
A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. The legislature finds that according to the
2 National Conference of State Legislatures, nearly thirty states
3 have no rest break laws for adult workers. Of the states that
4 do have such laws, the requirements vary significantly. The
5 legislature further finds that Hawaii law requires an interval
6 of at least thirty consecutive minutes for a rest or lunch
7 period for no more than five continuous hours of work for minors
8 who are at least fourteen years old. Federal law under the
9 Patient Protection and Affordable Care Act requires employers to
10 provide reasonable break time for an employee to express breast
11 milk for her nursing child for one year after the child's birth
12 each time the employee has a need to express the milk. Hawaii
13 law prohibits employers from penalizing an employee who
14 breastfeeds or expresses milk at the workplace. However,
15 neither state law nor federal wage and hour law currently
16 requires employers to provide employees who are sixteen years of



1 age or older with any rest break no matter how many consecutive
2 hours an employee is required to work.

3 The legislature recognizes the benefits of rest breaks to
4 employees and the workplace though increased productivity and
5 stress reduction. Employees who must work a full day or eight-
6 hour shift or more should not be denied a reasonable period to
7 rest.

8 The purpose of this Act is to require employers with five
9 or more employees to provide rest breaks to employees under
10 certain conditions.

11 SECTION 2. Section 387-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§387-3 Maximum hours.** (a) No employer [~~shall~~], except
14 as otherwise provided in this section, shall employ any employee
15 for a workweek longer than forty hours unless the employee
16 receives overtime compensation for the employee's employment in
17 excess of the hours above specified at a rate not less than one
18 and one-half times the regular rate at which the employee is
19 employed.

20 For the purposes of this section[+]:[+]



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

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

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

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

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

20 (3) If the employee is employed on a semi-monthly salary,
21 the semi-monthly salary and the reasonable cost of



1 board, lodging, or other facilities, if furnished to
2 the employee, shall be multiplied by twenty-four, the
3 product divided by fifty-two and the quotient divided
4 by forty[-]; and

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

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

18 (1) If the employee's salary and the reasonable cost of
19 board, lodging, or other facilities, if furnished to
20 the employee, equal or exceed fifty per cent of the
21 employee's total earnings for the pay period, the



1 total earnings shall be reduced to a regular rate in
2 the manner provided in [~~paragraph~~] subsection (b) (1),
3 (2), (3), or (4) [~~of subsection (b),~~] whichever [~~is~~
4 ~~applicable.~~] applies; and

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

18 (d) The regular rate of an employee whose compensation is
19 based on other than salary shall be computed in the manner
20 provided in [~~paragraph (2) of~~] subsection [~~(c)~~] (c) (2). The
21 reasonable cost of board, lodging, or other facilities, if



1 furnished to the employee, shall be included in computing the
2 employee's regular rate. Such an employee shall receive
3 overtime compensation for such employment in excess of forty
4 hours in a workweek at a rate not less than one-half times the
5 employee's regular rate.

6 (e) An employer[~~+~~] who:

7 (1) [~~who is~~] Is engaged in agriculture and in the first
8 processing of milk, buttermilk, whey, skim milk, or
9 cream into dairy products, or in the processing of
10 sugar cane molasses or sugar cane into sugar (but not
11 refined sugar) or into syrup, or in the first
12 processing of or in canning or packing any
13 agricultural or horticultural commodity, or in
14 handling, slaughtering, or dressing poultry or
15 livestock;

16 (2) [~~who is~~] Is engaged in agriculture and whose
17 agricultural products are processed by an employer who
18 is engaged in a seasonal pursuit or in processing,
19 canning, or packing operations referred to in
20 paragraph (1); or



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

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

19 (g) Any employee who works six or more hours but less than
20 eight hours on a shift shall be permitted a rest break of twenty
21 minutes. An employer and employee may negotiate the terms of a



1 rest break, including the employee's option to take no rest
2 break. A rest break may be unpaid. An employee shall be
3 relieved of the employee's duties during any unpaid rest break.

4 For the purposes of this subsection, "employer" means any
5 person with five or more employees.

6 [~~g~~] (h) This section shall not apply to any overtime
7 hours worked by an employee of an air carrier subject to title
8 II of the Railway Labor Act, 45 U.S.C. section 181 et seq. ;
9 provided such overtime hours are the result of a voluntary
10 agreement between employees to exchange work time or days off."

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

13 SECTION 4. This Act shall take effect on July 1, 2023.

14

INTRODUCED BY:



JAN 19 2023



H.B. NO. 207

Report Title:

Employers; Employees; Rest Breaks

Description:

Requires employers with five or more employees to provide rest breaks under certain conditions.

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