
A BILL FOR AN ACT

RELATING TO WAGES.

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

1 SECTION 1. Wage theft, which consists of pay-related
2 violations committed by employers, such as the failure to pay
3 wage earners the required minimum wages or overtime, impacts
4 employees throughout the United States. Many states are
5 addressing this issue by creating laws to better protect wage
6 earners' rights. New York, for example, recently passed its
7 Wage Theft Prevention Act, which amended that state's notice of
8 wage rate requirements and expanded criminal and civil remedies.

9 The legislature finds that Hawaii is one of several states
10 that have agreed to work with the United States Department of
11 Labor to share information in an effort to deal with the wage
12 theft problem.

13 The purpose of this Act is to protect employees in this
14 State by requiring employers to provide employees with specific
15 wage information at the time of hiring and on pay statements and
16 to expand the criminal and civil penalties available for
17 enforcement purposes.



1 SECTION 2. Chapter 387, Hawaii Revised Statutes, is
2 amended by adding a new section to read as follows:

3 "§387- Public notice of employer violations. (a) When
4 an employer is found to have violated this chapter, the director
5 may post or affix or both, for a period not to exceed one year,
6 a notice not less than eight and one-half by eleven inches in an
7 area visible to the employer's employees summarizing the
8 violations and other information deemed pertinent by the
9 director, in the form and manner ordered by the director.

10 (b) When the employer's violation is a wilful failure to
11 pay all wages as required by this chapter, the director may post
12 or affix or both, for a period not to exceed ninety days, in an
13 area visible to the general public, as ordered by the director,
14 a notice not less than eight and one-half by eleven inches
15 regarding the violations, in the form and manner ordered by the
16 director.

17 (c) Any person other than the director or the director's
18 duly authorized representative who removes, alters, defaces, or
19 otherwise interferes with a notice posted or affixed under this
20 section shall be guilty of a misdemeanor."

21 SECTION 3. Chapter 388, Hawaii Revised Statutes, is
22 amended by adding a new section to read as follows:



1 "§388- Public notice of employer violations. (a) When
2 an employer is found to have violated this chapter, the director
3 may post or affix or both for a period, not to exceed one year,
4 a notice not less than eight and one-half by eleven inches in an
5 area visible to the employer's employees summarizing the
6 violations and other information deemed pertinent by the
7 director, in the form and manner ordered by the director.

8 (b) When the employer's violation is a wilful failure to
9 pay all wages as required by this chapter, the director may post
10 or affix or both, for a period not to exceed ninety days, in an
11 area visible to the general public, as ordered by the director,
12 a notice not less than eight and one-half by eleven inches
13 regarding the violations, in the form and manner ordered by the
14 director.

15 (c) Any person other than the director or the director's
16 duly authorized representative who removes, alters, defaces, or
17 otherwise interferes with a notice posted or affixed under this
18 section shall be guilty of a misdemeanor."

19 SECTION 4. Section 387-1, Hawaii Revised Statutes, is
20 amended by amending the definition of "employer" to read as
21 follows:

1 ""Employer" includes any individual, partnership, limited
2 liability company, association, corporation, business trust,
3 legal representative, or any organized group of persons, acting
4 directly or indirectly in the interest of an employer in
5 relation to an employee, but shall not include the State or any
6 political subdivision thereof or the United States."

7 SECTION 5. Section 387-6, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) Every employer shall keep in or about the premises
11 wherein any employee is employed a contemporaneous, true, and
12 accurate record of [~~the~~]:

13 (1) The name, address, and occupation of each [~~such~~]
14 employee [~~, of the~~];

15 (2) The amount paid each pay period to each [~~such~~]
16 employee [~~, of the~~];

17 (3) The hours worked each day and each workweek by each
18 [~~such~~] employee [~~, of the~~];

19 (4) The rate or rates of pay and basis thereof, whether
20 paid by the hour, shift, day, week, salary, piece,
21 commission, or other basis; gross wages; deductions;



1 allowances, if any, claimed as part of the minimum
2 wage; net wages; and [of such]
3 (5) Any other information and for [~~such~~] the periods of
4 time as the director [~~of labor and industrial~~
5 ~~relations~~] may by [~~regulation~~] rule prescribe.

6 The director or the director's authorized representative
7 shall for the purpose of examination have access to and the
8 right to copy from [~~such~~] the records. Every employer shall
9 furnish to the director or the director's authorized
10 representative [~~such~~] any information relating to the employment
11 of workers and in [~~such~~] any manner as the director may
12 prescribe."

13 2. By amending subsection (c) to read:

14 "(c) Every employer shall furnish each employee at every
15 pay period a legible printed, typewritten, or handwritten
16 [~~notice~~] record showing the [~~employee's:~~] following:

17 (1) The name of the employee;

18 (2) The name of the employer;

19 (3) The address and telephone number of the employer;

20 [~~(4)~~] (4) [~~Total~~] The employee's total hours worked;

21 [~~(5)~~] (5) [~~Overtime~~] The employee's regular and overtime
22 hours;



1 may provide an electronic [~~notice~~] record that may be
2 electronically accessed by the employee. At the request of an
3 employee, an employer shall provide an explanation in writing of
4 how the wages were computed."

5 SECTION 6. Section 387-7, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§387-7 Wilful violations; penalty.** Any employer who
8 wilfully hinders or delays the director [~~of labor and industrial~~
9 ~~relations~~] or the director's authorized representative in the
10 performance of the director's duties in the enforcement of this
11 chapter; or who wilfully refuses to admit the director or the
12 director's authorized representative to any place of employment;
13 or who fails to keep or who falsifies any record required under
14 section 387-6 or who refuses to make [~~such~~] the records
15 accessible or to give information required for the proper
16 enforcement of this chapter, upon demand, to the director or the
17 director's authorized representative, shall be fined not [~~more~~]
18 less than \$500 nor more than \$5,000 or imprisoned not more than
19 [~~ninety days, or both.~~] one year, or both. If a second or
20 subsequent offense is committed within six years of the date of
21 conviction for a prior offense, the employer shall be guilty of
22 a class C felony for the second or subsequent offense; provided



1 that in addition to any other authorized sentence, the employer
 2 shall be fined not less than \$500 nor more than \$20,000 for each
 3 offense. Each day's failure to keep the records requested under
 4 this chapter or to furnish the records or information to the
 5 director or the director's representative shall constitute a
 6 separate offense."

7 SECTION 7. Section 387-12, Hawaii Revised Statutes, is
 8 amended by amending subsection (a) to read as follows:

9 "(a) Criminal~~[r]~~ penalties.

10 (1) Any person divulging information in violation of
 11 section 387-8~~[, or]~~;

12 (2) ~~[any]~~ Any employer who wilfully violates this chapter
 13 or ~~[of]~~ any rule~~[, regulation,]~~ or order issued under
 14 the authority of this chapter~~[, or]~~;

15 (3) ~~[any]~~ Any employer or the employer's agent or any
 16 officer or agent of a corporation, partnership, or
 17 limited liability company or any other person who
 18 discharges, threatens, or in any other manner
 19 discriminates or retaliates against any employee
 20 because the employee has made a complaint to the
 21 employee's employer, to the director, or to any other
 22 person that ~~[the employee has not been paid wages in~~



1 ~~accordance with this chapter, or~~ the employer engaged
2 in conduct that the employee reasonably and in good
3 faith believes constitutes a violation this chapter or
4 the employee has instituted or caused to be instituted
5 any proceeding under or related to this chapter, or
6 has testified or is about to testify in any such
7 proceedings~~[7]~~; or

- 8 (4) ~~[any]~~ Any employer or the employer's agent or any
9 officer or agent of a corporation, partnership, or
10 limited liability company who pays or agrees to pay
11 any employee compensation less than that which the
12 employee is entitled to under this chapter,
13 shall be guilty of a misdemeanor and, upon conviction thereof,
14 shall be punished by a fine of not less than ~~[\$50]~~ \$500 nor more
15 than ~~[\$500]~~ \$20,000 or by imprisonment for a period not to
16 exceed one year or by both ~~[such]~~ fine and imprisonment. If a
17 second or subsequent offense is committed within six years of
18 the date of conviction for a prior offense, the employer shall
19 be guilty of a class C felony for the second or subsequent
20 offense; provided that in addition to any other authorized
21 sentence, the employer shall be fined not less than \$500 nor
22 more than \$20,000 for each offense. Each day's failure to keep



1 the records requested under this chapter, or to furnish the
2 records or information to the director or the director's
3 representative, shall constitute a separate offense."

4 SECTION 8. Section 388-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "employer" to read as
6 follows:

7 ""Employer" includes any individual, partnership, limited
8 liability company, association, joint-stock company, trust,
9 corporation, the personal representative of the estate of a
10 deceased individual or the receiver, trustee, or successor of
11 any of the same, employing any person, but shall not include the
12 State or any political subdivision thereof or the United
13 States."

14 SECTION 9. Section 388-7, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§388-7 Notification, posting, and records. Every
17 employer shall:

18 (1) [~~Notify~~] Provide each employee in writing[~~7~~] in
19 English and in the language identified by each
20 employee as the primary language of the employee, at
21 the time of hiring and on or before February 1 of each



1 subsequent year of the employee's employment with the
2 employer, a notice containing the following:

3 (A) [of the] The rate or rates of pay[7] and basis
4 thereof, whether paid by the hour, shift, day,
5 week, salary, piece, commission, or otherwise,
6 including any rates for overtime, if applicable;

7 (B) Allowances, if any, claimed as part of the
8 minimum wage, including tip, meal, or lodging
9 allowances;

10 (C) [and of the] The day, hour, and place of payment;

11 (D) The name of the employer, including any "doing
12 business as" names used by the employer;

13 (E) The physical address of the employer's main
14 office or principal place of business and a
15 mailing address, if different;

16 (F) The telephone number of the employer; and

17 (G) Any other information the director deems material
18 and necessary.

19 Whenever the employer provides the notice to an
20 employee, the employer shall obtain from the employee
21 a signed and dated written acknowledgment in English,
22 and in the primary language of the employee, of the



1 receipt of the notice, which the employer shall
2 maintain and keep for six years. The director shall
3 prepare templates that comply with the requirements of
4 this paragraph. Each template shall be dual-language,
5 including English and one additional language. The
6 director shall determine which languages to provide in
7 addition to English, based on the size of the
8 population of this State that speaks each language and
9 any other factor the director deems relevant. The
10 templates shall be made available to employers in the
11 manner determined by the director. When an employee
12 identifies as the employee's primary language a
13 language for which a template is not available from
14 the director, the employer shall comply with this
15 paragraph by providing that employee an English-
16 language notice of acknowledgment. An employer shall
17 not be penalized for errors or omissions in the non-
18 English portions of any notice provided by the
19 director;

- 20 (2) Notify each employee in writing or through a posted
21 notice maintained in a place accessible to employees
22 of any changes in the arrangements specified [above]



1 in paragraph (1) at least seven calendar days prior to
2 the time of the change~~+~~, unless the changes are
3 reflected on a timely pay statement furnished to the
4 employee;

5 (3) Provide to each employee in writing or through a
6 posted notice maintained in a place accessible to
7 employees, policies with regard to vacation and sick
8 leave;

9 (4) ~~[Furnish]~~ Provide each employee at every ~~[payday]~~ pay
10 period a legible printed, typewritten, or handwritten
11 record showing ~~[the employee's total gross~~
12 ~~compensation, the amount and purpose of each~~
13 ~~deduction, total net compensation, date of payment,~~
14 ~~and pay period covered;]~~ the information required
15 under section 387-6(c); and maintain and preserve a
16 copy of the record or its equivalent for a period of
17 at least six years; provided that in lieu of the
18 printed, typewritten, or handwritten record required
19 by this paragraph and upon receipt of written
20 authorization from the employee, the employer may
21 provide an electronic record that may be
22 electronically accessed by the employee that shall be



1 retained by the employer for a period of at least six
2 years;

3 (5) Keep posted in a place accessible to employees the
4 notices pertaining to the application of this chapter
5 as ~~[shall be]~~ prescribed by the director ~~[of labor and~~
6 ~~industrial relations]~~; and

7 (6) Make and keep records of all employees which shall
8 include basic employment and earnings records, and
9 preserve the records for [a] the period of time and in
10 [a] the manner, as the director shall prescribe by
11 rule."

12 SECTION 10. Section 388-9, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§388-9 Enforcement.** (a) The director ~~[of labor and~~
15 ~~industrial relations]~~ shall enforce and administer this chapter
16 and the director or the director's authorized representatives
17 may hold hearings and otherwise investigate charges of
18 violations of this chapter and institute actions for penalties
19 hereunder.

20 (b) The director or the director's authorized
21 representatives may enter and inspect ~~[such]~~ places, question
22 ~~[such]~~ employees, and investigate ~~[such]~~ facts, conditions, or



1 matters as they may deem appropriate to determine whether any
2 person has violated this chapter or any rule [~~or regulation~~]
3 issued hereunder or which may aid in the enforcement of this
4 chapter.

5 The director shall keep confidential the names of employees
6 that are the subject of an investigation until disclosure is
7 necessary for the resolution of an investigation or a complaint.

8 (c) If any judgment obtained by the director against an
9 employer for nonpayment of wages remains unsatisfied for a
10 period of thirty days after the time to appeal therefrom has
11 expired and no appeal is pending or after [~~such~~] the judgment
12 has been finally affirmed on appeal, the director may institute
13 proceedings in the name of the State in the circuit court in
14 which the employer has the employer's principal place of
15 business to compel the employer to cease doing any business
16 until the judgment has been satisfied. Any judgment or court
17 order awarding remedies under this section shall provide that if
18 any amount remains unpaid ninety days after the judgment is
19 issued, or ninety days after the time to appeal has expired and
20 no appeal is pending, whichever is later, the total amount of
21 the judgment shall automatically increase by fifteen per cent.



1 (d) If any order to comply issued to an employer under
2 this chapter remains unsatisfied for a period of ten days after
3 the time to appeal therefrom has expired, and no appeal is
4 pending, the director may require the employer to provide an
5 accounting of the employer's assets, including but not limited
6 to a list of the employer's bank accounts, accounts receivable,
7 personal property, real property, motor vehicles, and any other
8 assets, in the form and manner prescribed by the director. The
9 demand may be made by certified or registered mail. An employer
10 shall provide amended accountings of assets as ordered by the
11 director. If within ten days after a demand for an accounting
12 of assets, the employer fails to provide the accounting, or if
13 the employer fails to provide an amended accounting as required,
14 the director may bring an action against the employer in the
15 appropriate circuit court to compel the employer to provide the
16 accounting and pay a civil penalty of no more than \$10,000."

17 SECTION 11. Section 388-10, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§388-10 Penalties.** (a) Civil[-] penalties.

20 (1) Any employer who fails to pay wages in accordance with
21 this chapter without equitable justification shall be
22 liable to the employee, in addition to the wages



1 legally proven to be due, for a sum equal to the
2 amount of unpaid wages and interest at a rate of six
3 per cent per year from the date that the wages were
4 due[-];

5 (2) (A) Any employee who is not provided within ten
6 business days of the employee's first day of
7 employment a notice as required by section 388-
8 7(1) may recover in a civil action damages of \$50
9 for each workweek that the violation occurred or
10 continues to occur, not to exceed \$2,500,
11 together with costs and reasonable attorney's
12 fees. The court may also award other relief,
13 including injunctive and declaratory relief, that
14 the court in its discretion deems necessary or
15 appropriate; and

16 (B) The director may bring, on behalf of any employee
17 not provided a notice as required by section 388-
18 7(1), any legal action necessary, including
19 administrative action, to collect the claim, and
20 as part of the legal action, in addition to any
21 other remedies and penalties otherwise available.

22 The director may assess against the employer



1 damages of \$50 for each workweek that the
2 violation occurred or continues to occur; and

3 (3) (A) Any employee who is not provided a pay statement
4 as required by section 388-7(4) shall recover in
5 a civil action damages of \$100 for each workweek
6 that the violation occurred or continues to
7 occur, not to exceed \$2,500, together with costs
8 and reasonable attorney's fees. The court may
9 also award other relief, including injunctive and
10 declaratory relief, that the court in its
11 discretion deems necessary or appropriate; and

12 (B) The director may bring, on behalf of any employee
13 not provided a pay statement as required by
14 section 388-7(4), any legal action necessary,
15 including administrative action, to collect the
16 claim, and as part of the legal action, in
17 addition to any other remedies and penalties
18 otherwise available under this chapter. The
19 director may assess against the employer damages
20 of \$100 for each workweek that the violation
21 occurred or continues to occur.



1 (b) Criminal~~[]~~ penalties. Any employer who does not pay
2 the wages of any of the employer's employees in accordance with
3 this chapter~~[]~~; or any officer or agent of any corporation,
4 partnership, or limited liability company who knowingly permits
5 the corporation, partnership, or limited liability company to
6 violate this chapter by failing to pay wages of any of its
7 employees in accordance with this chapter~~[]~~; or any employer or
8 the employer's agent or any officer or agent of a corporation,
9 partnership, or limited liability company, or any other person
10 who discharges, threatens, or in any other manner discriminates
11 or retaliates against any employee because the employee has made
12 a complaint to the employee's employer, or to the director, or
13 to any other person that the ~~[employee has not been paid wages~~
14 ~~in accordance with this chapter, or]~~ employer engaged in conduct
15 that the employee reasonably and in good faith believes violates
16 this chapter, or the employee has instituted or caused to be
17 instituted any proceeding under or related to this chapter~~[]~~ or
18 has testified or is about to testify in any such proceedings~~[]~~;
19 or any employer who wilfully fails to comply with any other
20 requirements of this chapter, shall be fined not less than
21 ~~[\$100]~~ \$500 nor more than ~~[\$10,000]~~ \$20,000 or imprisoned for
22 not more than one year, or punished by both fine and



1 imprisonment for each [~~sueh~~] offense. If a second or subsequent
 2 offense is committed within six years of the date of conviction
 3 for a prior offense, the employer shall be guilty of a class C
 4 felony for the second or subsequent offense; provided that in
 5 addition to any other authorized sentence, the employer shall be
 6 fined not less than \$500 nor more than \$20,000 for each offense.
 7 Each day's failure to keep the records requested under this
 8 chapter, or to furnish the records or information to the
 9 director or the director's representative, shall constitute a
 10 separate offense."

11 SECTION 12. Section 388-11, Hawaii Revised Statutes, is
 12 amended by amending subsection (c) to read as follows:

13 "(c) The court in any action brought under this section
 14 [~~shall~~], in addition to any judgment awarded to the plaintiff or
 15 plaintiffs, shall allow interest of six per cent per year from
 16 the date the wages were due, costs of action, including costs of
 17 fees of any nature, and reasonable attorney's fees, to be paid
 18 by the defendant. Any judgment or court order awarding remedies
 19 under this section shall provide that if any amounts remain
 20 unpaid ninety days after the judgment is issued or ninety days
 21 after the time to appeal has expired and no appeal is pending,



1 whichever is later, the total amount of judgment shall
2 automatically increase by fifteen per cent.

3 The director shall not be required to:

4 (1) Pay the filing fee or other costs or fees of any
5 nature, including the opposing party's fees and costs;
6 or

7 (2) File a bond or other security of any nature, in
8 connection with [~~such~~] the action, with proceedings
9 supplementary thereto, or as a condition precedent to
10 the availability to the director of any process in aid
11 of such action or proceedings. The director may join
12 various claimants in one preferred claim or lien, and
13 in case of suit join them in one cause of action."

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

16 SECTION 14. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.

19 SECTION 15. This Act shall take effect on January 1, 2013.

20

INTRODUCED BY:

T. Stahl

Karl Khoshdel



Report Title:

Wages; Payment of Compensation; Penalties

Description:

Requires employers to provide employees with specific wage and employer information at the time of hiring and in employees' pay records. Increases penalties for employers' noncompliance with wage requirements.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

