

S.B. NO. 2839

JAN 25 2012

A BILL FOR AN ACT

RELATING TO WAGES.

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

1 SECTION 1. Section 388-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "wages" to read as
3 follows:

4 ""Wages" means compensation for labor or services rendered
5 by an employee, whether the amount is determined on a time,
6 task, piece, commission, or other basis of calculation. It
7 shall include the:

8 (1) Vacation or personal time off pay earned in accordance
9 with the terms of any written agreement between an
10 employer and employee or under a written policy of the
11 employer; provided that, if the agreement or policy is
12 not in writing, then in accordance with the practice
13 of the employer as substantiated by corroborating
14 evidence.

15 (2) The reasonable cost, as determined by the director
16 under chapter 387, to the employer of furnishing an
17 employee with board, lodging, or other facilities if

1 such board, lodging, or other facilities are
2 customarily furnished by the employer to the
3 employer's employees but shall not include tips or
4 gratuities of any kind, provided that for the purposes
5 of section 388-6, "wages" shall include tips or
6 gratuities of any kind."

7 SECTION 2. Section 388-3, Hawaii Revised Statutes, is
8 amended by adding new language to Sections 388-3(a), (b), and (c)
9 to read as follows:

10 "**§388-3 Employees who are separated from the payroll**
11 **before paydays.** (a) Whenever an employer discharges an
12 employee either with or without cause, the employer shall pay
13 the employee's wages in full at the time of discharge or if the
14 discharge occurs at a time and under conditions which prevent an
15 employer from making immediate payment, then not later than the
16 working day following discharge. However, vacation and personal
17 time off pay shall not be required to be paid if the written
18 agreement between the employer and employee, or if the agreement
19 or policy is not in writing then the practice of the employer as
20 substantiated by corroborating evidence, does not require
21 payment upon separation.

1 (b) Whenever an employee quits or resigns, the employer
2 shall pay the employee's wages in full no later than the next
3 regular payday, as provided under section 388-2, either through
4 the regular pay channels or by mail if requested by the
5 employee, except that if the employee gives at least one pay
6 period's notice of intention to quit, the employer shall pay all
7 wages earned by the employee at the time of quitting. However,
8 vacation and personal time off pay shall not be required to be
9 paid if the written agreement between the employer and employee,
10 or if the agreement or policy is not in writing then the
11 practice of the employer as substantiated by corroborating
12 evidence, does not require payment upon separation.

13 (c) When work of an employee is suspended as a result of a
14 labor dispute, or when an employee for any reason whatsoever is
15 temporarily laid off, the employer shall pay in full to the
16 employee not later than the next regular payday, as designated
17 under section 388-2, either through the regular pay channels or
18 by mail if requested by the employee, wages earned at the time
19 of suspension or layoff. However, vacation and personal time off
20 pay shall not be required to be paid if the written agreement
21 between the employer and employee, or if the agreement or policy
22 is not in writing then the practice of the employer as

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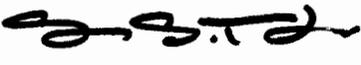
1 substantiated by corroborating evidence, does not require
2 payment upon separation.

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

5 SECTION 4. This Act shall take effect upon its approval.

6

7

INTRODUCED BY: 

8

BY REQUEST

S.B. NO. 2839

Report Title:

Wages; Definition of

Description:

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

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO WAGES.

PURPOSE: To clarify that promised vacation or personal time off earned is included in the definition of "wages."

MEANS: Amend section 388-1, and 388-3, Hawaii Revised Statutes.

JUSTIFICATION: The ambiguity as to whether the Wage Standards Division has authority to enforce a promised wage by employers that includes vacation or personal time off earned as "wages" has created uncertainty in the enforcement of unpaid wages. The amendment would allow enforcement of the promised vacation and "paid time off" as previously enforced prior to the Hawaii Supreme Court decision in Casumpang v. ILWU. The amendment makes clear that 108 Haw. 411 (2005) vacation or personal time off earned is included in "wages."

Impact on the public: The public will be able to get assistance from the Wage Standards Division to collect promised vacation or personal time off earned from employers.

Impact on the department and other agencies: Empowers the Wage Standards Division to assist members of the public in the recovery of unpaid wages that include promised vacation and paid time off.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LBR 152.

OTHER AFFECTED

AGENCIES: None.

EFFECTIVE DATE: Upon approval.