

ACT 158

S.B. NO. 2495

A Bill for an Act Relating to Wage and Hour Law.

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

SECTION 1. The legislature finds that the airline industry is an integral and growing part of the State's economy. As an island state, it is vital for Hawaii to encourage and support the airline industry. The legislature further finds that airlines need the flexibility to accommodate employee hours of work and operational needs of airlines in scheduling work.

The purpose of this Act is to exempt employees of qualified airlines from the wage and hour law.

SECTION 2. Section 387-3, Hawaii Revised Statutes, is amended to read as follows:

“§387-3 Maximum hours. (a) No employer shall, except as otherwise provided in this section, employ any employee for a workweek longer than forty hours unless the employee receives overtime compensation for the employee's employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which the employee is employed.

For the purposes of this section,

- (1) “Salary” means a predetermined wage, exclusive of the reasonable cost of board, lodging, or other facilities, at which an employee is employed each pay period;
- (2) If an employee performs two or more different kinds of work for the same employer, the total earnings for all such work for the pay period shall be considered to have been earned for performing one kind of work.

(b) The regular rate of an employee who is employed on a salary shall be computed as follows:

- (1) If the employee is employed on a weekly salary, the weekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by forty.
- (2) If the employee is employed on a biweekly salary, the biweekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by two and the quotient divided by forty.
- (3) If the employee is employed on a semi-monthly salary, the semi-monthly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be multiplied by twenty-four, the product divided by fifty-two and the quotient divided by forty.
- (4) If the employee is employed on a monthly salary, the monthly salary and the reasonable cost of board, lodging, or other facilities if furnished to the employee, shall be multiplied by twelve, the product divided by fifty-two and the quotient divided by forty.

(c) The regular rate of an employee who is employed on a salary and in addition receives other wages such as, but not limited to, commissions, bonus, piecework pay, and hourly or daily pay shall be computed in the manner provided in this subsection. As used hereinabove, the term "other wages" shall not include the reasonable cost of board, lodging, or other facilities.

- (1) If the employee's salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, equal or exceed fifty per cent of the employee's total earnings for the pay period, the total earnings shall be reduced to a regular rate in the manner provided in paragraph (1), (2), (3), or (4) of subsection (b), whichever is applicable.
- (2) If the employee's salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, are less than fifty per cent of the employee's total earnings for the pay period, the total earnings shall be reduced to a regular rate in the manner provided in paragraph (1), (2), (3), or (4) of subsection (b), whichever is applicable, except that the actual number of hours worked in the workweek shall be substituted for the final divisor of forty. Such an employee shall receive overtime compensation for employment in excess of forty hours in a workweek at a rate not less than one-half times the employee's regular rate.

(d) The regular rate of an employee whose compensation is based on other than salary shall be computed in the manner provided in paragraph (2) of subsection (c). The reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be included in computing the employee's regular rate. Such an employee shall receive overtime compensation for such employment in excess of forty hours in a workweek at a rate not less than one-half times the employee's regular rate.

(e) An employer,

- (1) Who is engaged in agriculture and in the first processing of milk, buttermilk, whey, skim milk, or cream into dairy products, or in the processing of sugar cane molasses or sugar cane into sugar (but not refined sugar) or into syrup, or in the first processing of or in canning or packing any agricultural or horticultural commodity, or in handling, slaughtering, or dressing poultry or livestock; or
- (2) Who is engaged in agriculture and whose agricultural products are processed by an employer who is engaged in a seasonal pursuit or in processing, canning, or packing operations referred to in paragraph (1); or

(3) Who is at any place of employment engaged primarily in the first processing of, or in canning or packing seasonal fresh fruits; shall not be required to pay overtime compensation for hours in excess of forty in a workweek to any of the employer's employees during any of twenty different workweeks, as selected by the employer, in any yearly period commencing July 1, for employment in any place where the employer is so engaged. The employer, however, shall pay overtime compensation for such employment in excess of forty-eight hours in any such exempt workweek at the rate and in the manner provided in subsections (a), (b), (c) and (d), whichever is applicable, except that the word "forty-eight" shall be substituted for the word "forty" wherever it appears in subsections (b), (c), and (d).

(f) No employer shall employ any employee in split shifts unless all of the shifts within a period of twenty-four hours fall within a period of fourteen consecutive hours, except in case of extraordinary emergency.

(g) This section shall not apply to any overtime hours worked by an employee of an air carrier subject to Title II of the Railway Labor Act, 45 U.S.C. section 181 et seq.; provided such overtime hours are the result of a voluntary agreement between employees to exchange work time or days off."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 13, 1998.)