requesting the Committee to amend both resolutions to include the Department of Commerce and Consumer Affairs, Insurance Division, Insurance Commissioner, or the Commissioner's designee to serve as a member of the underground economy and employee misclassification task force.**

The hard-working men and women in the counties are victimized by an “underground economy” and “employee misclassification” where individuals and businesses utilize schemes to conceal or misrepresent their employee population to avoid one or more of their employer responsibilities related to wages, payroll taxes, insurance, licensing, safety, or other regulatory requirements. The Maile Sky Court hotel-condo project in Waikiki is an example of the underground economy at work in the state. This was a \$25 million renovation project awarded to unscrupulous contractors who violated labor and licensing laws. On August 29, 2016, the joint enforcement working group raided the project which resulted in the following:

- Department of Labor and Industrial Relations issued a \$767,095 fine to R&R Construction for failing to provide prepaid health care, temporary disability, and workers' compensation insurance to employees.
- The U.S. Department of Labor ordered R&R Construction to pay workers \$371,376 in back wages and damages for overtime violations.
- RICO issued Selby Construction Services a \$25,000 fine for unlicensed activity.
- Ron's Electrical Services (sub) issued a \$10,000 fine for unlicensed activity.
- RICO issued TRG Construction a \$25,000 fine for unlicensed activity.

Another example occurred during the COVID-19 pandemic when out-of-state workers entered Kaua'i to work on a hotel renovation at the Westin Princeville Ocean Resort Villas that led to a U.S. Department of Labor (USDOL) investigation of S&A Industries Inc. The USDOL found S&A in violation of the Fair Labor Standards Act (FLSA) for failing to pay overtime wages to workers and was able to recover \$693,000 in back wages and damages for such violations (See Attachment). It was because of their illegal employment/payroll scheme



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that S&A Industries Inc. was able to win the work and deprive local reputable contractors, like Shioi Construction, and their workers from working on this project.

These types of cases occur far too often in every county throughout the state as unscrupulous contractors take advantage of workers by not paying them appropriate wages and overtime required by law. This unlawful practice is often accompanied by other forms of cheating, such as evading state and federal taxes by paying workers off the books and not paying the required unemployment benefits, medical insurance, social security, and workers' compensation. When contractors and businesses do not play by the rules, it hurts all of us resulting in lower wages, unsafe workplaces, and less funding for community services. Ultimately, many of these factors play a role in whether Hawai'i residents remain in the islands or leave for the mainland, as has been the case since 2019 with a total population decline of more than 15,000 people.

As such, we respectfully request your favorable decision on this measure. Thank you for this opportunity to submit written testimony.