



STATE OF HAWAII  
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March 16, 2015

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,  
The Honorable Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, March 17, 2015  
Time: 9:00 a.m.  
Place: Conference Room 016, State Capitol

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

**RE: HB1497HD1 RELATING TO LABOR, PROFESSIONAL EMPLOYER  
ORGANIZATIONS, EMPLOYERS, RECORDS**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB1497HD1 proposes to amend section 371-11, Hawaii Revised Statutes (HRS) to allow the DLIR to require employers to make, keep, and preserve records of the business name, physical location address, North American Industry Classification System (NAICS) business activity code, and number of employees employed by the employer.

The bill also proposes to require Professional Employer Organizations (PEOs) to provide their client company information including physical location addresses, NAICS codes, and the number of employees of each client company to the DLIR by amending section 373L-2, HRS.

The department strongly supports this proposal.

The department's federal funding levels are in jeopardy of being lowered because the Bureau of Labor Statistics (BLS) ties funding to the number of employing units reported and some employers, especially national chains, are not responding to surveys unless they are required.

## **II. CURRENT LAW**

Section 371-11, HRS currently allows the DLIR's Research and Statistics Office (R&S) to investigate and gather data regarding wages, hours, and other related employment information. However, the current law is limited in that it does not provide for the collection of the employer's physical location, NAICS classification code, and the number of employees. Similarly, section 373L-2 also does not require PEOs to report who their client companies are, their location, NAICS codes, and the number of employees employed at these individual client companies.

## **III. COMMENTS ON THE HOUSE BILL**

This legislation will allow the DLIR to gather information necessary for preparing accurate industrial and geographical summaries of economic conditions within Hawaii. These data are important input to funding formulas for many of our State's programs and agencies that rely on federal funding, including the Unemployment Insurance Division, which needs an accounting of employers and employees in Hawaii.

The Department of Transportation Statewide Transportation Planning Office for updating travel demand forecasting models to develop land transportation plans for all islands in the State. The plans utilize the employer and employment data to quantify land use activity and trip purposes correlated to the amount of employment in specific areas.

This legislation will also greatly improve the Quarterly Census of Employment and Wages (QCEW) program conducted by R&S, which is a near census of monthly employment and quarterly wage information by industry at the State and county levels. It provides information on major shifts in employment or wage levels as a result of various economic activities.

Moreover, this proposal, if enacted, would provide much needed information to track growth and decline in employment for the State, employment distribution by County, employment by industry, and assess major shifts in employment and wage levels as a result of various economic activities. Currently 25 other states mandate collection of this type of information from employers and businesses in their states.

Furthermore, the growth of PEOs in the State affects the quality of the data compiled and reported by R&S. Without the detailed company data from PEOs, all client companies and their employees are coded and reported under the PEO, not by company and not under their company's major business activity and location.

For example, if a client company is in the Construction Industry and utilizes a PEO, their employees are reported as employees of the PEO and these employees are coded under the Professional and Business Services industry and not in Construction. In addition, the geographic location is reported as the location of the

PEO and not the client company, which tends to under count employment on the neighbor islands.

In addition to the federally-funded state agencies listed above, the data is needed by other state agencies and consumers including the Legislature, the Council on Revenues, the Department of Business, Economic Development and Tourism (DBEDT), the Economic Research Organization at the University of Hawaii (UHERO), and the Hawaii Tourism Authority (HTA) for economic studies and workforce development and planning.

R&S adheres to the BLS privacy procedures so all data collected by R&S are kept confidential and used for statistical research purposes only.



March 16, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Committee on Judiciary and Labor  
State Capitol  
Honolulu, Hawaii 96813

Subject: House Bill 1497, March 17, 2015, 9:00 am

Dear Senators Keith-Agaran and Shimabukuro:

My name is Barron Guss, President and second-generation owner of ALTRES, Inc., a 45-year old Hawaii company and Hawaii's original and oldest Professional Employer Organization (PEO). The genesis of the PEO industry is rooted in volume and efficiency. Therefore, one has to conclude that we know a thing or two about managing data.

I am writing you today in opposition to HB 1497. We support the concept of data collection, but cannot agree that this legislation is a good idea due to the lack of thought regarding implementation and oversight.

The NAICS code assignment is not issued by any governing agency or even the Department of Labor. It is assigned by the business itself, in this case, the employer. If the PEO is responsible for reporting, I assume that we will be responsible for determining the appropriate code. PEOs are not qualified to make this determination, nor do we possess enough information on the business to make one. For example, in a PEO's database, we might have a bicycle shop whose worker's compensation code is actually reported under "hardware store." So who is to determine if it's a bicycle shop or a hardware store? Only the business operator knows for sure. If the PEO inadvertently miscodes the business, not only will the information be erroneous and of no use to the State, but the code would not be corrected for up to five years in some cases due to NAICS guidelines.

Furthermore, the only mechanism available to the Department of Labor for gathering this data is the Quarterly Wage, Contribution and Employment and Training Assessment Report (UC-B6). The information on the form is limited to the Business Name, Employer ID Number, Employees Name, Wages, Taxes Withheld and the Unemployment Tax Calculation. In order to report the additional NAICS information, the

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form would need to be modified for this function, as well as the electronic filing system the State uses for large employers.

Modifying the form is the easy part. When we were working on the PEO legislation two years ago, the industry asked the Director of the Department of Labor to consider client level reporting for UI Wages and Contribution Rates. At that time, the Director testified that he would NOT support the idea of client level reporting because it would require a modification of the Department of Labor's technology at a cost of more than \$20M dollars. If reporting the PEO client company's information on an individual basis was financially prohibitive then, what has changed since that session to make this possible today?

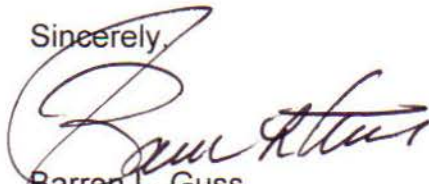
If the Department of Labor really wants this data, I would suggest that the requirement be that each business/workplace employer, whether they use a PEO, national payroll provider, bookkeeper or not, be sent an annual report at year end to be completed with the information the Department of Labor desires for its database. It makes the most sense to put this responsibility on the business and not on the PEO, because the business has the firsthand knowledge to classify and code the NAICS information properly.

The proposed legislation requires the PEO to maintain the business name and address as well as the NAICS code. It is important to note that this information is already in the possession of the State on the annual tax return filed by the business and, therefore, the only missing data is the number of employees and payroll remuneration, which the workplace employer could easily provide on this proposed new form.

In closing, we support the collection of this important data for the State's economic purposes, but do not feel the PEO is the best method for collection.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Barron L. Guss", written over a large, stylized circular flourish.

Barron L. Guss  
President and CEO