
A BILL FOR AN ACT

RELATING TO LABOR.

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

1 PART I

2 SECTION 1. Section 386-123, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§386-123 Failure to give security for compensation;
5 penalty; injunction[-]; stop-work order; fines. (a) If an
6 employer fails to comply with section 386-121, or fails to
7 comply with section 386-99, the director or the director's
8 designee shall provide the employer with written notice
9 requiring the employer to provide evidence, satisfactory to the
10 director or director's designee, of having secured any necessary
11 insurance or self-insurance in accordance with section 386-121
12 within three business days. If an employer fails to provide
13 evidence of insurance or self-insurance within three business
14 days, the director or the director's designee shall issue and
15 serve the employer a stop-work order that prohibits the use of
16 employee labor by the employer until the employer is in
17 compliance with section 386-121. The stop-work order shall



1 become effective immediately upon service. Any employee who is
2 affected by the work stoppage shall be paid by the employer for
3 the time lost, not to exceed ten days, pending compliance by the
4 employer.

5 (b) An employer may protest a stop-work order by making
6 and filing with the director a written request for a hearing
7 within twenty days after service of the stop-work order. The
8 hearing shall be held within thirty days from the date of filing
9 the request. The director shall notify the employer of the time
10 and place of the hearing by mail. At the conclusion of the
11 hearing, the stop-work order shall be affirmed or dismissed, and
12 within three hours after the hearing, the director shall issue a
13 written decision to all parties by registered or certified mail.
14 If any party is aggrieved by the decision of the director or the
15 designated hearings officer, the party may appeal in the manner
16 provided in chapter 91 to the circuit court after filing a
17 surety bond or letter of credit with the director in an amount
18 equal to ten per cent of the penalty amount; provided that the
19 operation of a stop-work order shall not be stayed on appeal
20 unless specifically ordered by a court of competent jurisdiction
21 in accordance with section 91-14(c).



1 (c) At the time the stop-work order is issued and served
2 pursuant to this section, the director or the director's
3 designee shall also issue and serve a penalty requiring the
4 employer [~~shall be liable for~~] who violates section 386-121 to
5 pay a penalty of not less than \$500 or of \$100 for each employee
6 for every day [~~during which such failure continues,~~] the
7 employer is not in compliance, whichever sum is greater, to be
8 recovered in an action brought by the director or the director's
9 designee in the name of the State, and the amount [~~se~~] that is
10 collected shall be paid into the special compensation fund
11 created by section 386-151. The director may, however, in the
12 director's discretion, for good cause shown, remit all or any
13 part of the penalty in excess of \$500; provided that the
14 employer in default complies with section 386-121. With respect
15 to such actions, the attorney general or any county attorney or
16 public prosecutor shall prosecute the same if so requested by
17 the director.

18 In addition, if any employer is in default under section
19 386-121 for a period of [~~thirty~~] fourteen days, the employer may
20 be enjoined, by the circuit court of the circuit in which the
21 employer's principal place of business is located[~~7~~] in the



1 State or where the violation occurred, from carrying on the
2 employer's business anywhere in the State so long as the default
3 continues, such action for injunction to be prosecuted by the
4 attorney general or any county attorney if so requested by the
5 director.

6 (d) Stop-work orders and any penalties imposed shall be
7 effective against any successor entity that has one or more of
8 the same principals or officers as the corporation, association,
9 partnership, limited liability company, sole proprietorship, or
10 other legal business entity against which the stop-work order
11 was issued."

12 **PART II**

13 SECTION 2. Chapter 388, Hawaii Revised Statutes, is
14 amended by adding three new sections to part I to be
15 appropriately designated and to read as follows:

16 "§388-A Order of wage payment violation; appeal. (a)
17 When the department of labor and industrial relations, as a
18 result of the department's own investigation, finds that a
19 violation of this chapter or administrative rules adopted under
20 this chapter has been committed and not corrected, or a penalty
21 under section 388-10(a)(2) has not been paid, the department



1 shall issue an order of wage payment violation to the employer
2 in violation. The order shall include any penalty assessed
3 pursuant to section 388-10(a).

4 (b) The order of wage payment violation shall be final and
5 conclusive unless within twenty days after a copy of the order
6 of wage payment violation has been sent to the employer, the
7 employer files a written notice of appeal with the director in
8 writing.

9 (c) A hearing on the written notice of appeal shall be
10 held pursuant to chapter 91, by a hearings officer appointed by
11 the director, within thirty days of the filing of the notice of
12 appeal. A decision stating the findings of fact and conclusions
13 of law shall be rendered by the hearings officer within thirty
14 days after the conclusion of the hearing.

15 (d) Any party to an appeal under this chapter may obtain
16 judicial review of the decision issued by the hearings officer
17 in the manner provided under chapter 91.

18 **§388-B Remittance of penalties.** Until the order of wage
19 payment violation becomes final, the director may withdraw or
20 modify the order of wage payment violation or remit all or any
21 part of a penalty assessed if good cause is shown; provided that



1 the employer in default complies with this chapter and the
2 administrative rules adopted under this chapter.

3 §388-C Enforcement of the order of wage payment violation.

4 The director may file in the circuit court in the jurisdiction
5 in which the employer does business, a certified copy of the
6 final order of wage payment violation. The court shall render a
7 judgment in accordance with the final order of wage payment
8 violation and notify the parties of the judgment. The judgment
9 shall have the same effect, and all proceedings in relation to
10 the judgment shall be the same, as though the judgment had been
11 rendered in an action duly heard and determined by the court,
12 except that there shall be no appeal from the judgment."

13 SECTION 3. Section 388-10, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Civil. Any employer who fails to pay wages in
16 accordance with this chapter without equitable justification or
17 violates this chapter or the administrative rules adopted under
18 this chapter shall be liable [tə]:

19 (1) To the employee [, in addition to the wages legally
20 proven to be due,] for a sum equal to the amount of



Report Title:

Stop-work Orders; Workers' Compensation; Order of Wage Payment Violation; Establishment; Enforcement; Penalties

Description:

Authorizes the Director of Labor and Industrial Relations or the Director's designee to issue and serve on an employer a stop-work order prohibiting the use of employee labor by the employer until the employer complies with certain provisions regarding security for payments of workers' compensation coverage for employees. Authorizes the Department of Labor and Industrial Relations to issue an order of wage payment violation to the employer in violation of provisions regarding payment of wages and other compensation. Establishes penalties, enforcement, and protest procedures related to stop-work orders and orders of wage payment violations. Takes effect 1/7/2059. (SD2)

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

