
A BILL FOR AN ACT

RELATING TO LABOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 377, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§377- Hours of labor for domestic workers. (a) No
5 person or corporation employing a domestic worker, as defined in
6 section 377-1, shall require the domestic worker to work more
7 than the following number of hours per week unless the domestic
8 worker receives compensation for overtime work at a rate that is
9 equal to at least one and one-half times the worker's normal
10 wage rate:

11 (1) Forty hours per week; provided that the domestic
12 worker does not reside in the employer's home; or

13 (2) Forty-four hours per week; provided that the domestic
14 worker resides in the employer's home.

15 (b) Every person employed as a domestic worker, as defined
16 in section 377-1, shall be allowed at least twenty-four
17 consecutive hours of rest in each calendar week. No provision
18 of this subsection shall prohibit a domestic worker from



1 voluntarily agreeing to work on a day of rest required by this
2 subsection; provided that the worker is compensated at the
3 overtime rate specified in subsection (a) for all hours worked
4 on the day of rest. The day of rest required under this
5 subsection, to the extent possible, shall coincide with the
6 traditional day reserved by the domestic worker for religious
7 worship. In addition, after one year of work with the same
8 employer a domestic worker shall be entitled to at least three
9 days of rest in each calendar year at the domestic worker's
10 regular rate of compensation."

11 SECTION 2. Section 377-1, Hawaii Revised Statutes, is
12 amended by adding two new definitions to be appropriately
13 inserted and to read as follows:

14 "Casual basis" means employment that is irregular or
15 intermittent, and that is not performed by an individual whose
16 vocation is the provision of babysitting or companionship
17 services or an individual employed by an employer or agency
18 other than the family or household using the individual's
19 services. Employment is not on a casual basis, whether
20 performed for one or more family or household employers, if the
21 employment for all employers exceeds twenty hours per week in
22 the aggregate.



1 "Domestic worker" means a person employed in a home or
2 residence for the purpose of caring for a child, serving as a
3 companion for a sick, convalescing, or elderly person,
4 housekeeping, or for any other domestic service purpose.

5 "Domestic worker" does not include any individual who is:

6 (1) Working on a casual basis;

7 (2) Engaged in providing companionship services, as
8 described in section 213(a)(15) of the Fair Labor
9 Standards Act of 1938, 29 United States Code 201, et
10 seq., and who is employed by an employer or agency
11 other than the family or household using the
12 individual's services; or

13 (3) A relative through blood, marriage, or adoption of:

14 (A) The employer; or

15 (B) The person for whom the worker is delivering
16 services under a program funded or administered
17 by federal, state, or county government."

18 SECTION 3. Section 378-1, Hawaii Revised Statutes, is
19 amended by amending the definition of "employment" to read as
20 follows:

21 ""Employment" means any service performed by an individual
22 for another person under any contract of hire, express or



1 implied, oral or written, whether lawfully or unlawfully entered
2 into. Employment does not include services by an individual
3 employed as a domestic in the home of any person[-]; except as
4 provided in section 378-2(a)(9) and (10)."

5 SECTION 4. Section 378-2, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§378-2 Discriminatory practices made unlawful; offenses**
8 **defined.** (a) It shall be an unlawful discriminatory practice:

9 (1) Because of race, sex, including gender identity or
10 expression, sexual orientation, age, religion, color,
11 ancestry, disability, marital status, arrest and court
12 record, or domestic or sexual violence victim status
13 if the domestic or sexual violence victim provides
14 notice to the victim's employer of such status or the
15 employer has actual knowledge of such status:

16 (A) For any employer to refuse to hire or employ or
17 to bar or discharge from employment, or otherwise
18 to discriminate against any individual in
19 compensation or in the terms, conditions, or
20 privileges of employment;



1 (B) For any employment agency to fail or refuse to
2 refer for employment, or to classify or otherwise
3 to discriminate against, any individual;

4 (C) For any employer or employment agency to print,
5 circulate, or cause to be printed or circulated
6 any statement, advertisement, or publication or
7 to use any form of application for employment or
8 to make any inquiry in connection with
9 prospective employment, that expresses, directly
10 or indirectly, any limitation, specification, or
11 discrimination;

12 (D) For any labor organization to exclude or expel
13 from its membership any individual or to
14 discriminate in any way against any of its
15 members, employer, or employees; or

16 (E) For any employer or labor organization to refuse
17 to enter into an apprenticeship agreement as
18 defined in section 372-2; provided that no
19 apprentice shall be younger than sixteen years of
20 age;

21 (2) For any employer, labor organization, or employment
22 agency to discharge, expel, or otherwise discriminate



1 against any individual because the individual has
2 opposed any practice forbidden by this part or has
3 filed a complaint, testified, or assisted in any
4 proceeding respecting the discriminatory practices
5 prohibited under this part;

6 (3) For any person, whether an employer, employee, or not,
7 to aid, abet, incite, compel, or coerce the doing of
8 any of the discriminatory practices forbidden by this
9 part, or to attempt to do so;

10 (4) For any employer to violate the provisions of section
11 121-43 relating to nonforfeiture for absence by
12 members of the national guard;

13 (5) For any employer to refuse to hire or employ or to bar
14 or discharge from employment any individual because of
15 assignment of income for the purpose of satisfying the
16 individual's child support obligations as provided for
17 under section 571-52;

18 (6) For any employer, labor organization, or employment
19 agency to exclude or otherwise deny equal jobs or
20 benefits to a qualified individual because of the
21 known disability of an individual with whom the



1 qualified individual is known to have a relationship
2 or association;

3 (7) For any employer or labor organization to refuse to
4 hire or employ, bar or discharge from employment,
5 withhold pay from, demote, or penalize a lactating
6 employee because the employee breastfeeds or expresses
7 milk at the workplace. For purposes of this
8 paragraph, the term "breastfeeds" means the feeding of
9 a child directly from the breast; ~~[or]~~

10 (8) For any employer to refuse to hire or employ, bar or
11 discharge from employment, or otherwise to
12 discriminate against any individual in compensation or
13 in the terms, conditions, or privileges of employment
14 of any individual because of the individual's credit
15 history or credit report, unless the information in
16 the individual's credit history or credit report
17 directly relates to a bona fide occupational
18 qualification under section 378-3(2) ~~[+]~~;

19 (9) For an employer to engage in unwelcome sexual
20 advances, requests for sexual favors, or other verbal
21 or physical conduct of a sexual nature to a domestic
22 worker when:



1 (A) Submission to the conduct is made either
2 explicitly or implicitly a term or condition of
3 an individual's employment;

4 (B) Submission to or rejection of the conduct by an
5 individual is used as the basis for employment
6 decisions affecting the individual; or

7 (C) The conduct has the purpose or effect of
8 unreasonably interfering with an individual's
9 work performance by creating an intimidating,
10 hostile, or offensive working environment; or

11 (10) For an employer to subject a domestic worker to
12 unwelcome harassment based on gender, race, religion
13 or national origin, where the harassment has the
14 purpose or effect of unreasonably interfering with an
15 individual's work performance by creating an
16 intimidating, hostile, or offensive working
17 environment.

18 (b) For purposes of subsection (a)(1):

19 (1) An employer may verify that an employee is a victim of
20 domestic or sexual violence by requesting that the
21 employee provide:



(A) A signed written statement from a person listed below from whom the employee or the employee's minor child has sought assistance in relation to the domestic or sexual violence:

(i) An employee, agent, or volunteer of a victim services organization;

(ii) The employee's attorney or advocate;

(iii) The attorney or advocate of the employee's minor child;

(iv) A medical or other health care professional; or

(v) A member of the clergy; or

(B) A police or court record supporting the occurrence of the domestic or sexual violence; and

(2) An employer may verify an employee's status as a domestic or sexual violence victim not more than once every six months following the date the employer:

(A) Was provided notice by the employee of the employee's status as a domestic or sexual violence victim;



1 (B) Has actual knowledge of the employee's status as
2 a domestic or sexual violence victim; or
3 (C) Received verification that the employee is a
4 domestic or sexual violence victim;
5 provided that where the employee provides verification
6 in the form of a protective order related to the
7 domestic or sexual violence with an expiration date,
8 the employer may not request any further form of
9 verification of the employee's status as a domestic or
10 sexual violence victim until the date of the
11 expiration or any extensions of the protective order,
12 whichever is later.

13 (c) For the purposes of this section, "domestic worker"
14 shall have the same meaning as in section 377-1."

15 SECTION 5. Section 387-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "employee" to read as
17 follows:

18 ""Employee" includes any individual employed by an
19 employer, but shall not include any individual employed:

20 (1) At a guaranteed compensation totaling \$2,000 or more a
21 month, whether paid weekly, biweekly, or monthly;



- 1 (2) In agriculture for any workweek in which the employer
2 of the individual employs less than twenty employees
3 or in agriculture for any workweek in which the
4 individual is engaged in coffee harvesting;
- 5 (3) In domestic service in or about the home of the
6 individual's employer on a casual basis, as defined in
7 section 377-1, or as a house parent in or about any
8 home or shelter maintained for child welfare purposes
9 by a charitable organization exempt from income tax
10 under section 501 of the federal Internal Revenue
11 Code;
- 12 (4) By the individual's brother, sister, brother-in-law,
13 sister-in-law, son, daughter, spouse, parent, or
14 parent-in-law;
- 15 (5) In a bona fide executive, administrative, supervisory,
16 or professional capacity or in the capacity of outside
17 salesperson or as an outside collector;
- 18 (6) In the propagating, catching, taking, harvesting,
19 cultivating, or farming of any kind of fish,
20 shellfish, crustacean, sponge, seaweed, or other
21 aquatic forms of animal or vegetable life, including
22 the going to and returning from work and the loading



1 and unloading of such products prior to first
2 processing;

3 (7) On a ship or vessel and who has a Merchant Mariners
4 Document issued by the United States Coast Guard;

5 (8) As a driver of a vehicle carrying passengers for hire
6 operated solely on call from a fixed stand;

7 (9) As a golf caddy;

8 (10) By a nonprofit school during the time such individual
9 is a student attending such school;

10 (11) In any capacity if by reason of the employee's
11 employment in such capacity and during the term
12 thereof the minimum wage which may be paid the
13 employee or maximum hours which the employee may work
14 during any workweek without the payment of overtime,
15 are prescribed by the federal Fair Labor Standards Act
16 of 1938, as amended, or as the same may be further
17 amended from time to time; provided that if the
18 minimum wage which may be paid the employee under the
19 Fair Labor Standards Act for any workweek is less than
20 the minimum wage prescribed by section 387-2, then
21 section 387-2 shall apply in respect to the employees
22 for such workweek; provided further that if the



1 maximum workweek established for the employee under
2 the Fair Labor Standards Act for the purposes of
3 overtime compensation is higher than the maximum
4 workweek established under section 387-3, then section
5 387-3 shall apply in respect to such employee for such
6 workweek; except that the employee's regular rate in
7 such an event shall be the employee's regular rate as
8 determined under the Fair Labor Standards Act;

9 (12) As a seasonal youth camp staff member in a resident
10 situation in a youth camp sponsored by charitable,
11 religious, or nonprofit organizations exempt from
12 income tax under section 501 of the federal Internal
13 Revenue Code or in a youth camp accredited by the
14 American Camping Association; or

15 (13) As an automobile salesperson primarily engaged in the
16 selling of automobiles or trucks if employed by an
17 automobile or truck dealer licensed under chapter
18 437."

19 SECTION 6. Section 386-1, Hawaii Revised Statutes, is
20 amended by amending the definition of "employment" to read as
21 follows:



1 ""Employment" means any service performed by an individual
2 for another person under any contract of hire or apprenticeship,
3 express or implied, oral or written, whether lawfully or
4 unlawfully entered into. It includes service of public
5 officials, whether elected or under any appointment or contract
6 of hire, express or implied. "Employment" includes the service
7 of domestic workers, as defined in section 377-1.

8 "Employment" does not include:

9 (1) Service for a religious, charitable, educational, or
10 nonprofit organization if performed in a voluntary or
11 unpaid capacity;

12 (2) Service for a religious, charitable, educational, or
13 nonprofit organization if performed by a recipient of
14 aid therefrom and the service is incidental to or in
15 return for the aid received;

16 (3) Service for a school, college, university, college
17 club, fraternity, or sorority if performed by a
18 student who is enrolled and regularly attending
19 classes and in return for board, lodging, or tuition
20 furnished, in whole or in part;

21 (4) Service performed by a duly ordained, commissioned, or
22 licensed minister, priest, or rabbi of a church in the



1 exercise of the minister's, priest's, or rabbi's
2 ministry or by a member of a religious order in the
3 exercise of nonsecular duties required by the order;

4 (5) Service performed by an individual for another person
5 solely for personal, family, or household purposes if
6 the cash remuneration received is less than \$225
7 during the current calendar quarter and during each
8 completed calendar quarter of the preceding twelve-
9 month period;

10 (6) Domestic, in-home and community-based services for
11 persons with developmental and intellectual
12 disabilities under the medicaid home and community-
13 based services program pursuant to Title 42 Code of
14 Federal Regulations sections 440.180 and 441.300, and
15 Title 42 Code of Federal Regulations, Part 434,
16 Subpart A, as amended, and identified as chore,
17 personal assistance and habilitation, residential
18 habilitation, supported employment, respite, and
19 skilled nursing services, as the terms are defined by
20 the department of human services, performed by an
21 individual whose services are contracted by a
22 recipient of social service payments and who



1 voluntarily agrees in writing to be an independent
2 contractor of the recipient of social service
3 payments;

4 (7) Service performed without wages for a corporation
5 without employees by a corporate officer in which the
6 officer is at least a twenty-five per cent
7 stockholder;

8 (8) Service performed by an individual for a corporation
9 if the individual owns at least fifty per cent of the
10 corporation; provided that no employer shall require
11 an employee to incorporate as a condition of
12 employment;

13 (9) Service performed by an individual for another person
14 as a real estate salesperson or as a real estate
15 broker, if all the service performed by the individual
16 for the other person is performed for remuneration
17 solely by way of commission;

18 (10) Service performed by a member of a limited liability
19 company if the member is an individual and has a
20 distributional interest, as defined in section 428-
21 101, of not less than fifty per cent in the company;
22 provided that no employer shall require an employee to



1 form a limited liability company as a condition of
2 employment;

3 (11) Service performed by a partner of a partnership, as
4 defined in section 425-101, if the partner is an
5 individual; provided that no employer shall require an
6 employee to become a partner or form a partnership as
7 a condition of employment;

8 (12) Service performed by a partner of a limited liability
9 partnership if the partner is an individual and has a
10 transferable interest as described in section 425-127
11 in the partnership of not less than fifty per cent;
12 provided that no employer shall require an employee to
13 form a limited liability partnership as a condition of
14 employment; and

15 (13) Service performed by a sole proprietor.

16 As used in this definition, "religious, charitable, educational,
17 or nonprofit organization" means a corporation, unincorporated
18 association, community chest, fund, or foundation organized and
19 operated exclusively for religious, charitable, or educational
20 purposes, no part of the net earnings of which inure to the
21 benefit of any private shareholder or individual."



SECTION 7. The department of labor and industrial relations shall report to the legislature no later than twenty days prior to the convening of the regular session of 2013 on the feasibility and practicality of allowing domestic workers to organize for the purposes of collective bargaining.

In preparing the report, the department of labor and industrial relations shall consult with representatives of domestic workers, individuals and agencies that employ domestic workers, and relevant state agencies. The report shall address:

- (1) The feasibility of an employee organization formed in accordance with the Hawaii employment relations act;
- (2) How bargaining units for domestic worker organizations could be formed; and
- (3) Whether there are any unique issues relating to collective bargaining for domestic workers and whether there are other possible frameworks for collective organization or for ensuring the benefits that accompany organization for domestic workers.

The report shall also determine the best means of providing easily accessible educational and informational material for domestic workers and their employers. The educational and



1 informational material shall cover employment benefits, tax, and
2 insurance laws.

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect upon its approval.

6

INTRODUCED BY:

B. Stearns

Karl Mundt

JAN 11 2012



Report Title:

Domestic Workers Bill of Rights; Report

Description:

Establishes rights for domestic workers. Directs DLIR to report on feasibility of allowing domestic workers to organize for the purposes of collective bargaining.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

