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# A BILL FOR AN ACT

RELATING TO THE WAGE AND HOUR LAW.

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

1           SECTION 1. The legislature finds that the Fair Labor  
2 Standards Act and Hawaii's wage and hour law were enacted to  
3 protect the health, efficiency, and general well-being of  
4 workers by prescribing minimum wage and overtime rates as well  
5 as employer recordkeeping provisions.

6           Federal and state laws provide some exemptions that are  
7 similar, such as the narrow exemptions in title 29 Code of  
8 Federal Regulations part 541 (Defining and Delimiting the  
9 Exemptions for Executive, Administrative, Professional, Computer  
10 and Outside Sales Employees) for certain employees, including  
11 those employed in bona fide executive, administrative, and  
12 professional capacities. Hawaii's corresponding law, chapter  
13 387, Hawaii Revised Statutes, provides similar exemptions that  
14 include those employed in bona fide executive, administrative,  
15 and professional capacities.

16           However, Hawaii's law also exempts any employee paid at a  
17 guaranteed compensation of \$2,000 or more a month. These



1 workers are not protected by minimum wage and overtime rates and  
2 their employers are not subject to the recordkeeping provisions  
3 of Hawaii's wage and hour law.

4 Accordingly, the purpose of this Act is to amend the  
5 definition of "employee" in Hawaii's wage and hour law by  
6 eliminating the exclusion of employees who receive guaranteed  
7 compensation totaling \$2,000 or more a month.

8 SECTION 2. Section 387-1, Hawaii Revised Statutes, is  
9 amended by amending the definition of "employee" to read as  
10 follows:

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

13 (1) [~~At a guaranteed compensation totaling \$2,000 or more~~  
14 ~~a month, whether paid weekly, biweekly, or monthly.~~

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

19 ~~[(3)]~~ (2) In or about the home of the individual's  
20 employer:

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



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

3 ~~[(4)]~~ (3) As a house parent in or about any home or shelter  
4 maintained for child welfare purposes by a charitable  
5 organization exempt from income tax under section 501  
6 of the federal Internal Revenue Code;

7 ~~[(5)]~~ (4) By the individual's [~~brother, sister, brother-in-~~  
8 ~~law, sister-in-law, son, daughter,~~] sibling,  
9 sibling-in-law, child, spouse, parent, or parent-in-  
10 law;

11 ~~[(6)]~~ (5) In a bona fide executive, administrative,  
12 supervisory, or professional capacity or in the  
13 capacity of outside salesperson or as an outside  
14 collector;

15 ~~[(7)]~~ (6) In the propagating, catching, taking, harvesting,  
16 cultivating, or farming of any kind of fish,  
17 shellfish, crustacean, sponge, seaweed, or other  
18 aquatic forms of animal or vegetable life, including  
19 the going to and returning from work and the loading  
20 and unloading of [~~such~~] those products [~~prior to~~]  
21 before first processing;



1        [~~(8)~~] (7) On a ship or vessel and who has a Merchant  
2                    Mariners Document issued by the United States Coast  
3                    Guard;

4        [~~(9)~~] (8) As a driver of a vehicle carrying passengers for  
5                    hire operated solely on call from a fixed stand;

6        [~~(10)~~] (9) As a golf caddy;

7        [~~(11)~~] (10) By a nonprofit school during the time [~~such~~] the  
8                    individual is a student attending [~~such~~] the school;

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



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

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

17       ~~[(14)]~~ (13) As an automobile salesperson primarily engaged  
18          in the selling of automobiles or trucks if employed by  
19          an automobile or truck dealer licensed under chapter  
20          437."



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

3 SECTION 4. This Act shall take effect on June 30, 3000.



**Report Title:**

Wage and Hour Law; Employee; Guaranteed Compensation; Employer Recordkeeping

**Description:**

Amends the definition of "employee" in Hawaii's wage and hour law by eliminating the exclusion of employees who receive guaranteed compensation totaling \$2,000 or more a month. Effective 6/30/3000. (HD2)

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

