

ACT 89

H.B. NO. 2812-76

A Bill for an Act Relating to Exemption from Minimum Wage Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 387-1, Hawaii Revised Statutes, is amended by amending the definition of "employee" to read:

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

- (1) At a guaranteed compensation totaling \$700 or more a month, whether paid weekly, biweekly, or monthly;
- (2) In agriculture for any workweek in which the employer of the individual employs less than twenty employees or in agriculture for any workweek in which the individual is engaged in coffee harvesting;
- (3) In domestic service in or about the home of his employer or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
- (4) By his brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law;

- (5) In a bona fide executive, administrative, supervisory, or professional capacity or in the capacity of outside salesman, or as an outside collector;
- (6) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- (7) As a seaman;
- (8) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- (9) As a golf caddy;
- (10) By a nonprofit school during the time such individual is a student attending such school;
- (11) In any capacity if by reason of his employment in such capacity and during the term thereof the minimum wage which may be paid the employee or maximum hours which the employee may work during any workweek without the payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as amended, or as the same may be further amended from time to time; provided, that if the minimum wage which may be paid the employee under the Fair Labor Standards Act for any workweek is less than the minimum wage prescribed by section 387-2 then section 387-2 shall apply in respect to the employees for such workweek; provided further, that if the maximum workweek established for the employee under the Fair Labor Standards Act for the purposes of overtime compensation is higher than the maximum workweek established under section 387-3, then section 387-3 shall apply in respect to such employee for such workweek; except that the employee's regular rate in such an event shall be his regular rate as determined under the Fair Labor Standards Act; or
- (12) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or non-profit organizations exempt from income tax under section 501 of the federal Internal Revenue Code or in a youth camp accredited by the American Camping Association.

"Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are employed.

"Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$20.00 a month in tips.

"Wage" means (except as the department may provide under section 387-11) legal tender of the United States or checks on banks convertible into cash on demand at full face value thereof and in addition thereto the reasonable cost as determined by the department, to the employer of furnishing an employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to his employees. Except for the purposes of the last sentence of Section 387-2, "wage" shall not include tips or

gratuities of any kind.

“Week” or “workweek” means a fixed and regularly recurring period of seven consecutive days.

“Agriculture” means agriculture as defined in section 3(f) of the Federal Fair Labor Standards Act of 1938, or as the same may be amended from time to time.

“Seasonal pursuit” means one in which it is customary in each year for the volume of employment in such pursuit to be substantially increased during a regularly recurring period or periods of seasonal activity, and in the remainder of the year, owing to climate or other natural conditions, for the volume of the employment to be substantially decreased. Periods of seasonal activity shall be considered as “regularly recurring”, within the meaning of this paragraph, notwithstanding that such periods may vary from year to year.

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 12, 1976.)

*Edited accordingly.