

**"CHAPTER 388
WAGES AND OTHER COMPENSATION, PAYMENT OF**

Part I

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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).

Plaintiff hotel employees' claim pursuant to this chapter was not preempted by §301 of the Labor Management Relations Act, 29 U.S.C. §185(a), because the claim asserted a state-law right that was independent of any right conferred by their collective bargaining agreement ("agreement"); further, agreement did not need to be interpreted in resolving this claim. 835 F. Supp. 2d 914 (2011).

Chapter establishes clear mandate of public policy to protect at will employee from being discharged for asserting rights accorded employee by its provisions, and does not itself provide sufficient remedy for discharge; no legislative intent to supersede at will employee's common law remedy for wrongful discharge detected. 10 H. App. 250, 865 P.2d 170 (1994).

"PART I

§388-1 Definitions. As used in this chapter:

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

"Electronic transfer" means any transfer of funds, other than transactions originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal or computer so as to order, instruct, or authorize a federally insured depository institution to debit or credit an account. "Electronic transfer" includes but is not limited to point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by a telephone conversation.

"Employ" includes to permit or suffer to work.

"Employee" includes any person suffered or permitted to work.

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

"Issuer" means the pay card issuer authorized to accept deposits and whose deposits are federally insured, and includes a person acting as a direct or indirect agent or administrator of an issuer.

"Pay card" means a prepaid debit card distributed to an employee by an employer, or by another entity by arrangement with the employer, through which the employer provides the employee access to the employee's wages and is:

- (1) Issued by a federally insured depository institution authorized to accept deposits; and
- (2) Used by an employee to access wages from a pay card account and is redeemable at multiple unaffiliated merchants or service providers or automated teller machines.

"Pay card account" means an account that is directly or indirectly established by an employer and to which transfers of the employee's wages are made.

"Pay card fee schedule" means a written list of fees that may be charged to an employee by an issuer in connection with a pay card account or an explanation of how the fees will be determined.

"Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. It shall include the reasonable cost, as determined by the director under chapter 387, to the employer of furnishing an employee with board, lodging, or other facilities if such board, lodging, or other facilities are customarily furnished by the employer to the employer's employees but shall not include tips or gratuities of any kind, provided that for the purposes of section 388-6, "wages" shall include tips or gratuities of any kind. [L 1963, c 158, pt of §3; Supp, §95-1; HRS §388-1; am L 1972, c 122, §1; am L 1976, c 200, pt of §1; gen ch 1985; am L 2014, c 208, §3]

Revision Note

Numeric designations deleted and definitions rearranged pursuant to §23G-15.

Case Notes

Because defendant concedes that it is contractually responsible for managing the resorts that plaintiff employees have worked at and had the authority to do so, there was no genuine issue of fact that defendant "permit[ted] or suffer[ed]" plaintiffs to work, and was therefore their "employer" under this section. 810 F. Supp. 2d 1145 (2011).

In reading §388-3 in the context of the entire statute and in light of the common law, the trial court did not err in concluding that payment for unused vacation upon separation from

employment did not constitute "wages" under the plain meaning of this section. 108 H. 411, 121 P.3d 391 (2005).

" **§388-2 Semimonthly payday; method of payment of wages.**

(a) Every employer shall pay all wages due to the employer's employees at least twice during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States, with checks convertible into cash on demand at full face value thereof, by direct deposit to the employee's account at a federally insured depository institution as provided in subsection (d), or by other means as provided in section 388-5.7; provided that when a majority of an employer's employees or a majority of the employees in a collective bargaining unit recognized by an employer or established by law elect, in a secret ballot election under procedures approved by the director of labor and industrial relations, to be paid once a month on a regularly scheduled basis, the employees shall be paid on such monthly basis. The elections shall not be held more frequently than once in every two years and each election shall be valid for a period of two years.

(b) The earned wages of all employees shall be due and payable within seven days after the end of each pay period.

(c) The director may, upon application showing good and sufficient reasons, permit an employer to:

(1) Establish regular paydays less frequently than semimonthly; provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule; or

(2) Pay earned wages within fifteen days after the end of each pay period.

(d) An employer may pay wages due to the employer's employees by direct deposit to the employee's account at a financial institution; provided that:

(1) The employee has voluntarily authorized, in writing or via electronic signature, the direct deposit to the account and financial institution of the employee's choice;

(2) The deposits and accounts of the financial institution selected are insured by the Federal Deposit Insurance Corporation or any other comparable federal or state agency;

(3) The employee may cancel the direct deposit at any time with reasonable notice;

(4) The employer shall provide a pay statement as required under section 388-7(4);

- (5) No employee shall be required to pay any costs or fees for the direct deposit of wages into the employee's account; and
- (6) No employee may be disciplined or otherwise penalized for authorizing or refusing to authorize the direct deposit of wages. [L 1963, c 158, pt of §3; am L 1964, c 20, §2; Supp, §95-2; HRS §388-2; gen ch 1985; am L 1989, c 32, §1; am L 2014, c 208, §4]

" **§388-3 Employees who are separated from the payroll before paydays.** (a) Whenever an employer discharges an employee either with or without cause, the employer shall pay the employee's wages in full at the time of discharge or if the discharge occurs at a time and under conditions which prevent an employer from making immediate payment, then not later than the working day following discharge.

(b) Whenever an employee quits or resigns, the employer shall pay the employee's wages in full no later than the next regular payday, as provided under section 388-2, either through the regular pay channels or by mail if requested by the employee, except that if the employee gives at least one pay period's notice of intention to quit, the employer shall pay all wages earned by the employee at the time of quitting.

(c) When work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is temporarily laid off, the employer shall pay in full to the employee not later than the next regular payday, as designated under section 388-2, either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff. [L 1963, c 158, pt of §3; Supp, §95-3; HRS §388-3]

Case Notes

In reading this section in the context of the entire statute and in light of the common law, the trial court did not err in concluding that payment for unused vacation upon separation from employment did not constitute "wages" under the plain meaning of §388-1. 108 H. 411, 121 P.3d 391 (2005).

" **§388-4 Payment of wages to relatives of deceased employees.** Where an employee dies leaving any wages, vacation, or sick leave pay due the employee, the employer shall, within thirty days after such death, whether or not a personal representative has been appointed, pay the wages, vacation, or sick leave pay in an amount not exceeding \$2,000 to, and upon application by the surviving spouse or reciprocal beneficiary

or, if none, by an adult child. The employer shall require the applicant to show proof of his or her relationship to the deceased by affidavit and to acknowledge receipt of the payment in writing. Any such payment shall discharge the employer to the extent thereof and the employer shall not be liable to the decedent's estate. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution. [L 1967, c 11, §1; HRS §388-4; am L 1984, c 174, §1; gen ch 1985; am L 1997, c 383, §56]

" **§388-5 Unconditional payment of wages conceded to be due.**

(a) In case of a dispute as to the amount of wages, the employer shall pay, without condition and within the time set by this chapter, all wages, or parts thereof, conceded by the employer to be due, leaving to the employee all remedies the employee might otherwise be entitled to, including those provided under this chapter, as to any balance claimed.

(b) The acceptance by an employee of a payment under this section shall not constitute a release or accord and satisfaction with respect to the disputed amount and any release required by an employer as a condition to payment shall be in violation of this chapter and shall be null and void. [L 1963, c 158, pt of §3; Supp, §95-4; HRS §388-5; gen ch 1993]

" **§388-5.5 Payment of wages by check or electronic transfer.**

Whenever an employee receives the employee's wages from the employee's employer in the form of a check or electronic transfer for which insufficient amounts are available in the bank account of the employer, the employer shall be liable for any bank's special handling fee which the employee may incur by reason of negotiating the check or the electronic transfer. [L 1977, c 35, §1; gen ch 1985; am L 2014, c 208, §5]

" **[§388-5.7] Payment of wages by pay cards.** (a)

Notwithstanding section 388-2, an employer shall not pay wages due to the employer's employees by use of a pay card unless the following requirements are satisfied:

- (1) The employee shall be given the option of receiving the employee's wages by direct deposit to a depository account of the employee's choosing, receiving payment by paper check, or receiving payment by pay card before the employee selects direct deposit, pay card, or paper check;
- (2) The employer shall not mandate an employee's use of a pay card;

- (3) The employer shall not make participation in the pay card program a condition of hire or continued employment;
- (4) The employee shall voluntarily authorize the payment of wages using a pay card in writing or via electronic signature, without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the pay card or pay card account;
- (5) Prior to obtaining the employee's consent, the employer shall provide the employee in writing, in plain language in at least ten-point font:
 - (A) A description of the employee's options for receiving wages;
 - (B) The pay card fee schedule in a form that the employee may retain for the employee's records stating the dollar amount of all fees;
 - (C) A notice that states whether third parties may assess additional fees relating to the use of the pay card; and
 - (D) A list of the services available to the employee pursuant to paragraph (8);
- (6) The employer shall be responsible for fees that have been assessed against the employee outside the pay card fee schedule;
- (7) The employer shall agree to honor a written request by the employee to change the method of receiving wages from a pay card to another method offered by the employer within two pay periods from the time of the request;
- (8) The pay card shall provide for all of the following, at no cost to the employee:
 - (A) A pay card on which the employee may receive wages, with no charges for the application, initiation, transfer, loading of wages by the employer, privilege of participation, or distribution or delivery of the initial pay card;
 - (B) The ability during each pay period for the employee to make at least three free withdrawals from the pay card, at least one of which permits withdrawal of the full amount of the employee's net wages on the card at a federally insured depository institution or at that institution's affiliated automated teller machines;
 - (C) The means to access the balance or other account information online and via telephone offered in conjunction with the pay card in a manner that allows access to account information twenty-four

- hours a day, seven days a week without charging a fee;
- (D) A readily accessible electronic history of the employee's account transactions covering at least sixty days preceding the date the employee electronically accesses the account;
 - (E) Upon oral or written request or via electronic signature by the employee, a written history of the account transactions covering at least sixty days prior to the employee's request;
 - (F) No pay card shall assess an overdraft fee or charge pursuant to the pay card issuer's overdraft service against an employee or the employee's account; and
 - (G) The ability to close a pay card account and obtain payment of the balance remaining on the card;
- (9) The pay card shall not impose fees based on an employee's account balance;
 - (10) The employer shall ensure that the pay card account provides one free replacement pay card per year at no cost to the employee at least fifteen days before the pay card's expiration date; provided that the replacement pay card need not be issued if the pay card has been inactive for a period of not less than twelve months or the employee is no longer employed by the employer;
 - (11) Pooled pay card accounts shall be permitted; provided that each subaccount shall be for the sole and exclusive benefit of the named employee, and not subject to the claims of the employer's creditors; provided further that each employee's pay card account shall be eligible for deposit insurance on a pass through basis, including:
 - (A) The account records of the federally insured depository institution shall disclose the existence of the agency or custodial relationship;
 - (B) The records of the federally insured depository institution, custodian, or other party shall disclose the identities of the employee cardholders who actually own the deposits and the amounts owned by each employee cardholder; and
 - (C) The funds in the account shall be owned by the individual employee cardholders under an agreement among the parties or pursuant to

applicable law and shall not be used by the employer's creditor; and

- (12) The funds in the pay card account shall not expire. The pay card account may be closed after six continuous months of inactivity, with reasonable notice to the employee; provided that the remaining funds in the pay card account shall be refunded to the employee at no cost to the employee.

(b) An employer shall deposit all wages owed to an employee, who has elected in writing or via electronic signature to receive the employee's wages through a pay card, into the employee's pay card account on or before the employee's designated payday. The employee shall be deemed to have been paid wages owed at the time the wages are deposited into the employee's pay card account and the employee has access to those wages. If there is any delay of an employee's access to wages due to an error by the issuer, the employer shall not be held liable for this delay; provided that the employer deposited the proper amount of wages into the account on or before the designated payday and the employer is in compliance with subsection (a).

(c) An employer shall be liable for any wages due and not timely paid onto a pay card pursuant to subsection (b).

(d) The employer shall provide twenty-one days prior written notice to any change to the pay card program taking effect. The written notice shall state in plain language in at least ten-point font any change to any of the terms and conditions of the pay card account, including any changes in the itemized list of fees.

(e) The employer shall comply with all applicable recordkeeping requirements under this chapter and section 387-6.

(f) The employer's obligation under this section shall cease sixty days after the employer-employee relationship ends and the employee has been paid the employee's final wages. [L 2014, c 208, §2]

Note

Section effective with the payroll period beginning on September 1, 2014. L 2014, c 208, §7(1).

" **§388-6 Withholding of wages.** No employer may deduct, retain, or otherwise require to be paid, any part or portion of any compensation earned by any employee except where required by federal or state statute or by court process or when such deductions or retentions are authorized in writing by the

employee, provided that the following may not be so authorized, or required to be borne by the employee:

- (1) Fines;
- (2) Cash shortage in a common money till, cash box, or register used by two or more persons; or cash shortage in a money till, cash box, or register under sole control if the employee is not given an opportunity to account for all moneys received at the start of a shift and all moneys turned in at the end of a shift;
- (3) Fines, penalties, or replacement costs for breakage;
- (4) Losses due to acceptance by an employee of checks which are subsequently dishonored if employee is given discretion to accept or reject any check;
- (5) Losses due to defective or faulty workmanship, lost or stolen property, damage to property, default of customer credit, or nonpayment for goods or services received by customer if such losses are not attributable to employee's wilful or intentional disregard of employer's interest; or
- (6) Medical or physical examination or medical report expenses which accrue due to services rendered to an employee or prospective employee, where such examination or report is requested or required by the employer or prospective employer or required by any law or regulation of federal, state or local governments or agencies thereof. [L 1963, c 158, pt of §3; Supp, §95-5; HRS §388-6; am L 1972, c 121, §1; am L 1977, c 90, §1]

Case Notes

Section preempted by ERISA as it "relates to" an employee welfare benefit plan; FAA-mandated medical exam for pilots was "medical benefit" within meaning of ERISA employee welfare benefit plan. 12 F.3d 1498 (1993).

Paragraph (6) requirement that employer pay for medical examinations mandated by federal agency is preempted by §514(a) of the Employee Retirement Income Security Act. 807 F. Supp. 1501 (1992).

To the extent that the legislative history of §481B-14 is relevant to the question of whether employees may sue for unpaid wages under this section based on violations of §481B-14, that legislative history, as interpreted by the Hawaii supreme court, provides support for the idea that employees may do so. 810 F. Supp. 2d 1145 (2011).

Plaintiff resort employees' claim for unpaid wages brought pursuant to this section was not preempted by section 301 of the

Labor Management Relations Act, 29 U.S.C. §185(a) where there was no need to look to, much less interpret the collective bargaining agreement (agreement) between defendant resort and plaintiffs, no need to consult or interpret the agreement, and defendants presented no evidence that there was a clear and unmistakable waiver in the agreement, as they are required to, if they seek to assert a party has waived a state-law right. 818 F. Supp. 2d 1240 (2010).

The legislative history of §481B-14, as interpreted by the Hawaii supreme court in Davis, allows plaintiff hotel employees to recover for unpaid service charges imposed without the requisite disclosure set forth in §481B-14, through a claim brought pursuant to §§388-10 and 388-11 and this section. 835 F. Supp. 2d 914 (2011).

When a hotel or restaurant applying a service charge for the sale of food or beverage services allegedly violates §481B-14 by: (1) not distributing the full service charge directly to its employees as "tip income" (in other words, as "wages and tips of employees"); and (2) failing to disclose this practice to the purchaser of the services, the employees may bring an action under §§388-8 and 388-10 and this section to enforce the employees' rights and seek remedies. 130 H. 130, 306 P.3d 175 (2013).

" **§388-7 Notification, posting, and records.** Every employer shall:

- (1) Notify each employee in writing, at the time of hiring of the rate of pay, and of the day, hour, and place of payment;
- (2) Notify each employee in writing or through a posted notice maintained in a place accessible to employees of any changes in the arrangements specified above prior to the time of the change;
- (3) Provide to each employee in writing or through a posted notice maintained in a place accessible to employees, policies with regard to vacation and sick leave;
- (4) Furnish each employee at every payday a legible printed, typewritten, or handwritten record showing the employee's total gross compensation, the amount and purpose of each deduction, total net compensation, date of payment, and pay period covered; and maintain and preserve a copy of the record or its equivalent for a period of at least six years; provided that in lieu of the printed, typewritten, or handwritten record required by this paragraph and upon receipt of written authorization from the employee, the employer

may provide an electronic record that may be electronically accessed by the employee that shall be retained by the employer for a period of at least six years;

- (5) Keep posted in a place accessible to employees the notices pertaining to the application of this chapter as shall be prescribed by the director of labor and industrial relations; and
- (6) Make and keep records of all employees which shall include basic employment and earnings records and preserve the records for a period of time and in a manner as the director shall prescribe by rule. [L 1963, c 158, pt of §3; Supp, §95-6; HRS §388-7; gen ch 1985; am L 1988, c 61, §1; am L 2005, c 210, §2]

" **§388-8 Provisions of law may not be waived by agreement.**

Except as provided in section 388-11, no provision of this chapter may in any way be contravened or set aside by private agreement. [L 1963, c 158, pt of §3; am L 1965, c 77, §1(a); Supp, §95-7; HRS §388-8]

Case Notes

When a hotel or restaurant applying a service charge for the sale of food or beverage services allegedly violates §481B-14 by: (1) not distributing the full service charge directly to its employees as "tip income" (in other words, as "wages and tips of employees"); and (2) failing to disclose this practice to the purchaser of the services, the employees may bring an action under §§388-6 and 388-10 and this section to enforce the employees' rights and seek remedies. 130 H. 130, 306 P.3d 175 (2013).

" **§388-9 Enforcement.** (a) The director of labor and industrial relations shall enforce and administer this chapter and the director or the director's authorized representatives may hold hearings and otherwise investigate charges of violations of this chapter and institute actions for penalties hereunder.

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

(c) If any judgment obtained by the director against an employer for nonpayment of wages remains unsatisfied for a

period of thirty days after the time to appeal therefrom has expired and no appeal is pending or after such judgment has been finally affirmed on appeal, the director may institute proceedings in the name of the State in the circuit court in which the employer has the employer's principal place of business to compel the employer to cease doing any business until the judgment has been satisfied. [L 1963, c 158, pt of §3; Supp, §95-8; HRS §388-9; gen ch 1985]

" **§388-10 Penalties.** (a) Civil. Any employer who fails to pay wages in accordance with this chapter without equitable justification shall be liable to the employee, in addition to the wages legally proven to be due, for a sum equal to the amount of unpaid wages and interest at a rate of six per cent per year from the date that the wages were due.

(b) Criminal. Any employer who does not pay the wages of any of the employer's employees in accordance with this chapter, or any officer of any corporation who knowingly permits the corporation to violate this chapter by failing to pay wages of any of its employees in accordance with this chapter, or 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, or 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 any employer who wilfully fails to comply with any other requirements of this chapter shall be fined not less than \$100 nor more than \$10,000 or imprisoned for not more than one year, or punished by both fine and imprisonment for each such offense. [L 1963, c 158, pt of §3; am L 1965, c 77, §1(b); Supp, §95-9; HRS §388-10; am L 1977, c 89, §1; gen ch 1985; am L 1994, c 84, §1; am L 1999, c 22, §1]

Case Notes

The legislative history of §481B-14, as interpreted by the Hawaii supreme court in Davis, allows plaintiff hotel employees to recover for unpaid service charges imposed without the requisite disclosure set forth in §481B-14, through a claim brought pursuant to §§388-6 and 388-11 and this section. 835 F. Supp. 2d 914 (2011).

When a hotel or restaurant applying a service charge for the sale of food or beverage services allegedly violates §481B-14 by: (1) not distributing the full service charge directly to

its employees as "tip income" (in other words, as "wages and tips of employees"); and (2) failing to disclose this practice to the purchaser of the services, the employees may bring an action under §§388-6 and 388-8 and this section to enforce the employees' rights and seek remedies. 130 H. 130, 306 P.3d 175 (2013).

Employer has burden of proving "equitable justification" for failure to pay wages; civil penalty justified. 5 H. App. 106, 679 P.2d 627 (1984).

" **§388-11 Employees remedies.** (a) Action by an employee to recover unpaid wages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves, or the employee or employees may designate an agent or representative to maintain the action.

(b) Except for claims filed by individuals employed in a bona fide executive, administrative, or professional capacity or in the capacity of an outside salesperson, whenever the director of labor and industrial relations determines that wages have not been paid, and that the unpaid wages constitute an enforceable claim, the director may upon the request of the employee take an assignment in trust for the wages without being bound by any of the technical rules respecting validity of any such assignments and may bring any legal action necessary to collect such claim. With the consent of the assigning employee at the time of the assignment the director may settle and adjust any such claim to the same extent as might the assigning employee. No claim shall be accepted by the director after the expiration of one year from the date the wages are due and payable.

(c) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow interest of six per cent per year from the date the wages were due, costs of action, including costs of fees of any nature, and reasonable attorney's fees, to be paid by the defendant. The director shall not be required to:

- (1) Pay the filing fee or other costs or fees of any nature, including the opposing party's fees and costs; or
- (2) File a bond or other security of any nature, in connection with such action, with proceedings supplementary thereto, or as a condition precedent to the availability to the director of any process in aid of such action or proceedings. The director may join various claimants in one preferred claim or lien, and in case of suit join them in one cause of action.

(d) When the business of any person, corporation, company, or firm is suspended as a result of a writ of execution or

attachment or is placed in the hands of a receiver, trustee, or assignee for creditors, then in all such cases claims for wages of not more than \$600 to each claimant, earned within one year of the date such business is suspended or placed in the hands of a receiver, trustee, or assignee for creditors, shall be paid in full prior to the payment of taxes or any other debts except a debt secured by a mortgage duly recorded before the wages were earned.

(e) Any employee desiring to enforce the employee's claim for wages under subsections (d), (e), and (f) of this section shall present a statement under oath showing the amount due, the kind of work for which the wages are due, and when the work was performed to the office or person charged with such property within twenty days after the seizure thereof on any execution or writ of attachment or within sixty days after the property has been placed in the hands of a receiver, trustee, or assignee for creditors. Any interested party may contest any such claim or part thereof by filing sworn exception thereto with such officer or person within ten days after the period for filing claims, and thereupon the claimant shall be required to reduce the claimant's claim to judgment before any part thereof shall be paid.

(f) No claim shall be paid until after the expiration of the time for filing and contesting claims. If the funds realized from the sale of the property are insufficient to pay the total claims for wages presented, then the funds shall be prorated on such claims. [L 1963, c 158, pt of §3; Supp, §95-10; am L 1967, c 13, §1; HRS §388-11; am L 1973, c 8, §1; gen ch 1985, 1993; am L 1994, c 84, §2; am L 1999, c 251, §4]

Rules of Court

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

Case Notes

The legislative history of §481B-14, as interpreted by the Hawaii supreme court in *Davis*, allows plaintiff hotel employees to recover for unpaid service charges imposed without the requisite disclosure set forth in §481B-14, through a claim brought pursuant to §§388-6 and 388-10 and this section. 835 F. Supp. 2d 914 (2011).

Hawaii courts should be given discretion to enhance the lodestar fee when an attorney has been retained on a contingency fee basis; a "reasonable fee" under Hawaii fee-shifting statutes is an amount of fees that "would attract competent counsel", in

light of all the circumstances, and that under certain circumstances the lodestar fee may be multiplied by a factor to achieve a "reasonable" award of fees. 96 H. 408, 32 P.3d 52 (2001).

Where a court awards attorney's fees pursuant to fee-shifting statutes in cases involving contingency fee arrangements, a trial judge should not be limited by the contingency fee arrangement between a plaintiff and his or her counsel in determining a reasonable fee; plaintiff is thus not necessarily barred from recovery of a doubled lodestar fee. 96 H. 408, 32 P.3d 52 (2001).

" **§388-12 Reciprocal agreements with other states; actions.**

(a) The director of labor and industrial relations may enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of such department or agency, for the collection in such other states of claims or judgments for wages and other demands based upon claims assigned to the director.

(b) The director may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state as herein provided, maintain actions in the courts of such other state for the collection of claims for wages, judgments, and other demands and may assign such claims, judgments, and demands to the labor department or agency of such other state for collection to the extent that such an assignment may be permitted or provided for by the law of such state or by reciprocal agreement.

(c) The director may, upon the written consent of the labor department or other corresponding agency of any other state or of any person, board, officer, or commission of such state authorized to act on behalf of such labor department or corresponding agency, maintain actions in the courts of this State upon assigned claims for wages, judgments, and demands arising in such other state in the same manner and to the same extent that such actions by the director are authorized when arising in this State. However, such actions may be maintained only in cases where such other state by law or reciprocal agreement extends a like comity to cases arising in this State. [L 1965, c 77, §1(c); Supp, §95-11; HRS §388-12]

" **§388-13 Rules and regulations.** The director of labor and industrial relations is authorized to issue such rules and regulations as the director determines necessary for the purpose of carrying out this chapter. [L 1963, c 158, pt of §3; Supp, §95-12; HRS §388-13; gen ch 1985]

Cross References

Rulemaking, see chapter 91.

"PART II--REPEALED

§§388-31 to 388-33 REPEALED. L 1972, c 27, §1.

"[PART III]

[\$388-41] Advance notice of termination of employment. If an employer requires an employee to give advance notice of termination and the employee gives such notice, the employer shall be liable for the wages which the employee would have earned during the stated period in such notice starting from the day such notice is given, providing that the employee does not voluntarily terminate the employment or the employment is not terminated for cause prior to the last day of such period. [L 1972, c 52, pt of §1]

" **[\$388-42] Other applicable provisions.** Sections 388-1 to 388-13 shall be applicable to this part and the terms "wages" and "compensation" used in the sections shall include all compensation payable under this part. [L 1972, c 52, pt of §1]

"[PART IV. JOB APPLICATION PROCESSING FEES]

[\$388-51] Job application processing fee. Except as provided for by chapter 373 and rules adopted thereto, no employer shall require to be paid or to be borne by an employee or prospective employee a job application processing fee. [L 1987, c 169, §1]

" **[\$388-52] Penalties.** Any employer found in violation of section 388-51 shall be subject to a fine of not less than \$100 nor more than \$1,000 to be collected by the director and such fine shall not be suspended. Each violation shall constitute a separate offense. Amounts so collected by the director shall be paid into the general fund. [L 1987, c 169, §2]