

JAN 16 2025

A BILL FOR AN ACT

RELATING TO WAGES.

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

SECTION 1. Chapter 387, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

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

(b) The order of wage payment violation shall be final and
conclusive unless within twenty days after a copy of the order
of wage payment violation has been sent to the employer, the
employer files a written notice of appeal with the director in
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- 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- Enforcement of the order of wage payment**
17 **violation.** The director may file in the circuit court in the
18 jurisdiction in which the employer does business, a certified
19 copy of the final order of wage payment violation. The court
20 shall render a judgement in accordance with the final order of
21 wage payment violation and notify the parties of the judgment.



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

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

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



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

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

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

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

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

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

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



1 (3) Any employer or the employer's agent or any officer or
2 agent of a corporation who discharges or in any other
3 manner discriminates against any employee because the
4 employee has made a complaint to the employee's
5 employer, to the director, or to any other person that
6 the employee has not been paid wages in accordance
7 with this chapter, or has instituted or caused to be
8 instituted any proceeding under or related to this
9 chapter, or has testified or is about to testify in
10 any such proceedings[7] or

11 (4) Any employer or the employer's agent or any officer or
12 agent of a corporation who pays or agrees to pay any
13 employee compensation less than that which the
14 employee is entitled to under this chapter,

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

19 ~~(4) Any employer or the employer's agent or any officer or~~
20 ~~agent of a corporation who pays or agrees to pay any~~
21 ~~employee compensation less than that which the~~



1 ~~employee is entitled to under this chapter, shall be~~
2 ~~guilty of a class C felony and, notwithstanding~~
3 ~~section 706 640, be subject to a fine of not less than~~
4 ~~\$500 per offense; provided that each violation shall~~
5 ~~be deemed a separate offense].~~

6 ~~[(b) Liability to employee. Any employer who violates any~~
7 ~~provision of sections 387 2 and 387 3 shall be liable to the~~
8 ~~employee or employees affected in the amount of their unpaid~~
9 ~~minimum wages or unpaid overtime compensation, and in case of~~
10 ~~wilful violation in an additional equal amount as liquidated~~
11 ~~damages.]~~

12 (c) Collection suits; attorney's fee; assignments; relief
13 from costs. Action to recover such liability may be maintained
14 in any court of competent jurisdiction by any one or more
15 employees for and ~~[in]~~ on behalf of oneself or themselves and
16 other employees similarly situated, or the employee or employees
17 may designate an agent or representative to maintain action for
18 and ~~[in]~~ on behalf of all employees similarly situated. The
19 court in such action shall, in addition to any judgment awarded
20 to the plaintiff or plaintiffs, in the event the plaintiff or
21 plaintiffs prevail, allow a reasonable attorney's fee to be paid



1 by the defendant and costs of the action. At the request of any
2 person paid less than the amount to which the person is entitled
3 under this chapter, the director may take an assignment in trust
4 for the assigning employee of the full amount to which the
5 employee is entitled under this subsection and may bring any
6 legal action necessary to collect the claim, and the employer
7 shall be required to pay the costs and such reasonable
8 attorney's fees as may be allowed by the court in the event the
9 director prevails. The director shall not be required to pay
10 the filing fee or other costs in connection with such action,
11 including the opposing party's attorney's fees and costs. The
12 director, in case of suit, may join various claimants against
13 the same employer in one cause of action. The right provided by
14 this subsection to bring an action by or on behalf of any
15 employee, and the right of any employee to become a party
16 plaintiff to any such action, shall terminate upon the filing of
17 a complaint by the director in an action in which restraint is
18 sought of any further delay in the payment of unpaid minimum
19 wages, or the amount of unpaid overtime compensation owing to
20 the employee under section 387-2 or 387-3 by an employer liable
21 therefor under this section.



1 (d) Injunctions.

2 (1) Whenever it appears to the director that any employer
3 is engaged in any act or practice which constitutes or
4 will constitute a violation of this chapter, or of any
5 regulation, the director may in the director's
6 discretion bring an action in the circuit court of the
7 circuit in which it is charged the act or practice
8 complained of occurred to enjoin the act or practice
9 and to enforce compliance with this chapter or with
10 the regulation, and upon a proper showing, a permanent
11 or temporary injunction or decree or restraining order
12 shall be granted without bond.

13 (2) The circuit courts shall have jurisdiction, for cause
14 shown, to restrain any withholding of payment of
15 minimum wages or overtime compensation found by the
16 court to be due to employees under section 387-2 or
17 387-3.

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

19 Whenever in the course of an inspection made for the purposes of
20 this chapter it is determined that there has been an illegal
21 deduction of wages under chapter 388, the director or the



1 director's authorized representative may secure restitution of
2 such deductions. If the restitution is made, no prosecution
3 under chapter 388 shall be instituted or maintained."

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

6 SECTION 5. This Act shall take effect upon its approval.

7

INTRODUCED BY:

20A2-



S.B. NO. 461

Report Title:

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

Description:

Requires the Department of Labor and Industrial Relations to issue an order of wage payment violation to employers in violation of the State's Wages and Hour Law. Establishes penalties, enforcement, and appeal procedures related to orders of payment violations. Amends the definition of "wage" under the State's Wage and Hour Law to clarify that it means compensation for labor or services rendered by an employee regardless of how it is calculated.

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

