
A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Section 387-3, Hawaii Revised Statutes, is
2 amended to read as follows:

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

9 For the purposes of this section,

10 (1) "Salary" means a predetermined wage, exclusive of the
11 reasonable cost of board, lodging, or other
12 facilities, at which an employee is employed each pay
13 period;

14 (2) If an employee performs two or more different kinds of
15 work for the same employer, the total earnings for all
16 such work for the pay period shall be considered to
17 have been earned for performing one kind of work.



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

3 (1) If the employee is employed on a weekly salary, the
4 weekly salary and the reasonable cost of board,
5 lodging, or other facilities, if furnished to the
6 employee, shall be divided by forty.

7 (2) If the employee is employed on a biweekly salary, the
8 biweekly salary and the reasonable cost of board,
9 lodging, or other facilities, if furnished to the
10 employee, shall be divided by two and the quotient
11 divided by forty.

12 (3) If the employee is employed on a semi-monthly salary,
13 the semi-monthly salary and the reasonable cost of
14 board, lodging, or other facilities, if furnished to
15 the employee, shall be multiplied by twenty-four, the
16 product divided by fifty-two and the quotient divided
17 by forty.

18 (4) If the employee is employed on a monthly salary, the
19 monthly salary and the reasonable cost of board,
20 lodging, or other facilities if furnished to the
21 employee, shall be multiplied by twelve, the product

1 divided by fifty-two and the quotient divided by
2 forty.

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

10 (1) If the employee's salary and the reasonable cost of
11 board, lodging, or other facilities, if furnished to
12 the employee, equal or exceed fifty per cent of the
13 employee's total earnings for the pay period, the
14 total earnings shall be reduced to a regular rate in
15 the manner provided in paragraph (1), (2), (3), or (4)
16 of subsection (b), whichever is applicable.

17 (2) If the employee's salary and the reasonable cost of
18 board, lodging, or other facilities, if furnished to
19 the employee, are less than fifty per cent of the
20 employee's total earnings for the pay period, the
21 total earnings shall be reduced to a regular rate in
22 the manner provided in paragraph (1), (2), (3), or (4)



1 of subsection (b), whichever is applicable, except
2 that the actual number of hours worked in the workweek
3 shall be substituted for the final divisor of forty.
4 Such an employee shall receive overtime compensation
5 for employment in excess of forty hours in a workweek
6 at a rate not less than one-half times the employee's
7 regular rate.

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

16 (e) An employer,
17 (1) Who is engaged in agriculture and in the first
18 processing of milk, buttermilk, whey, skim milk, or
19 cream into dairy products, or in the processing of
20 sugar cane molasses or sugar cane into sugar (but not
21 refined sugar) or into syrup, or in the first
22 processing of or in canning or packing any



1 agricultural or horticultural commodity, or in
2 handling, slaughtering, or dressing poultry or
3 livestock; or

4 (2) Who is engaged in agriculture and whose agricultural
5 products are processed by an employer who is engaged
6 in a seasonal pursuit or in processing, canning, or
7 packing operations referred to in paragraph (1); or

8 (3) Who is at any place of employment engaged primarily in
9 the first processing of, or in canning or packing
10 seasonal fresh fruits;

11 shall not be required to pay overtime compensation for hours in
12 excess of forty in a workweek to any of the employer's employees
13 during any of twenty different workweeks, as selected by the
14 employer, in any yearly period commencing July 1, for employment
15 in any place where the employer is so engaged. The employer,
16 however, shall pay overtime compensation for such employment in
17 excess of forty-eight hours in any such exempt workweek at the
18 rate and in the manner provided in subsections (a), (b), (c) and
19 (d), whichever is applicable, except that the word "forty-eight"
20 shall be substituted for the word "forty" wherever it appears in
21 subsections (b), (c), and (d).



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

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

10 (h) An employer who operates an establishment subject to
11 the transient accommodations tax and employs housekeeping room
12 attendants shall provide, at a minimum, one paid thirty-minute
13 and two paid fifteen-minute breaks for each eight-hour shift
14 that the housekeeping room attendant works. The employer may
15 not require any housekeeping room attendant to work during a
16 break period. The employer is responsible for providing a clean
17 and comfortable room with adequate seating and drinking water
18 free of charge in which the housekeeping room attendants can
19 take their breaks.

20 The meal break shall consist of thirty consecutive minutes
21 from the time the housekeeping room attendant sits down for the
22 meal and shall not include the time required to walk to the



1 cafeteria and back to the housekeeping room attendant's work
2 station. The meal break shall be taken as close to the middle
3 of the work shift as is reasonable, but in no case after more
4 than five hours of work.

5 The two rest breaks shall consist of fifteen consecutive
6 minutes of rest from the time the housekeeping room attendant is
7 allowed to sit in the rest room.

8 The minimum break period in this subsection applies to all
9 housekeeping room attendants employed in the State, whether
10 represented by a collective bargaining agreement or not. This
11 subsection shall not be construed to preclude additional or
12 longer breaks or breaks for shorter shifts.

13 Each employer of housekeeping room attendants shall keep a
14 complete and accurate record of its employees' breaks. This
15 subsection shall be enforced by the department.

16 For any violation of this subsection, the employer shall be
17 required to pay the employee triple wages for any break period
18 missed.

19 In any action brought under this subsection, it shall be
20 unlawful for the employer to retaliate against the employee.
21 For a civil action brought under this subsection, a rebuttable
22 presumption of retaliation shall arise when the employee



1 establishes that the allegation was made in good faith that the
2 employer was not acting in compliance with the law and that the
3 employee was thereafter terminated, demoted, or otherwise
4 disciplined or penalized.

5 An employee claiming a violation of this subsection shall
6 be entitled to all remedies available under law and in equity,
7 including but not limited to damages, back pay, reinstatement,
8 or injunctive relief. An employee terminated in violation of
9 this subsection shall recover treble the employee's normal daily
10 compensation and fringe benefits, including interest from the
11 date of termination, and any consequential damages suffered by
12 the employee. The court shall award attorney's fees and costs
13 to an employee who prevails in an enforcement action under this
14 subsection.

15 For the purposes of this subsection, a "housekeeping room
16 attendant" means a person who cleans and puts in order guest
17 rooms in a hotel, resort, or other establishment subject to the
18 transient accommodations tax."

19 SECTION 2. New statutory material is underscored.

20 SECTION 3. This Act shall take effect on July 1, 2006.

21

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JAN 25 2006



H.B. NO. 3090

Report Title:

Labor; Hours

Description:

Requires work breaks for housekeeping room attendants.

