
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. Effective October 1, 2022, the
4 legislature increased the minimum wage to \$12.00 per hour and
5 set \$2.00 per hour increases every two years thereafter,
6 beginning January 1, 2024, up through \$18.00 per hour beginning
7 January 1, 2028. The legislature finds that the \$2,000
8 guaranteed compensation would equate to \$11.54 per hour and
9 allow employers to convert hourly workers to salaried positions
10 and pay employees below the current minimum wage.

11 Accordingly, the purpose of this Act is to amend the
12 definition of "employee" in Hawaii's wage and hour law by
13 realigning the guaranteed compensation of \$2,000 or more to a
14 sum that is at least equal to the monthly earnings of an
15 individual who is compensated at the minimum wage rate pursuant
16 to section 387-2, Hawaii Revised Statutes.

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

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



- 1 (1) At a guaranteed compensation [~~totaling \$2,000 or more~~
2 ~~a month,~~] that is at least equal to the monthly
3 earnings of an individual who is compensated at the
4 minimum wage rate pursuant to section 387-2, whether
5 paid weekly, biweekly, or monthly;
- 6 (2) In agriculture for any workweek in which the employer
7 of the individual employs less than twenty employees
8 or in agriculture for any workweek in which the
9 individual is engaged in coffee harvesting;
- 10 (3) In or about the home of the individual's employer:
11 (A) In domestic service on a casual basis; or
12 (B) Providing companionship services for the aged or
13 infirm;
- 14 (4) As a house parent in or about any home or shelter
15 maintained for child welfare purposes by a charitable
16 organization exempt from income tax under section 501
17 of the federal Internal Revenue Code;
- 18 (5) By the individual's brother, sister, brother-in-law,
19 sister-in-law, son, daughter, spouse, parent, or
20 parent-in-law;



- 1 (6) In a bona fide executive, administrative, supervisory,
2 or professional capacity or in the capacity of outside
3 salesperson or as an outside collector;
- 4 (7) In the propagating, catching, taking, harvesting,
5 cultivating, or farming of any kind of fish,
6 shellfish, crustacean, sponge, seaweed, or other
7 aquatic forms of animal or vegetable life, including
8 the going to and returning from work and the loading
9 and unloading of such products prior to first
10 processing;
- 11 (8) On a ship or vessel and who has a Merchant Mariners
12 Document issued by the United States Coast Guard;
- 13 (9) As a driver of a vehicle carrying passengers for hire
14 operated solely on call from a fixed stand;
- 15 (10) As a golf caddy;
- 16 (11) By a nonprofit school during the time such individual
17 is a student attending such school;
- 18 (12) In any capacity if by reason of the employee's
19 employment in such capacity and during the term
20 thereof the minimum wage which may be paid the
21 employee or maximum hours which the employee may work



1 during any workweek without the payment of overtime,
2 are prescribed by the federal Fair Labor Standards Act
3 of 1938, as amended, or as the same may be further
4 amended from time to time; provided that if the
5 minimum wage which may be paid the employee under the
6 Fair Labor Standards Act for any workweek is less than
7 the minimum wage prescribed by section 387-2, then
8 section 387-2 shall apply in respect to the employees
9 for such workweek; provided further that if the
10 maximum workweek established for the employee under
11 the Fair Labor Standards Act for the purposes of
12 overtime compensation is higher than the maximum
13 workweek established under section 387-3, then section
14 387-3 shall apply in respect to such employee for such
15 workweek; except that the employee's regular rate in
16 such an event shall be the employee's regular rate as
17 determined under the Fair Labor Standards Act;

18 (13) As a seasonal youth camp staff member in a resident
19 situation in a youth camp sponsored by charitable,
20 religious, or nonprofit organizations exempt from
21 income tax under section 501 of the federal Internal



1 Revenue Code or in a youth camp accredited by the
2 American Camping Association; or
3 (14) As an automobile salesperson primarily engaged in the
4 selling of automobiles or trucks if employed by an
5 automobile or truck dealer licensed under chapter
6 437."

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

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

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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 realigning the guaranteed compensation of \$2,000 or more to a sum that is at least equal to the monthly earnings of an individual who is compensated at the minimum wage rate pursuant to section 387-2, Hawaii Revised Statutes. Effective 6/30/3000. (HD1)

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