

ACT 240

S.B. NO. 294

A Bill for an Act Relating to Employment.

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

SECTION 1. The legislature finds that a job should be a bridge out of poverty, an opportunity to make a living by working. But for minimum wage workers, especially those with families, it is not. The inflation-adjusted value of the minimum wage is twenty-four per cent lower today than it was in 1979. If the minimum wage kept pace with inflation since 1968, when it was \$1.60 an hour, the minimum wage would be \$8.46 an hour in 2003.

Nationally, about three and a half million workers worked full-time and year-round in 1999, yet they and their families lived in poverty. A 2001 United States Conference of Mayors study found that thirty-seven per cent of adults seeking emergency food aid were employed. Officials in sixty-three per cent of the cities surveyed identified low-paying jobs as a primary cause of hunger.

The legislature finds that the recent increases in minimum wage have not restored the lost value. Nor has the economy remained static. The State cannot boast of low unemployment when so many must work two jobs just to make ends meet.

The purpose of this Act is to raise the minimum wage and to clarify the definition of seaman, as it applies to the definition of "employee" under chapter 387, Hawaii Revised Statutes.

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

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

- (1) At a guaranteed compensation totaling \$2,000 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 the individual’s 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 the individual’s 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 salesperson or as an outside collector;
- (6) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponge, seaweed, 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:] On a ship or vessel and who has a Merchant Mariners Document issued by the United States Coast Guard;
- (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 the employee’s 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 the employee’s regular rate as determined under the Fair Labor Standards Act;
- (12) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit 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; or
- (13) As an automobile salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.”

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

“§387-2 Minimum wages. Except as provided in section 387-9 and this section, every employer shall pay to each employee employed by the employer, wages at the rate of not less than:

- ~~[(1) \$5.25 per hour beginning January 1, 1993;~~
- ~~(2) \$5.75 per hour beginning January 1, 2002; and~~
- ~~(3)] (1) \$6.25 per hour beginning January 1, 2003[-];~~
- (2) \$6.75 per hour beginning January 1, 2006; and
- (3) \$7.25 per hour beginning January 1, 2007.

The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than 25 cents below the applicable minimum wage by the employee’s employer and the combined amount the employee receives from the employee’s employer and in tips is at least 50 cents more than the applicable minimum wage.”

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

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

(Became law on July 12, 2005, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)