

JAN 26 2011

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# A BILL FOR AN ACT

RELATING TO LABOR AND INDUSTRIAL RELATIONS.

**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 continuous hours.  
5 Likewise, the legislature finds that although the Hawaii Revised  
6 Statutes was revised in 1999 to make it illegal for an employer  
7 to prohibit an employee from expressing breast milk during any  
8 meal period or other break period required by law, neither the  
9 State nor federal wage and hour laws currently require employers  
10 to provide employees over the age of sixteen any meal period or  
11 rest break no matter how many consecutive hours they may be  
12 required to work.

13           The legislature finds that employees who must work a full  
14 day or eight-hour shift or more regardless of age or sex should  
15 not be denied a reasonable period of time to rest and consume a  
16 meal as is commonly required by other states such as California,  
17 Oregon, and Washington. The purpose of this Act is to ensure  
18 that no employee shall be required to work more than five hours



1 continuously without a scheduled interval of at least thirty  
2 consecutive minutes for a rest or bona fide meal period.

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

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

- 7 (1) At a guaranteed compensation totaling \$2,000 or more a  
8 month, whether paid weekly, biweekly, or monthly;
- 9 (2) In agriculture for any workweek in which the employer  
10 of the individual employs less than twenty employees  
11 or in agriculture for any workweek in which the  
12 individual is engaged in coffee harvesting;
- 13 (3) In domestic service in or about the home of the  
14 individual's employer or as a house parent in or about  
15 any home or shelter maintained for child welfare  
16 purposes by a charitable organization exempt from  
17 income tax under section 501 of the federal Internal  
18 Revenue Code;
- 19 (4) By the individual's brother, sister, brother-in-law,  
20 sister-in-law, son, daughter, spouse, parent, or  
21 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 more than five  
6 hours continuously without a scheduled interval of at least  
7 thirty consecutive minutes for a rest or bona fide meal period,  
8 as defined in Title 29 Code of Federal Regulations Section  
9 785.19, unless a collective bargaining agreement otherwise  
10 contains express provisions for employee meal breaks.

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

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

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



1 damages. An employer who does not provide a rest or bona fide  
2 meal period as provided by section 387-3(g) shall be liable to  
3 the employee affected in an amount equivalent to one and  
4 one-half hours for each thirty minute meal break the employee  
5 was not provided."

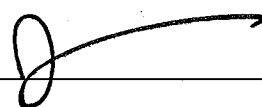
6 SECTION 5. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



**Report Title:**

Labor and Industrial Relations; Meal Breaks

**Description:**

Requires that no employee be required to work more than five hours continuously without a scheduled interval of at least thirty consecutive minutes for a rest or bona fide meal period. Requires employers who do not provide a rest or meal break to employees to be liable to the employee affected in an amount equivalent to one and one-half hours for each thirty minute meal break the employee was not provided.

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