

JAN 24 2013

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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. The legislature finds that chapter 390, Hawaii  
2 Revised Statutes, protects the right of minors, who are at least  
3 fourteen years old but under sixteen years old, by providing an  
4 interval of at least thirty consecutive minutes for a rest or  
5 lunch period for no more than five continuous hours of work.  
6 Likewise, the legislature finds that, although Act 172, Session  
7 Laws of Hawaii 1999, prohibited employers from disallowing an  
8 employee to express breast milk during any meal period or other  
9 break period required by law, neither state law nor federal wage  
10 and hour law currently requires employers to provide employees  
11 sixteen years of age or older any meal period or rest break, no  
12 matter how many consecutive hours the employee may be required  
13 to work. Employees who must work a full day or eight-hour shift  
14 or more, regardless of age or sex should not be denied a  
15 reasonable period of time to rest and consume a meal, as is  
16 commonly required by other states such as California, Oregon,  
17 and Washington.



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

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

10 For the purposes of this section,

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

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

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

21 (1) If the employee is employed on a weekly salary, the  
22 weekly salary and the reasonable cost of board,



1           lodging, or other facilities, if furnished to the  
2           employee, shall be divided by forty[-];

3           (2) If the employee is employed on a biweekly salary, the  
4           biweekly salary and the reasonable cost of board,  
5           lodging, or other facilities, if furnished to the  
6           employee, shall be divided by two and the quotient  
7           divided by forty[-];

8           (3) If the employee is employed on a semi-monthly salary,  
9           the semi-monthly salary and the reasonable cost of  
10          board, lodging, or other facilities, if furnished to  
11          the employee, shall be multiplied by twenty-four, the  
12          product divided by fifty-two and the quotient divided  
13          by forty[-]; and

14          (4) If the employee is employed on a monthly salary, the  
15          monthly salary and the reasonable cost of board,  
16          lodging, or other facilities if furnished to the  
17          employee, shall be multiplied by twelve, the product  
18          divided by fifty-two and the quotient divided by  
19          forty.

20          (c) The regular rate of an employee who is employed on a  
21          salary and in addition receives other wages such as, but not  
22          limited to, commissions, bonus, piecework pay, and hourly or



1 daily pay shall be computed in the manner provided in this  
2 subsection. As used hereinabove, the term "other wages" shall  
3 not include the reasonable cost of board, lodging, or other  
4 facilities.

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

12 (2) If the employee's salary and the reasonable cost of  
13 board, lodging, or other facilities, if furnished to  
14 the employee, are less than fifty per cent of the  
15 employee's total earnings for the pay period, the  
16 total earnings shall be reduced to a regular rate in  
17 the manner provided in paragraph (1), (2), (3), or (4)  
18 of subsection (b), whichever is applicable, except  
19 that the actual number of hours worked in the workweek  
20 shall be substituted for the final divisor of forty.  
21 Such an employee shall receive overtime compensation  
22 for employment in excess of forty hours in a workweek



1 at a rate not less than one-half times the employee's  
2 regular rate.

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

12 (e) An employer,

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



1           (2) Who is engaged in agriculture and whose agricultural  
2           products are processed by an employer who is engaged  
3           in a seasonal pursuit or in processing, canning, or  
4           packing operations referred to in paragraph (1); or

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

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

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



1        (g) No employer shall require any employee to work more  
2 than a total of five hours without a scheduled interval of no  
3 less than thirty consecutive minutes for a bona fide meal  
4 period, as described in title 29 Code of Federal Regulations  
5 section 785.19; provided that a collective bargaining agreement  
6 does not otherwise contain express provisions for employee meal  
7 breaks; provided further that if an employee who is scheduled to  
8 work a total of six hours chooses, the employee may be allowed  
9 to work uninterrupted for five hours and thirty minutes without  
10 a bona fide meal period, to complete the scheduled work hours at  
11 least thirty minutes early. This subsection shall not apply to  
12 any employer who is the operator of a continuously operating  
13 facility that is regulated by an environmental permit; provided  
14 that an on-duty meal period is provided. This subsection shall  
15 not apply to an employer who is subject to title 49 Code of  
16 Federal Regulations part 395.

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



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

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

5 (1) Any employer who violates any provision of sections  
6 387-2 and 387-3 shall be liable to the employee or  
7 employees affected in the amount of their unpaid  
8 minimum wages or unpaid overtime compensation, and in  
9 case of wilful violation in an additional equal amount  
10 as liquidated damages[-]; and

11 (2) Any employer who does not provide a meal break as  
12 required by section 387-3(g) shall be liable to the  
13 employee affected in the amount of one and one half  
14 times the employee's hourly rate of pay for each meal  
15 break not provided; provided that the one and one half  
16 times the hourly rate penalty shall be computed based  
17 on the employee's regular wage at the time the  
18 infraction occurred."

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



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

A handwritten signature in black ink, appearing to read "M. Smith", is written over a horizontal line.



# S.B. NO. 1263

**Report Title:**

Meal Breaks; Employees

**Description:**

Requires employers to provide meal breaks for employees who work more than a total of five hours a day. Imposes penalties on employers who fail to provide meal breaks. Clarifies that the employer's liability is based on an employee's regular wage at the time the infraction occurred.

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

