



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

March 25, 2015

To: The Honorable Mark Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor and Public Employment

Date: Friday, March 27, 2015
Time: 10:00 a.m.
Place: Conference Room 309, State Capitol

From: Elaine Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 1219, SD2 Relating to Employment Security

I. OVERVIEW OF PROPOSED LEGISLATION

SB 1219, SD2 amends section 383-6, Hawaii Revised Statutes (HRS), by adding a second criterion that must be met to determine the existence of an employee-employer relationship. A new subsection codifies the Internal Revenue Service 20 common-law factors and requires that both a preponderance of these elements and the ABC test must be considered in the adjudication of independent contractor status.

Section 12-5-2, Hawaii Administrative Rules, currently identifies 20 factors to be used as a guide in deciding whether sufficient control or direction is present to establish employment. However, SB1219 SD2 includes an alternative version of the 20 elements and adds definitions of "client" and "independent contractor," ostensibly to simplify and facilitate the self-employment determination process.

II. CURRENT LAW

The IRS applies the common-law standard for Federal Unemployment Tax Act (FUTA) purposes and developed the 20 point criteria to weigh facts relevant to an employer's right to control and direct an individual who performs services, whether that right is exercised or not. Whereas only part "A" of the ABC test must be passed to meet federal conformity requirements, section 383-6, HRS, requires that all three prongs be satisfied to render an independent contractor ruling under state law.

Section 383-6, HRS, provides that services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to chapter 383, HRS, irrespective of whether the common law relationship of master and servant exists, unless it is shown to the department that each of the following criteria have been met:

1. The individual has been and will continue to be free from control or direction over the performance of such service, both under the individual's contract of hire and in fact; and
2. The service is either outside the usual course of the business for which the service performed or that the service is performed outside all the places of business of the enterprise for which the service is performed; and
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service.

Section 12-5-2, Hawaii Administrative Rules, defines terms used in the ABC test and includes the 20 factors intended to be used as a guide in determining whether an individual is an employee under common law rules. The rule clearly enunciates that the degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed, without requiring a "preponderance of factors."

III. COMMENTS ON THE SENATE BILL

The Department previously expressed its strong opposition to SB1219 and SB1219 SD1 based on U.S.DOL opinions raising conformity issues with federal laws. While SB1219 SD2 appears to have addressed those serious challenges by eliminating the objectionable language that could have resulted in significant increases in FUTA payroll taxes for all employers and jeopardized receipt of UI administrative grants to operate Hawaii's UI program, this measure as written creates major conflicts in statutory interpretation that would delay decision making and likely encourage more appeals to be filed.

The Department raises the following concerns regarding SB 1219 SD2:

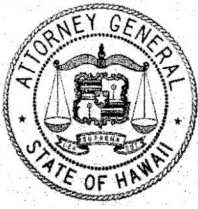
1. This bill establishes a new requirement of two tests to be applied to substantiate that employment exists: a preponderance of factors set forth in subsection (b) **and** the ABC test. Consequently, this proposed amendment is counteractive with the explicit intent of this measure, as expressed in the Committee Report, to clarify that "an employer and employer relationship exists unless and until it is shown to the satisfaction of the Department of Labor and Industrial Relations that, in the Department's determination, a preponderance of

twenty factors has been met..." Only by utilizing both tests can the Department support a conclusion of employment, which adds to the complexity of an inherently challenging process.

2. Subsection (b) effectively replaces the 20 factors contained in the administrative rules, and assumes that these factors "shall be guidelines for determining whether an individual could be deemed an independent contractor." This reasoning, in conjunction with the definition of "independent contractor" in subsection (c) which limits its focus to prong C, neither includes the conjunctive ABC and "preponderance of factors" tests, nor fully addresses all aspects of the ABC test.
3. Subsection (c) includes new "client" and "independent contractor" definitions that have no other references in chapter 383, HRS. The rationale of restricting these terms to section 383-6, when their applicability should be integrated and compatible with established definitions of "employer" or "employing unit" is unclear. Additionally, "independent contractor" is defined by circular reasoning, which undercuts the basic premise of the Hawaii Employment Security Law that a determination of independent contractor is conditioned on satisfying the 3 prongs of the ABC test, irrespective of whether the common law relationship of master and servant exists.

If the "purpose of this Act is to provide greater clarity in Hawaii's employment security law to those individuals choosing to become entrepreneurs by setting forth in greater detail the criteria used to determine independent contractor status" this measure, as drafted, defeats that goal. A greater lack of clarity has resulted to the extent that it would be more burdensome for businesses to apply the ABC and common-law tests when hiring individuals. Moreover, any problematic language increases administrative problems, delaying an already time-intensive coverage determination process and encouraging legal challenges of the final decisions.

The department recommends that the 20 factors in section 12-5-2, Administrative Rules be codified in lieu of the statutory amendments proposed in this bill and the definitions of "client" and "independent contractor" be deleted due to the concerns discussed above.



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:

S.B. NO. 1219, S.D. 2, RELATING TO EMPLOYMENT SECURITY.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Friday, March 27, 2015

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Robyn M. Kuwabe, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General has concerns about the provisions in this bill as amended.

The purpose of this bill is to clarify Hawaii's employment security law, regarding the tests to be used in determining whether an individual is an independent contractor.

This bill preserves the ABC test found in section 383-6, Hawaii Revised Statutes (HRS), and adds a revamped version of the common-law twenty factor test, which is already found in the Department of Labor and Industrial Relations' administrative rules, section 12-5-2(b), Hawaii Administrative Rules. Because the two tests are already in the statute and administrative rules, this bill may not be necessary.

In addition, this bill also includes a definition of "independent contractor," which creates an internal conflict because the definition is not consistent with the ABC and the common-law tests provided in the bill for determining if an individual is an independent contractor.

We respectfully ask the Committee to hold this bill.



Randy Perreira
President

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

The Twenty-Eighth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Telephone: (808) 597-1441
Fax: (808) 593-2149

Testimony by
Hawaii State AFL-CIO
March 27, 2015

S.B. 1219, S.D. 2 – RELATING TO EMPLOYMENT SECURITY

The Hawaii State AFL-CIO opposes S.B. 1219, S.D. 2 which clarifies Hawaii's employment security law for independent contractors, includes 20 factors to be used as guidelines when determining whether an individual could be an independent contractor, retains the ability of the Department of Labor and Industrial Relations to determine if an individual is an independent contractor and requires the Director of Labor and Industrial Relations to report to the Legislature prior to the Regular Session of 2016 regarding guidelines developed by the Unemployment Insurance Coverage Committee.

While, S.B. 1219, S.D. 2 addresses a number of concerns, the Hawaii State AFL-CIO is still concerned changing the independent contractor law will be detrimental to a number of workers in the State of Hawaii. Independent contractors have several disadvantages such as not having the ability to collect unemployment insurance or claim workers' compensation. Consequently, the Hawaii State AFL-CIO strongly urges the Committee on Labor and Public Employment to defer S.B. 1219, S.D. 2 indefinitely.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

The Twenty-Eighth Legislature
Regular Session of 2015

HOUSE OF REPRESENTATIVES
Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
State Capitol, Conference Room 309
Friday, March 27, 2015; 10:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1219, SD2
RELATING TO EMPLOYMENT SECURITY**

The ILWU Local 142 **opposes** S.B. 1219, SD2, which clarifies Hawaii's employment security law for independent contractors to include 20 factors to be used as guidelines when determining whether an individual could be an independent contractor. The bill retains the ability of the Department of Labor and Industrial Relations to determine if an individual is an independent contractor and requires DLIR to report to the Legislature regarding guidelines development by the Unemployment Insurance Coverage Committee and covered employment determinations.

We believe this bill is unnecessary and will further muddy the waters regarding independent contractor status. The Employment Security law (HRS 383) is clear. According to HRS 383-6, a "master-servant"—or employer-employee—relationship exists unless and until it is shown to the satisfaction of DLIR that the "ABC test" applies, namely that:

- (A) the individual has been and will continue to be free from control or direction over the performance of such service, both under the individual's contract of hire and in fact; and
- (B) the service is either outside the usual course of the business for which the service performed or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and
- (C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service.

Furthermore, the Administrative Rules (12-5-2) are clear and clarify the law. They spell out 20 factors which may be used as guides to determine if an individual is an employee. These 20 factors need not be included in the law as they are "guidelines," as the bill states, the same as is stated in the Administrative Rules.

This bill appears to have been introduced in response to a misapplication of the guidelines in the unemployment insurance claim of an individual contracted for work by a Maui employer, who subsequently prevailed in Circuit Court to have two earlier decisions vacated. The Court's decision recognized that application of the test for "control and direction" should determine independent contractor status. That the guidelines and law were not strictly applied in one instance should not justify changing the law. This bill does nothing to make a bad situation better. In fact, it will make matters worse.

Although the issue of conformity with federal law seems to have been addressed, amending the law must be carefully thought through to ensure no unintended consequences. However, we firmly believe there is **no need to amend the law**.

The ILWU respectfully urges that S.B. 1219, SD1 be held. Thank you for considering our views and concerns.

March 27, 2015

The Honorable Mark M. Nakashima, Chair
House Committee on Labor & Public Employment
State Capitol, Room 309
Honolulu, Hawaii 96813

RE: S.B. 1219, S.D.2, Relating to Employment Security

HEARING: Friday, March 27, 2015, at 10:00 a.m.

Aloha Chair Nakashima, Vice Chair Keohokalole and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **offers comments and amendments** on S.B. 1219, S.D.2 which clarifies Hawaii's employment security law for independent contractors. Additionally, it includes twenty factors to be used as guidelines when determining whether an individual could be an independent contractor.

The majority of our 8,400 members practice as independent contractors. The independent contractor relationships underpin the practice and business of real estate which is characterized by highly flexible, independent business professionals that provide individualized service to Hawaii's real estate consumers.

The current definition of independent contractor contained in Hawai'i Revised Statutes §383-6 (which this bill seeks to amend) is consistent with well-established legal standards for independent contractors, in particular the concept of control. In short, independent contractors are free to control the time spent, manner and nature of the services they provide consistent with applicable law.

Unfortunately, S.B. 1219, S.D.2 eliminates the stability and predictability of the definition and may create legal risks because it changes the well understood language of the existing statute.

For the foregoing reasons, if this Committee is inclined to pass this measure, HAR respectfully requests that explicit language be inserted in this measure and the Committee Report to ensure that the rights, duties, and exemptions in HRS §383-7 *Excluded Service* continue to be clear exemptions from the definition of employment and 20 factors in determining whether one is an independent contractor.

Mahalo for the opportunity to testify.

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.



§383-7 Excluded service. (a) "Employment" shall not include:

(1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:

- (A) That, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash remuneration to individuals employed in agricultural labor, including labor performed by an alien referred to in subparagraph (C); and
- (B) That had, in each of the current and the preceding calendar years:
 - (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees, including labor performed by an alien referred to in subparagraph (C); or
 - (ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week, including labor performed by an alien referred to in subparagraph (C); or
- (C) If such agricultural labor is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority as set forth in section 3306(c)(2) of the Internal Revenue Code of 1986, as amended;

(3) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter if:

- (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
 - (B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident

thereto, except:

- (i) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
- (ii) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year; and
- (iii) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;

(5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;

(6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall apply to those instrumentalities, and to services performed for those instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of those instrumentalities with respect to that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;

(7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986, as amended;

(8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;

- (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of the Internal Revenue Code), if:
 - (i) The remuneration for the service is less than \$50; or
 - (ii) The service is performed by a fully ordained,

commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;

- (B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or
- (C) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of such program, and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(10) Service performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative;

(11) Service performed in the employ of an instrumentality wholly owned by a foreign government:

- (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
- (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(13) Service performed by an individual for an employing unit as an insurance producer, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;

(14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(15) Service covered by an arrangement between the department and the agency charged with the

administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;

(16) Service performed by an individual who, pursuant to the federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;

(17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;

(18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;

(19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;

(20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at least fifty per cent of the shares issued by the corporation; provided that:

- (A) The private corporation elects to be excluded from coverage under this chapter;
- (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
- (C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;
- (D) The exclusion shall be irrevocable for five years;
- (E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
- (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all substantiating documents requested by the department are filed with the department;

(21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986;

(22) Service performed by an election official or election worker as defined in section 3309(b)(3)(F) of the Internal Revenue Code of 1986, as amended;

(23) Service performed by an inmate or any person committed to a penal institution; and

(24) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to title 42 Code of Federal Regulations sections 440.180 and 441.300, and title 42 Code of Federal Regulations, part 434, subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined and amended from time to time by the department of human services, performed by an individual whose services are contracted by a recipient of

social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments unless the individual is an employee and not an independent contractor of the recipient of social service payments under the federal Unemployment Tax Act.

(b) None of the exclusions in subsection (a) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter. [L 1939, c 219, §2(k)(6); am L 1941, c 304, §1, pt of subs 8; RL 1945, §4208; am L 1945, c 19, §1; am L 1947, c 75, §1; am L 1951, c 191, §1(1), (2) and c 195, §1(2), (3); am L 1953, c 41, §1(2); RL 1955, §93-7; am L 1959, c 11, §1(b), c 222, §1(2), and c 232, §4; am L Sp 1959 2d, c 1, §27; am L 1961, c 81, §1 and c 141, §1; am L 1965, c 61, §1; am L 1967, c 51, §1; HRS §383-7; am L 1969, c 73, §§1, 2; am L 1971, c 187, §2 and c 213, §2; am L 1973, c 120, §1; am L 1974, c 156, §1; am L 1977, c 148, §2; am L 1982, c 192, §1 and c 194, §2; gen ch 1985; am L 1989, c 217, §2; am L 1990, c 284, §1; am L 1994, c 112, §2; am L 1996, c 223, §2 and c 306, §1; am L 1998, c 34, §1; am L 2003, c 212, §4; am L 2007, c 70, §3, c 97, §2, and c 259, §6; am L 2011, c 220, §15; am L 2012, c 158, §1]

Law Journals and Reviews

Relief for Manufacturers and Wholesalers: A Proposal to Exclude Commissions Paid to Part-Time Sales Representatives from Hawaii's Unemployment Tax. II HBJ, no. 13, at 35 (1998).

The Lum Court and the First Amendment. 14 UH L. Rev. 395 (1992).

Case Notes

Under paragraph (9)(B), eligibility of a student-employee for unemployment insurance benefits rests on whether the "primary relationship" the student occupies with respect to the school, college, or university involved is that of student or employee; under circumstances of the case, the primary relationship claimant had to the university while claimant performed services during the summer was that of a student of the university. 105 H. 485, 100 P.3d 55 (2004).

[Previous](#)

[Vol07_Ch0346-0398](#)

[Next](#)



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Friday, March 27, 2015 at 10:00 A.M.
Conference Room 309, State Capitol**

RE: SENATE BILL 1219 SD2 RELATING TO EMPLOYMENT SECURITY

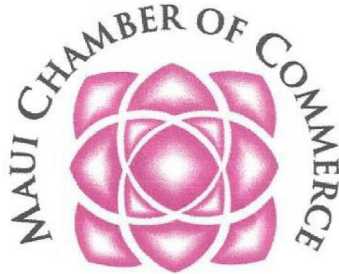
Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **supports the intent of SB 1219 SD2**, which clarifies Hawaii's employment security law for independent contractors and includes twenty factors to be used as guidelines when determining whether an individual could be an independent contractor. Also retains the ability of the department of labor and industrial relations to determine if an individual is an independent contractor and requires the director of labor and industrial relations to report to the legislature prior to the regular session of 2016 regarding guidelines developed by the unemployment insurance coverage committee. Also requires an annual report to the legislature regarding covered employment determinations.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber believes independent contractors are an important part of Hawaii's business community and economy. We have seen too much of a broad interpretation in the current law as to who qualifies as an independent contractor vs. an employee of a company. As more independent contracts are emerging in the ever-changing economic environment, clarification of who qualifies as an independent contractor would offer proper protection to legitimate independent contractors and the business that they contract with.

Thank you for the opportunity to testify.



OUR BUSINESS IS MAUI BUSINESS

**TESTIMONY IN SUPPORT OF SB1219 SD2
RELATING TO EMPLOYMENT SECURITY**

TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Hawaii State Capitol,
Conference Room 309
March 27, 2015
10:00 AM

Aloha Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

I am writing to share our strong support of SB1219 SD2 which clarifies Hawaii's employment security law for independent contractors.

SB1219 SD 2 protects legitimate independent contractors and those that hire them. We strongly support this bill as Senator Roz Baker worked with the Department of Labor and Industrial Relations (DLIR) to come up with this solution to ensure that the DLIR appropriately applies the existing IRS tax. We hope DLIR will agree with and continue to honor this solution. We would respectfully request an effective date of January 1, 2016.

By passing this bill, all parties can move forward with the business relationships they agree to, knowing at the outset where they stand with the State and avoid unintended consequences.

Mahalo nui loa for the opportunity to provide testimony on this bill. We ask for your strong support of SB1219 SD2 to clarify who is an independent contractor and rectify an ongoing problem of improper rulings by the DLIR.

Sincerely,

Pamela Tumpap
President



Before the House Committee on Labor & Public Employment

DATE: Friday, March 27, 2015

TIME: 10:00 A.M.

PLACE: Conference Room 309

Re: SB 1219, SD2 Relating to Employment Security

Testimony of Melissa Pavlicek for NFIB Hawaii

We are testifying on behalf of the National Federation of Independent Business (NFIB) in **SUPPORT** of **SB 1219 SD2** relating to employment security.

The National Federation of Independent Business is the largest advocacy organization representing small and independent business in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We look forward to engaging in continued conversation about the matter.



Testimony to the House Committee on Labor & Public Employment
Friday, March 27, 2015
10:00 A.M.
State Capitol - Conference Room 309

RE: SENATE BILL 1219 SD2; RELATING TO EMPLOYMENT SECURITY

Aloha Chair Nakashima, Vice Chair Keohokalole and members of the committee:

We are Melissa Pannell and John Knorek, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter ("SHRM Hawaii"). SHRM Hawaii represents nearly 1,000 human resource professionals in the State of Hawaii.

We are writing to respectfully SUPPORT SB 1219 SD2. We find that the original version of this measure SB1219, would have served as a means to address a critical gap in Hawai'i's employment and labor law. However, this version is a good step towards accomplishing that goal.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: human capital. We truly have our employers' and employees' interests at heart. We respectfully support this measure for the potential benefit that this measure could have in fostering trust, accountability, and a generally stronger employee/employer relationship.

We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it. Thank you for the opportunity to testify.



TO: Members of the Committee on Labor & Public Employment

FROM: Natalie Iwasa
Honolulu, HI 96825
808-395-3233

HEARING: 10 a.m. Friday, March 27, 2015

SUBJECT: SB1219, SD2, Relating to Employment Security – **OPPOSED**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB1219, SD2, which attempts to define independent contractors.

On page 6, line 5 indicates that a client has no “right to control or direct the manner and means used by an independent contractor to accomplish the result.” There may be times when a business is required to follow certain procedures that contractors would also be required to perform. This language could therefore have the unintended consequence of not allowing contractors the flexibility they need in order to perform the job(s) they are hired to do.

This version of the bill also requires the director of the department of labor and industrial relations (DLIR) to develop guidelines and report to the legislature, which will require staff time. The DLIR has a backlog of almost two years processing premium supplementation applications. Will additional funding be given to the DLIR to implement this change in the law?

The IRS already has a 20-factor test for determining employees and independent contractors. In addition, Hawaii has laws about who is required to obtain a general excise tax license, and licensees’ information is available online to the public. This bill is not needed. Please hold it in committee.



March 26, 2015

To: The Honorable Mark Nakashima, Chair
The Honorable Jarret Keohokalole, Vice Chair
Members of the Labor & Public Employment Committee

Date: Friday, March 27, 2015
Time: 10:00 am
Place: State Capitol, Conference Room 309

From: Wayne Hikiji, President
Envisions Entertainment & Productions, Inc.

RE: **S.B. 1219, SD2 Relating to Employment Security**

TESTIMONY IN SUPPORT OF THE S.B. 1219, SD2

My name is Wayne Hikiji and I am the president of *Envisions Entertainment & Productions, Inc.*, an event production company based in Kihei, Maui since 1995.

At the hearing before this Committee regarding companion bill H.B. 1213, I testified that the impetus for that Bill and companion bill S.B. 1219 was the DLIR's unfavorable determination in 2013 against my company based on its extreme interpretation of H.R.S. Section 383-6, commonly referred to as the "ABC Test." (the Circuit Court's Decision is attached).

In our case, the DLIR determined that a self-employed musician was our employee solely because we instruct him on when and where to perform the contracted services and paid him for his services. On appeal, Judge Cahill reversed the DLIR's decision on the grounds that the DLIR's and the appeals referees' findings were "clearly erroneous in view of the reliable, probative and substantial evidence in the record as a whole."

- Judge Cahill found that the DLIR blatantly ignored the factors of independent contractor status which it was bound to consider, including the 20-factor test for control which the DLIR adopted from the I.R.S.'s original test in Hawaii Administrative Rules, Section 12-5-2.
- He also dismissed the DLIR's interpretation of "business premise" by refusing to extent our place of business to the event venues where we produced events for our clients.
- And finally, Judge Cahill rejected the DLIR's interpretation of "outside the usual course of business." He agreed with us that playing the saxophone was not integral to our business as an event production company. He ruled that "integral" means a fundamental aspect of one's business, and that nothing in the record indicated that our business would fail if the musician's services were not available to us, and there were no other saxophone players available.

381 Huku Li'i Place, Suite 3, Kihei, Hawaii 96753 * Office: (808) 874-1000 * Fax: (808) 879-0720 *
INFO@EnvisionsEntertainment.com

Sadly however, the legal precedent of our case provides no assurances that the DLIR will change its extreme interpretation of H.R.S. 383-6 in future cases. In fact, in oral testimony before this Committee regarding H.B.1213, the DLIR made it clear that it will continue to interpret H.R.S. 383-6 as it has in the past because it considered Judge Cahill's ruling specific only to the facts of our case.

We are, therefore, grateful that Senator Roz Baker recognized the plight of independent contractors and those who hire them and applaud her efforts and that of her committee for carefully and thoughtfully drafting S.B. 1219, SD2.

While it does not include the Certification process we initially proposed, this current version defines and clarifies who is an "independent contractor," defines who is a "client," AND statutorily requires the DLIR to apply the 20-factor test that it blatantly ignored in our case. By doing so, S.B. 1219, SD2 helps to ensure that the DLIR will properly apply the existing law, which has always been the basis of our concern.

I am, therefore, writing in strong support of S.B.1219, SD2 and humbly ask that this Committee pass this Bill with an effective date of January 1, 2016.

Respectfully submitted,

ENVISIONS ENTERTAINMENT & PRODUCTIONS, INC.

Wayne Hikiji
Its President

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys at Law
A Law Corporation

ANNA ELENTO-SNEED 3412-0
CHRISTY GRAY 9715-0
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
E-mail: aes@ahfi.com
cgray@ahfi.com

Attorneys for Taxpayer-Appellant
ENVISIONS ENTERTAINMENT &
PRODUCTIONS, INC.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

In the Matter of
ENVISIONS ENTERTAINMENT &
PRODUCTIONS, INC.,

Taxpayer-Appellant,

vs.

DWIGHT TAKAMINE, DIRECTOR,
DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS, STATE OF
HAWAII; and DEPARTMENT OF
LABOR AND INDUSTRIAL RELATIONS,
STATE OF HAWAII,

Appellees,

and



Claimant-Appellee.

Civil No. 13-1-0931(2)
(Consolidated)

**PERTINENT FACTS, CONCLUSIONS
OF LAW, AND ORDER**

ORAL ARGUMENT

Date: May 30, 2014

Time: 9:00 a.m.

Judge: The Honorable Peter T.
Cahill

FILED

2014 SEP -3 AM 9:57

N. MARTINS, CLERK
SECOND CIRCUIT COURT

PERTINENT FACTS, CONCLUSIONS OF LAW, AND ORDER

On May 30, 2014, Taxpayer-Appellant Envisions Entertainment & Productions, Inc.'s ("Envisions") appeal of the Department of Labor and Industrial Relations Employment Security Appeals Referees' Office ("ESARO") Decisions 1300760 and 1300751, dated August 20, 2013 and October 7, 2013 respectively (the "Appeal")¹ was heard by the Honorable Peter T. Cahill in his courtroom. Anna Elento-Sneed, Esq. of Alston Hunt Floyd & Ing appeared on behalf of Appellant Envisions. Staci Teruya, Esq., Deputy Attorney General, appeared on behalf of Appellees Dwight Takamine, Director, Department of Labor and Industrial Relations, State of Hawai'i and Department of Labor and Industrial Relations, State of Hawai'i ("DLIR"). Appellee [REDACTED] made no appearance.

The Court, having heard and considered the briefs filed by the parties, the arguments of counsel, the files and records on appeal herein, hereby finds and concludes as follows:

PERTINENT FACTS

Envisions and [REDACTED]

1. Envisions is a Maui-based event production company that provides event planning and organization services for conventions, wedding,

¹ ESARO Decision 1300760 affirmed the Decision and Notice of Assessment issued by the DLIR Unemployment Insurance Division ("UID") dated February 4, 2013 that found that [REDACTED] was an employee of Envisions under HRS Chapter 383. ESARO Decision 1300751 affirmed the Decision issued by the UID dated February 15, 2013 that found that 5.963 percent of the benefits payable to [REDACTED] were chargeable to Envisions' reserve account.

and special events in the State of Hawai'i. Envisions provides its clients with supplies and services for these events that include tents, chairs, dance floors, stages, props, floral arrangements, audio/visual systems and entertainment.

2. While Envisions owns some event supplies (such as certain event props, decorations, dance floors and chairs), it contracts with outside vendors for the other required event services and supplies (such as live entertainment).

3. Envisions collects payment for the entire event from its client and distributes payment to the separate individuals and businesses that provided services and supplies for the event.

4. [REDACTED] is a professional musician who advertises his services through websites and social media where he identifies himself as an "entertainment professional."

5. [REDACTED] entered into his first independent contractor agreement with Envisions to perform saxophone services in 2006.

6. [REDACTED] and Envisions contemplated an independent contractor type of relationship with one another.

a. Envisions notified [REDACTED] of the date, time and place of the events. The date, time and place of events where [REDACTED] was to perform his services were determined by Envisions' clients.

b. If [REDACTED] rejected an engagement, it was Envisions' responsibility, not [REDACTED], to find an alternate saxophonist for the event. If

████████ cancelled at the last minute, Envisions was responsible for finding a replacement.

c. Envisions notified ██████████ of the general type of music performance requested by its clients for these events, but ██████████ was free to choose his own music selection within those parameters.

d. ██████████ provided his own instrument, as well as his own attire. At no time did Envisions provide ██████████ with tools, equipment or a uniform.

e. At no time did Envisions provide ██████████ with any training with respect to his saxophone performance skills, nor did it supervise any aspect of ██████████ performance.

f. ██████████ set his own billing rate. Envisions paid ██████████ for his services from the event fees it collected from its clients.

g. ██████████ filled out an IRS Form W-9. He received an IRS Form 1099 from Envisions.

7. In 2012, ██████████ contracted with Envisions to provide live saxophone music at two separate events organized by Envisions, for a grand total of five (5) hours. Envisions and ██████████ executed an independent contractor agreement to govern ██████████ provision of those services.

Procedural History

8. On January 7, 2013, ██████████ filed an unemployment benefits claim after he was laid off from employment with an unrelated third-party employer.

9. On February 4, 2013, the DLIR's UID auditor issued an employment determination and a benefits determination, finding that the saxophone services performed by ██████ constituted employment, and thus, the remuneration paid to him by Envisions was subject to HRS Chapter 383. Envisions appealed.

10. On July 24, 2013, ESARO conducted a hearing in the appeal of the employment determination.

11. On August 20, 2013, the ESARO appeals referee ruled that ██████ ran an independently established business so that "Clause 3" of HRS §383-6 had been met. However, the appeals referee also ruled that: as to "Clause 1" of HRS §383-6, ██████ was not free from control or direction over the performance of his services; and, as to "Clause 2" of HRS §383-6, ██████ services were not outside the usual course of Envisions' business or outside all of Envisions' places of business.

12. The ESARO appeals referee concluded that because only a single clause of the three-part test under HRS §383-6 had been satisfied, the services performed by ██████ constituted employment, and thus, payments made to him were wages subject to HRS Chapter 386.

13. On September 23, 2014, the ESARO conducted a separate hearing regarding UID Decision 1300751, charging Employer's reserve account for a percentage of benefits payable to ██████

14. On October 7, 2014, the ESARO appeals referee affirmed UID Decision 1300751, charging Employer's reserve account for a percentage of benefits payable to [REDACTED].

15. Envisions file a notice of appeal for each ESARO decision. The two appeals were consolidated into the Appeal herein.

CONCLUSIONS OF LAW

Issues on Appeal

16. The statute in question is HRS §383-6, which presumes that all services performed by an individual for a taxpayer are employment. To determine if an individual is an independent contractor pursuant to HRS §383-6, the taxpayer must establish all three clauses of the independent contractor test set forth in the statute.

17. In the present case, the ESARO appeals officer determined that Envisions satisfied "Clause 3" of the test, but failed to establish "Clause 1" and "Clause 2" of the test.

"Clause 1"

18. Under Clause 1, it must be shown that the individual has been and will continue to be free from control or direction over the performance of such service, both under the individual's contract of hire and in fact. Hawaii Administrative Rules ("HAR") §12-5-2(a) provides that control or direction means general control, and need not extend to all details of the performance of service. Furthermore, general control does not mean actual control necessarily, but only that there is a right to exercise control.

19. HAR §12-5-2 provides a twenty-part test that serves as guidelines the DLIR uses, or should be using, to determine whether a person is within the employer-employee relationship. However, there is nothing in the appeals referee's decision to indicate that she went through the guidelines set forth in HAR §12-5-2 and analyzed any of the evidence submitted by Envisions or the testimony of its president, Wayne Hikiji.

20. Envisions points to evidence in the record showing that it had an obligation to its clients to provide saxophone services during the events at which [REDACTED] provided his services, and thus, Envisions would have been responsible for finding a replacement if [REDACTED] cancelled at the last minute. The record also shows that Envisions collected event fees from its clients and paid [REDACTED] for its services. Contrary to the DLIR's argument, the Court finds these factors as indicative of and establishing Envisions' lack of general control, not an exercise of general control.

21. The Ninth Circuit, in analyzing what constitutes an employer/employee relationship under similar federal regulations, determined that if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and method for accomplishing the result, the individual is an independent contractor. *Flemming v. Huycke*, 284 F. 2d 546, 547-548 (9th Cir. 1960).

22. Here, Envisions notified [REDACTED] of the date, time and place of the events as determined by the clients, as well as the general type of music performance requested by its clients for these events. [REDACTED] was free to

choose his own music selection within these parameters, and he provided his own instrument as well as his own attire. At no time did Envisions provide him with tools, equipment, or uniform. At no time did Envisions train [REDACTED] with respect to his saxophone performance skills or supervise any aspect of his performance. [REDACTED] set his own billing rate throughout the matter, filled out an IRS Form W-9, and received an IRS Form 1099.

23. The facts presented in the record on appeal clearly indicate the parties contemplated an independent contractor relationship with one another, and there are advantages to both parties that the independent contractor relationship exist. However, there is nothing in the record that indicates the DLIR or the appeals referee considered any of these factors or the benefits that accrued to [REDACTED].

24. Ignoring the independent contractor relationship in this particular case may have a detrimental effect on [REDACTED] provision of saxophone services. In effect, Envisions is an agent that simply directs business to [REDACTED]. Without that ability, [REDACTED] has the potential to lose, *business,*
PM
The DLIR's and the appeals referees' failure to consider this factor in this particular case was clearly erroneous.

25. Most important, the record does not reflect any consideration by the DLIR or the appeals referee of the issue of control. The record shows that [REDACTED] was in total control as to whether or not he accepted any particular performance. If [REDACTED] were to reject the engagement, it was Envisions' responsibility, not [REDACTED] to find an alternate saxophonist from

its list. Even after [REDACTED] services were engaged, with or through Envisions, [REDACTED] maintained complete control as to whether or not he would show up at a performance. Looking at this situation and the facts in the record, it is [REDACTED] who had total and complete control at all times as to whether or not he would allow his services to be engaged.

26. Taken as a whole, it is evident that the control Envisions exercised over [REDACTED] was merely as to the result to be accomplished by [REDACTED] work and not as to the means and method accomplishing the result.

27. Upon careful review of the entire record on appeal, the Court finds that [REDACTED] was free from control or direction by Envisions over the performance of his services. Consequently, as to Clause 1 of HRS §383-6, the Court concludes that the DLIR's and the appeals referees' findings were not supported by clearly probative and substantial evidence and, therefore, were clearly erroneous.

"Clause 2"

28. Clause 2 of HRS §383-6 requires Envisions to prove that [REDACTED] services were either performed outside of Envisions' usual course of business, or performed outside of all of Envisions' places of business.

29. HAR §12-5-2 (3), which describes the standard to be applied, specifies that the term "outside the usual course of the business" refers to services that do not provide or enhance the business of the taxpayer, or services that are merely incidental to, and not an integral part of, the taxpayer's business.

30. In this case, the appeals referee found that Envisions did not prove the services were outside of its usual business, stating, "In this case, [REDACTED] services as musician for Envisions' events were integral to Envisions' event production business." The record indicates that this finding was based on a statement made by the UID auditor at the hearing on the appeal of the employment determination. The UID auditor based her statement on the opinions and experience of her supervisor.

31. The opinions and experience of the UID auditor's supervisor is not evidence, it is simply an opinion. Accordingly, the Court holds that the statement made by the UID auditor should not have been considered by the appeals referee.

32. The record shows that Envisions is an event production company. Its services are in planning and organizing events for its clients.

33. The DLIR argues that Envisions' testimony that it provided entertainment for its clients, and the fact that Envisions' client contracts specifically required a saxophone player at events, constitutes dispositive evidence that [REDACTED] services were not incidental and not outside Envisions' usual course of business.

34. The services provided by [REDACTED] were limited to the playing of the saxophone, and the playing of the saxophone by [REDACTED] was not integral to Envisions' business.

35. "Integral" means a foundation aspect of Envisions' business. There is nothing in the record that indicates that if [REDACTED] services were not

available to Envisions, and there were no other saxophone players of [REDACTED] competence, that Envisions' business would fail.

36. The record clearly indicates that [REDACTED] services were provided only two times during the period under investigation, for a grand total of five hours in all of 2012.

37. Given these facts, the Court finds that [REDACTED] saxophone services were incidental rather than integral to Envisions' business.

38. Based on the foregoing facts, the Court finds the DLIR's determination and the appeals referee's decision were clearly erroneous in view of the reliable, probative and substantial evidence in the record as a whole.

ORDER

Based on the foregoing, the Court reverses the UID Decision and Notice of Assessment, DOL# 0003018601, dated February 4, 2013, and ESARO Decisions 1300760 and 1300751, dated August 20, 2013 and October 7, 2013 respectively.

DATED: Honolulu, Hawaii, SEP - 2 2014.

/S/ PETER T. CAHILL (SEAL)

Judge of the Above-Entitled Court

APPROVED AS TO FORM:


STACI TERUYA

Attorney for Appellees DWIGHT TAKAMINE and
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

*Envisions Entertainment & Productions, Inc. v. Dwight Takamine, Director,
Department Of Labor and Industrial Relations, State of Hawai'i, et al.; Civil No.
13-1-0931(2) (Consolidated); PERTINENT FACTS, CONCLUSIONS OF LAW,
AND ORDER*

From: mauicloset@aol.com
Sent: Tuesday, March 24, 2015 5:28 PM
To: LABtestimony
Subject: SB 1219 BILL

I wanted to thank you for the opportunity to again show support for the SB 1219 Bill which clarifies the Independent Contractor. As a business owner there are a few occasions where the assistance of an independent contractor might be needed and prove helpful in fulfilling our needs to our clients, It would be helpful to have an independent contractor clarification so we are not open to challenges that might arise in the future with the lack of clarification. Please help us continue to conduct our business with the passing of the bill. Mahalo for your support. To a bright and prosperous year.

Aloha with blessings

Debbie
The Maui Closet Company
808-871-7996 (office)
808-264-3763 (cell)



FEED MY SHEEP

Support [SB1219 SD2](#)

To Whom it may concern;

We are is strong support of SB1219 SD2. Please take into consideration Hawaii businesses and non-profits that occasionally use Independent Contractors. The bill will clarify the designation and help us all to be able to keep the use of such an option that helps not only the independent contractor but also helps our non-profit to find the right person for the occasional job. It is good business!!!

Joyce Kawakami, CEO
Feed My Sheep, Inc
PO Box 847
Pu`unene HI 96784

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 26, 2015 11:55 AM
To: LABtestimony
Cc: tamihamilton@pacificwhale.org
Subject: Submitted testimony for SB1219 on Mar 27, 2015 10:00AM

SB1219

Submitted on: 3/26/2015

Testimony for LAB on Mar 27, 2015 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Tami Hamilton	Pacific Whale Foundation	Support	No

Comments: On behalf of Pacific Whale Foundation, I would like to voice our strong support of SB1219. Tami Hamilton HR Manager Pacific Whale Foundation 300 Ma'alaea Road, Suite 211 Wailuku, HI 96793

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 25, 2015 3:05 PM
To: LABtestimony
Cc: chandra_krown@yahoo.com
Subject: *Submitted testimony for SB1219 on Mar 27, 2015 10:00AM*

SB1219

Submitted on: 3/25/2015

Testimony for LAB on Mar 27, 2015 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
chandra krown	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 25, 2015 5:51 PM
To: LABtestimony
Cc: paolino@hawaii.rr.com
Subject: Submitted testimony for SB1219 on Mar 27, 2015 10:00AM
Attachments: SB1219

SB1219

Submitted on: 3/25/2015

Testimony for LAB on Mar 27, 2015 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Marchetti	Individual	Support	No

Comments: Aloha, I am writing in support of SB1219. I currently choose to perform Music services as an independent contractor under the name Paolino Productions LLC, Through this business, I serve multiple clients in a given tax year and am not an employee of my customers. I realize this means that I do not receive employment benefits and that I am required to have my own materials and equipment, insurance, health coverage, etc. In a changing economic environment, being an independent contractor allows me to work as a Musician in the same way musicians work all over the world, such as the ability to be my own boss, have flexibility in my schedule as it is always changing, work for multiple companies, hire independent contractors if I need to for temporary work situations, and earn more money. I have performed music on 5 continents. If I and other musicians could not work as independent contractors we would not be able to survive as musicians in Hawaii. I think Music is a great thing for Hawaii. I have worked as an independent contractor in Hawaii for 35 years and I have always paid my taxes. Therefore, I support SB1219 to make it clear that I am an Independent Contractor to the clients who are interested in hiring me, as well as the state. Thank you for the opportunity to provide testimony and please support SB1219. Sincerely, Paul Marchetti

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: laura@encoretalent-hawaii.com
Sent: Wednesday, March 25, 2015 7:46 PM
To: LABtestimony
Subject: Please use THIS Testimony, NOT the one sent a few minutes ago. Mahalo, Laura Bollinger

Aloha, my name is Laura Bollinger; I am writing in support of the original version of SB1219 SD2.

I began a business of providing talent/entertainment services as an independent contractor in Kona 30 years ago. Through my business (which started by my doing singing telegrams as Lyrics by Laura and eventually became Encore Talent Agency) I have served multiple clients in a given tax year and have never been an employee of my customers. I realize this means that I do not receive employment benefits and that I am required to have my own materials and equipment, insurance, health coverage, etc.

Being an independent contractor allowed me to raise my son & daughter - on my own, as a single parent - as a nurturing, stay-at-home-Mom who never had to enlist the help of a welfare program; this is because I could choose my own working hours and worked as often or as little as I chose. It allowed me to raise two caring, responsible, creative, hard-working adults who are now raising their own families, and for that, I am very grateful.

Therefore, I support SB1219 SD2 and want to make it clear that I'm an Independent Contractor to the State of Hawaii and to my clients.

Mahalo nui for the opportunity to provide testimony and I sincerely ask you to please support the original version of SB1219 SD2.

*With gratitude for all you do,
Laura Bollinger, owner
Encore Talent & Big Island Casting
Kailua-Kona, Island of Hawaii*

**My testimony is being submitted on Wednesday, March 25, 2015*

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 25, 2015 8:09 PM
To: LABtestimony
Cc: elamm001@hawaii.rr.com
Subject: *Submitted testimony for SB1219 on Mar 27, 2015 10:00AM*

SB1219

Submitted on: 3/25/2015

Testimony for LAB on Mar 27, 2015 10:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
michael elam	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov