

JAN 18 2013

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 the
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) If
4 an employer violates any provision 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) If the employer's violation is a wilful failure to pay
11 all wages as required by this chapter, the director may post or
12 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 summarizing the violations, in the form and manner ordered by
16 the 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) Any
2 employer who violates any provision in this chapter, the
3 director may post or affix or both for a period, not to exceed
4 one year, a notice not less than eight and one-half by eleven
5 inches in an area visible to the employer's employees
6 summarizing the violations and other information deemed
7 pertinent by the director, in the form and manner ordered by the
8 director.

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

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

20 SECTION 4. Section 387-1, Hawaii Revised Statutes, is
21 amended by amending the definition of "employer" to read as
22 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 by amending subsections (a) and (b) to read as follows:

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

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

14 (2) The amount paid each pay period to each [~~such~~]
15 employee, of the hours worked each day and each
16 workweek by each [~~such~~] employee, and of [~~such~~] other
17 information and for [~~such~~] periods of time as the
18 director of labor and industrial relations may by
19 [~~regulation~~] rule prescribe. The director or the
20 director's authorized representative [~~shall~~], for the
21 purpose of examination, shall have access to and the
22 right to copy from such records. Every employer shall



1 furnish to the director or the director's authorized
2 representative [~~such~~] any information relating to the
3 employment of workers and in [~~such~~] a manner as the
4 director may prescribe.

5 (b) Every employer shall post and keep posted [~~such~~]
6 notices pertaining to the application of the law as shall be
7 prescribed by the director in conspicuous places in every
8 establishment where any employee is employed so as to permit the
9 employee to observe readily a copy on the way to or from the
10 employee's place of employment."

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

13 "**§387-7 Wilful violations; penalty.** Any employer who
14 wilfully hinders or delays the director [~~of labor and industrial~~
15 ~~relations~~] or the director's authorized representative in the
16 performance of the director's duties in the enforcement of this
17 chapter; or who wilfully refuses to admit the director or the
18 director's authorized representative to any place of employment;
19 or who fails to keep or who falsifies any record required under
20 section 387-6 or who refuses to make [~~such~~] the records
21 accessible or to give information required for the proper
22 enforcement of this chapter, upon demand, to the director or the



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

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

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

16 (1) Any person divulging information in violation of
17 section 387-8~~[r-oe]~~;

18 (2) ~~[any]~~ Any employer who wilfully violates this chapter
19 or ~~[oe]~~ any rule~~[r-regulationr]~~ or order issued under
20 the authority of this chapter~~[r-oe]~~;

21 (3) ~~[any]~~ Any employer or the employer's agent or any
22 officer or agent of a corporation, partnership, or



1 limited liability company or any other person who
2 discharges, threatens, or in any other manner
3 discriminates or retaliates against any employee
4 because the employee has made a complaint to the
5 employee's employer, to the director, or to any other
6 person that [~~the employee has not been paid wages in~~
7 ~~accordance with this chapter, or~~] the employer engaged
8 in conduct that the employee reasonably and in good
9 faith believes constitutes a violation this chapter or
10 the employee has instituted or caused to be instituted
11 any proceeding under or related to this chapter, or
12 has testified or is about to testify in any such
13 proceedings[~~7~~]; or

14 (4) [~~any~~] Any employer or the employer's agent or any
15 officer or agent of a corporation, partnership, or
16 limited liability company who pays or agrees to pay
17 any employee compensation less than that which the
18 employee is entitled to under this chapter,
19 shall be guilty of a misdemeanor and, upon conviction thereof,
20 shall be punished by a fine of not less than [~~\$50~~] \$500 nor more
21 than [~~\$500~~] \$20,000 or by imprisonment for a period not to
22 exceed one year or by both [~~such~~] fine and imprisonment. If a



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

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

13 ""Employer" includes any individual, partnership, limited
14 liability company, association, joint-stock company, trust,
15 corporation, the personal representative of the estate of a
16 deceased individual or the receiver, trustee, or successor of
17 any of the same, employing any person, but shall not include the
18 State or any political subdivision thereof or the United
19 States."

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



1 "§388-7 Notification, posting, and records. Every

2 employer shall:

3 (1) [~~Notify~~] Provide each employee in writing[~~7~~] in
4 English and in the language identified by each
5 employee as the primary language of the employee, at
6 the time of hiring and on or before February 1 of each
7 subsequent year of the employee's employment with the
8 employer, a notice containing the following:

9 (A) [~~of the~~] The rate or rates of pay[~~7~~] and basis
10 thereof, whether paid by the hour, shift, day,
11 week, salary, piece, commission, or otherwise,
12 including any rates for overtime, if applicable;

13 (B) Allowances, if any, claimed as part of the
14 minimum wage, including tip, meal, or lodging
15 allowances;

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

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

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

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



1 (G) Any other information the director deems material
2 and necessary.
3 Whenever the employer provides the notice to an
4 employee, the employer shall obtain from the employee
5 a signed and dated written acknowledgment in English,
6 and in the primary language of the employee, of the
7 receipt of the notice, which the employer shall
8 maintain and keep for six years. The director shall
9 prepare templates that comply with the requirements of
10 this paragraph. Each template shall be dual-language,
11 including English and one additional language. The
12 director shall determine which languages to provide in
13 addition to English, based on the size of the
14 population of this State that speaks each language and
15 any other factor the director deems relevant. The
16 templates shall be made available to employers in the
17 manner determined by the director. When an employee
18 identifies as the employee's primary language a
19 language for which a template is not available from
20 the director, the employer shall comply with this
21 paragraph by providing that employee an English-
22 language notice of acknowledgment. An employer shall



1 not be penalized for errors or omissions in the non-
2 English portions of any notice provided by the
3 director;

4 (2) Notify each employee in writing or through a posted
5 notice maintained in a place accessible to employees
6 of any changes in the arrangements specified [~~above~~]
7 in paragraph (1) at least seven calendar days prior to
8 the time of the change[+], unless the changes are
9 reflected on a timely pay statement furnished to the
10 employee;

11 (3) Provide to each employee in writing or through a
12 posted notice maintained in a place accessible to
13 employees, policies with regard to vacation and sick
14 leave;

15 (4) [~~Furnish~~] Provide each employee at every [~~payday~~] pay
16 period a legible printed, typewritten, or handwritten
17 record showing [~~the employee's total gross~~
18 ~~compensation, the amount and purpose of each~~
19 ~~deduction, total net compensation, date of payment,~~
20 ~~and pay period covered;~~] the information required
21 under section 387-6(c); and maintain and preserve a
22 copy of the record or its equivalent for a period of



1 at least six years; provided that in lieu of the
 2 printed, typewritten, or handwritten record required
 3 by this paragraph and upon receipt of written
 4 authorization from the employee, the employer may
 5 provide an electronic record that may be
 6 electronically accessed by the employee that shall be
 7 retained by the employer for a period of at least six
 8 years;

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

13 (6) Make and keep records of all employees which shall
 14 include basic employment and earnings records, and
 15 preserve the records for ~~[a]~~ the period of time and in
 16 ~~[a]~~ the manner, as the director shall prescribe by
 17 rule."

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

20 "**§388-9 Enforcement.** (a) The director ~~[of labor and~~
 21 ~~industrial relations]~~ shall enforce and administer this chapter
 22 and the director or the director's authorized representatives



1 may hold hearings and otherwise investigate charges of
2 violations of this chapter and institute actions for penalties
3 hereunder.

4 (b) The director or the director's authorized
5 representatives may enter and inspect [~~such~~] places, question
6 [~~such~~] employees, and investigate [~~such~~] facts, conditions, or
7 matters as they may deem appropriate to determine whether any
8 person has violated this chapter or any rule [~~or regulation~~]
9 issued hereunder or which may aid in the enforcement of this
10 chapter.

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

14 (c) If any judgment obtained by the director against an
15 employer for nonpayment of wages remains unsatisfied for a
16 period of thirty days after the time to appeal therefrom has
17 expired and no appeal is pending or after [~~such~~] the judgment
18 has been finally affirmed on appeal, the director may institute
19 proceedings in the name of the State in the circuit court in
20 which the employer has the employer's principal place of
21 business to compel the employer to cease doing any business
22 until the judgment has been satisfied. Any judgment or court



1 order awarding remedies under this section shall provide that if
2 any amount remains unpaid ninety days after the judgment is
3 issued, or ninety days after the time to appeal has expired and
4 no appeal is pending, whichever is later, the total amount of
5 the judgment shall automatically increase by fifteen per cent.

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



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

3 "**§388-10 Penalties.** (a) Civil~~[-]~~ penalties.

4 (1) Any employer who fails to pay wages in accordance with
5 this chapter without equitable justification shall be
6 liable to the employee, in addition to the wages
7 legally proven to be due, for a sum equal to the
8 amount of unpaid wages and interest at a rate of six
9 per cent per year from the date that the wages were
10 due~~[-]~~;

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



1 (B) The director may bring, on behalf of any employee
2 not provided a notice as required by section 388-
3 7(1), any legal action necessary, including
4 administrative action, to collect the claim, and
5 as part of the legal action, in addition to any
6 other remedies and penalties otherwise available.
7 The director may assess against the employer
8 damages of \$50 for each workweek that the
9 violation occurred or continues to occur; and
10 (3) (A) Any employee who is not provided a pay statement
11 as required by section 388-7(4) shall recover in
12 a civil action damages of \$100 for each workweek
13 that the violation occurred or continues to
14 occur, not to exceed \$2,500, together with costs
15 and reasonable attorney's fees. The court may
16 also award other relief, including injunctive and
17 declaratory relief, that the court in its
18 discretion deems necessary or appropriate; and
19 (B) The director may bring, on behalf of any employee
20 not provided a pay statement as required by
21 section 388-7(4), any legal action necessary,
22 including administrative action, to collect the



1 claim, and as part of the legal action, in
2 addition to any other remedies and penalties
3 otherwise available under this chapter. The
4 director may assess against the employer damages
5 of \$100 for each workweek that the violation
6 occurred or continues to occur.

7 (b) Criminal~~[r]~~ penalties.

8 (1) Any employer who does not pay the wages of any of the
9 employer's employees in accordance with this chapter~~[r]~~
10 ~~or any~~];

11 (2) Any officer or agent of any corporation, partnership,
12 or limited liability company who knowingly permits the
13 corporation, partnership, or limited liability company
14 to violate this chapter by failing to pay wages of any
15 of its employees in accordance with this chapter~~[r]~~~~or~~
16 any];

17 (3) Any employer or the employer's agent or any officer or
18 agent of a corporation, partnership, or limited
19 liability company, or any other person who discharges,
20 threatens, or in any other manner discriminates or
21 retaliates against any employee because the employee
22 has made a complaint to the employee's employer, or to



1 the director, or to any other person that the
2 ~~[employee has not been paid wages in accordance with~~
3 ~~this chapter, or]~~ employer engaged in conduct that the
4 employee reasonably and in good faith believes
5 violates this chapter, or the employee has instituted
6 or caused to be instituted any proceeding under or
7 related to this chapter[7] or has testified or is
8 about to testify in any such proceedings[7]; or [any]
9 (4) Any employer who wilfully fails to comply with any
10 other requirements of this chapter,
11 shall be fined not less than [~~\$100~~] \$500 nor more than [~~\$10,000~~]
12 \$20,000 or imprisoned for not more than one year, or punished by
13 both fine and imprisonment for each [~~such~~] offense. If a second
14 or subsequent offense is committed within six years of the date
15 of conviction for a prior offense, the employer shall be guilty
16 of a class C felony for the second or subsequent offense;
17 provided that in addition to any other authorized sentence, the
18 employer shall be fined not less than \$500 nor more than \$20,000
19 for each offense. Each day's failure to keep the records
20 requested under this chapter, or to furnish the records or
21 information to the director or the director's representative,
22 shall constitute a separate offense."



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

3 "(c) The court in any action brought under this section
4 [~~shall~~], in addition to any judgment awarded to the plaintiff or
5 plaintiffs, shall allow interest of six per cent per year from
6 the date the wages were due, costs of action, including costs of
7 fees of any nature, and reasonable attorney's fees, to be paid
8 by the defendant. Any judgment or court order awarding remedies
9 under this section shall provide that if any amounts remain
10 unpaid ninety days after the judgment is issued or ninety days
11 after the time to appeal has expired and no appeal is pending,
12 whichever is later, the total amount of judgment shall
13 automatically increase by fifteen per cent.

14 The director shall not be required to:

15 (1) Pay the filing fee or other costs or fees of any
16 nature, including the opposing party's fees and costs;
17 or

18 (2) File a bond or other security of any nature, in
19 connection with [~~such~~] the action, with proceedings
20 supplementary thereto, or as a condition precedent to
21 the availability to the director of any process in aid
22 of such action or proceedings. The director may join



1 various claimants in one preferred claim or lien, and
2 in case of suit join them in one cause of action."

3 SECTION 13. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun before its effective date.

6 SECTION 14. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 15. This Act shall take effect upon its approval.

9

INTRODUCED BY: *Chris Hill*



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 civil and criminal penalties for employers' noncompliance with wage rate notice requirements. Require public notice of employer violations.

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

