

JAN 25 2023

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 exemptions in Title 29 Code of Federal
8 Regulations part 541 (Defining and Delimiting the Exemptions for
9 Executive, Administrative, Professional, Computer and Outside
10 Sales Employees) that provides narrow exemptions for certain
11 employees including those employed in bona fide executive,
12 administrative, and professional capacities. Hawaii's
13 corresponding law, chapter 387, Hawaii Revised Statutes,
14 provides similar exemptions including those employed in bona
15 fide executive, administrative, 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
18 workers are not protected by minimum wage and overtime rates and

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1 their employers are not subject to the recordkeeping provisions
2 of Hawaii's wage and hour law.

3 Accordingly, the purpose of this Act is to provide minimum
4 wage and overtime protections to these workers and subject their
5 employers to the recordkeeping provisions of the law by
6 eliminating the exclusion of employees who receive guaranteed
7 compensation totaling \$2,000 or more a month from the definition
8 of employee in Hawaii's wage and hour law.

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

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

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

16 [~~(2)~~] (1) In agriculture for any workweek in which the
17 employer of the individual employs less than twenty
18 employees or in agriculture for any workweek in which
19 the individual is engaged in coffee harvesting;

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

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- 1 (A) In domestic service on a casual basis; or
- 2 (B) Providing companionship services for the aged or
- 3 infirm;
- 4 [~~4~~] (3) As a house parent in or about any home or
- 5 shelter maintained for child welfare purposes by a
- 6 charitable organization exempt from income tax under
- 7 section 501 of the federal Internal Revenue Code;
- 8 [~~5~~] (4) By the individual's brother, sister, brother-in-
- 9 law, sister-in-law, son, daughter, spouse, parent, or
- 10 parent-in-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,
- 16 harvesting, cultivating, or farming of any kind of
- 17 fish, 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 products prior to first
- 21 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
8 individual is a student attending such school;

9 ~~[(12)]~~ (11) In any capacity if by reason of the employee's
10 employment in such capacity and during the term
11 thereof the minimum wage which may be paid the
12 employee or maximum hours which the employee may work
13 during any workweek without the payment of overtime,
14 are prescribed by the federal Fair Labor Standards Act
15 of 1938, as amended, or as the same may be further
16 amended from time to time; provided that if the
17 minimum wage which may be paid the employee under the
18 Fair Labor Standards Act for any workweek is less than
19 the minimum wage prescribed by section 387-2, then
20 section 387-2 shall apply in respect to the employees
21 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 ~~(13)~~ (12) As a seasonal youth camp staff member in a
10 resident situation in a youth camp sponsored by
11 charitable, religious, or nonprofit organizations
12 exempt from income tax under section 501 of the
13 federal Internal Revenue Code or in a youth camp
14 accredited by the American Camping Association; or

15 ~~(14)~~ (13) As an automobile salesperson primarily engaged
16 in the selling of automobiles or trucks if employed by
17 an automobile or truck dealer licensed under chapter
18 437."

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

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

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INTRODUCED BY: *MM N. JJ.*

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BY REQUEST

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Report Title:

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

Description:

Expands the coverage of employees and employers covered under the minimum wage, overtime, and recordkeeping requirements of chapter 387, Hawaii Revised Statutes, by deleting from the definition of "employee" employees guaranteed a monthly compensation of \$2,000 or more.

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 THE WAGE AND HOUR LAW.

PURPOSE: To amend the definition of "employee" to delete the exclusion from coverage under the wage and hour law for those paid at a guaranteed compensation of \$2,000 or more a month.

MEANS: Amend section 387-1, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The definition of employee in chapter 387, HRS, Hawaii's Wage and Hour Law, does not include those guaranteed a compensation of \$2,000 or more a month. These employees are not provided the protection of minimum or overtime wage rates. Their employers do not have to comply with recordkeeping provisions also designed to protect workers.

Amending the definition of employee to delete the exclusion for these workers will provide them with the protections afforded by the minimum wage rates, overtime rates, and recordkeeping protections that exist for employees and employers covered under wage and hour law.

Impact on the public: This bill will increase the number of workers protected by Hawaii's Wage and Hour Law and thereby promote the health, efficiency, and well-being of Hawaii's workforce.

Impact on the department and other agencies: This bill will necessitate rulemaking by the department.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR 152.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.