
A BILL FOR AN ACT

RELATING TO LABOR.

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 the minor works for more than five continuous
5 hours. Likewise, the legislature finds that, though Act 172,
6 Session Laws of Hawaii 1999 amended state law to make it illegal
7 for an employer to prohibit an employee from expressing breast
8 milk during any meal period or other break period required by
9 law, neither state law nor federal wage and hour law currently
10 requires employers to provide employees over the age of sixteen
11 any meal period or rest break no matter how many consecutive
12 hours the employee may be required to work. Employees who must
13 work a full day or eight-hour shift or more regardless of age or
14 sex should not be denied a reasonable period of time to rest and
15 consume a meal as is commonly required by other states such as
16 California, Oregon, and Washington.

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



1 "§387-3 Maximum hours. (a) No employer [~~shall~~], except
2 as otherwise provided in this section, shall employ any employee
3 for a workweek longer than forty hours unless the employee
4 receives overtime compensation for the employee's employment in
5 excess of the hours above specified at a rate not less than one
6 and one-half times the regular rate at which the employee is
7 employed.

8 For the purposes of this section,

9 (1) "Salary" means a predetermined wage, exclusive of the
10 reasonable cost of board, lodging, or other
11 facilities, at which an employee is employed each pay
12 period;

13 (2) If an employee performs two or more different kinds of
14 work for the same employer, the total earnings for all
15 such work for the pay period shall be considered to
16 have been earned for performing one kind of work.

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

19 (1) If the employee is employed on a weekly salary, the
20 weekly salary and the reasonable cost of board,
21 lodging, or other facilities, if furnished to the
22 employee, shall be divided by forty.



- 1 (2) If the employee is employed on a biweekly salary, the
2 biweekly salary and the reasonable cost of board,
3 lodging, or other facilities, if furnished to the
4 employee, shall be divided by two and the quotient
5 divided by forty.
- 6 (3) If the employee is employed on a semi-monthly salary,
7 the semi-monthly salary and the reasonable cost of
8 board, lodging, or other facilities, if furnished to
9 the employee, shall be multiplied by twenty-four, the
10 product divided by fifty-two and the quotient divided
11 by forty.
- 12 (4) If the employee is employed on a monthly salary, the
13 monthly salary and the reasonable cost of board,
14 lodging, or other facilities if furnished to the
15 employee, shall be multiplied by twelve, the product
16 divided by fifty-two and the quotient divided by
17 forty.
- 18 (c) The regular rate of an employee who is employed on a
19 salary and in addition receives other wages such as, but not
20 limited to, commissions, bonus, piecework pay, and hourly or
21 daily pay shall be computed in the manner provided in this
22 subsection. As used hereinabove, the term "other wages" shall



1 not include the reasonable cost of board, lodging, or other
2 facilities.

3 (1) If the employee's salary and the reasonable cost of
4 board, lodging, or other facilities, if furnished to
5 the employee, equal or exceed fifty per cent of the
6 employee's total earnings for the pay period, the
7 total earnings shall be reduced to a regular rate in
8 the manner provided in paragraph (1), (2), (3), or (4)
9 of subsection (b), whichever is applicable.

10 (2) If the employee's salary and the reasonable cost of
11 board, lodging, or other facilities, if furnished to
12 the employee, are less than 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, except
17 that the actual number of hours worked in the workweek
18 shall be substituted for the final divisor of forty.
19 Such an employee shall receive overtime compensation
20 for employment in excess of forty hours in a workweek
21 at a rate not less than one-half times the employee's
22 regular rate.



1 (d) The regular rate of an employee whose compensation is
2 based on other than salary shall be computed in the manner
3 provided in [~~paragraph (2) of~~] subsection [~~(e).~~] (c)(2). The
4 reasonable cost of board, lodging, or other facilities, if
5 furnished to the employee, shall be included in computing the
6 employee's regular rate. Such an employee shall receive
7 overtime compensation for such employment in excess of forty
8 hours in a workweek at a rate not less than one-half times the
9 employee's regular rate.

10 (e) An employer,

11 (1) Who is engaged in agriculture and in the first
12 processing of milk, buttermilk, whey, skim milk, or
13 cream into dairy products, or in the processing of
14 sugar cane molasses or sugar cane into sugar (but not
15 refined sugar) or into syrup, or in the first
16 processing of or in canning or packing any
17 agricultural or horticultural commodity, or in
18 handling, slaughtering, or dressing poultry or
19 livestock; or

20 (2) Who is engaged in agriculture and whose agricultural
21 products are processed by an employer who is engaged



1 in a seasonal pursuit or in processing, canning, or
2 packing operations referred to in paragraph (1); or

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

6 shall not be required to pay overtime compensation for hours in
7 excess of forty in a workweek to any of the employer's employees
8 during any of twenty different workweeks, as selected by the
9 employer, in any yearly period commencing July 1, for employment
10 in any place where the employer is so engaged. The employer,
11 however, shall pay overtime compensation for such employment in
12 excess of forty-eight hours in any such exempt workweek at the
13 rate and in the manner provided in subsections (a), (b), (c) and
14 (d), whichever is applicable, except that the word "forty-eight"
15 shall be substituted for the word "forty" wherever it appears in
16 subsections (b), (c), and (d).

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

21 (g) No employer shall require any employee to work more
22 than five consecutive hours without a scheduled interval of no



1 less than thirty consecutive minutes for a bona fide meal
 2 period, as described in 29 C.F.R. section 785.19; provided that
 3 a collective bargaining agreement does not otherwise contain
 4 express provisions for employee meal breaks.

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

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

12 "(b) Liability to employee. An employer shall be liable
 13 to an employee for the following violations:

14 (1) Any employer who violates any provision of sections
 15 387-2 and 387-3 shall be liable to the employee or
 16 employees affected in the amount of their unpaid
 17 minimum wages or unpaid overtime compensation, and in
 18 case of wilful violation in an additional equal amount
 19 as liquidated damages~~[-]~~; and

20 (2) Any employer who does not provide a meal break as
 21 required by section 387-3(g) shall be liable to the



1 employee affected in the amount of 1.5 hours of the
2 employee's wages for each meal break not provided."

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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

9

INTRODUCED BY: Hal Abrah

JAN 11 2012



H.B. NO. 1699

Report Title:

Meal Breaks

Description:

Requires employers to provide meal breaks for employees.
Imposes penalties for failure to provide meal breaks.

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

