



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

March 29, 2023

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: Wednesday, March 29, 2023

Time: 10:00 a.m.

Place: Conference Room 309, State Capitol, and via videoconference

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

**Re: H.C.R. NO. 58 AND H.R. 60 REQUESTING THE DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS TO COMPLETE A COMPARATIVE STUDY OF ITS  
POLICIES ON YOUTH EMPLOYMENT AND FEDERAL REQUIREMENTS FOR  
YOUTH EMPLOYMENT UNDER THE FAIR LABOR STANDARDS ACT.**

**I. OVERVIEW OF PROPOSED LEGISLATION**

The DLIR **offers comments** on this measure that requests the department to perform a comparative study on child labor laws. The DLIR suggests another agency be tasked with such a study as the Wage Standards Division currently has 19 authorized positions to administer six laws and does not have the capacity to take on additional responsibilities at this time and is likely to be involved in family or sick leave research efforts pursuant to other resolutions and bills currently moving through the legislative process.

The DLIR supports a comparative study to provide policy makers with a basis for reviewing and considering amendments to Chapter 390, Child Labor Law, HRS, as Chapter 390 has not been amended since 2003. The DLIR notes that the Hawaii Administrative Rules contain exemptions from prohibitions on employment in hazardous occupations for any apprentice, trainee, student-learner, or enrollee under certain conditions.

**II. CURRENT LAW**

Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed in accordance with the Fair Labor Standards Act (FLSA)

The FLSA youth employment provisions do not:

- Require minors to obtain "working papers" or "work permits,"
- Restrict the number of hours or times of day that workers 16 years of age and older may be employed,
- Regulate or require such things as breaks, meal periods, or fringe benefits, or
- regulate such issues as discrimination, harassment, verbal or physical abuse, or morality.

Chapter 390, HRS, includes:

- Requiring employers to hold on file a valid certificate of employment,
- Prohibitions on employment in adult entertainment and hazardous occupations,
- 16 & 17-year-old minors may work during periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school,
- 14- & 15-year-old minors, under the same school conditions as above, may work:
  - No more than five hours continuously without an interval of at least thirty consecutive minutes for a rest or lunch period,
  - Between 7:00 a.m. and 7:00 p.m. of any day; provided that during any authorized school break, the minor may be employed between 6:00 a.m. and 9:00 p.m.,
  - No more than six consecutive days,
  - No more than eighteen hours in a calendar week during which the minor is legally required to attend school, and no more than forty hours in a calendar week during which the minor is not legally required to attend school or when the minor is excused by school authorities from attending school, and
  - No more than three hours on any school day nor more than eight hours on a non-school day, and
- Minors 13 and under may work in coffee harvesting and in theatrical employment when the work is performed during periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school and the employer holds on file a valid certificate of employment.

Title 12, Chapter 25, Subchapter 4 (Hawaii Administrative Rules) Hazardous Occupations includes:

- §12-25-43 (Occupations in operation of power-driven woodworking machines)

- §12-25-46 (Occupations involved in the operation of power-driven metal forming, punching, and shearing machines)
- §12-25-47 (Occupations in or about slaughtering and meat packing establishments and rendering plants)
- §12-25-49 (Occupations involved in the operation of certain power-driven paper products machines)
- §12-25-51 (Occupations involved in the operation of circular saws, band saws, and guillotine shears)
- §12-25-53 (Occupations involved in roofing operations), and
- §12-25-54 (Occupations involved in excavation operations)

These provisions contain exemptions from employment in hazardous occupations for any apprentice, trainee, student-learner, or enrollee if:

- 1) The apprentice or trainee is a party to an apprenticeship or trainee agreement registered with the DLIR within thirty days after execution of the agreement and the work of the apprentice or trainee in the occupation declared hazardous is incidental to the training; or
- 2) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a bona fide vocational training program authorized and approved by the department of education; provided that:
  - a. The employment is intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person; and
  - b. Safety instructions are given by the school and correlated by the employer with on-the-job training; or
- 3) The enrollee is enrolled in a work training program approved and conducted by or under the auspices of a government agency.

### **III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION**

When Chapter 390, HRS, and the related HAR, were enacted, they were based on the Child Labor regulations contained in the FLSA. The regulations, including hazardous occupations, in both the State and federal laws mirror each other. Both Chapter 390 and the FLSA provide exemptions to the hazardous occupation provisions when a minor is employed as an apprentice, student-learner, or an enrollee in a work training program, under the conditions specified in the respective provisions of the regulations.

One difference between Chapter 390 and the FLSA is the State's requirement for a certificate of employment (§390-2(c)) and certificate of age (§390-2(b)), also known as work permits, for minors to work. While the FLSA does not require work permits for minors, the U.S. Department of Labor (USDOL) relies on the work

permit registration data collected by the DLIR, and often seeks assistance and information from the DLIR for their federal child labor investigations.

The statutory requirement to obtain a work permit does not obstruct a minor's access to employment opportunities and is in place to protect the health, safety, and well-being of the minor. Applying for a work permit is a fairly simple process and there is no fee to obtain the certificate. If the requirement is removed from the statute, all minors and their employers would not be required to register with the DLIR and obtain a work permit. Minors employed at any age could be subject to exploitation and may not be protected since the DLIR would not know where these minors are employed, what type of work they are performing, and working conditions they are employed under. Removing the requirement for age and employment (also requires parental permission) certificates could facilitate exploitation, increase violations, and increase youth injuries in the workplace.

The nature of education has changed since substantive amendments were made (2003) to Hawaii's Child Labor Law. Experiential learning, especially for at-risk and disadvantaged youth, has proven an effective method to improve learning and vocational outcomes. Therefore, the DLIR supports the Legislature obtaining contemporary information about how other states are amending or deleting provisions in child labor law to provide policy makers with a basis for reviewing and considering amendments to Hawaii's Child Labor Law.



KAUAI ECONOMIC DEVELOPMENT BOARD



March 29, 2023

Committee on Labor & Government Operations

Rep. Scot Z. Matayoshi, Chair

Rep. Andrew Takuya Garrett, Vice Chair

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

As diverse members of our local community, the Hawaii Work-Based Learning Policy Hui **strongly supports HCR58/HR60.**

While we represent many perspectives and roles, we are united in believing that Hawaii's students deserve to be equipped with the skills and connections they need to get hired for local jobs that enable them to live, work, and contribute to this special place. While work-based learning can be an incredibly powerful learning opportunity for young people of all backgrounds, we believe our state could be doing more to help students access these programs.

HCR58/HR60 is an important resolution in that it studies how to streamline processes from the employer side to get more students engaged in work-based learning. Currently, many local employers are wary of offering programs to students due to limited capacity to navigate the various permitting requirements and remaining in compliance. We hope

this study helps to provide much-needed clarity around best practices and current policy.

For this reason, we kindly request you **PASS HCR58/HR60**. Mahalo for the opportunity to testify.

(Please see names below.)

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David Miyashiro  
Executive Director

March 29, 2023

Committee on Labor & Government Operations  
Rep. Scot Z. Matayoshi, Chair  
Rep. Andrew Takuya Garrett, Vice Chair

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

**HawaiiKidsCAN strongly supports HCR58/HR60**, which requests the Department of Labor and Industrial Relations (DLIR) to complete a comparative study of its policies on youth employment and federal requirements for youth employment under the Fair Labor Standards Act.

Founded in 2017, HawaiiKidsCAN is a local nonprofit organization committed to ensuring that Hawaii has an excellent and equitable education system that reflects the true voices of our communities and, in turn, has a transformational impact on our children and our state. We strongly believe that all students should have access to excellent educational opportunities, regardless of family income levels and circumstances.

Hawaii's youth are facing an affordability crisis if they want to remain in the state for years to come. While there are many elements needed to address this issue, a must-have is making sure our youth are equipped with the skills and connections they need to pursue their dream careers. Work-based learning opportunities, such as internships in skilled fields including healthcare, IT, and air travel, give students the chance to learn on-the-job and gain experience that will make them stand out high-paying for job opportunities in the future. On the other side, employers across Hawaii will have the opportunity to recruit and grow their own workforce by providing mentorship and training for their next generation of workers. This is a win-win for Hawaii's people and long-term future.

Accordingly, it is critical that youth are exposed to high-quality, high-paying careers while they still have access to free public education at the secondary level, and as they are gaining experience at the postsecondary level. Making sure our youth have a strong springboard prior to graduation and applying for full-time employment is more important than ever, as the current unemployment rates for youth (ages 16-24) across

the country are higher than the national average of 3.4%. Currently, 7.3% of all 16-24 year-olds are unemployed. The younger half of that group, the 16-19 year-olds, are unemployed at a rate of 9.1%, while the older half still experiences higher-than-average unemployment at 6.6%. In Hawaii, the numbers are even more concerning, with 10.2% of all youth experiencing unemployment, which is one of the worst rates for this group in the country<sup>1</sup>.

As education has evolved to meet these local and global challenges, student experiences now involve much more than just traditional academics. Students are now getting opportunities to have real-world experiences as members of high-stakes teams. For example, many local non-profit organizations have begun to hire high school media teams to shoot professional events, and high school academy culinary arts programs to cater them. These are unique situations that can seem to sit in the gray area of school and the workforce.

Importantly, HCR58/HR60 does not actually make any policy changes, as the intent of this resolution is for a comparative study. We believe that the DLIR should have the resources it needs to successfully complete this research. The resolution is important in that it does recognize that the lines are blurring in education and that our state must be more forward thinking and proactive. The resolution finally helps to bring some clarity and coherence to student-employer partnerships that will illuminate how to best support career readiness experiences between students, schools, and employers.

When reviewing current practices around youth employment around the country (<https://www.dol.gov/agencies/whd/state/age-certificates>), it's clear that there is a hodgepodge of various ways states approach this issue. States have flexibility over whether an Employment certificate and/or Age certification is required, and whether the state labor department or school collects this information. As even a cursory review of state practices show, there is no one way for all states to approach these requirements. Some states require only the Employment certificate or Age certification, and some require neither. Are conditions necessarily safer or more dangerous in some states versus others? Is there data to back up any assumptions made?

Given that it has been many years since Hawaii reviewed its policies at work sites, it's clear this study is needed now to best determine how to move forward. This information will help show whether any updates to policy should be considered based on the needs of students and employers. We believe that HCR58/HR60 will enable policymakers, schools, and employers to act from a place of possibility and carefully consider how to

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<sup>1</sup> <https://www.mathematica.org/dataviz/youth-unemployment-tracker>

best protect our kids now and protect them in the future by making sure they are prepared.

Mahalo for your consideration,

David Miyashiro  
Founding Executive Director  
HawaiiKidsCAN