

S.B. NO. 3152

JAN 24 2024

A BILL FOR AN ACT

RELATING TO THE WAGE AND HOUR LAW.

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

1 SECTION 1. Section 387-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "employee" to read as
3 follows:

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

6 (1) ~~[At a guaranteed compensation totaling \$2,000 or more~~
7 ~~a month, whether paid weekly, biweekly, or monthly;~~

8 ~~(2)]~~ In agriculture for any workweek in which the employer
9 of the individual employs less than twenty employees
10 or in agriculture for any workweek in which the
11 individual is engaged in coffee harvesting;

12 ~~[(3)]~~ (2) In or about the home of the individual's
13 employer:

14 (A) In domestic service on a casual basis; or

15 (B) Providing companionship services for the aged or
16 infirm;

17 ~~[(4)]~~ (3) As a house parent in or about any home or shelter
18 maintained for child welfare purposes by a charitable

1 organization exempt from income tax under section 501
2 of the federal Internal Revenue Code;

3 ~~[(5)]~~ (4) By the individual's ~~[brother, sister, brother-in-~~
4 ~~law, sister-in-law, son, daughter,]~~ sibling,
5 sibling-in-law, child, spouse, parent, or
6 parent-in-law;

7 ~~[(6)]~~ (5) In a bona fide executive, administrative,
8 supervisory, or professional capacity or in the
9 capacity of outside salesperson or as an outside
10 collector;

11 ~~[(7)]~~ (6) In the propagating, catching, taking, harvesting,
12 cultivating, or farming of any kind of fish,
13 shellfish, crustacean, sponge, seaweed, or other
14 aquatic forms of animal or vegetable life, including
15 the going to and returning from work and the loading
16 and unloading of ~~[such]~~ those products ~~[prior to]~~
17 before first processing;

18 ~~[(8)]~~ (7) On a ship or vessel and who has a Merchant
19 Mariners Document issued by the United States Coast
20 Guard;

21 ~~[(9)]~~ (8) As a driver of a vehicle carrying passengers for
22 hire operated solely on call from a fixed stand;

1 ~~(10)~~ (9) As a golf caddy;

2 ~~(11)~~ (10) By a nonprofit school during the time ~~[such]~~

3 that the individual is a student attending [such] the

4 school;

5 ~~(12)~~ (11) In any capacity if by reason of the employee's

6 employment, in ~~[such]~~ that capacity and during the

7 term thereof, the minimum wage ~~[which]~~ that may be

8 paid to the employee or maximum hours ~~[which]~~ that the

9 employee may work during any workweek without the

10 payment of overtime, are prescribed by the federal

11 Fair Labor Standards Act of 1938, as amended, or as

12 the same may be further amended from time to time;

13 provided that if the minimum wage ~~[which]~~ that may be

14 paid to the employee under the Fair Labor Standards

15 Act for any workweek is less than the minimum wage

16 prescribed by section 387-2, then section 387-2 shall

17 apply in respect to the ~~[employees]~~ employee for

18 ~~[such]~~ that workweek; provided further that if the

19 maximum workweek established for the employee under

20 the Fair Labor Standards Act for the purposes of

21 overtime compensation is higher than the maximum

22 workweek established under section 387-3, then

1 section 387-3 shall apply in respect to [~~such~~] the
 2 employee for [~~such~~] that workweek; except that the
 3 employee's regular rate in [~~such an~~] that event shall
 4 be the employee's regular rate as determined under the
 5 Fair Labor Standards Act;

6 [~~(13)~~] (12) As a seasonal youth camp staff member in a
 7 resident situation in a youth camp sponsored by
 8 charitable, religious, or nonprofit organizations
 9 exempt from income tax under section 501 of the
 10 federal Internal Revenue Code or in a youth camp
 11 accredited by the American Camping Association; or

12 [~~(14)~~] (13) As an automobile salesperson primarily engaged
 13 in the selling of automobiles or trucks if employed by
 14 an automobile or truck dealer licensed under chapter
 15 437."

16 SECTION 2. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

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

19
 20
 21
 22

INTRODUCED BY: 

BY REQUEST

S.B. NO. 3152

Report Title:

Wage and Hour Law; Employee; Guaranteed Compensation; Employer Recordkeeping

Description:

Amends the definition of "employee" in Hawaii's wage and hour law by repealing the definition's categorical exclusion of any employee who receives guaranteed compensation totaling \$2,000 or more a month. Makes technical non substantive amendments.

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

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE WAGE AND HOUR LAW.

PURPOSE: To amend the definition of "employee" to delete the exclusion from coverage under the wage and hour law for those paid at a guaranteed compensation of \$2,000 or more a month.

MEANS: Amend the definition of "employee" under section 387-1, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The definition of "employee" in chapter 387, HRS, Hawaii's Wage and Hour Law, does not include those guaranteed a compensation of \$2,000 or more a month. These employees are not provided the protection of minimum or overtime wage rates. Their employers do not have to comply with recordkeeping provisions also designed to protect workers.

The \$2,000 compensation for exemption is less than an employee earning the current minimum wage of \$12.00 per hour and will be even lower when the minimum wage increases through 2028.

Amending the definition of employee to delete the exclusion for these workers will provide them with the protections afforded by the minimum wage rates, overtime rates, and recordkeeping protections that exist for employees and employers covered under the wage and hour law.

Impact on the public: This bill will provide more workers with stronger protections for minimum wage and overtime under the Hawaii Wage and Hour Law and thereby promote the health, efficiency, and well-being of Hawaii's workforce.

Impact on the department and other agencies:
This amendment will allow the Department of Labor and Industrial Relations to maintain labor standards that are consistent with public health, efficiency and well-being of workers. This chapter applies to the private sector only, so this bill will not affect public sector employees. This bill will necessitate rulemaking by the department.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM
DESIGNATION: LBR152.
OTHER AFFECTED
AGENCIES: None.
EFFECTIVE DATE: Upon approval.