

JAN 19 2007

A BILL FOR AN ACT

RELATING TO EMPLOYEES.

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

1 SECTION 1. The legislature finds that chapter 390, Hawaii
2 Revised Statutes, has long protected the right of minors to an
3 interval of at least thirty consecutive minutes for a rest or
4 lunch period if they work for more than five consecutive hours.
5 Furthermore, the legislature finds that, although Act 172,
6 Session Laws of Hawaii 1999, made it illegal for an employer to
7 prohibit an employee from expressing breastmilk during any meal
8 period or other break period required by law, neither state nor
9 federal wage and hour laws currently require employers to
10 provide employees over the age of sixteen any meal or rest
11 period no matter how many consecutive hours they may be required
12 to work. Employees who must work a full day or an eight-hour
13 shift regardless of age or sex should not be denied a reasonable
14 period of time to rest and consume a meal as commonly required
15 by other states such as California, Oregon, and Washington.



1 The purpose of this Act is to require employers to provide
2 scheduled meal breaks or rest periods for employees that work
3 more than five consecutive hours.

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

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

- 9 (1) At a guaranteed compensation totaling \$2,000 or more a
10 month, whether paid weekly, biweekly, or monthly;
- 11 (2) In agriculture for any workweek in which the employer
12 of the individual employs less than twenty employees
13 or in agriculture for any workweek in which the
14 individual is engaged in coffee harvesting;
- 15 (3) In domestic service in or about the home of the
16 individual's employer or as a house parent in or about
17 any home or shelter maintained for child welfare
18 purposes by a charitable organization exempt from
19 income tax under section 501 of the federal Internal
20 Revenue Code;



- 1 (4) By the individual's brother, sister, brother-in-law,
2 sister-in-law, son, daughter, spouse, parent, or
3 parent-in-law;
- 4 (5) In a bona fide executive, administrative, supervisory,
5 or professional capacity or in the capacity of outside
6 salesperson or as an outside collector;
- 7 (6) In the propagating, catching, taking, harvesting,
8 cultivating, or farming of any kind of fish,
9 shellfish, crustacean, sponge, seaweed, or other
10 aquatic forms of animal or vegetable life, including
11 the going to and returning from work and the loading
12 and unloading of [~~such~~] these products prior to first
13 processing;
- 14 (7) On a ship or vessel and who has a Merchant Mariners
15 Document issued by the United States Coast Guard;
- 16 (8) As a driver of a vehicle carrying passengers for hire
17 operated solely on call from a fixed stand;
- 18 (9) As a golf caddy;
- 19 (10) By a nonprofit school during the time [~~such~~] the
20 individual is a student attending [~~such~~] the school;
- 21 [~~(11) In any capacity if by reason of the employee's~~
22 ~~employment in such capacity and during the term~~



1 ~~thereof the minimum wage which may be paid the~~
2 ~~employee or maximum hours which the employee may work~~
3 ~~during any workweek without the payment of overtime,~~
4 ~~are prescribed by the federal Fair Labor Standards Act~~
5 ~~of 1938, as amended, or as the same may be further~~
6 ~~amended from time to time; provided that if the~~
7 ~~minimum wage which may be paid the employee under the~~
8 ~~Fair Labor Standards Act for any workweek is less than~~
9 ~~the minimum wage prescribed by section 387 2, then~~
10 ~~section 387 2 shall apply in respect to the employees~~
11 ~~for such workweek; provided further that if the~~
12 ~~maximum workweek established for the employee under~~
13 ~~the Fair Labor Standards Act for the purposes of~~
14 ~~overtime compensation is higher than the maximum~~
15 ~~workweek established under section 387 3, then section~~
16 ~~387 3 shall apply in respect to such employee for such~~
17 ~~workweek; except that the employee's regular rate in~~
18 ~~such an event shall be the employee's regular rate as~~
19 ~~determined under the Fair Labor Standards Act;~~

20 ~~(12)]~~ (11) As a seasonal youth camp staff member in a
21 resident situation in a youth camp sponsored by
22 charitable, religious, or nonprofit organizations



1 exempt from income tax under section 501 of the
2 federal Internal Revenue Code or in a youth camp
3 accredited by the American Camping Association; or
4 ~~[(13)]~~ (12) As an automobile salesperson primarily engaged
5 in the selling of automobiles or trucks if employed by
6 an automobile or truck dealer licensed under chapter
7 437."

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

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

16 For the purposes of this section,

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

21 (2) If an employee performs two or more different kinds of
22 work for the same employer, the total earnings for all



1 such work for the pay period shall be considered to
2 have been earned for performing one kind of work.

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

5 (1) If the employee is employed on a weekly salary, the
6 weekly salary and the reasonable cost of board,
7 lodging, or other facilities, if furnished to the
8 employee, shall be divided by forty[-];

9 (2) If the employee is employed on a biweekly salary, the
10 biweekly salary and the reasonable cost of board,
11 lodging, or other facilities, if furnished to the
12 employee, shall be divided by two and the quotient
13 divided by forty[-];

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

20 (4) If the employee is employed on a monthly salary, the
21 monthly salary and the reasonable cost of board,
22 lodging, or other facilities if furnished to the



1 employee, shall be multiplied by twelve, the product
2 divided by fifty-two and the quotient divided by
3 forty.

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

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

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



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

9 As used in this subsection, the term "other wages" shall
10 not include the reasonable cost of board, lodging, or other
11 facilities.

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

20 (e) An employer,

21 (1) Who is engaged in agriculture and in the first
22 processing of milk, buttermilk, whey, skim milk, or



1 cream into dairy products, or in the processing of
2 sugar cane molasses or sugar cane into sugar (but not
3 refined sugar) or into syrup, or in the first
4 processing of or in canning or packing any
5 agricultural or horticultural commodity, or in
6 handling, slaughtering, or dressing poultry or
7 livestock; or

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

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

15 shall not be required to pay overtime compensation for hours in
16 excess of forty in a workweek to any of the employer's employees
17 during any of twenty different workweeks, as selected by the
18 employer, in any yearly period commencing July 1, for employment
19 in any place where the employer is so engaged. The employer,
20 however, shall pay overtime compensation for [~~such~~] employment
21 in excess of forty-eight hours in any [~~such~~] exempt workweek at
22 the rate and in the manner provided in subsections (a), (b),



1 (c), and (d), whichever is applicable, except that the word
2 "forty-eight" shall be substituted for the word "forty" wherever
3 it appears in subsections (b), (c), and (d).

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

8 (g) No employee shall be required to work more than five
9 continuous hours without a scheduled interval of at least thirty
10 minutes for a rest or bona fide meal period as defined in title
11 29 Code of Federal Regulations section 785.19, unless a
12 collective bargaining agreement otherwise contains express
13 provisions for employee meal breaks.

14 [~~g~~] (h) This section shall not apply to any overtime
15 hours worked by an employee of an air carrier subject to Title
16 II of the Railway Labor Act title 45 [~~U.S.C.~~] United States
17 Code section 181 et seq.; provided [~~such~~] that the overtime
18 hours are the result of a voluntary agreement between the
19 employees to exchange work time or days off."

20 SECTION 4. Section 387-12, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) Liability to employee. Any employer who violates any
2 provision of sections 387-2 and 387-3 shall be liable to the
3 employee or employees affected in the amount of their unpaid
4 minimum wages or unpaid overtime compensation, and in case of
5 wilful violation in an additional equal amount as liquidated
6 damages[-]; provided that any employer who does not provide a
7 rest or meal period, as required by section 387-3(g), shall be
8 liable to the employee or employees affected in an amount
9 equivalent to one and a half hours for each thirty minute rest
10 or meal period not provided to the employee or employees."

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

Gay L. Han
[Signature]
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Erzanne Chun Calitand
President of Labor
Business, K&L

Report Title:

Employees; Wage and Hour Law; Meal Breaks

Description:

Requires employers to allow rest or meal periods for employees that work more than five consecutive hours. Clarify the term "other wages" by excluding the reasonable cost of board, lodging, or other facilities. Repeals the exclusion of persons whose employment is governed by the federal Fair Labor Standards Act from the definition of "employee" under the State's wage and hour law.

