

**"CHAPTER 387  
WAGE AND HOUR LAW**

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## Law Journals and Reviews

Employee Rights Under Judicial Scrutiny: Prevalent Policy Discourse and the Hawai'i Supreme Court. 14 UH L. Rev. 189 (1992).

### Case Notes

Chapters 387 and 388 serve to prevent employer from withholding sums or benefits to which employee has rights by virtue of contract with employer, not a predecessor. 661 F.2d 776 (1981).

Regardless of whether this chapter can form the basis of a Parnar action, Hawaii law indicated that appellants (ramp supervisor and ramp agent who contended that they were terminated by airline in connection with ramp supervisor's wage and hour complaint, in violation of public policy) had not produced sufficient evidence to survive summary judgment on such a claim, even if it did exist. 281 F.3d 1054 (2002).

" **§387-1 Definitions.** As used in this chapter:

"Agriculture" means agriculture as defined in section 3(f) of the Federal Fair Labor Standards Act of 1938, or as the same may be amended from time to time.

"Casual basis" means employment that is:

- (1) Irregular or intermittent; and
- (2) Performed for a family or household who directly employs the individual providing the services.

Employment is not on a casual basis, whether performed for one or more family or household employers, if the employment for all employers exceeds twenty hours per week in the aggregate. For babysitting or companionship services for the aged or infirm, employment is not on a casual basis if the service is performed by an individual whose vocation is the provision of babysitting or companionship services.

"Companionship services for the aged or infirm" means those services that provide fellowship, care, and protection for an individual who, because of advanced age or physical or mental infirmity, cannot care for the individual's own needs.

"Companionship services for the aged or infirm" does not include services relating to the care and protection of the aged or infirm that require and are performed by trained personnel, such as a registered or practical nurse.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

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

"Employ" includes to permit or suffer to work.

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

- (1) At a guaranteed compensation totaling \$2,000 or more a month, whether paid weekly, biweekly, or monthly;
- (2) In agriculture for any workweek in which the employer of the individual employs less than twenty employees or in agriculture for any workweek in which the individual is engaged in coffee harvesting;
- (3) In or about the home of the individual's employer:
  - (A) In domestic service on a casual basis; or
  - (B) Providing companionship services for the aged or infirm;
- (4) As a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
- (5) By the individual's brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law;
- (6) In a bona fide executive, administrative, supervisory, or professional capacity or in the capacity of outside salesperson or as an outside collector;
- (7) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponge, seaweed, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- (8) On a ship or vessel and who has a Merchant Mariners Document issued by the United States Coast Guard;
- (9) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- (10) As a golf caddy;
- (11) By a nonprofit school during the time such individual is a student attending such school;

- (12) In any capacity if by reason of the employee's employment in such capacity and during the term thereof the minimum wage which may be paid the employee or maximum hours which the employee may work during any workweek without the payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as amended, or as the same may be further amended from time to time; provided that if the minimum wage which may be paid the employee under the Fair Labor Standards Act for any workweek is less than the minimum wage prescribed by section 387-2, then section 387-2 shall apply in respect to the employees for such workweek; provided further that if the maximum workweek established for the employee under the Fair Labor Standards Act for the purposes of overtime compensation is higher than the maximum workweek established under section 387-3, then section 387-3 shall apply in respect to such employee for such workweek; except that the employee's regular rate in such an event shall be the employee's regular rate as determined under the Fair Labor Standards Act;
- (13) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit organizations exempt from income tax under section 501 of the federal Internal Revenue Code or in a youth camp accredited by the American Camping Association; or
- (14) As an automobile salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.

"Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the State or any political subdivision thereof or the United States.

"Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are employed.

"Seasonal pursuit" means one in which it is customary in each year for the volume of employment in such pursuit to be substantially increased during a regularly recurring period or periods of seasonal activity, and in the remainder of the year, owing to climate or other natural conditions, for the volume of employment to be substantially decreased. Periods of seasonal activity shall be considered as "regularly recurring", within

the meaning of this paragraph, notwithstanding that such periods may vary from year to year.

"Tipped employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$20 a month in tips.

"Wage" means (except as the department may provide under section 387-11) legal tender of the United States or checks on banks convertible into cash on demand at full face value thereof and in addition thereto the reasonable cost as determined by the department, to the employer of furnishing an employee with board, lodging, or other facilities if such board, lodging, or other facilities are customarily furnished by such employer to the employer's employees. Except for the purposes of the last sentence of section 387-2, "wage" shall not include tips or gratuities of any kind.

"Week" or "workweek" means a fixed and regularly recurring period of seven consecutive days. [L Sp 1941, c 66, §2; am L 1943, c 159, §1; RL 1945, §4352; am L 1945, c 15, §1(1); am L 1949, c 292, §1; am L 1951, c 180, §1; am L 1953, c 161, §1; am L 1955, cc 15, 120, §1; RL 1955, §94-2; am L 1957, c 256, §3; am L 1959, c 89, §1 and c 164, §1; am L Sp 1959 2d, c 1, §27; am L 1962, c 15, §2 and c 19, §2; am L 1965, c 67, §1 and c 132, §1(a), (b), and c 167, §1; HRS §387-1; am L 1969, c 36, §§1, 2 and c 219, §1; am L 1976, c 89, §1; am L 1983, c 44, §1; gen ch 1985; am L 1991, c 264, §1; am L 2002, c 43, §1; am L 2005, c 240, §2; am L 2013, c 248, §3]

### Case Notes

Defendants not entitled to summary judgment; in appropriate circumstances, portorage may be considered in the nature of "gratuities" for the purposes of this section and §387-2; plaintiffs raised genuine issue of material fact as to whether "portorage" is a "gratuity of any kind". 78 H. 351, 893 P.2d 779 (1995).

" **§387-2 Minimum wages.** (a) Except as provided in section 387-9 and this section, every employer shall pay to each employee employed by the employer, wages at the rate of not less than:

- (1) \$6.25 per hour beginning January 1, 2003;
- (2) \$6.75 per hour beginning January 1, 2006;
- (3) \$7.25 per hour beginning January 1, 2007;
- (4) \$7.75 per hour beginning January 1, 2015;
- (5) \$8.50 per hour beginning January 1, 2016;
- (6) \$9.25 per hour beginning January 1, 2017; and
- (7) \$10.10 per hour beginning January 1, 2018.

(b) The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than:

- (1) 25 cents;
- (2) 50 cents per hour beginning January 1, 2015; and
- (3) 75 cents per hour beginning January 1, 2016,

below the applicable minimum wage by the employee's employer and the combined amount the employee receives from the employee's employer and in tips is at least 50 cents more than the applicable minimum wage; provided that beginning January 1, 2015, the combined amount the employee receives from the employee's employer and in tips is at least \$7.00 more than the applicable minimum wage. [L Sp 1941, c 66, §3; am L 1943, c 159, §2; RL 1945, §4353; am L 1945, c 15, §1(2); am L 1953, c 77, §1; am L 1955, c 15, §2; RL 1955, §94-3; am L 1957, c 256, §1; am L 1962, c 16, pt of §2; HRS §387-2; am L 1969, c 36, §3; am L 1974, c 14, §1; am L 1978, c 4, §1; gen ch 1985; am L 1987, c 224, §1; am L 1990, c 34, §25; am L 1991, c 264, §2; am L 2001, c 279, §1; am L 2005, c 240, §3; am L 2014, c 82, §1]

#### **Cross References**

Service charge disclosure when not distributed as employees' tip income, see §481B-14.

#### **Case Notes**

Defendants not entitled to summary judgment; in appropriate circumstances, portage may be considered in the nature of "gratuities" for the purposes of §387-1 and this section; plaintiffs raised genuine issue of material fact as to whether "portage" is a "gratuity of any kind". 78 H. 351, 893 P.2d 779 (1995).

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

For the purposes of this section[:]

- (1) "Salary" means a predetermined wage, exclusive of the reasonable cost of board, lodging, or other facilities, at which an employee is employed each pay period;
- (2) If an employee performs two or more different kinds of work for the same employer, the total earnings for all

such work for the pay period shall be considered to have been earned for performing one kind of work.

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

- (1) If the employee is employed on a weekly salary, the weekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by forty.
- (2) If the employee is employed on a biweekly salary, the biweekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be divided by two and the quotient divided by forty.
- (3) If the employee is employed on a semi-monthly salary, the semi-monthly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, shall be multiplied by twenty-four, the product divided by fifty-two and the quotient divided by forty.
- (4) If the employee is employed on a monthly salary, the monthly salary and the reasonable cost of board, lodging, or other facilities if furnished to the employee, shall be multiplied by twelve, the product divided by fifty-two and the quotient divided by forty.

(c) The regular rate of an employee who is employed on a salary and in addition receives other wages such as, but not limited to, commissions, bonus, piecework pay, and hourly or daily pay shall be computed in the manner provided in this subsection. As used hereinabove, the term "other wages" shall not include the reasonable cost of board, lodging, or other facilities.

- (1) If the employee's salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, equal or exceed fifty per cent of the employee's total earnings for the pay period, the total earnings shall be reduced to a regular rate in the manner provided in paragraph (1), (2), (3), or (4) of subsection (b), whichever is applicable.
- (2) If the employee's salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, are less than fifty per cent of the employee's total earnings for the pay period, the total earnings shall be reduced to a regular rate in the manner provided in paragraph (1), (2), (3), or (4) of subsection (b), whichever is applicable, except that the actual number of hours worked in the workweek

shall be substituted for the final divisor of forty. Such an employee shall receive overtime compensation for employment in excess of forty hours in a workweek at a rate not less than one-half times the employee's regular rate.

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

(e) An employer[:]

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

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

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

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

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

(g) This section shall not apply to any overtime hours worked by an employee of an air carrier subject to title II of



the Railway Labor Act, 45 U.S.C. section 181 et seq.; provided such overtime hours are the result of a voluntary agreement between employees to exchange work time or days off. [L Sp 1941, c 66, pt of §4; RL 1945, §4354; RL 1955, §94-4; am L 1957, c 256, §2; am L 1959, c 32, §§1, 2; am L 1962, c 19, §3; am L 1965, c 85, §1; HRS §387-3; gen ch 1985; am L 1998, c 158, §2]

#### Revision Note

In subsection (e)(1), "or" deleted pursuant to §23G-15.

#### Case Notes

Federal Motor Carrier Act does not preempt this section. 833 F.2d 809 (1987).

Cited: 178 F.2d 603, 605 (1949).

" **§387-4 Wage discrimination prohibited.** No employer shall discriminate in any way in the payment of wages as between persons of different races or religions or as between the sexes; provided that nothing herein shall prohibit a variation of rates of pay for employees engaged in the same classification of work based upon a difference in seniority, length of service, substantial difference in duties or services performed, difference in the shift or time of day worked, or hours of work; and provided that an employer who is paying a wage rate differential in violation of this section shall not, in order to comply with this section, reduce the wage rate of any employee. [L 1959, c 122, §2; Supp, §94-4.5; HRS §387-4; am L 1972, c 63, §1]

" **[§387-4.5] Provisions of law may not be waived by agreement.** No provision of this chapter may in any way be contravened or set aside by private agreement. [L 1977, c 92, §1]

" **§387-5 Duty of director; employees, salaries.** The director of labor and industrial relations shall enforce this chapter. The director may appoint such assistants and such clerical, stenographic, and other help as may be necessary for the proper enforcement of this chapter subject to any civil service act relating to state employees. The salaries of all of the foregoing appointees and employees shall be as fixed by law. [L Sp 1941, c 66, pt of §5; RL 1945, §4355; RL 1955, §94-5; am L Sp 1959 2d, c 1, §27; HRS §387-5]

" **§387-6 Employer's records; posting of notices; furnishing of pay data; director's rights and duties.** (a) Every employer shall keep in or about the premises wherein any employee is employed a contemporaneous, true, and accurate record of:

- (1) The name, address, and occupation of each employee;
- (2) The amount paid each pay period to each employee;
- (3) The hours worked each day and each workweek by each employee;
- (4) The rate or rates of pay of each employee and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages; and
- (5) Any other information and for the periods of time as the director may by rule prescribe.

The director or the director's authorized representative shall for the purpose of examination have access to and the right to copy the records. Every employer shall furnish to the director or the director's authorized representative any information relating to the employment of workers and in any manner as the director may prescribe.

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

(c) Every employer shall furnish each employee at every pay period a legible printed, typewritten, or handwritten record showing the following:

- (1) The name of the employee;
- (2) The name of the employer;
- (3) The address and telephone number of the employer;
- (4) The employee's total hours worked;
- (5) The employee's regular and overtime hours;
- (6) The employee's straight-time compensation;
- (7) The employee's overtime compensation;
- (8) Any other compensation, including allowances, if any, claimed as part of the minimum wage;
- (9) The employee's total gross compensation;
- (10) The amount and purpose of each deduction;
- (11) The employee's total net compensation;
- (12) The date of payment;
- (13) The pay period covered; and
- (14) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis, including overtime rate or

rates of pay. For employees paid a piece rate, the record shall indicate the applicable piece rate or rates of pay, and the number of pieces completed at each piece rate;

provided that in lieu of the printed, typewritten, or handwritten record required by this subsection and upon receipt of written authorization from the employee, the employer may provide an electronic record that may be electronically accessed by the employee.

(d) The director shall cause this chapter to be printed and copies thereof shall be furnished to interested persons upon request without charge. Copies of orders of the director and of rules and regulations of the director shall also be furnished to employers affected thereby without charge.

(e) Every employer shall permit the director or the director's authorized representative to confer with and interrogate any employee of the employer at the place of employment and during working hours with respect to any matter cognizable under this chapter. [L Sp 1941, c 66, pt of §5; RL 1945, §4356; RL 1955, §94-6; am L 1961, c 118, §1; am L 1965, c 132, §1(c); HRS §387-6; gen ch 1985; am L 2005, c 210, §1; am L 2013, c 70, §2]

" **§387-7 Wilful violations; penalty.** Any employer who wilfully hinders or delays the director of labor and industrial relations or the director's authorized representative in the performance of the director's duties in the enforcement of this chapter; or who wilfully refuses to admit the director or the director's authorized representative to any place of employment; or who fails to keep or who falsifies any record required under section 387-6 or who refuses to make such records accessible or to give information required for the proper enforcement of this chapter, upon demand, to the director or the director's authorized representative shall be fined not more than \$500 or imprisoned not more than ninety days, or both. [L Sp 1941, c 66, pt of §5; RL 1945, §4357; RL 1955, §94-7; HRS §387-7; gen ch 1985]

#### **Cross References**

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

" **§387-8 Disclosure of information.** Except as otherwise provided herein, information secured from inspection of the records, or from the transcriptions or from the taking of transcriptions thereof, or from inspection of the employer's

premises by the director of labor and industrial relations or the director's authorized representative, shall be held confidential and shall not be disclosed or be open to any person. The information may be made available:

- (1) To officials concerned with, and for the purposes of, the administration of the laws relating to matters under the jurisdiction of the director;
- (2) To any agency of this or any other state, or any federal agency for the purposes of enforcing this chapter;
- (3) To any employee to the extent necessary for the proper presentation of the employee's claim under section 387-12;
- (4) To the Wage and Hour and Public Contracts Divisions of the United States Department of Labor. [L Sp 1941, c 66, pt of §5; am L 1943, c 159, §3; RL 1945, §4358; RL 1955, §94-8; am L 1965, c 132, §1(d); HRS §387-8; gen ch 1985]

" **§387-9 Special minimum wages for learners; apprentices; full-time students; paroled wards of Hawaii youth correctional facility; handicapped workers.** (a) Notwithstanding the provisions of section 387-2, the director may by rule provide for the employment:

- (1) Of learners, of apprentices, of part-time employees who are full-time students attending public or private schools other than colleges, universities, business schools, or technical schools, and of wards paroled from the Hawaii youth correctional facility, under special certificates issued by the director, at such wages lower than the applicable minimum wage and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe; and
- (2) Of individuals whose earning capacity is impaired by old age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the applicable minimum wage and for such period as shall be fixed in the certificates.

(b) The director may by rule prescribe standards and requirements to ensure that this section will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the special minimum wage rate authorized by this section is applicable. [L Sp 1941, c 66, §6; RL 1945, §4359; RL 1955, §94-9; am L 1962, c 16, pt of §2; am L 1963, c 49, §3; HRS §387-9; am L 1974, c 14, §2; am L 2005, c 191, §2]

" **§387-10 Oaths; affidavits; subpoenas; witnesses; immunities.** The director of labor and industrial relations or the director's authorized representative may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation. The subpoena shall be signed and issued by the director or the director's authorized representative. In cases of failure of any person to comply with any subpoena lawfully issued under this section or on the refusal of any witness to produce evidence or to testify to any matter regarding which the witness may be lawfully interrogated, any circuit court, or the judge thereof, upon the application of the director or the director's authorized representative, shall compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein. The director may certify to official acts.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the director or the director's authorized representative, or in obedience to the subpoena of the director or the director's authorized representative, or in any cause or proceeding instituted under this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled to testify or produce evidence, documentary or otherwise, after having claimed the individual's privilege against self-incrimination, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [L Sp 1941, c 66, §7; RL 1945, §4360; RL 1955, §94-10; HRS §387-10; gen ch 1985]

#### **Cross References**

Depositions, see chapter 624.

Hearings, see chapter 91.

Oaths, subpoenas, see §§603-21.9, 621-1, and 621-12.

" **§387-11 Rules and regulations.** The department of labor and industrial relations may make, issue, amend, and rescind such rules and regulations as are necessary or appropriate to

carry out this chapter. The rules and regulations, without being limited thereto, and without limiting the generality of the foregoing, may define terms used in this chapter, may include such terms and conditions, including the restriction or prohibition of industrial homework or of such other acts or practices, as the department finds necessary or appropriate to carry out the purposes of this chapter, and to prevent the circumvention or evasion thereof and to safeguard the standards therein established; and shall include such partial or total restrictions or prohibitions on the employment (notwithstanding the payment of one and one-half times the regular rate of pay) of employees in excess of the hours specified in the first paragraph of section 387-3 as the department finds necessary to prevent the reduction of wage rates for the purpose of evading the penalizing effect of the overtime compensation provisions of the first paragraph of section 387-3 or the circumvention by other devices of the intent of such paragraph to reduce hours of labor; and shall provide for reasonable deductions from the minimum wage applicable under this chapter for board, lodging, or other similar services furnished by an employer to the employer's employees.

Rules and regulations of the department issued pursuant to this section which relate to industrial homework or to employment in excess of the hours specified in the first paragraph of section 387-3 shall be made only after notice to interested persons and a public hearing by the department at which such persons may be heard. [L Sp 1941, c 66, §8; RL 1945, §4361; RL 1955, §94-11; am L Sp 1959 2d, c 1, §27; am L 1965, c 96, §74; HRS §387-11; gen ch 1985]

### **Cross References**

Rulemaking, see chapter 91.

" **§387-12 Penalties; collection of unpaid wages; injunctions; etc.** (a) Criminal.

- (1) Any person divulging information in violation of section 387-8;
- (2) Any employer who wilfully violates this chapter or of any rule, regulation, or order issued under the authority of this chapter;
- (3) Any employer or the employer's agent or any officer or agent of a corporation who discharges or in any other manner discriminates against any employee because the employee has made a complaint to the employee's employer, to the director, or to any other person that the employee has not been paid wages in accordance

with this chapter, or has instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings; or

(4) Any employer or the employer's agent or any officer or agent of a corporation who pays or agrees to pay any employee compensation less than that which the employee is entitled to under this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment for a period not to exceed one year or by both such fine and imprisonment.

(b) Liability to employee. Any employer who violates any provision of sections 387-2 and 387-3 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or unpaid overtime compensation, and in case of wilful violation in an additional equal amount as liquidated damages.

(c) Collection suits; attorney's fee; assignments; relief from costs. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant and costs of the action. At the request of any person paid less than the amount to which the person is entitled under this chapter, the director may take an assignment in trust for the assigning employee of the full amount to which the employee is entitled under this subsection and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court in the event the director prevails. The director shall not be required to pay the filing fee or other costs in connection with such action, including the opposing party's attorney's fees and costs. The director, in case of suit, may join various claimants against the same employer in one cause of action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation owing to

the employee under section 387-2 or 387-3 by an employer liable therefor under this section.

(d) Injunctions.

(1) Whenever it appears to the director that any employer is engaged in any act or practice which constitutes or will constitute a violation of this chapter, or of any regulation, the director may in the director's discretion bring an action in the circuit court of the circuit in which it is charged the act or practice complained of occurred to enjoin the act or practice and to enforce compliance with this chapter or with the regulation, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.

(2) The circuit courts shall have jurisdiction, for cause shown, to restrain any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under section 387-2 or 387-3.

(e) Restitution of illegal deductions; effect of.

Whenever in the course of an inspection made for the purposes of this chapter it is determined that there has been an illegal deduction of wages under chapter 388, the director or the director's authorized representative may secure restitution of such deductions. If the restitution is made, no prosecution under chapter 388 shall be instituted or maintained. [L Sp 1941, c 66, §10; am L 1943, c 159, §4; RL 1945, §4363; am L 1945, c 15, §1(3), (4); RL 1955, §94-13; am L 1963, c 49, §§1, 2 and c 158, §2; am L 1965, c 132, §1(e); HRS §387-12; gen ch 1985; am L 1999, c 251, §3]

#### **Revision Note**

Pursuant to §23G-15, in:

- (1) Subsection (a), (1) to (4) reformatted as paragraphs (1) to (4);
- (2) Subsection (a)(1) and (a)(2), "or" deleted and punctuation changed;
- (3) Subsection (a)(3), punctuation changed; and
- (4) Subsection (d), (1) and (2) reformatted as paragraphs (1) and (2).

#### **Rules of Court**

Collection suits, maintenance of, see HRCF rules 17(a), 18(a), 20, 23.

Injunctions, see HRCF rule 65.



" **§387-13 Right of collective bargaining protected.** Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this chapter, or to establish hours of work shorter than the applicable maximum under this chapter. [L Sp 1941, c 66, §11; RL 1945, §4364; RL 1955, §94-14; HRS §387-13]

" **§387-14 State-federal cooperation.** In the administration of this chapter, the department of labor and industrial relations shall cooperate to the fullest extent consistent with this chapter with the Administrator of the Wage and Hour Division, United States Department of Labor. [L Sp 1941, c 66, §12; RL 1945, §4365; RL 1955, §94-15; am L Sp 1959 2d, c 1, §27; HRS §387-14]

" **§387-15 Relation to child labor law.** Nothing in this chapter shall in any way repeal or affect the validity of chapter 390. [L Sp 1941, c 66, §15; RL 1945, §4366; RL 1955, §94-16; HRS §387-15; am L 1980, c 232, §22]