



**Testimony to the House Committees on Labor & Public Employment
Friday, February 3, 2012
9:00 a.m.
State Capitol - Conference Room 309**

RE: HOUSE BILL NO. 2577 RELATING TO WAGES

Chair Rhoads, Vice Chair Yamashita, and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber seeks amendments to clarify the intent of HB 2577 relating to Wages.

The Chamber is the largest business organization in Hawaii, representing more than 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 its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

HB 2577 clarifies the definition of "wages" in the Payment of Wages and Other Compensation Law, chapter 388, Hawaii Revised Statutes, to include any promised paid time off.

The Chamber supports Section 2 which codifies case law, however we do have concerns with Section 1. The measure needs to clarify how it interacts with other parts within Chapter 388 that references "wages."

The first section amends the definition of "wages" to include "vacation or personal time off pay" earned in accordance with the terms of any written agreement, employer written policy, or practice. This proposal amends current law, which clearly excludes vacation/paid time off from wages as held in Casumpang v. ILWU Local 142, 108 Haw. 411 (2005).

We believe there may be some technical issues. For instance, HRS 388-2 requires employers to "pay all wages due . . . at least twice during each calendar month . . ." When does vacation/paid time off as "wages" become "due?" Do they become "due" when the employee earns it or when s/he takes the vacation/paid time off? The bill would have to clarify that vacation/paid time off as wages only become "due" after approval from the employer to take the vacation/paid time off and the employee actually

takes the time off. If the bill doesn't clarify this, employer agreements/policies will have to address when vacation/paid time off payments are "due."

Section 388-2 also requires employers to pay "earned wages . . . within seven days after the end of each pay period." There may be confusion over when an employee "earns" the vacation/paid time off. Some employers say employees earn 1 day of vacation per month. A technical reading of HB 2577 would mean the employer must pay the vacation when it is "earned" – meaning at the end of the month. Or, what about employers that give employees all vacation/paid time off days at the beginning of their anniversary year...does that mean that they've "earned" the vacation/paid time off so that the employer must now pay it within 7 days of that?

Also, how would it interact with Section 388-8, which basically prohibits waiver of Payment of Wages rights by agreement. Some employers allow employees to donate vacation/paid time off time to those who are sick. Redefining "wages" to include vacation/paid time off might impede this practice since technically, the employer is only supposed to pay the *employee* "wages" (not the sick co-worker, even if the employee agreed to it).

Finally, how does this bill apply to an employer's use it or lose it policies? The bill could require employers to pay employees the vacation/paid time off because once it is in their vacation/paid time off bank, employees have "earned" it. In other words, employees would never "lose" vacation. Requiring annual vacation/paid time off payoffs runs counterproductive to the policy behind use it or lose it policies, which is to encourage employees to take much needed time off.

We respectfully ask that the committee takes these concerns into consideration. Thank you for the opportunity to express our views.