

JAN 19 2018

S.B. NO. 2013

A BILL FOR AN ACT

RELATING TO EMPLOYEES.

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

1 SECTION 1. The legislature finds that chapter 390, Hawaii
2 Revised Statutes, has long protected the right of minors to an
3 interval of at least thirty consecutive minutes for a rest or
4 lunch period if they work for more than five consecutive hours.
5 Furthermore, the legislature finds that Act 172, Session Laws of
6 Hawaii 1999, made it illegal for an employer to prohibit an
7 employee from expressing breastmilk during any meal period or
8 other break period required by law; however, state and federal
9 wage and hour laws currently do not require employers to provide
10 employees over the age of sixteen with any meal or rest period
11 no matter how many consecutive hours they may be required to
12 work. Employees who must work a full day or an eight-hour shift
13 regardless of age or sex should not be denied a reasonable
14 period of time to rest and consume a meal as commonly required
15 by other states such as California, Oregon, and Washington.
16 The legislature further finds that many of the State's
17 residents are denied suitable meal or rest breaks, and fear



1 reprisals from their employers if they take meal or rest breaks,
2 including elderly workers.

3 The purpose of this Act is to require employers to provide
4 scheduled meal breaks or rest periods for employees who work
5 more than five consecutive hours.

6 SECTION 2. Section 378-32, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) It shall be unlawful for any employer to suspend,
9 discharge, or discriminate against any of the employer's
10 employees:

11 (1) Solely because the employer was summoned as a
12 garnishee in a cause where the employee is the debtor
13 or because the employee has filed a petition in
14 proceedings for a wage earner plan under chapter XIII
15 of the Bankruptcy Act;

16 (2) Solely because the employee has suffered a work injury
17 which arose out of and in the course of the employee's
18 employment with the employer and which is compensable
19 under chapter 386 unless the employee is no longer
20 capable of performing the employee's work as a result
21 of the work injury and the employer has no other



1 available work which the employee is capable of
2 performing. Any employee who is discharged because of
3 the work injury shall be given first preference of
4 reemployment by the employer in any position which the
5 employee is capable of performing and which becomes
6 available after the discharge and during the period
7 thereafter until the employee secures new employment.
8 This paragraph shall not apply to any employer in
9 whose employment there are less than three employees
10 at the time of the work injury or who is a party to a
11 collective bargaining agreement which prevents the
12 continued employment or reemployment of the injured
13 employee;

14 (3) Because the employee testified or was subpoenaed to
15 testify in a proceeding under this part; ~~[or]~~

16 (4) Because an employee tested positive for the presence
17 of drugs, alcohol, or the metabolites of drugs in a
18 substance abuse on-site screening test conducted in
19 accordance with section 329B-5.5; provided that this
20 provision shall not apply to an employee who fails or



refuses to report to a laboratory for a substance
abuse test pursuant to section 329B-5.5[-]; or

(5) Solely because the employee took, was going to take,
requested, or was going to request a rest or bona fide
meal period as provided for at subsection 387-3(g)."

SECTION 3. Section 387-1, Hawaii Revised Statutes, is
amended by amending the definition of "employee" to read as
follows:

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

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

(2) In agriculture for any workweek in which the employer
of the individual employs less than twenty employees
or in agriculture for any workweek in which the
individual is engaged in coffee harvesting;

(3) In or about the home of the individual's employer:

(A) In domestic service on a casual basis; or

(B) Providing companionship services for the aged or
infirm;



- 1 (4) As a house parent in or about any home or shelter
2 maintained for child welfare purposes by a charitable
3 organization exempt from income tax under section 501
4 of the federal Internal Revenue Code;
- 5 (5) By the individual's brother, sister, brother-in-law,
6 sister-in-law, son, daughter, spouse, parent, or
7 parent-in-law;
- 8 (6) In a bona fide executive, administrative, supervisory,
9 or professional capacity or in the capacity of outside
10 salesperson or as an outside collector;
- 11 (7) In the propagating, catching, taking, harvesting,
12 cultivating, or farming of any kind of fish,
13 shellfish, crustacean, sponge, seaweed, or other
14 aquatic forms of animal or vegetable life, including
15 the going to and returning from work and the loading
16 and unloading of [~~such~~] these products prior to first
17 processing;
- 18 (8) On a ship or vessel and who has a Merchant Mariners
19 Document issued by the United States Coast Guard;
- 20 (9) As a driver of a vehicle carrying passengers for hire
21 operated solely on call from a fixed stand;



1 (10) As a golf caddy;

2 (11) By a nonprofit school during the time ~~[such]~~ the
3 individual is a student attending ~~[such]~~ the school;

4 ~~[(12) In any capacity if by reason of the employee's~~
5 ~~employment in such capacity and during the term~~
6 ~~thereof the minimum wage which may be paid the~~
7 ~~employee or maximum hours which the employee may work~~
8 ~~during any workweek without the payment of overtime,~~
9 ~~are prescribed by the federal Fair Labor Standards Act~~
10 ~~of 1938, as amended, or as the same may be further~~
11 ~~amended from time to time; provided that if the~~
12 ~~minimum wage which may be paid the employee under the~~
13 ~~Fair Labor Standards Act for any workweek is less than~~
14 ~~the minimum wage prescribed by section 387-2, then~~
15 ~~section 387-2 shall apply in respect to the employees~~
16 ~~for such workweek; provided further that if the~~
17 ~~maximum workweek established for the employee under~~
18 ~~the Fair Labor Standards Act for the purposes of~~
19 ~~overtime compensation is higher than the maximum~~
20 ~~workweek established under section 387-3, then section~~
21 ~~387-3 shall apply in respect to such employee for such~~



1 ~~workweek, except that the employee's regular rate in~~
2 ~~such an event shall be the employee's regular rate as~~
3 ~~determined under the Fair Labor Standards Act,~~

4 ~~(13)]~~ (12) As a seasonal youth camp staff member in a
5 resident situation in a youth camp sponsored by
6 charitable, religious, or nonprofit organizations
7 exempt from income tax under section 501 of the
8 federal Internal Revenue Code or in a youth camp
9 accredited by the American Camping Association; or

10 ~~[(14)]~~ (13) As an automobile salesperson primarily engaged
11 in the selling of automobiles or trucks if employed by
12 an automobile or truck dealer licensed under chapter
13 437."

14 SECTION 4. Section 387-3, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§387-3 Maximum hours. (a) No employer shall, except as
17 otherwise provided in this section, employ any employee for a
18 workweek longer than forty hours unless the employee receives
19 overtime compensation for the employee's employment in excess of
20 the hours above specified at a rate not less than one and one-
21 half times the regular rate at which the employee is employed.



For the purposes of this section~~[7]~~ :

(1) "Salary" means a predetermined wage, exclusive of the reasonable cost of board, lodging, or other facilities, at which an employee is employed each pay period; and

(2) If an employee performs two or more different kinds of work for the same employer, the total earnings for all ~~such~~ work for the pay period shall be considered to have been earned for performing one kind of work.

(b) The regular rate of an employee who is employed on a salary shall be computed as follows:

(1) If the employee is employed on a weekly salary, the weekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by forty~~[7]~~ ;

(2) If the employee is employed on a biweekly salary, the biweekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by two and the quotient divided by forty~~[7]~~ ;



1 (3) If the employee is employed on a semi-monthly salary,
2 the semi-monthly salary and the reasonable cost of
3 board, lodging, or other facilities, if furnished to
4 the employee, shall be multiplied by twenty-four, the
5 product divided by fifty-two and the quotient divided
6 by forty[-]; and

7 (4) If the employee is employed on a monthly salary, the
8 monthly salary and the reasonable cost of board,
9 lodging, or other facilities if furnished to the
10 employee, shall be multiplied by twelve, the product
11 divided by fifty-two and the quotient divided by
12 forty.

13 (c) The regular rate of an employee who is employed on a
14 salary and in addition receives other wages such as, but not
15 limited to, commissions, bonus, piecework pay, and hourly or
16 daily pay shall be computed [~~in the manner provided in this~~
17 ~~subsection. As used hereinabove, the term "other wages" shall~~
18 ~~not include the reasonable cost of board, lodging, or other~~
19 ~~facilities.~~] as follows:

20 (1) If the employee's salary and the reasonable cost of
21 board, lodging, or other facilities, if furnished to



1 the employee, equal or exceed fifty per cent of the
2 employee's total earnings for the pay period, the
3 total earnings shall be reduced to a regular rate in
4 the manner provided in paragraph (1), (2), (3), or (4)
5 of subsection (b), whichever is applicable[-]; or

6 (2) If the employee's salary and the reasonable cost of
7 board, lodging, or other facilities, if furnished to
8 the employee, are less than fifty per cent of the
9 employee's total earnings for the pay period, the
10 total earnings shall be reduced to a regular rate in
11 the manner provided in paragraph (1), (2), (3), or (4)
12 of subsection (b), whichever is applicable, except
13 that the actual number of hours worked in the workweek
14 shall be substituted for the final divisor of forty.
15 Such an employee shall receive overtime compensation
16 for employment in excess of forty hours in a workweek
17 at a rate not less than one-half times the employee's
18 regular rate.

19 As used in this subsection, the term "other wages" shall
20 not include the reasonable cost of board, lodging, or other
21 facilities.



1 (d) The regular rate of an employee whose compensation is
2 based on other than salary shall be computed in the manner
3 provided in paragraph (2) of subsection (c). The reasonable
4 cost of board, lodging, or other facilities, if furnished to the
5 employee, shall be included in computing the employee's regular
6 rate. Such an employee shall receive overtime compensation for
7 such employment in excess of forty hours in a workweek at a rate
8 not less than one-half times the employee's regular rate.

9 (e) An employer[7]:

10 (1) Who is engaged in agriculture and in the first
11 processing of milk, buttermilk, whey, skim milk, or
12 cream into dairy products, or in the processing of
13 sugar cane molasses or sugar cane into sugar (but not
14 refined sugar) or into syrup, or in the first
15 processing of or in canning or packing any
16 agricultural or horticultural commodity, or in
17 handling, slaughtering, or dressing poultry or
18 livestock;

19 (2) Who is engaged in agriculture and whose agricultural
20 products are processed by an employer who is engaged



1 in a seasonal pursuit or in processing, canning, or
2 packing operations referred to in paragraph (1); or

3 (3) Who is at any place of employment engaged primarily in
4 the first processing of, or in canning or packing
5 seasonal fresh fruits[+],

6 shall not be required to pay overtime compensation for hours in
7 excess of forty in a workweek to any of the employer's employees
8 during any of twenty different workweeks, as selected by the
9 employer, in any yearly period commencing July 1, for employment
10 in any place where the employer is so engaged. The employer,
11 however, shall pay overtime compensation for [such] employment
12 in excess of forty-eight hours in any [such] exempt workweek at
13 the rate and in the manner provided in subsections (a), (b), (c)
14 and (d), whichever is applicable, except that the word "forty-
15 eight" shall be substituted for the word "forty" wherever it
16 appears in subsections (b), (c), and (d).

17 (f) No employer shall employ any employee in split shifts
18 unless all of the shifts within a period of twenty-four hours
19 fall within a period of fourteen consecutive hours, except in
20 case of extraordinary emergency.



1 (g) No employee employed by an employer who employs fifty
2 or more employees shall be required to work more than five
3 continuous hours without a scheduled interval of at least thirty
4 minutes for a rest or bona fide meal period as defined in title
5 29 Code of Federal Regulations section 785.19, unless a
6 collective bargaining agreement otherwise contains express
7 provisions for employee meal breaks. This subsection shall not
8 apply to any employer who is the operator of a continuously
9 operating facility that is regulated by an environmental permit;
10 provided that an on-duty meal period is provided.

11 ~~[(g)]~~ (h) This section shall not apply to any overtime
12 hours worked by an employee of an air carrier subject to title
13 II of the Railway Labor Act, title 45 [U.S.C. section] United
14 States Code section 181 et seq.; provided [such] that the
15 overtime hours are the result of a voluntary agreement between
16 employees to exchange work time or days off."

17 SECTION 5. Section 387-12, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) Liability to employee. Any employer who violates any
20 provision of sections 387-2 and 387-3 shall be liable to the
21 employee or employees affected in the amount of their unpaid



1 minimum wages or unpaid overtime compensation, and in case of
2 wilful violation in an additional equal amount as liquidated
3 damages[-]; provided that any employer who does not provide a
4 rest or meal period, as required by section 387-3(g), shall be
5 liable to the employee affected in an amount equivalent to one
6 and one-half hours for each thirty-minute rest or meal period
7 not provided to the employee."

8 SECTION 6. Section 387-13, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§387-13 Right of collective bargaining protected.**

11 Nothing in this chapter shall be deemed to interfere with,
12 impede, or in any way diminish the right of employees to bargain
13 collectively through representatives of their own choosing in
14 order to establish wages in excess of the applicable minimum
15 under this chapter, to establish longer or more frequent rest or
16 bona fide meal periods than provided for under this chapter, or
17 to establish hours of work shorter than the applicable maximum
18 under this chapter."

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



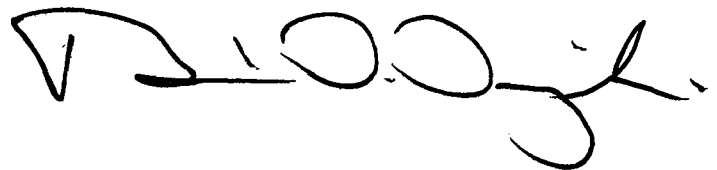
S.B. NO. 2093

1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

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A handwritten signature in black ink, appearing to be "D. O. O. J.", written in a cursive style.



S.B. NO. 2093

Report Title:

Employees; Wage and Hour Law; Meal Breaks

Description:

Requires employers with fifty or more individuals to allow rest or meal periods for employees that work more than five consecutive hours, with certain exceptions. Repeals the exclusion of persons whose employment is governed by the federal Fair Labor Standards Act from the definition of "employee" under the State's wage and hour law.

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