
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. Chapter 387, Hawaii Revised Statutes, is
2 amended by adding three new sections to be appropriately
3 designated and to read as follows:

4 "**\$387-A Order of wage payment violation; appeal; judicial**
5 **review.** (a) When the department, as a result of the
6 department's own investigation, finds that a violation of this
7 chapter or rules adopted under this chapter has been committed
8 and not corrected, the department shall issue an order of wage
9 payment violation to the employer in violation. The order shall
10 include any amount assessed pursuant to section 387-12(a).

11 (b) The order of wage payment violation shall be final and
12 conclusive unless the employer files a written notice of appeal
13 with the director within twenty days after a copy of the order
14 of wage payment violation has been sent to the employer.

15 (c) A hearing on the written notice of appeal shall be
16 held pursuant to chapter 91, by a hearings officer appointed by
17 the director, within thirty days of the filing of the notice of



1 appeal. A decision stating the findings of fact and conclusions
2 of law shall be issued by the hearings officer within thirty
3 days after the conclusion of the hearing.

4 (d) Any party to an appeal under this chapter may obtain
5 judicial review of the decision issued by the hearings officer
6 in the manner provided under chapter 91.

7 **§387-B Remittance of penalties.** Until the order of wage
8 payment violation becomes final, the director may withdraw or
9 modify the order of wage payment violation or remit all or any
10 part of a penalty assessed if good cause is shown; provided that
11 the employer in default complies with this chapter and the rules
12 adopted under this chapter.

13 **§387-C Enforcement of the order of wage payment violation.**
14 The director may file a certified copy of the final order of
15 wage payment violation in any court of competent jurisdiction in
16 the jurisdiction in which the employer does business. The court
17 shall render a judgment in accordance with the final order of
18 wage payment violation and notify the parties of the judgment.
19 The judgment shall have the same effect, and all proceedings in
20 relation to the judgment shall be the same, as though the
21 judgment had been rendered in an action duly heard and



1 determined by the court; provided that there shall be no appeal
2 from the judgment."

3 SECTION 2. Section 371-12.5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) There is established in the state treasury the labor
6 law enforcement special fund into which shall be deposited:

7 (1) All penalties collected pursuant to section 387-C;

8 (2) All penalties collected pursuant to section
9 387-12(a)(2);

10 ~~[(1)]~~ (3) All penalties collected pursuant to section
11 388-9.7;

12 ~~[(2)]~~ (4) All penalties collected pursuant to section
13 388-10;

14 ~~[(3)]~~ (5) All civil penalties assessed pursuant to section
15 396-10;

16 ~~[(4)]~~ (6) Moneys appropriated by the legislature to the
17 fund; and

18 ~~[(5)]~~ (7) Any income and capital gains earned by the fund."

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



1 "'Wage" means (except as the department may provide under
2 section 387-11) legal tender of the United States or checks on
3 banks convertible into cash on demand at full face value thereof
4 as compensation for labor or services rendered by an employee,
5 whether the amount is determined on a time, task, piece,
6 commission, or other basis of calculation, and, in addition
7 thereto, the reasonable cost, as determined by the department,
8 to the employer of furnishing an employee with board, lodging,
9 or other facilities if [such] the board, lodging, or other
10 facilities are customarily furnished by [such] the employer to
11 the employer's employees. Except for the purposes of the last
12 sentence of section 387-2, "wage" shall not include tips or
13 gratuities of any kind."

14 SECTION 4. Section 387-12, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§387-12 Penalties; collection of unpaid wages;**
17 **injunctions; etc. (a) Civil. Any employer who fails to pay**
18 **wages in accordance with this chapter without equitable**
19 **justification or violates this chapter or the rules adopted**
20 **under this chapter shall be liable:**



- 1 (1) To the employee, in addition to the wages legally
2 proven to be due, for a sum equal to the amount of
3 unpaid wages and interest at a rate of six per cent
4 per year from the date that the wages were due; and
5 (2) For a penalty of not less than \$500 or \$100 for each
6 violation, whichever is greater. The penalty shall be
7 deposited into the labor law enforcement special fund
8 under section 371-12.5.

9 [~~a~~] (b) Criminal.

10 (1) Any person divulging information in violation of
11 section 387-8;

12 (2) Any employer who wilfully violates this chapter or
13 [~~e~~] any rule, regulation, or order issued under the
14 authority of this chapter; or

15 (3) Any employer or the employer's agent or any officer or
16 agent of a corporation who discharges or in any other
17 manner discriminates against any employee because the
18 employee has made a complaint to the employee's
19 employer, to the director, or to any other person that
20 the employee has not been paid wages in accordance
21 with this chapter, or has instituted or caused to be



1 instituted any proceeding under or related to this
2 chapter, or has testified or is about to testify in
3 any [such] proceedings,

4 shall be guilty of a misdemeanor and, upon conviction
5 thereof, shall be subject to a fine of not less than \$500
6 nor more than \$5,000, or by imprisonment for a period not
7 to exceed one year, or by both fine and imprisonment; and

8 (4) Any employer or the employer's agent or any officer or
9 agent of a corporation who pays or agrees to pay any
10 employee compensation less than that which the
11 employee is entitled to under this chapter, shall be
12 guilty of a class C felony and, notwithstanding
13 section 706-640, be subject to a fine of not less than
14 \$500 per offense; provided that each violation shall
15 be deemed a separate offense.

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



(c) Collection suits; attorney's fee; assignments; relief from costs. Action to recover ~~[such]~~ the 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]~~ the 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 or administrative action necessary to collect the claim, and the employer shall be required to pay the costs and ~~[such]~~ reasonable ~~[attorney's]~~ attorneys' fees as may be allowed by the court or administrative agency in the event the director prevails. The director shall not be required to pay the filing fee or other costs in connection with ~~[such]~~ the action,



1 including the opposing party's attorney's fees and costs. The
2 director, in case of suit, may join various claimants against
3 the same employer in one cause of action. The right provided by
4 this subsection to bring an action by or on behalf of any
5 employee, and the right of any employee to become a party
6 plaintiff to ~~[any such]~~ the action, shall terminate upon the
7 filing of a complaint or commencement of an administrative
8 proceeding by the director in an action in which restraint is
9 sought of any further delay in the payment of unpaid minimum
10 wages, or the amount of unpaid overtime compensation owing to
11 the employee under section 387-2 or 387-3 by an employer liable
12 therefor under this section.

13 (d) Injunctions.

14 (1) Whenever it appears to the director that any employer
15 is engaged in any act or practice ~~[which]~~ that
16 constitutes or will constitute a violation of this
17 chapter, or of any regulation, the director may ~~[in]~~,
18 at the director's discretion, bring an action in the
19 circuit court of the circuit in which ~~[it is charged]~~
20 the act or practice complained of occurred to enjoin
21 the act or practice and to enforce compliance with



1 this chapter or with the regulation, and upon a proper
2 showing, a permanent or temporary injunction or decree
3 or restraining order shall be granted without bond.

4 (2) The circuit courts shall have jurisdiction, for cause
5 shown, to restrain any withholding of payment of
6 minimum wages or overtime compensation found by the
7 court to be due to employees under section 387-2 or
8 387-3.

9 (e) Restitution of illegal deductions; effect of.

10 Whenever in the course of an inspection made for the purposes of
11 this chapter it is determined that there has been an illegal
12 deduction of wages under chapter 388, the director or the
13 director's authorized representative may secure restitution of
14 ~~[such]~~ the deductions. If the restitution is made, no
15 prosecution under chapter 388 shall be instituted or
16 maintained."

17 SECTION 5. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 6. In codifying the new sections added by section
21 1 and referenced in section 2 of this Act, the revisor of



1 statutes shall substitute appropriate section numbers for the
2 letters used in designating or referring to the new sections in
3 this Act.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.



Report Title:

DLIR; Order of Wage Payment Violation; Wage and Hour Law;
Enforcement; Penalties

Description:

Requires the Department of Labor and Industrial Relations to issue an order of wage payment violation to employers found to be in violation of the State's Wage and Hour Law. Establishes penalties, enforcement, and appeal procedures. Amends the definition of "wage" to clarify that it means compensation for labor or services rendered by an employee, regardless of how it is calculated. (CD1)

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

