



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

February 7, 2024

To: The Honorable Henry J.C. Aquino, Chair,
The Honorable Sharon Y. Moriwaki, Vice Chair, and
Members of the Senate Committee on Labor and Technology

Date: Wednesday, February 7, 2024
Time: 3:00 p.m.
Place: Conference Room 224, State Capitol

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

Re: S.B. 3152 RELATING TO THE WAGE AND HOUR LAW

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR strongly supports** this Governor's Package proposal. SB3152 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 Chapter 387 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 SENATE 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: Senate Committee on Labor and Technology
Re: **SB 3152 – Relating to the Wage and Hour Law**
Hawai'i State Capitol & Via Videoconference
February 7, 2024, 3:00 PM

Dear Chair Aquino, Vice Chair Moriwaki, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUPPORT of SB 3152**. 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.

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 2022.¹

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.²

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 earnings as adults.³

That's why this bill is important. Categorically excluding 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 could enable employers to skirt our state's minimum wage laws. This loophole needs to be closed, for the well-being of our state's workers and their families.

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

Thank you,

Nicole Woo
Director of Research and Economic Policy

¹ https://files.hawaii.gov/dbedt/economic/reports/self-sufficiency/self-sufficiency_2022.pdf

² <https://www.auw.org/sites/default/files/pictures/ALICE-in-Focus-Children-Hawaii%20%283%29.pdf>

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



SENATE BILL 3152, RELATING TO THE WAGE AND HOUR LAW

FEBRUARY 7, 2024 · LBT HEARING

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports** SB 3152, 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

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.

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

SB-3152

Submitted on: 2/5/2024 9:36:49 AM

Testimony for LBT on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support this fix to the wage and hour law. Please pass this bill. Mahalo.



HAWAII WORKERS CENTER

Defending and Respecting the workers of
Hawaii'i

LATE

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February 6, 2024

Hawaii'i State Senate
Committee on Labor and Technology
Senator Henry J.C. Aquino, Chair
Senator Sharon Y. Moriwaki, Vice Chair

**Executive Board
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Justin Jansen

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Executive Director
Sergio Alcubilla III, Esq.

RE: STRONG SUPPORT for S.B. 1352 RELATING TO THE WAGE AND HOUR LAW.

Dear Chair Sen. Aquino, Vice-Chair Sen. Moriwaki, and Members of the Committee on Labor and Technology:

The Hawaii'i Workers Center (HWC) envisions a Hawaii'i in which all workers are empowered to exercise their right to organize for their social, economic and political well-being. It is a resource of information, education, training and organizing for Hawaii's workers.

The HWC stands in strong support of S.B. 1352 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

As the Department of Labor and Industrial Relations shares, the current definition of "employee" in chapter 387, HRS, Hawaii's Wage and Hour Law, does not include those guaranteed a compensation of \$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. The \$2,000 compensation for exemption is less than an employee earning the last year's minimum wage of \$12.00 per hour.

This current definition is of course, non-sensical. This bill, by simply correcting this definition, will provide more workers with stronger protections for minimum wage and overtime under the Hawaii Wage and Hour Law and thereby promote the health, efficiency, and well-being of Hawaii's workforce.

We ask that you please pass and support S.B. 1352.

Sincerely,

Sergio Alcubilla
Executive Director