

JAN 27 2021

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# A BILL FOR AN ACT

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RELATING TO ESSENTIAL WAGES FOR ESSENTIAL WORKERS.

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

1       SECTION 1. The legislature finds that the State of Hawaii  
2 has the highest cost of living in the United States. Despite  
3 rising prices and rising normal wages for workers, there are no  
4 scheduled increases for the state minimum wage. The department  
5 of business, economic development, and tourism's *Self-*  
6 *Sufficiency Standard: Estimates for Hawaii 2018* report found  
7 that a single adult with no children needed to earn \$16.90 per  
8 hour to be self-sufficient in the State.

9       The legislature also finds that, during the COVID-19  
10 pandemic, individuals classified as "essential workers" were  
11 required to work through the pandemic at great risk to their  
12 health and safety. These essential workers often had to work  
13 two to three jobs to make ends meet, due to earning as little as  
14 the current state minimum wage of \$10.10 per hour.

15       The legislature thereby finds that essential workers, who  
16 provided a great public service to the State during the pandemic  
17 and beyond, are deserving of adequate compensation to afford to



1 live in the State. Upon signing the National Industrial  
2 Recovery Act in 1933, President Franklin D. Roosevelt clarified  
3 the intent of a minimum wage by stating ". . . no business which  
4 depends for existence on paying less than living wages to its  
5 workers has any right to continue in this country. By  
6 'business' I mean the whole of commerce as well as the whole of  
7 industry; by workers I mean all workers, the white collar class  
8 as well as the men in overalls; and by living wages I mean more  
9 than a bare subsistence level—I mean the wages of decent  
10 living."

11 According to an October 2020 nationwide study by the  
12 nonpartisan United States Government Accountability Office,  
13 millions of full-time workers rely on public health care and  
14 food assistance programs. Several large corporate employers  
15 have thousands of full-time employees on public benefit programs  
16 in every state. Allowing these large employers to pay less than  
17 a living wage wrongfully transfers the financial burden to the  
18 county, state, and federal governments, essentially subsidizing  
19 those companies' profits with public tax dollars.

20 The legislature further finds that the wage distribution  
21 gap between the bottom and the middle categories of wage-earners



1 is widening. The minimum wage must rise annually to keep up  
2 with the rising cost of living and must be indexed to a reliable  
3 source. Indexing the minimum wage to the median wage links it  
4 to overall conditions in the labor market rather than to the  
5 general level of prices or inflation. Indexing the minimum wage  
6 to the median wage will ensure that the minimum wage keeps pace  
7 with the typical worker's wage and keeps inflation lower than it  
8 would be if indexed to the Consumer Price Index.

9 The legislature further finds that some tipped employees in  
10 high-end establishments are highly compensated through gratuity,  
11 and therefore don't require the same base minimum wage as most  
12 tipped employees. Under this Act, employers may opt to take a  
13 sliding scale tip credit of \$0.50 per dollar over the threshold  
14 amount, not to exceed federal minimum wage standards for tipped  
15 employees, when their tipped employees regularly earn more than  
16 \$5.00 per hour over the minimum wage. The following table  
17 provides examples of the allowable tip credits employers may  
18 claim and the resulting wages for employees for select amounts  
19 of tips received per hour, assuming that the minimum wage is  
20 \$15.00 per hour:



1	Tips received	Total wages	Tip	Minimum	Total wages
2	per hour	before credit	credit	hourly pay	after credit
3	\$5.00	\$20.00	\$0	\$15.00	\$20.00
4	\$10.00	\$25.00	\$2.50	\$12.50	\$22.50
5	\$15.00	\$30.00	\$5.00	\$10.00	\$25.00
6	\$20.00	\$35.00	\$7.50	\$7.50	\$27.50
7	\$25.00	\$40.00	\$10.00	\$5.00	\$30.00
8	\$30.00	\$45.00	\$12.50	\$2.50	\$32.50

9

10 The purpose of this Act is to:

- 11 (1) Require the department of taxation to share  
 12 information, on a limited basis, with the department  
 13 of labor and industrial relations for the purposes of  
 14 enforcing the tip credit under the wage and hour law;
- 15 (2) Increase the minimum wage to fifteen dollars per hour  
 16 by 2024 and index future annual increases to the  
 17 median wage for all occupations in the State; and
- 18 (3) Allow employers to credit tipped employees' wages  
 19 based on the amounts of tips the employees receive.



1       SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding a new section to part III to be appropriately  
3 designated and to read as follows:

4       "§235-       Information sharing for enforcement of the tip  
5 credit under chapter 387; confidentiality; calculation  
6 assistance for employers. (a) The department of taxation shall  
7 furnish to the department of labor and industrial relations  
8 information necessary, as collected from the employers'  
9 remittance of tax withheld, to ensure employers' compliance with  
10 and to assist in the enforcement of the tip credit under chapter  
11 387.

12       The information sharing required under this section shall  
13 not conflict with section 231-18 and shall not extend to  
14 information not directly related to determining compliance with  
15 and enforcement of the tip credit under chapter 387.

16       All information shared with the department of labor and  
17 industrial relations under this section shall be kept  
18 confidential unless there is a violation of the tip credit under  
19 chapter 387.

20       (b) Beginning January 1, 2022, the department of taxation  
21 shall develop or provide access to an online tool or program



1 that allows employers to determine whether wages paid are in  
2 compliance with the tip credit under chapter 387. The office of  
3 enterprise technology services and the department of labor and  
4 industrial relations shall assist in the development or  
5 provision of access to the online tool or program and the  
6 accuracy of the tool's or program's determinations of  
7 compliance."

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

10 "**§387-2 Minimum wages.** (a) Except as provided in section  
11 387-9 and this section, every employer shall pay to each  
12 employee employed by the employer, wages at the rate of not less  
13 than:

- 14 (1) \$6.25 per hour beginning January 1, 2003;  
15 (2) \$6.75 per hour beginning January 1, 2006;  
16 (3) \$7.25 per hour beginning January 1, 2007;  
17 (4) \$7.75 per hour beginning January 1, 2015;  
18 (5) \$8.50 per hour beginning January 1, 2016;  
19 (6) \$9.25 per hour beginning January 1, 2017; [~~and~~]  
20 (7) \$10.10 per hour beginning January 1, 2018[~~-~~];  
21 (8) \$12.00 per hour beginning January 1, 2022;



(9) \$13.50 per hour beginning January 1, 2023;

(10) \$15.00 per hour beginning January 1, 2024; and

(11) The rate determined by the department on September 30,

2024, and on September 30 of each year thereafter, for

the calendar year following each September 30;

provided that the rate shall be calculated to the

nearest cent of seventy-five per cent of the most

recently published United States Department of Labor

median hourly wage for all occupations in Hawaii.

(b) [The] Prior to January 1, 2022, 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



1 employee's employer and in tips is at least \$7.00 more than the  
2 applicable minimum wage.

3 (c) Beginning January 1, 2022, an employer may reduce or  
4 credit an employee's wages on account of tips of a tipped  
5 employee; provided that:

6 (1) The combined amount the tipped employee receives from  
7 the employer and in tips is at least \$5.00 per hour  
8 more than the applicable minimum wage; and

9 (2) The tipped employee customarily and regularly receives  
10 more than \$20.00 per month in tips.

11 The credit shall be 50 cents per hour for every dollar above the  
12 sum of the applicable minimum wage plus \$5.00 per hour in tips;  
13 provided that the total credits shall not reduce an employee's  
14 wages below the minimum wage for tipped employees under federal  
15 law.

16 Every employer that elects to use the tip credit pursuant  
17 to this subsection shall provide written notice to each affected  
18 employee before paying that employee in accordance with this  
19 subsection."

20 SECTION 4. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.





S.B. NO. 965

1 SECTION 5. This Act shall take effect on July 1, 2021.

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INTRODUCED BY: \_\_\_\_\_

*James Acosta*



# S.B. NO. 965

**Report Title:**

Wage and Hour Law; Minimum Wage; Tip Credit

**Description:**

Requires the department of taxation to share information with the department of labor and industrial relations for the purposes of enforcing the tip credit. Requires the department of taxation to provide an online tool or program to employers to determine compliance with the tip credit. Increases the minimum wage to \$15.00 per hour by 2024 and indexes future annual increases to the median wage for all occupations in the State. Beginning 01/01/2022, adjusts the tip credit to 50 cents for every dollar above a certain amount. Requires written notice to an affected tipped employee.

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