

A Bill for an Act Relating to Labor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 378-1, Hawaii Revised Statutes, is amended by amending the definition of "employment" to read as follows:

““Employment” means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into. Employment does not include services by an individual employed as a domestic in the home of any person[-], except as provided in section 378-2(a)(9).”

SECTION 2. Section 378-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be an unlawful discriminatory practice:

- (1) Because of race, sex[;] including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim’s employer of such status or the employer has actual knowledge of such status:
 - (A) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment;
 - (B) For any employment agency to fail or refuse to refer for employment, or to classify or otherwise to discriminate against, any individual;
 - (C) For any employer or employment agency to print, circulate, or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, that expresses, directly or indirectly, any limitation, specification, or discrimination;
 - (D) For any labor organization to exclude or expel from its membership any individual or to discriminate in any way against any of its members, employer, or employees; or
 - (E) For any employer or labor organization to refuse to enter into an apprenticeship agreement as defined in section 372-2; provided that no apprentice shall be younger than sixteen years of age;
- (2) For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any individual because the individual has opposed any practice forbidden by this part or has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part;
- (3) For any person, whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or to attempt to do so;
- (4) For any employer to violate the provisions of section 121-43 relating to nonforfeiture for absence by members of the national guard;
- (5) For any employer to refuse to hire or employ or to bar or discharge from employment any individual because of assignment of income

- for the purpose of satisfying the individual's child support obligations as provided for under section 571-52;
- (6) For any employer, labor organization, or employment agency to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
 - (7) For any employer or labor organization to refuse to hire or employ, bar or discharge from employment, withhold pay from, demote, or penalize a lactating employee because the employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph, the term "breastfeeds" means the feeding of a child directly from the breast; [øø]
 - (8) For any employer to refuse to hire or employ, bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual's credit history or credit report, unless the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification under section 378-3(2)[-]; or
 - (9) For any employer to discriminate against any individual employed as a domestic, in compensation or in terms, conditions, or privileges of employment because of the individual's race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, or marital status."

SECTION 3. Section 387-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

"Casual basis" means employment that is:

- (1) Irregular or intermittent; and
- (2) Performed for a family or household who directly employs the individual providing the services.

Employment is not on a casual basis, whether performed for one or more family or household employers, if the employment for all employers exceeds twenty hours per week in the aggregate. For babysitting or companionship services for the aged or infirm, employment is not on a casual basis if the service is performed by an individual whose vocation is the provision of babysitting or companionship services.

"Companionship services for the aged or infirm" means those services that provide fellowship, care, and protection for an individual who, because of advanced age or physical or mental infirmity, cannot care for the individual's own needs. "Companionship services for the aged or infirm" does not include services relating to the care and protection of the aged or infirm that require and are performed by trained personnel, such as a registered or practical nurse.

"Domestic service" means services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed. The term includes, but is not limited to, services performed by employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen, gardeners, and chauffeurs of automobiles for family use. The term also includes babysitters whose employment is not on a casual basis."

2. By amending the definition of "employee" to read:

“Employee” includes any individual employed by an employer, but shall not include any individual employed:

- (1) At a guaranteed compensation totaling \$2,000 or more a month, whether paid weekly, biweekly, or monthly;
- (2) In agriculture for any workweek in which the employer of the individual employs less than twenty employees or in agriculture for any workweek in which the individual is engaged in coffee harvesting;
- (3) In ~~[domestic service in]~~ or about the home of the individual’s employer ~~[or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code];~~
 - (A) In domestic service on a casual basis; or
 - (B) Providing companionship services for the aged or infirm;
- (4) As a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the federal Internal Revenue Code;
- [(4)] (5) By the individual’s brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law;
- [(5)] (6) In a bona fide executive, administrative, supervisory, or professional capacity or in the capacity of outside salesperson or as an outside collector;
- [(6)] (7) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponge, seaweed, or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- [(7)] (8) On a ship or vessel and who has a Merchant Mariners Document issued by the United States Coast Guard;
- [(8)] (9) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- [(9)] (10) As a golf caddy;
- [(10)] (11) By a nonprofit school during the time such individual is a student attending such school;
- [(11)] (12) In any capacity if by reason of the employee’s employment in such capacity and during the term thereof the minimum wage which may be paid the employee or maximum hours which the employee may work during any workweek without the payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as amended, or as the same may be further amended from time to time; provided that if the minimum wage which may be paid the employee under the Fair Labor Standards Act for any workweek is less than the minimum wage prescribed by section 387-2, then section 387-2 shall apply in respect to the employees for such workweek; provided further that if the maximum workweek established for the employee under the Fair Labor Standards Act for the purposes of overtime compensation is higher than the maximum workweek established under section 387-3, then section 387-3 shall apply in respect to such employee for such workweek; except that the employee’s regular rate in such an event shall be the employee’s regular rate as determined under the Fair Labor Standards Act;
- [(12)] (13) As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious, or nonprofit organizations exempt from income tax under section 501 of the fed-

eral Internal Revenue Code or in a youth camp accredited by the American Camping Association; or
[~~(13)~~] (14) As an automobile salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.”

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

SECTION 5. This Act shall take effect upon its approval.
(Approved July 1, 2013.)