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STATE OF HAWAII
KA MOKU'ĀINA O HAWAII'
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHAHA
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HONOLULU, HAWAII 96813

December 14, 2023

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirty-Second Legislature
State Capitol, Room 409
Honolulu, HI 96813

The Honorable Scott K. Saiki
Speaker and Members House of
Representatives
Thirty-Second Legislature
State Capitol, Room 431
Honolulu, HI 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Department of Labor and Industrial Relations' Senate Resolution 129 Minimum Wage Exemptions Report, Requesting the Department of Labor and Industrial Relations to Conduct a Study of the Exemptions to Hawaii's Minimum Wage Law, as required by Senate Resolution 129, Regular Session of 2023.

In accordance with section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://labor.hawaii.gov/find-a-report/>.

Sincerely,

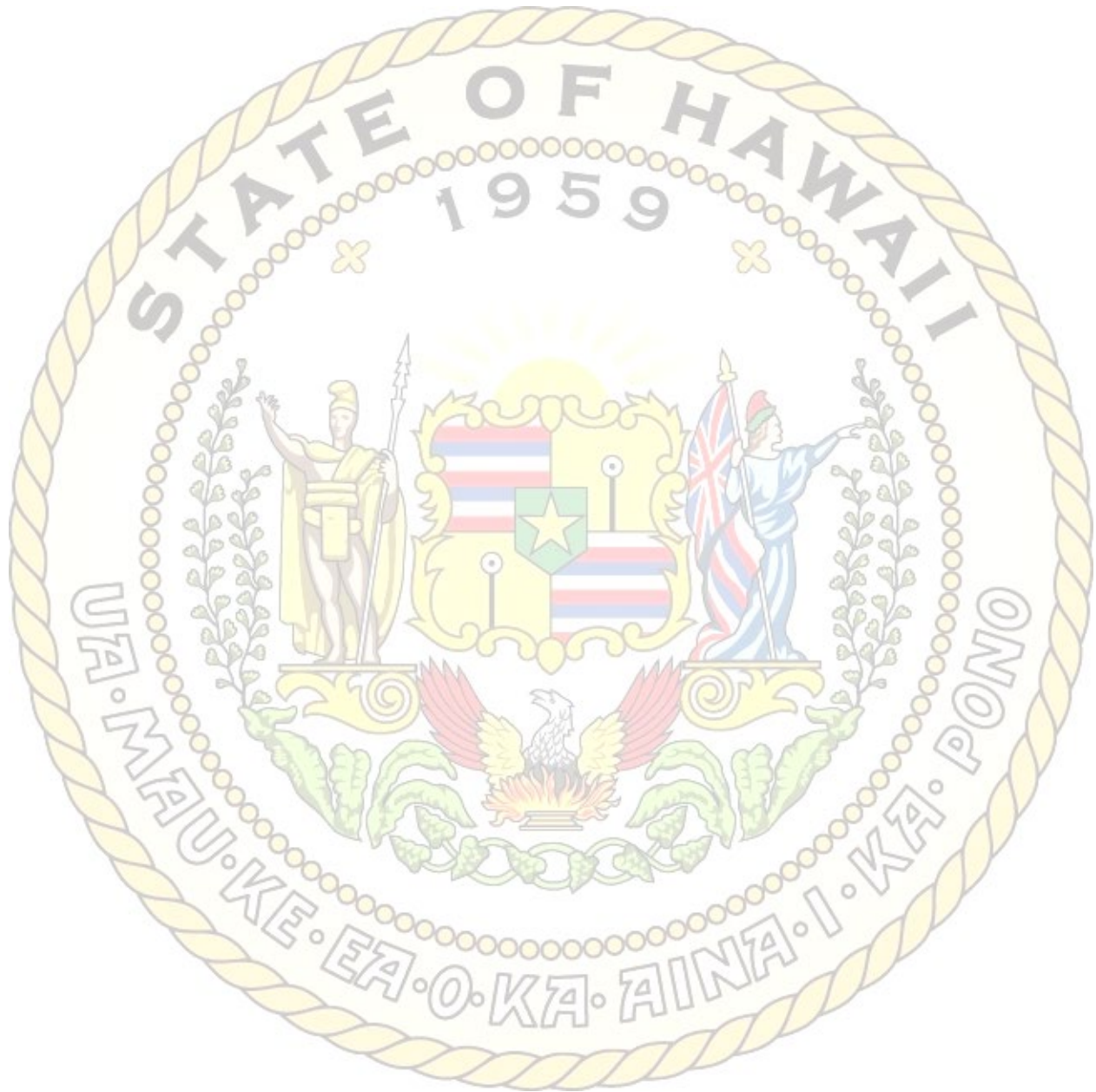
JADE T. BUTAY
Director of Labor and Industrial Relations

Enclosure

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SR129 MINIMUM WAGE EXEMPTIONS

REPORT TO THE 2024 LEGISLATURE



Department of Labor and Industrial Relations

State of Hawai'i
Department of Labor and Industrial Relations
WAGE STANDARDS DIVISION

BACKGROUND

As requested by Senate Resolution No. 129, 2023 Legislative Session, the Department of Labor and Industrial Relations (DLIR) conducted a study of the exemptions to Hawai'i's minimum wage law. SR129 further specifically requested the DLIR to consider the exemptions from the definition of "employee" that are contained in section 387-1, Hawai'i Revised Statutes (HRS), and whether any of those exemptions should be repealed.

FAIR LABOR STANDARDS ACT (FLSA) AND HAWAI'I'S WAGE AND HOUR LAW

The Fair Labor Standards Act of 1938 (FLSA) for the first-time established provisions in federal law for minimum wages, overtime, and child labor. Subsequently, Hawai'i's Territorial Legislature enacted the Wages and Hours of Labor Law, now Chapter 387, HRS, the Wage and Hour Law, to establish minimum wages and maximum hours and to conform Hawai'i's law "more closely to the federal law."¹

Both the FLSA and Chapter 387 govern minimum wage and overtime provisions. When both are applicable, the law with the higher standard applies in accordance with the FLSA. This requires Hawai'i employers to pay workers the current state minimum wage rate of \$12.00 per hour as it is higher than the federal minimum wage rate of \$7.25 per hour. Additionally, this means that if there is an exemption present in one law, but not present in the other law, the law without the exemption would apply as it would provide minimum wage coverage to the worker. For example, Hawai'i employers that pay their workers a guaranteed monthly compensation of at least \$2,000 would be covered by the federal FLSA and subject to enforcement actions by the U.S. Department of Labor because the state law provides this exemption to the minimum wage.

For enforcement purposes, the determination of whether federal or state law applies is essentially dependent on whether the establishment is either engaged in interstate commerce as defined broadly or has annual gross proceeds of over \$500,000. If an establishment meets either of those criteria, then the U.S. Department of Labor would conduct investigative and enforcement activities.

CHAPTER 387 AND FLSA EXEMPTIONS

There are exemptions in Chapter 387 that are also present in the FLSA as illustrated by the attached chart (Appendix A). The FLSA also exempts numerous categories of federal employees, which are also not covered under Chapter 387. However, state law has a provision for "guaranteed compensation" not found in the federal law. 387-1,

¹ P. 150 of 1941 Senate Journal.

HRS, Definitions excludes from the definition of employee workers provided a compensation of \$2,000 or more a month, which excludes them from the minimum wage and overtime provisions of Hawai'i's law. The FLSA and corresponding Code of Federal Regulations does not contain an analogous provision.

FINDINGS AND RECOMMENDATIONS

The DLIR recommends removing the exemption for the guaranteed compensation from 387-1, HRS. Removing the exemption will provide more workers with protections afforded by the minimum wage rates, overtime rates, and recordkeeping requirements that exist for employers and workers covered under the Wage and Hour Law, and thereby promoting the health, efficiency, and well-being of Hawai'i's workforce.

As the exemption stands, an employer could schedule a worker to labor unlimited hours and pay the worker a guaranteed monthly compensation of \$2,000 without regard to additional compensation for overtime. Moreover, the \$2,000 guaranteed compensation is also less than the \$2,080 a month a worker earning the 2023 minimum wage rate of \$12.00 per hour is earning.²

This disparity between the guaranteed compensation totaling \$2,000 a month and the minimum wage rate will continue to grow when the minimum wage increases through 2028. In 2024, the minimum wage will be \$14.00 per hour, meaning that a worker paid at the minimum wage rate will earn \$2,427 per month, which is \$427 more than the guaranteed compensation exemption. This disparity further grows to \$773 in 2026 and \$1,120 by 2028.

The DLIR notes that although the Legislature has frequently changed the minimum wage rate, it has not changed the level of the guaranteed compensation exemption correspondingly—see Appendix B. Over the course of the last 82 years the guaranteed compensation level has changed nine times. Since the last time the guaranteed compensation level was raised to \$2,000 in 2002, the minimum wage rate has increased eight times with three more increases scheduled pursuant to 387-2, HRS.

The DLIR also notes that the FLSA does not contain explicit exemptions for coffee harvesting and golf caddies. The exemption for the golf caddies was added in 1949 at the request of the Department due to the "difficulty employers experience in keeping accurate time records for such employees."³ The DLIR recognizes that subsequent advances in timekeeping may have rendered the golf caddy exemption anachronistic.

² \$2,080 figure was calculated using the following formula: $[((\$12.00 \times 40 \text{ hours}) \times 52 \text{ weeks}) / 12 \text{ months}]$.

³ P. 1870 of 1949 House Journal.

Appendix A

Minimum Wage Comparison Chart

State Exemption	Whether FLSA Has Same Exemption
Guaranteed compensation of \$2,000 monthly.	No.
Agriculture that employs less than 20 employees.	Yes.
Coffee harvesting.	No.
In or about the home of the individual's employer in casual domestic service.	Yes.
In or about the home of the individual's employer to provide companionship for the aged or infirm.	Yes.
House parent in charity home.	Yes.
Sibling, sibling-in-law, child, parent, or parent-in-law.	Yes.
Executive, administrative, supervisory, professional, outside salesperson, or outside collector.	Yes.
Fishing or farming fish or other sea life.	Yes.
Ship or vessel or Merchant Marine.	Yes.
Taxi-cab driver.	Yes.
Golf caddy.	No.
A nonprofit school during the time such individual is a student attending such school.	Yes.
If considered an employee under the FLSA.	No.
Seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit organizations.	Yes.
Car salespeople.	Yes.

Appendix B

Guaranteed Compensation Level

Year	Amount
1941	Established at \$150
1949	Raised to \$200
1951	Raised to \$300
1955	Raised to \$350
1959	Raised to \$450
1965	Raised to \$550
1969	Raised to \$700
1983	Raised to \$1,000
1991	Raised to \$1,250
2002	Raised to \$2,000