

JAN 24 2007

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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 take
3 at least thirty consecutive minutes for a rest or lunch period
4 if they had worked for more than five continuous hours.
5 Likewise, the legislature further finds that, though 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 period or
11 rest break no matter how many consecutive hours they are
12 required to work. Employees who must work an eight-hour shift
13 or more regardless of age or sex should not be denied a
14 reasonable period of time to rest and consume a meal as is
15 commonly required by other states such as California, Oregon,
16 and Washington.



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

4 "Employee" includes any individual employed by an
5 employer, but shall not include any individual employed:

6 (1) At a guaranteed compensation totaling \$2,000 or more a
7 month, whether paid weekly, biweekly, or monthly;

8 (2) In agriculture for any workweek in which the employer
9 of the individual employs less than twenty employees
10 or in agriculture for any workweek in which the
11 individual is engaged in coffee harvesting;

12 (3) In domestic service in or about the home of the
13 individual's employer or as a house parent in or about
14 any home or shelter maintained for child welfare
15 purposes by a charitable organization exempt from
16 income tax under section 501 of the federal Internal
17 Revenue Code;

18 (4) By the individual's brother, sister, brother-in-law,
19 sister-in-law, son, daughter, spouse, parent, or
20 parent-in-law;



- 1 (5) In a bona fide executive, administrative, supervisory,
2 or professional capacity or in the capacity of outside
3 salesperson or as an outside collector;
- 4 (6) In the propagating, catching, taking, harvesting,
5 cultivating, or farming of any kind of fish,
6 shellfish, crustacean, sponge, seaweed, or other
7 aquatic forms of animal or vegetable life, including
8 the going to and returning from work and the loading
9 and unloading of such products prior to first
10 processing;
- 11 (7) On a ship or vessel and who has a Merchant Mariners
12 Document issued by the United States Coast Guard;
- 13 (8) As a driver of a vehicle carrying passengers for hire
14 operated solely on call from a fixed stand;
- 15 (9) As a golf caddy;
- 16 (10) By a nonprofit school during the time such individual
17 is a student attending such school;
- 18 ~~(11) In any capacity if by reason of the employee's~~
19 ~~employment in such capacity and during the term~~
20 ~~thereof the minimum wage which may be paid the~~
21 ~~employee or maximum hours which the employee may work~~
22 ~~during any workweek without the payment of overtime,~~



1 ~~are prescribed by the federal Fair Labor Standards Act~~
2 ~~of 1938, as amended, or as the same may be further~~
3 ~~amended from time to time; provided that if the~~
4 ~~minimum wage which may be paid the employee under the~~
5 ~~Fair Labor Standards Act for any workweek is less than~~
6 ~~the minimum wage prescribed by section 387-2, then~~
7 ~~section 387-2 shall apply in respect to the employees~~
8 ~~for such workweek; provided further that if the~~
9 ~~maximum workweek established for the employee under~~
10 ~~the Fair Labor Standards Act for the purposes of~~
11 ~~overtime compensation is higher than the maximum~~
12 ~~workweek established under section 387-3, then section~~
13 ~~387-3 shall apply in respect to such employee for such~~
14 ~~workweek; except that the employee's regular rate in~~
15 ~~such an event shall be the employee's regular rate as~~
16 ~~determined under the Fair Labor Standards Act;~~

17 ~~(12)]~~ (11) As a seasonal youth camp staff member in a
18 resident situation in a youth camp sponsored by
19 charitable, religious, or nonprofit organizations
20 exempt from income tax under section 501 of the
21 federal Internal Revenue Code or in a youth camp
22 accredited by the American Camping Association; or



1 [~~(13)~~] (12) As an automobile salesperson primarily engaged
2 in the selling of automobiles or trucks if employed by
3 an automobile or truck dealer licensed under chapter
4 437."

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

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

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, 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) No employee shall be required to work for more than
6 five continuous hours without a scheduled rest or bona-fide meal
7 period as defined under 29 CFR 785.19, of at least thirty
8 consecutive minutes; provided that this subsection shall not
9 apply to an employee covered by an employee meal period
10 provision under a collective bargaining agreement with the
11 employer.

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

17 SECTION 3. Section 387-12, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

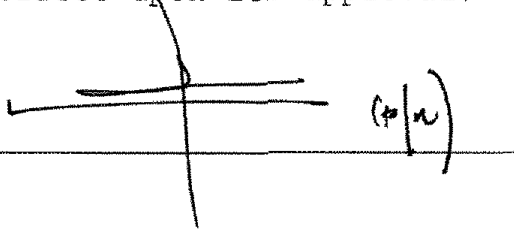
19 "(b) Liability to employee. Any employer who violates any
20 provision of sections 387-2 and 387-3 shall be liable to the
21 employee or employees affected in the amount of their unpaid
22 minimum wages or unpaid overtime compensation, and in case of



1 wilful violation in an additional equal amount as liquidated
2 damages. An employer who does not provide a rest or meal period
3 to an employee pursuant to section 387-3(g) shall pay the
4 employee an amount equal to one and one-half hours of wages for
5 each thirty minute rest or meal break the employee was not
6 provided."

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

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

10 INTRODUCED BY:  (P/N)



Report Title:

Employee Meal Periods

Description:

Requires employers to provide employees that work 5 consecutive hours with a 30 minute rest or meal period unless the employee is covered by a rest or meal period provision under a collective bargaining agreement. Also requires an employer to pay an employee 1 1/2 hours of pay if no rest or meal period is provided. Also amends definition of "employee" with respect to minimum wage and overtime under federal law.

