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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. Chapter 387, Hawaii Revised Statutes, is  
2 amended by adding three new sections to be appropriately  
3 designated and to read as follows:

4           "§387-A Order of wage payment violation; appeal. (a)  
5 When the department, as a result of the department's own  
6 investigation, finds that a violation of this chapter or  
7 administrative rules adopted under this chapter has been  
8 committed and not corrected, the department shall issue an order  
9 of wage payment violation to the employer in violation. The  
10 order shall include any amount assessed pursuant to section  
11 387-12(a).

12           (b) The order of wage payment violation shall be final and  
13 conclusive unless within twenty days after a copy of the order  
14 of wage payment violation has been sent to the employer, the  
15 employer files a written notice of appeal with the director.

16           (c) A hearing on the written notice of appeal shall be  
17 held pursuant to chapter 91, by a hearings officer appointed by



1 the director, within thirty days of the filing of the notice of  
2 appeal. A decision stating the findings of fact and conclusions  
3 of law shall be rendered by the hearings officer within thirty  
4 days after the conclusion of the hearing.

5 (d) Any party to an appeal under this chapter may obtain  
6 judicial review of the decision issued by the hearings officer  
7 in the manner provided under chapter 91.

8 **§387-B Remittance of penalties.** Until the order of wage  
9 payment violation becomes final, the director may withdraw or  
10 modify the order of wage payment violation or remit all or any  
11 part of a penalty assessed if good cause is shown; provided that  
12 the employer in default complies with this chapter and the  
13 administrative rules adopted under this chapter.

14 **§387-C Enforcement of the order of wage payment violation.**  
15 The director may file in any court of competent jurisdiction in  
16 the jurisdiction in which the employer does business, a  
17 certified copy of the final order of wage payment violation.  
18 The court shall render a judgment in accordance with the final  
19 order of wage payment violation and notify the parties of the  
20 judgment. The judgment shall have the same effect, and all  
21 proceedings in relation to the judgment shall be the same, as



1 though the judgment had been rendered in an action duly heard  
2 and determined by the court, except that there shall be no  
3 appeal from the judgment."

4 SECTION 2. Section 371-12.5, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) There is established in the state treasury the labor  
7 law enforcement special fund into which shall be deposited:

8 (1) All penalties collected pursuant to section 387-C;

9 (2) All penalties collected pursuant to section  
10 387-12(a)(2);

11 [~~1~~] (3) All penalties collected pursuant to section  
12 388-9.7;

13 [~~2~~] (4) All penalties collected pursuant to section  
14 388-10;

15 [~~3~~] (5) All civil penalties assessed pursuant to section  
16 396-10;

17 [~~4~~] (6) Moneys appropriated by the legislature to the  
18 fund; and

19 [~~5~~] (7) Any income and capital gains earned by the fund."

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



1        ""Wage" means (except as the department may provide under  
2 section 387-11) legal tender of the United States or checks on  
3 banks convertible into cash on demand at full face value thereof  
4 as compensation for labor or services rendered by an employee,  
5 whether the amount is determined on a time, task, piece,  
6 commission, or other basis of calculation, and in addition  
7 thereto the reasonable cost as determined by the department, to  
8 the employer of furnishing an employee with board, lodging, or  
9 other facilities if [~~such~~] the board, lodging, or other  
10 facilities are customarily furnished by [~~such~~] the employer to  
11 the employer's employees. Except for the purposes of the last  
12 sentence of section 387-2, "wage" shall not include tips or  
13 gratuities of any kind."

14        SECTION 4. Section 387-12, Hawaii Revised Statutes, is  
15 amended to read as follows:

16        "**§387-12 Penalties; collection of unpaid wages;**  
17 **injunctions; etc.** (a) Civil. Any employer who fails to pay  
18 wages in accordance with this chapter without equitable  
19 justification or violates this chapter or the administrative  
20 rules adopted under this chapter shall be liable:



- 1        (1) To the employee, in addition to the wages legally  
2        proven to be due, for a sum equal to the amount of  
3        unpaid wages and interest at a rate of six per cent  
4        per year from the date that the wages were due; and  
5        (2) For a penalty of no less than \$500 or \$100 for each  
6        violation, whichever is greater. The penalty shall be  
7        deposited into the labor law enforcement special fund.

8        [~~a~~] (b) Criminal.

- 9        (1) Any person divulging information in violation of  
10       section 387-8;  
11       (2) Any employer who wilfully violates this chapter or  
12       [~~e~~] any rule, regulation, or order issued under the  
13       authority of this chapter; or  
14       (3) Any employer or the employer's agent or any officer or  
15       agent of a corporation who discharges or in any other  
16       manner discriminates against any employee because the  
17       employee has made a complaint to the employee's  
18       employer, to the director, or to any other person that  
19       the employee has not been paid wages in accordance  
20       with this chapter, or has instituted or caused to be  
21       instituted any proceeding under or related to this



1 chapter, or has testified or is about to testify in  
2 any ~~such~~ proceedings,  
3 shall be guilty of a misdemeanor and, upon conviction  
4 thereof, shall be subject to a fine of ~~not~~ no less than  
5 \$500 nor more than \$5,000, or by imprisonment for a period  
6 not to exceed one year, or by both fine and imprisonment;  
7 and

8 (4) Any employer or the employer's agent or any officer or  
9 agent of a corporation who pays or agrees to pay any  
10 employee compensation less than that which the  
11 employee is entitled to under this chapter, shall be  
12 guilty of a class C felony and, notwithstanding  
13 section 706-640, be subject to a fine of ~~not~~ no less  
14 than \$500 per offense; provided that each violation  
15 shall be deemed a separate offense.

16 ~~[(b) Liability to employee. Any employer who violates any~~  
17 ~~provision of sections 387-2 and 387-3 shall be liable to the~~  
18 ~~employee or employees affected in the amount of their unpaid~~  
19 ~~minimum wages or unpaid overtime compensation, and in case of~~  
20 ~~wilful violation in an additional equal amount as liquidated~~  
21 ~~damages.]~~



1 (c) Collection suits; attorney's fee; assignments; relief  
2 from costs. Action to recover [~~such~~] the liability may be  
3 maintained in any court of competent jurisdiction by any one or  
4 more employees for and in behalf of oneself or themselves and  
5 other employees similarly situated, or the employee or employees  
6 may designate an agent or representative to maintain action for  
7 and in behalf of all employees similarly situated. The court in  
8 [~~such~~] the action shall, in addition to any judgment awarded to  
9 the plaintiff or plaintiffs, in the event the plaintiff or  
10 plaintiffs prevail, allow a reasonable attorney's fee to be paid  
11 by the defendant and costs of the action. At the request of any  
12 person paid less than the amount to which the person is entitled  
13 under this chapter, the director may take an assignment in trust  
14 for the assigning employee of the full amount to which the  
15 employee is entitled under this subsection and may bring any  
16 legal or administrative action necessary to collect the claim,  
17 and the employer shall be required to pay the costs and [~~such~~]  
18 reasonable [~~attorney's~~] attorneys' fees as may be allowed by the  
19 court or administrative agency in the event the director  
20 prevails. The director shall not be required to pay the filing  
21 fee or other costs in connection with [~~such~~] the action,



1 including the opposing party's attorney's fees and costs. The  
2 director, in case of suit, may join various claimants against  
3 the same employer in one cause of action. The right provided by  
4 this subsection to bring an action by or on behalf of any  
5 employee, and the right of any employee to become a party  
6 plaintiff to any [~~such~~] the action, shall terminate upon the  
7 filing of a complaint or commencement of an administrative  
8 proceeding by the director in an action in which restraint is  
9 sought of any further delay in the payment of unpaid minimum  
10 wages, or the amount of unpaid overtime compensation owing to  
11 the employee under section 387-2 or 387-3 by an employer liable  
12 therefor under this section.

13 (d) Injunctions.

14 (1) Whenever it appears to the director that any employer  
15 is engaged in any act or practice [~~which~~] that  
16 constitutes or will constitute a violation of this  
17 chapter, or of any regulation, the director may in the  
18 director's discretion bring an action in the circuit  
19 court of the circuit in which it is charged the act or  
20 practice complained of occurred to enjoin the act or  
21 practice and to enforce compliance with this chapter



1 or with the regulation, and upon a proper showing, a  
2 permanent or temporary injunction or decree or  
3 restraining order shall be granted without bond.

4 (2) The circuit courts shall have jurisdiction, for cause  
5 shown, to restrain any withholding of payment of  
6 minimum wages or overtime compensation found by the  
7 court to be due to employees under section 387-2 or  
8 387-3.

9 (e) Restitution of illegal deductions; effect of.

10 Whenever in the course of an inspection made for the purposes of  
11 this chapter it is determined that there has been an illegal  
12 deduction of wages under chapter 388, the director or the  
13 director's authorized representative may secure restitution of  
14 [~~such~~] the deductions. If the restitution is made, no  
15 prosecution under chapter 388 shall be instituted or  
16 maintained."

17 SECTION 5. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20 SECTION 6. In codifying the new sections added by section  
21 1 and referenced in section 2 of this Act, the revisor of



1 statutes shall substitute appropriate section numbers for the  
2 letters used in designating or referring to the new sections in  
3 this Act.

4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 3000.



**Report Title:**

DLIR; Order of Wage Payment Violation; Wage and Hour Law;  
Enforcement; Penalties

**Description:**

Requires the Department of Labor and Industrial Relations to issue an order of wage payment violation to employers found to be in violation of the State's Wage and Hour Law. Establishes penalties, enforcement, and appeal procedures. Amends the definition of "wage" to clarify that it means compensation for labor or services rendered by an employee, regardless of how it is calculated. Effective 7/1/3000. (HD1)

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

