

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO MEAL BREAKS.

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

1           SECTION 1. The legislature finds that, though Act 172,  
2 Session Laws of Hawaii 1999, amended the law to make it illegal  
3 for an employer to prohibit an employee from expressing  
4 breastmilk during any meal period or other break period required  
5 by law, neither our state, nor federal wage and hour, laws  
6 currently require employers to provide employees over the age of  
7 sixteen any meal period or rest break no matter how many  
8 consecutive hours they may be required to work. Employees who  
9 must work a full day or an eight-hour shift or more, regardless  
10 of age or sex, should not be denied a reasonable period of time  
11 to rest and consume a meal as is commonly required by other  
12 states such as California, Oregon, and Washington.

13           The purpose of this Act is to require an employer to  
14 provide all employees a rest or meal break period of at least  
15 thirty consecutive minutes for employees who work a five or more  
16 continuous hour shift, unless an employer is subject to a  
17 collective bargaining agreement that contains an express  
18 provision for employee meal breaks, a common carrier of



1 passengers or a power generating utility, or the operator of a  
2 continuously operating facility regulated by an environmental  
3 permit.

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

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

13 For the purposes of this section,

14 (1) "Salary" means a predetermined wage, exclusive of the  
15 reasonable cost of board, lodging, or other  
16 facilities, at which an employee is employed each pay  
17 period; and

18 (2) If an employee performs two or more different kinds of  
19 work for the same employer, the total earnings for all  
20 such work for the pay period shall be considered to  
21 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,~~] in this subsection, the term  
8 "other wages" shall not include the reasonable cost of board,  
9 lodging, or other 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) No employee shall be required to work more than five  
6 hours continuously without an interval of at least thirty  
7 consecutive minutes for a meal break. A meal break shall  
8 consist of not less than thirty minutes during which the  
9 employee is relieved of all duties for each work period of not  
10 less than five hours. If the work period is six hours or less,  
11 the meal period is to be taken between the second and fifth hour  
12 worked. If the work period is more than six hours, the meal  
13 period is to be taken between the third and sixth hour worked.  
14 The employer shall not be required to compensate the employee  
15 for the meal break. This subsection shall not apply to any  
16 employer who is either:

- 17 (1) Subject to any collective bargaining agreement that  
18 expressly provides for employee meal breaks;  
19 (2) A common carrier by motor vehicle, a contract carrier  
20 by motor vehicle, or a private carrier of property by  
21 motor vehicle as these terms are defined in chapter  
22 271;



1           (3) A power generating utility, regulated under chapter  
2                   269; or

3           (4) The operator of a continuously operating facility that  
4                   is regulated by environmental permit.

5 For purposes of this subsection, "meal break" means any break  
6 period during which the employee is provided the opportunity to  
7 consume a meal.

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

13           SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

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**Report Title:**

Wage and Hour Law; Meal Breaks

**SB. NO. 2616****Description:**

Requires the provision of rest or meal break periods of at least thirty consecutive minutes for employees who work five or more continuous hours. Clarifies that the employer not be required to compensate the employee for the break. Excludes employers who are subject to a collective bargaining agreement that contains an express provision for employee meal breaks, a common carrier of passengers or a power generating utility, or the operator of a continuously operating facility regulated by an environmental permit.

