
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 in
16 writing.



1 (c) A hearing on the written notice of appeal shall be
2 held pursuant to chapter 91, by a hearings officer appointed by
3 the director, within thirty days of the filing of the notice of
4 appeal. A decision stating the findings of fact and conclusions
5 of law shall be rendered by the hearings officer within thirty
6 days after the conclusion of the hearing.

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

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

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



1 judgment. The judgment shall have the same effect, and all
2 proceedings in relation to the judgment shall be the same, as
3 though the judgment had been rendered in an action duly heard
4 and determined by the court, except that there shall be no
5 appeal from the judgment."

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

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

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

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

13 ~~[(1)]~~ (3) All penalties collected pursuant to section
14 388-9.7;

15 ~~[(2)]~~ (4) All penalties collected pursuant to section
16 388-10;

17 ~~[(3)]~~ (5) All civil penalties assessed pursuant to section
18 396-10;

19 ~~[(4)]~~ (6) Moneys appropriated by the legislature to the
20 fund; and

21 ~~[(5)]~~ (7) Any income and capital gains earned by the fund."



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

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

16 SECTION 4. Section 387-12; Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§387-12 Penalties; collection of unpaid wages;
19 injunctions; etc. (a) Civil. Any employer who fails to pay
20 wages in accordance with this chapter without equitable



1 justification or violates this chapter or the administrative
2 rules adopted under this chapter shall be liable:

3 (1) To the employee, in addition to the wages legally
4 proven to be due, for a sum equal to the amount of
5 unpaid wages and interest at a rate of six per cent
6 per year from the date that the wages were due; and

7 (2) For a penalty of not less than \$500 or \$100 for each
8 violation, whichever is greater. The penalty shall be
9 deposited into the labor law enforcement special fund.

10 [~~a~~] (b) Criminal.

11 (1) Any person divulging information in violation of
12 section 387-8;

13 (2) Any employer who wilfully violates this chapter or
14 ~~of~~ any rule, regulation, or order issued under the
15 authority of this chapter; or

16 (3) Any employer or the employer's agent or any officer or
17 agent of a corporation who discharges or in any other
18 manner discriminates against any employee because the
19 employee has made a complaint to the employee's
20 employer, to the director, or to any other person that
21 the employee has not been paid wages in accordance



1 with this chapter, or has instituted or caused to be
2 instituted any proceeding under or related to this
3 chapter, or has testified or is about to testify in
4 any [such] proceedings,

5 shall be guilty of a misdemeanor and, upon conviction
6 thereof, shall be subject to a fine of not less than \$500
7 nor more than \$5,000, or by imprisonment for a period not
8 to exceed one year; or by both fine and imprisonment; and

9 (4) Any employer or the employer's agent or any officer or
10 agent of a corporation who pays or agrees to pay any
11 employee compensation less than that which the
12 employee is entitled to under this chapter, shall be
13 guilty of a class C felony and, notwithstanding
14 section 706-640, be subject to a fine of not less than
15 \$500 per offense; provided that each violation shall
16 be deemed a separate offense.

17 ~~[(b) Liability to employee. Any employer who violates any~~
18 ~~provision of sections 387-2 and 387-3 shall be liable to the~~
19 ~~employee or employees affected in the amount of their unpaid~~
20 ~~minimum wages or unpaid overtime compensation, and in case of~~



1 ~~wilful violation in an additional equal amount as liquidated~~
2 ~~damages.]~~

3 (c) Collection suits; attorney's fee; assignments; relief
4 from costs. Action to recover [~~such~~] liability may be
5 maintained in any court of competent jurisdiction by any one or
6 more employees for and in behalf of oneself or themselves and
7 other employees similarly situated, or the employee or employees
8 may designate an agent or representative to maintain action for
9 and in behalf of all employees similarly situated. The court in
10 [~~such~~] the action shall, in addition to any judgment awarded to
11 the plaintiff or plaintiffs, in the event the plaintiff or
12 plaintiffs prevail, allow a reasonable attorney's fee to be paid
13 by the defendant and costs of the action. At the request of any
14 person paid less than the amount to which the person is entitled
15 under this chapter, the director may take an assignment in trust
16 for the assigning employee of the full amount to which the
17 employee is entitled under this subsection and may bring any
18 legal or administrative action necessary to collect the claim,
19 and the employer shall be required to pay the costs and [~~such~~]
20 reasonable [~~attorney's~~] attorneys' fees as may be allowed by the
21 court or administrative agency in the event the director



1 prevails. The director shall not be required to pay the filing
2 fee or other costs in connection with [~~such~~] the action,
3 including the opposing party's attorney's fees and costs. The
4 director, in case of suit, may join various claimants against
5 the same employer in one cause of action. The right provided by
6 this subsection to bring an action by or on behalf of any
7 employee, and the right of any employee to become a party
8 plaintiff to any [~~such~~] the action, shall terminate upon the
9 filing of a complaint or commencement of an administrative
10 proceeding by the director in an action in which restraint is
11 sought of any further delay in the payment of unpaid minimum
12 wages, or the amount of unpaid overtime compensation owing to
13 the employee under section 387-2 or 387-3 by an employer liable
14 therefor under this section.

15 (d) Injunctions.

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



1 practice complained of occurred to enjoin the act or
2 practice and to enforce compliance with this chapter
3 or with the regulation, and upon a proper showing, a
4 permanent or temporary injunction or decree or
5 restraining order shall be granted without bond.

6 (2) The circuit courts shall have jurisdiction, for cause
7 shown, to restrain any withholding of payment of
8 minimum wages or overtime compensation found by the
9 court to be due to employees under section 387-2 or
10 387-3.

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

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

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



1 SECTION 6. In codifying the new sections added by section
2 1 and referenced in section 2 of this Act, the revisor of
3 statutes shall substitute appropriate section numbers for the
4 letters used in designating or referring to the new sections in
5 this Act.

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

8 SECTION 8. This Act shall take effect upon its approval.



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. (SD1)

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

