

1 that is sufficient for a family of four to live at or above the
2 federal poverty level.

3 § -2 **Definitions.** As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Contracting department" means:

- 6 (1) Any state department established pursuant to section
7 26-4, including any boards, commissions, agencies,
8 offices, or corporations administratively attached
9 thereto, but excluding the University of Hawaii;
- 10 (2) The legislature;
- 11 (3) The judiciary; and
- 12 (4) The office of Hawaiian affairs.

13 The Hawaii health systems corporation shall not be considered a
14 contracting department.

15 "Covered employee" means an individual employed by a
16 covered vendor who directly expends or would directly expend the
17 person's time on the service contract or the service subcontract
18 with the contracting department.

19 "Covered vendor" means any for-profit employer who employs
20 at least twenty-five full-time equivalent employees or any
21 nonprofit employer who employs at least one hundred full-time



1 equivalent employees who has been awarded a service contract or
2 subcontract after the effective date of this chapter.

3 "Department" means the department of labor and industrial
4 relations. The department of labor and industrial relations
5 shall be responsible for the overall implementation, compliance,
6 and enforcement of this chapter.

7 "Full-time" means forty working hours per week.

8 "Full-time equivalent" is a formula to calculate the number
9 of employee work hours that equal one full-time position.

10 "Living wage" means the rate established by the department
11 as the minimum hourly wage rate that shall be paid to a covered
12 employee by a covered vendor pursuant to the formula set forth
13 in section -5.

14 "Person" means one or more of the following or their
15 agents, employees, and representatives: individuals,
16 corporations, partnerships, joint ventures, associations, labor
17 organizations, educational institutions, mutual companies,
18 joint-stock companies, trusts, unincorporated organizations,
19 trustees, trustees in bankruptcy, receivers, fiduciaries, and
20 all other entities recognized by law by this State.



1 "Service contract" means any single contract of at least
2 \$100,000 or more awarded to a vendor by a contracting department
3 for the furnishing of services.

4 "Service subcontract" means a subcontract of \$25,000 or
5 more awarded to a vendor by a covered vendor, provided the
6 subcontract is paid for by funds from the service contract.

7 "Vendor agreement" means a written agreement between the
8 State, through a contracting department, and any covered vendor
9 that is executed at the time a service contract is signed with
10 the State or a subcontract is signed with a covered vendor.

11 **§ -3 Applicability, exemptions, and waivers. (a)**

12 Except for the exemptions listed in subsection (b), this chapter
13 shall apply to all covered vendors. The department of labor and
14 industrial relations shall be responsible for the overall
15 implementation, compliance, and enforcement of this chapter.

16 (b) The following types of service contracts and
17 subcontracts shall be exempt from the requirements of this
18 chapter:

- 19 (1) Construction contracts awarded by the State that are
20 subject to the state prevailing wage law;



- 1 (2) Contracts awarded to work-study or cooperative
2 educational programs, provided that the contract is
3 for stipends to students in the programs;
- 4 (3) Contracts awarded to the department of public safety
5 or its attached agencies where contracted employees
6 are inmates of correctional institutions;
- 7 (4) Contracts awarded to the department of commerce and
8 consumer affairs or its attached agencies where
9 contracted employees are paid stipends for proctoring,
10 grading, supervising, or recording examinations; and
- 11 (5) Contracts awarded to vendors who provide services to
12 the State and contracts awarded to vendors who provide
13 trainees a stipend or wage as part of a job-training
14 program; provided that the trainees do not replace
15 current state-funded positions.
- 16 (c) A covered vendor must certify and submit to the
17 department an affidavit in a form approved by the department and
18 provided by the contracting department and signed by a principal
19 officer of the covered vendor, attesting that one of the
20 exemptions in this section applies to the covered vendor before
21 the department may grant an exemption to the covered vendor.



1 The covered vendor shall also submit a copy of the affidavit to
2 the contracting department.

3 (d) The department may grant general and hardship waivers
4 from this chapter as follows:

5 (1) A general waiver may be granted where application of
6 this chapter to a particular service contract or
7 subcontract violates a specific state or federal
8 statute, rule, regulation, or constitutional
9 provision. All general waiver requests shall include
10 the following:

11 (A) The service contract or subcontract to which this
12 chapter applies;

13 (B) The conflicting statutory, regulatory, or
14 constitutional provision that makes compliance
15 with this chapter unlawful, and a copy of each
16 such provision; and

17 (C) An explanation of how compliance with this
18 chapter would violate the cited provision, and
19 the consequences that would result if this
20 violation were to occur.



1 A general waiver request shall be submitted directly
2 to the department and a copy submitted to the
3 contracting department.

4 (2) With respect to hardship waivers, a contracting
5 department shall monitor, and as necessary, recommend
6 to the department, individual or group exemptions
7 necessary in cases in which compliance with this
8 chapter would cause undue economic hardship. These
9 waivers shall be subject to the department's approval
10 after a public hearing on the request has been held.

11 All hardship waiver requests shall include the
12 following:

13 (A) The service contract or service subcontract to
14 which this chapter applies;

15 (B) The lower wage paid by the covered vendor, and

16 (C) A detailed explanation of how the payment of a
17 living wage will cause undue economic hardship,
18 including supporting financial statements.

19 **§ -4 Notification requirements.** All contracting
20 departments engaged in the awarding of contracts shall provide
21 in writing, an explanation designed by the department, of the
22 requirements of this chapter in all requests for bids for



1 service contracts with the State. All persons who have signed a
2 service contract with the State shall forward a copy of the
3 requirements to any person submitting a bid for a subcontract on
4 the service contract.

5 **§ -5 Living wage payment to employees.** (a) Covered
6 vendors shall pay no less than the living wage to covered
7 employees.

8 (b) The living wage shall be calculated on an hourly basis
9 and shall be no less than \$9.43 beginning on July 1, 2007. Each
10 July 1 thereafter, the living wage shall be recalculated
11 according to each of the adjustments set forth in paragraphs (1)
12 to (3). The highest of the three figures derived in this manner
13 shall be the living wage applicable until the following June 30:

14 (1) Adjustment to the hourly rate which at forty hours of
15 work a week for fifty-two weeks a year would be equal
16 to but not less than the poverty threshold in Hawaii
17 for a family of four as published by the United States
18 Department of Health and Human Services;

19 (2) Adjustment in proportion to the increase at the
20 immediately preceding December 31 over the year
21 earlier level of the annual average consumer price
22 index for all urban consumers (CPI-U) Honolulu as



1 published by the Bureau of Labor Statistics, United
2 States Department of Labor applied to \$9.43; or

3 (3) Adjustment to one hundred ten per cent of the current
4 federal minimum wage.

5 § -6 **Duties of covered vendors; payroll records; vendor**
6 **agreements; annual reports.** Covered vendors shall have the
7 following duties:

8 (1) With respect to maintenance of payroll records, each
9 covered vendor shall maintain payrolls for all covered
10 employees and basic records relating thereto for a
11 period of three years. The records shall contain:

12 (A) The name and address of each employee;

13 (B) Each employee's job title and classification;

14 (C) The number of hours worked each day for each
15 employee;

16 (D) Each employee's gross wages, deductions made, and
17 actual wages paid;

18 (E) A record of fringe benefit payments including:

19 (i) Contributions to approved plans, funds, or
20 programs;

21 (ii) Additional cash payments; or

22 (iii) Both; and



- 1 (F) Any other data that may be required by the
2 contracting department from time to time;
- 3 (2) With respect to examination of payrolls, each covered
4 vendor shall permit a representative of the department
5 or its designee to observe work being performed upon
6 the work site, to interview employees, and to examine
7 the books and records relating to the payrolls being
8 investigated;
- 9 (3) With respect to vendor agreements, at the time of
10 signing a service contract with the State or a
11 subcontract with a vendor, the contract with the
12 covered vendor shall include the following:
- 13 (A) The name of the program or project under which
14 the contract or subcontract is being awarded;
- 15 (B) A local contact name, address, and phone number
16 for the covered vendor;
- 17 (C) A written commitment by the covered vendor to pay
18 all covered employees not less than the living
19 wage, subject to adjustment each July 1, and to
20 comply with this chapter;



1 (D) A workforce profile of covered employees paid for
2 by the service contract or subcontract including
3 the employees' job titles with wage ranges; and

4 (E) For service contracts, a list of all service
5 subcontracts either awarded or that will be
6 awarded to vendors with funds from the service
7 contract. Any covered vendor awarded a service
8 contract shall notify the contracting department
9 within three working days of signing a service
10 subcontract with a vendor; and

11 (4) By July 31 of each year, covered vendors shall provide
12 annual reports to the department of their employment
13 activities including the job positions charged to the
14 contract and the wage ranges of those positions.

15 § -7 **Enforcement.** (a) If necessary for the enforcement
16 of this chapter, the department may issue subpoenas, compel the
17 attendance and testimony of witnesses and production of books,
18 papers, records, and documents relating to payroll records
19 necessary for hearing, investigations, and proceedings. The
20 department may apply to a court of competent jurisdiction to
21 enforce these provisions.



1 (b) An individual who believes that the individual is a
2 covered employee, or if the individual is an applicant for a
3 position to be filled by a covered employee, and believes that
4 the employer is not complying with requirements of this chapter,
5 may file a complaint with the department. Complaints by covered
6 employees of alleged violations may be made at any time.
7 Written or oral statements made by the individual shall be
8 treated as confidential and shall not be disclosed to the
9 covered vendor without the consent of the individual. A
10 complaint of noncompliance with this chapter may be filed by any
11 person with the department, which shall provide a copy of the
12 complaint to each covered vendor against whom the complaint is
13 made within five business days.

14 (c) If a covered vendor discharges, reduces the
15 compensation of, or discriminates against any covered employee
16 or any other individual for making a complaint to the
17 department, otherwise asserting the individual's rights under
18 this chapter, participating in any of the proceedings under this
19 chapter, or using any civil remedies to enforce the individual's
20 rights under this chapter, the covered vendor shall be
21 considered in violation of this chapter. The department shall
22 investigate allegations of retaliation or discrimination and, if



1 found to be true, after notice and a hearing, shall order
2 appropriate relief to the employee or individual and assess
3 penalties against the covered vendor and may suspend the
4 contract or order the service contractor to suspend the
5 subcontract.

6 (d) The department or its designee shall investigate all
7 complaints of noncompliance. Investigations may include routine
8 reviews, spot checks, and investigations pursuant to complaints.
9 The department shall examine promptly all payrolls for
10 compliance upon receiving a complaint in furtherance of any
11 investigation.

12 (e) If the department finds evidence that the covered
13 vendor is not in compliance or has violated any of the
14 provisions of this chapter, the department shall order any
15 remedial measures that may be required to ensure compliance
16 including but not limited to ordering back pay to covered
17 employees for noncompliance with section -5. If the covered
18 vendor does not comply with the department's order within ten
19 working days, the department shall review the facts of the
20 finding and may proceed with a formal hearing and investigation.
21 If the department decides not to proceed with a hearing, it
22 shall provide a statement of the reasons for the decision.



1 § -8 **Penalties; remedies.** (a) In the event that the
2 department determines, after notice and hearing, that any
3 covered vendor has failed to pay the living wage rate or has
4 otherwise violated this chapter, the department may impose any
5 or all of the following penalties or remedies:

6 (1) A fine not to exceed \$300 for each affected covered
7 employee for each day that the covered vendor is in
8 violation of this chapter;

9 (2) The filing of a complaint with the pertinent state or
10 federal agency;

11 (3) Wage restitution for each affected employee;

12 (4) Suspension of ongoing contract and subcontract
13 payments;

14 (5) Ineligibility to bid for future contracts with the
15 State for three years or until all penalties and
16 restitution have been paid in full; and

17 (6) Any other action deemed appropriate and within the
18 discretion and authority of the State.

19 (b) No remedy set forth in this chapter is intended to be
20 exclusive or a prerequisite for asserting a claim for relief to
21 enforce the right granted under this chapter in a court of law.



1 This chapter shall not be construed to limit an employee's right
2 to bring a common law cause of action for wrongful termination.

3 **§ -9 Earned income credit notification.** Covered vendors
4 shall inform their covered employees earning less than \$12 per
5 hour, or any other amount as determined by the department, of
6 their possible right to apply for and receive the federal earned
7 income credit. The department shall assist any covered vendors
8 to the fullest extent possible to implement this section."

9 **SECTION 2. Living wage advisory committee established;**
10 **duties; composition and term; meetings; rules; conflict of**
11 **interest.** (a) There is established the living wage advisory
12 committee, which shall be attached to the department of labor
13 and industrial relations for administrative purposes only.

14 (b) The living wage advisory committee shall:

15 (1) Review and evaluate the effectiveness of this chapter
16 in creating and retaining living wage jobs in Hawaii;
17 (2) Review and evaluate the implementation and enforcement
18 of this chapter; and

19 (3) Submit to the legislature and the governor:

20 (A) An interim preliminary report no later than
21 twenty days prior to the convening of the regular
22 session of 2008;



1 (B) Two interim annual reports no later than twenty
2 days prior to the convening of the regular
3 sessions of 2009 and 2010; and

4 (C) A final report no later than twenty days prior to
5 the convening of the 2011 regular session, which
6 shall include recommendations, including
7 specifically whether or not to reenact a living
8 wage law for Hawaii.

9 (c) The living wage advisory committee shall be comprised
10 of five members who shall serve until the committee is
11 terminated pursuant to subsection (i) and whom the governor
12 shall appoint as follows:

13 (1) One member representing a labor union;

14 (2) One member representing a living wage advocacy
15 organization;

16 (3) One member representing a community-based organization
17 operating solely within the State of Hawaii;

18 (4) One member representing the Chamber of Commerce of
19 Hawaii; and

20 (5) One member representing small businesses in Hawaii.

21 The committee shall appoint from its members a chairperson and
22 secretary. Three members shall constitute a quorum, whose



1 affirmative vote shall be necessary for all actions by the
2 committee.

3 (d) Members shall serve without compensation, but may be
4 reimbursed for the necessary expenses, including travel
5 expenses, incurred in the performance of their duties.

6 (e) The committee shall meet quarterly or more frequently
7 as required. All meetings of the committee shall be open to the
8 public.

9 (f) The committee shall adopt rules in accordance with
10 chapter 91 governing public participation and testimony at
11 hearings and meetings; provided that the committee shall have
12 the power to issue interim rules, which shall be exempt from the
13 public notice, public hearing, and gubernatorial approval
14 requirements of chapter 91. The interim rules shall be valid
15 for not longer than one year.

16 (g) No person shall serve on the committee who has any
17 actual or potential conflict of interest as defined in chapter
18 84. No member of the committee shall participate in any
19 proceeding concerning a covered vendor, covered employee, or
20 applicant for waiver or exemption, if the member or any of the
21 member's immediate family has a direct or indirect financial
22 interest in the covered vendor, covered employee, or applicant



1 for waiver or exemption, or in the award of a service contract,
2 subcontract, or the granting of relief to the covered vendor,
3 covered employee, or applicant for waiver or exemption.

4 (h) The department of labor and industrial relations shall
5 provide staff assistance to the committee and shall provide all
6 information relating to the implementation of chapter ,
7 Hawaii Revised Statutes, to the committee at least quarterly and
8 upon the committee's request for the committee's review and
9 evaluation.

10 (i) The committee shall terminate on December 31, 2011.

11 SECTION 3. If any provision of this Act, or the
12 application thereof to any person or circumstance is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act, which can be given effect without the
15 invalid provision or application, and to this end the provisions
16 of this Act are severable.

17 SECTION 4. This Act shall take effect on July 1, 2007 and
18 shall be repealed on July 1, 2011, except that section 2, which
19 establishes the living wage advisory committee, shall be
20 repealed on December 31, 2011.

21

INTRODUCED BY:

Jyla B. Berg

B. Stal
W. M. M. M. M.
Della A. Blatti



[Signature]
JAN 17 2007

Report Title:

Living Wage for Hawaii

Description:

Requires private firms contracted by state government to pay covered workers a Hawaii living wage of at least \$9.43 an hour, to begin on 7/1/07 and adjusted thereafter. Requires DLIR to implement living wage. Establishes temporary living wage advisory committee to evaluate law. Repealed 7/1/2011.

