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# A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Section 378-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "employment" to read as  
3 follows:

4 "Employment" means any service performed by an individual  
5 for another person under any contract of hire, express or  
6 implied, oral or written, whether lawfully or unlawfully entered  
7 into. Employment does not include services by an individual  
8 employed as a domestic in the home of any person[-], except as  
9 provided in section 378-2(a)(9)."

10 SECTION 2. Section 378-2, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12 "(a) It shall be an unlawful discriminatory practice:

13 (1) Because of race, sex, including gender identity or  
14 expression, sexual orientation, age, religion, color,  
15 ancestry, disability, marital status, arrest and court  
16 record, or domestic or sexual violence victim status  
17 if the domestic or sexual violence victim provides



1 notice to the victim's employer of such status or the  
2 employer has actual knowledge of such status:

3 (A) For any employer to refuse to hire or employ or  
4 to bar or discharge from employment, or otherwise  
5 to discriminate against any individual in  
6 compensation or in the terms, conditions, or  
7 privileges of employment;

8 (B) For any employment agency to fail or refuse to  
9 refer for employment, or to classify or otherwise  
10 to discriminate against, any individual;

11 (C) For any employer or employment agency to print,  
12 circulate, or cause to be printed or circulated  
13 any statement, advertisement, or publication or  
14 to use any form of application for employment or  
15 to make any inquiry in connection with  
16 prospective employment, that expresses, directly  
17 or indirectly, any limitation, specification, or  
18 discrimination;

19 (D) For any labor organization to exclude or expel  
20 from its membership any individual or to  
21 discriminate in any way against any of its  
22 members, employer, or employees; or



- 1 (E) For any employer or labor organization to refuse  
2 to enter into an apprenticeship agreement as  
3 defined in section 372-2; provided that no  
4 apprentice shall be younger than sixteen years of  
5 age;
- 6 (2) For any employer, labor organization, or employment  
7 agency to discharge, expel, or otherwise discriminate  
8 against any individual because the individual has  
9 opposed any practice forbidden by this part or has  
10 filed a complaint, testified, or assisted in any  
11 proceeding respecting the discriminatory practices  
12 prohibited under this part;
- 13 (3) For any person, whether an employer, employee, or not,  
14 to aid, abet, incite, compel, or coerce the doing of  
15 any of the discriminatory practices forbidden by this  
16 part, or to attempt to do so;
- 17 (4) For any employer to violate the provisions of section  
18 121-43 relating to nonforfeiture for absence by  
19 members of the national guard;
- 20 (5) For any employer to refuse to hire or employ or to bar  
21 or discharge from employment any individual because of  
22 assignment of income for the purpose of satisfying the



1 individual's child support obligations as provided for  
2 under section 571-52;

3 (6) For any employer, labor organization, or employment  
4 agency to exclude or otherwise deny equal jobs or  
5 benefits to a qualified individual because of the  
6 known disability of an individual with whom the  
7 qualified individual is known to have a relationship  
8 or association;

9 (7) For any employer or labor organization to refuse to  
10 hire or employ, bar or discharge from employment,  
11 withhold pay from, demote, or penalize a lactating  
12 employee because the employee breastfeeds or expresses  
13 milk at the workplace. For purposes of this  
14 paragraph, the term "breastfeeds" means the feeding of  
15 a child directly from the breast; [e]

16 (8) For any employer to refuse to hire or employ, bar or  
17 discharge from employment, or otherwise to  
18 discriminate against any individual in compensation or  
19 in the terms, conditions, or privileges of employment  
20 of any individual because of the individual's credit  
21 history or credit report, unless the information in  
22 the individual's credit history or credit report



1 directly relates to a bona fide occupational  
 2 qualification under section 378-3(2) [-]; or  
 3 (9) For any employer to discharge from employment, or  
 4 otherwise to discriminate against any individual  
 5 employed as a domestic, in compensation or in terms,  
 6 conditions, or privileges of employment because of the  
 7 individual's race; sex, including gender identity or  
 8 expression; sexual orientation; age; religion; color;  
 9 ancestry; disability; or marital status."

10 SECTION 3. Section 387-1, Hawaii Revised Statutes, is  
 11 amended by adding three new definitions to be appropriately  
 12 inserted and to read as follows:

13 "Casual basis" means employment that is:

- 14 (1) Irregular or intermittent; and
- 15 (2) Not performed by an individual employed by an employer  
 16 or agency other than the family or household using the  
 17 individual's services.

18 Employment is not on a casual basis, whether performed for  
 19 one or more family or household employers, if the employment for  
 20 all employers exceeds twenty hours per week in the aggregate.

21 For babysitting or companionship services, employment is not on  
 22 a casual basis if the service is performed by an individual



1 whose vocation is the provision of babysitting or companionship  
2 services.

3 "Companionship services for the aged or infirm" means those  
4 services that provide fellowship, care, and protection for a  
5 person who, because of advanced age or physical or mental  
6 infirmity, cannot care for his or her needs.

7 "Domestic service" means services of a household nature  
8 performed by an employee in or about a private home (permanent  
9 or temporary) of the person whom he or she is employed. The  
10 term includes, but is not limited to, services performed by  
11 employees such as cooks, waiters, butlers, valets, maids,  
12 housekeepers, governesses, nurses, janitors, laundresses,  
13 caretakers, handymen, gardeners, and chauffeurs of automobiles  
14 for family use. The term also includes babysitters whose  
15 employment is not on a casual basis."

16 SECTION 4. Section 387-1, Hawaii Revised Statutes, is  
17 amended by amending the definition of "employee" to read as  
18 follows:

19 "Employee" includes any individual employed by an  
20 employer, but shall not include any individual employed:

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



- 1 (2) In agriculture for any workweek in which the employer  
2 of the individual employs less than twenty employees  
3 or in agriculture for any workweek in which the  
4 individual is engaged in coffee harvesting;
- 5 (3) In domestic service in or about the home of the  
6 individual's employer on a casual basis, or providing  
7 companionship services for the aged or infirm, or as a  
8 house parent in or about any home or shelter  
9 maintained for child welfare purposes by a charitable  
10 organization exempt from income tax under section 501  
11 of the federal Internal Revenue Code;
- 12 (4) By the individual's brother, sister, brother-in-law,  
13 sister-in-law, son, daughter, spouse, parent, or  
14 parent-in-law;
- 15 (5) In a bona fide executive, administrative, supervisory,  
16 or professional capacity or in the capacity of outside  
17 salesperson or as an outside collector;
- 18 (6) In the propagating, catching, taking, harvesting,  
19 cultivating, or farming of any kind of fish,  
20 shellfish, crustacean, sponge, seaweed, or other  
21 aquatic forms of animal or vegetable life, including  
22 the going to and returning from work and the loading



- 1           and unloading of such products prior to first  
2           processing;
- 3           (7) On a ship or vessel and who has a Merchant Mariners  
4           Document issued by the United States Coast Guard;
- 5           (8) As a driver of a vehicle carrying passengers for hire  
6           operated solely on call from a fixed stand;
- 7           (9) As a golf caddy;
- 8           (10) By a nonprofit school during the time such individual  
9           is a student attending such school;
- 10          (11) In any capacity if by reason of the employee's  
11          employment in such capacity and during the term  
12          thereof the minimum wage which may be paid the  
13          employee or maximum hours which the employee may work  
14          during any workweek without the payment of overtime,  
15          are prescribed by the federal Fair Labor Standards Act  
16          of 1938, as amended, or as the same may be further  
17          amended from time to time; provided that if the  
18          minimum wage which may be paid the employee under the  
19          Fair Labor Standards Act for any workweek is less than  
20          the minimum wage prescribed by section 387-2, then  
21          section 387-2 shall apply in respect to the employees  
22          for such workweek; provided further that if the





1 maximum workweek established for the employee under  
 2 the Fair Labor Standards Act for the purposes of  
 3 overtime compensation is higher than the maximum  
 4 workweek established under section 387-3, then section  
 5 387-3 shall apply in respect to such employee for such  
 6 workweek; except that the employee's regular rate in  
 7 such an event shall be the employee's regular rate as  
 8 determined under the Fair Labor Standards Act;

9 (12) As a seasonal youth camp staff member in a resident  
 10 situation in a youth camp sponsored by charitable,  
 11 religious, or nonprofit organizations exempt from  
 12 income tax under section 501 of the federal Internal  
 13 Revenue Code or in a youth camp accredited by the  
 14 American Camping Association; or

15 (13) As an automobile salesperson primarily engaged in the  
 16 selling of automobiles or trucks if employed by an  
 17 automobile or truck dealer licensed under chapter  
 18 437."

19 SECTION 5. Statutory material to be repealed is bracketed  
 20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect on July 1, 2113.



**Report Title:**

Domestic Workers Bill of Rights

**Description:**

Establishes basic rights and protections for domestics.  
Effective July 1, 2013. (SB535 HD1)

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

