



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai'i Appleseed Center for Law and Economic Justice
In Support of HB 1841 – Relating to Fair Employment Practices
House Committee on Labor & Public Employment
Tuesday, February 11, 2020, 9:10 AM, conference room 309

Dear Chair Johanson, Vice Chair Eli, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT** of **HB 1841**, which would prohibit non-compete agreements for low-wage workers.

According to economic theory, full employment should lead to workers being able to shop around for higher wages and better working conditions. That's because very low unemployment rates should pressure employers to treat their workers better in order to find and keep them.

Unfortunately, here in Hawaii, that theory hasn't played out. While during the past few years we have had some of the lowest unemployment rates in the nation – well below what would be considered full employment – our average wage remains the lowest in the nation, after adjusting for our high cost of living.ⁱ

One reason that workers are not seeing the types of pay increases that were predicted may be that the market for wages is restricted by non-competitive employment practices, such as non-compete agreements.

Non-compete agreements, which usually are part of employment contracts, restrict where or for whom employees can work in the future after leaving their current employer, which has the effect of limiting workers' mobility and their ability to get higher pay. In the past, non-compete agreements were generally limited to employees who are highly skilled, difficult to replace, and/or know trade secrets that a competitor could use.

However, over the past decade non-compete agreements have been forced on workers who are paid by the hour, don't have unique skills, are easy to replace, and don't possess privileged company information. These types of agreements appear to exist to enable employers to exploit workers by making it harder for workers to quit and/or demand improved wages and benefits.

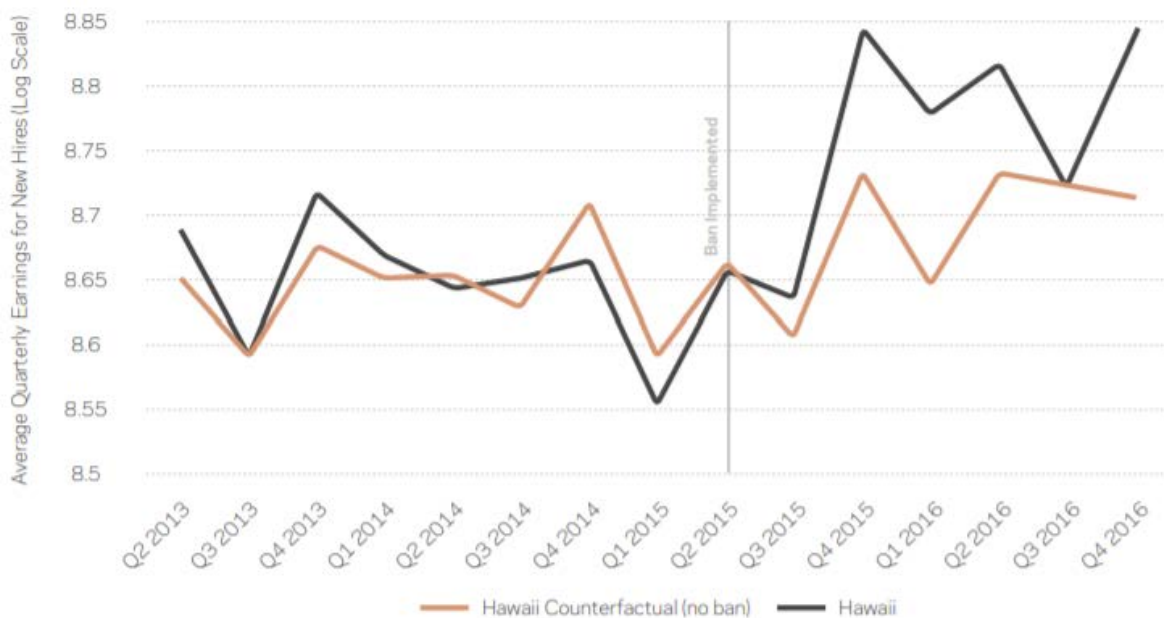
At least eight other states have passed laws to prohibit non-compete agreements for certain low-wage employees.ⁱⁱ Some of them already have seen workers' wages increase. For example, a recent paper found that Oregon's ban on non-compete agreements for low-wage workersⁱⁱⁱ led to an increase in pay of six percent. And since only a small portion of the workers studied were originally subject to non-

The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

compete agreements, the actual effect on individual workers is likely much higher, in the range of 14 to 21 percent.

In fact, here in Hawaii, the legislature passed a law in 2015 to ban non-compete agreements for employees of technology businesses.^{iv} Recent research found that this law led to an increase in new-hire pay of 4 percent, and an increase in employee mobility of 11 percent.^v

Figure 6. New Hire Wages In Hawaii Before and After Non-Competes Ban



Source: Balasubramanian, et al., 2018. Counterfactual represents a synthetic estimate created by matching Hawaii's pre-ban trends with weighted combinations of other states' trends. The sample is limited to only the tech industry.

If prohibiting non-compete agreements makes sense for high-tech workers in our state, it makes even more sense for our low-wage workers, as they have much less bargaining power than their high-tech counterparts.

Mahalo for your consideration of this testimony. Please pass HB 1841.

ⁱhttps://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm?type=0&year=2017&qtr=A&own=0&ind=10&supp=1 and <https://www.bea.gov/news/2019/real-personal-income-states-and-metropolitan-areas-2017>

ⁱⁱ <https://www.tradesecretslaw.com/2019/10/articles/restrictive-covenants/is-it-time-to-reconsider-your-non-compete-policy-it-might-be-if-you-employ-low-wage-workers/>

ⁱⁱⁱ <https://promarket.org/banning-noncompete-agreements-benefits-low-wage-workers/>

^{iv} <https://www.tradesecretslaw.com/2015/07/articles/trade-secrets/hawaii-bans-non-compete-and-non-solicit-agreements-with-technology-workers/>

^v <https://eig.org/wp-content/uploads/2019/02/Non-Competes-Brief.pdf>



**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 11, 2020**

Re: HB 1841 Relating to Fair Employment Practices

Good morning Chairperson Johanson and members of the House Committee on Labor & Public Employment. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

We are opposed to HB 1841 Relating to Fair Employment Practices. This bill prohibits noncompete agreements for low wage workers whose earnings do not exceed the greater of the minimum wage required by applicable federal or state law or \$15 per hour.

Hawaii businesses are already over regulated and measures like this become deterrents for new businesses to come to the islands or for business to remain in operation here. Non-compete agreements should be at the discretion of the business to keep their interest protected

Business needs some safeguard from employees who leave the company to work for a competitor or opens up a similar competing business. In order to thrive and remain healthy, businesses need to maintain the ability to keep their “trade secrets and keys to success”, proprietary information, and client base, protected and not stolen or used against them.

With unemployment at a record low, there is an alarming trend for employees to leave a company within a week or month after being hired to work for a competitor. Now the employer has lost the investment of time and training of that employee and must reinvest in a replacement employee. Without a non-compete clause the company may worry that the employee that left may have taken the information that gave the company a competitive advantage.

Businesses need to be able to operate without the fear that their business model, plan, knowledge, secrets and advantages will not be used against them by a competitor.

We urge you to hold this measure. Mahalo again for this opportunity to testify.