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# A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Chapter 377, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§377- Hours of labor for domestic workers. (a) No  
5 person or corporation employing a domestic worker shall require  
6 the domestic worker to work more than the following number of  
7 hours per week unless the domestic worker receives compensation  
8 for overtime work at a rate that is equal to at least one and  
9 one-half times the domestic worker's normal wage rate:

10 (1) Forty hours per week; provided that the domestic  
11 worker does not reside in the employer's home; or

12 (2) Forty-four hours per week; provided that the domestic  
13 worker resides in the employer's home.

14 (b) Every person employed as a domestic worker shall be  
15 allowed at least twenty-four consecutive hours of rest in each  
16 calendar week. No provision of this subsection shall prohibit a  
17 domestic worker from voluntarily agreeing to work on a day of  
18 rest required by this subsection; provided that the worker is



1 compensated at the overtime rate specified in subsection (a) for  
2 all hours worked on the day of rest. The day of rest required  
3 under this subsection, to the extent possible, shall coincide  
4 with the traditional day reserved by the domestic worker for  
5 religious worship. In addition, after one year of work with the  
6 same employer, a domestic worker shall be entitled to at least  
7 three days of rest in each calendar year at the domestic  
8 worker's regular rate of compensation."

9 SECTION 2. Section 377-1, Hawaii Revised Statutes, is  
10 amended by adding two new definitions to be appropriately  
11 inserted and to read as follows:

12 "Casual basis" means employment that is irregular or  
13 intermittent, and that is not performed by an individual whose  
14 vocation is the provision of babysitting or companionship  
15 services or an individual employed by an employer or agency  
16 other than the family or household using the individual's  
17 services. Employment is not on a casual basis, whether  
18 performed for one or more family or household employers, if the  
19 employment for all employers exceeds twenty hours per week in  
20 the aggregate.

21 "Domestic worker" means a person employed in a home or  
22 residence for the purpose of caring for a child, serving as a



1 companion for a sick, convalescing, or elderly person,  
2 housekeeping, or for any other domestic service purpose.

3 "Domestic worker" does not include any individual who is:

4 (1) Working on a casual basis;

5 (2) Engaged in providing companionship services, as  
6 described in section 213(a)(15) of the Fair Labor  
7 Standards Act of 1938 (29 U.S.C. 201, et seq.), and  
8 who is employed by an employer or agency other than  
9 the family or household using the individual's  
10 services; or

11 (3) A relative through blood, marriage, or adoption of:

12 (A) The employer; or

13 (B) The person for whom the worker is delivering  
14 services under a program funded or administered  
15 by federal, state, or county government."

16 SECTION 3. Section 378-1, Hawaii Revised Statutes, is  
17 amended by amending the definition of "employment" to read as  
18 follows:

19 ""Employment" means any service performed by an individual  
20 for another person under any contract of hire, express or  
21 implied, oral or written, whether lawfully or unlawfully entered  
22 into. Employment does not include services by an individual



1 employed as a domestic in the home of any person[-]; except as  
2 provided in section 378-2(a)(9) and (10)."

3 SECTION 4. Section 378-2, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§378-2 Discriminatory practices made unlawful; offenses**  
6 **defined.** (a) It shall be an unlawful discriminatory practice:

7 (1) Because of race, sex, including gender identity or  
8 expression, sexual orientation, age, religion, color,  
9 ancestry, disability, marital status, arrest and court  
10 record, or domestic or sexual violence victim status  
11 if the domestic or sexual violence victim provides  
12 notice to the victim's employer of such status or the  
13 employer has actual knowledge of such status:

14 (A) For any employer to refuse to hire or employ or  
15 to bar or discharge from employment, or otherwise  
16 to discriminate against any individual in  
17 compensation or in the terms, conditions, or  
18 privileges of employment;

19 (B) For any employment agency to fail or refuse to  
20 refer for employment, or to classify or otherwise  
21 to discriminate against, any individual;



1 (C) For any employer or employment agency to print,  
2 circulate, or cause to be printed or circulated  
3 any statement, advertisement, or publication or  
4 to use any form of application for employment or  
5 to make any inquiry in connection with  
6 prospective employment, that expresses, directly  
7 or indirectly, any limitation, specification, or  
8 discrimination;

9 (D) For any labor organization to exclude or expel  
10 from its membership any individual or to  
11 discriminate in any way against any of its  
12 members, employer, or employees; or

13 (E) For any employer or labor organization to refuse  
14 to enter into an apprenticeship agreement as  
15 defined in section 372-2; provided that no  
16 apprentice shall be younger than sixteen years of  
17 age;

18 (2) For any employer, labor organization, or employment  
19 agency to discharge, expel, or otherwise discriminate  
20 against any individual because the individual has  
21 opposed any practice forbidden by this part or has  
22 filed a complaint, testified, or assisted in any



- 1 proceeding respecting the discriminatory practices  
2 prohibited under this part;
- 3 (3) For any person, whether an employer, employee, or not,  
4 to aid, abet, incite, compel, or coerce the doing of  
5 any of the discriminatory practices forbidden by this  
6 part, or to attempt to do so;
- 7 (4) For any employer to violate the provisions of section  
8 121-43 relating to nonforfeiture for absence by  
9 members of the national guard;
- 10 (5) For any employer to refuse to hire or employ or to bar  
11 or discharge from employment any individual because of  
12 assignment of income for the purpose of satisfying the  
13 individual's child support obligations as provided for  
14 under section 571-52;
- 15 (6) For any employer, labor organization, or employment  
16 agency to exclude or otherwise deny equal jobs or  
17 benefits to a qualified individual because of the  
18 known disability of an individual with whom the  
19 qualified individual is known to have a relationship  
20 or association;
- 21 (7) For any employer or labor organization to refuse to  
22 hire or employ, bar or discharge from employment,



1 withhold pay from, demote, or penalize a lactating  
2 employee because the employee breastfeeds or expresses  
3 milk at the workplace. For purposes of this  
4 paragraph, the term "breastfeeds" means the feeding of  
5 a child directly from the breast; [or]

6 (8) For any employer to refuse to hire or employ, bar or  
7 discharge from employment, or otherwise to  
8 discriminate against any individual in compensation or  
9 in the terms, conditions, or privileges of employment  
10 of any individual because of the individual's credit  
11 history or credit report, unless the information in  
12 the individual's credit history or credit report  
13 directly relates to a bona fide occupational  
14 qualification under section 378-3(2) [-];

15 (9) For any employer to engage in unwelcome sexual  
16 advances, requests for sexual favors, or other verbal  
17 or physical conduct of a sexual nature to a domestic  
18 worker when:

19 (A) Submission to the conduct is made either  
20 explicitly or implicitly a term or condition of  
21 an individual's employment;



1           (B) Submission to or rejection of the conduct by an  
2           individual is used as the basis for employment  
3           decisions affecting the individual; or

4           (C) The conduct has the purpose or effect of  
5           unreasonably interfering with an individual's  
6           work performance by creating an intimidating,  
7           hostile, or offensive working environment; or

8           (10) For any employer to subject a domestic worker to  
9           unwelcome harassment based on gender, race, religion  
10           or national origin, where the harassment has the  
11           purpose or effect of unreasonably interfering with an  
12           individual's work performance by creating an  
13           intimidating, hostile, or offensive working  
14           environment.

15           (b) For purposes of subsection (a)(1):

16           (1) An employer may verify that an employee is a victim of  
17           domestic or sexual violence by requesting that the  
18           employee provide:

19           (A) A signed written statement from a person listed  
20           below from whom the employee or the employee's  
21           minor child has sought assistance in relation to  
22           the domestic or sexual violence:



- 1 (i) An employee, agent, or volunteer of a victim
- 2 services organization;
- 3 (ii) The employee's attorney or advocate;
- 4 (iii) The attorney or advocate of the employee's
- 5 minor child;
- 6 (iv) A medical or other health care professional;
- 7 or
- 8 (v) A member of the clergy; or
- 9 (B) A police or court record supporting the
- 10 occurrence of the domestic or sexual violence;
- 11 and
- 12 (2) An employer may verify an employee's status as a
- 13 domestic or sexual violence victim not more than once
- 14 every six months following the date the employer:
- 15 (A) Was provided notice by the employee of the
- 16 employee's status as a domestic or sexual
- 17 violence victim;
- 18 (B) Has actual knowledge of the employee's status as
- 19 a domestic or sexual violence victim; or
- 20 (C) Received verification that the employee is a
- 21 domestic or sexual violence victim;



1 provided that where the employee provides verification  
2 in the form of a protective order related to the  
3 domestic or sexual violence with an expiration date,  
4 the employer may not request any further form of  
5 verification of the employee's status as a domestic or  
6 sexual violence victim until the date of the  
7 expiration or any extensions of the protective order,  
8 whichever is later.

9 (c) For the purposes of this section, "domestic worker"  
10 shall have the same meaning as in section 377-1."

11 SECTION 5. Section 386-1, Hawaii Revised Statutes, is  
12 amended by amending the definition of "employment" to read as  
13 follows:

14 ""Employment" means any service performed by an individual  
15 for another person under any contract of hire or apprenticeship,  
16 express or implied, oral or written, whether lawfully or  
17 unlawfully entered into. [~~It~~] "Employment" includes [~~service~~]:

18 (1) Service of public officials, whether elected or under  
19 any appointment or contract of hire, express or  
20 implied[~~+~~]; and

21 (2) Service of domestic workers, as defined in section  
22 377-1.



1 "Employment" does not include:

2 (1) Service for a religious, charitable, educational, or  
3 nonprofit organization if performed in a voluntary or  
4 unpaid capacity;

5 (2) Service for a religious, charitable, educational, or  
6 nonprofit organization if performed by a recipient of  
7 aid therefrom and the service is incidental to or in  
8 return for the aid received;

9 (3) Service for a school, college, university, college  
10 club, fraternity, or sorority if performed by a  
11 student who is enrolled and regularly attending  
12 classes and in return for board, lodging, or tuition  
13 furnished, in whole or in part;

14 (4) Service performed by a duly ordained, commissioned, or  
15 licensed minister, priest, or rabbi of a church in the  
16 exercise of the minister's, priest's, or rabbi's  
17 ministry or by a member of a religious order in the  
18 exercise of nonsecular duties required by the order;

19 (5) Service performed by an individual for another person  
20 solely for personal, family, or household purposes if  
21 the cash remuneration received is less than \$225  
22 during the current calendar quarter and during each



- 1 completed calendar quarter of the preceding twelve-  
2 month period;
- 3 (6) Domestic, in-home and community-based services for  
4 persons with developmental and intellectual  
5 disabilities under the medicaid home and community-  
6 based services program pursuant to Title 42 Code of  
7 Federal Regulations sections 440.180 and 441.300, and  
8 Title 42 Code of Federal Regulations, Part 434,  
9 Subpart A, as amended, or when provided through state  
10 funded medical assistance to individuals ineligible  
11 for medicaid, and identified as chore, personal  
12 assistance and habilitation, residential habilitation,  
13 supported employment, respite, and skilled nursing  
14 services, as the terms are defined by the department  
15 of human services, performed by an individual whose  
16 services are contracted by a recipient of social  
17 service payments and who voluntarily agrees in writing  
18 to be an independent contractor of the recipient of  
19 social service payments;
- 20 (7) Domestic services, which include attendant care, and  
21 day care services authorized by the department of  
22 human services under the Social Security Act, as



1 amended, or when provided through state-funded medical  
2 assistance to individuals ineligible for medicaid,  
3 when performed by an individual in the employ of a  
4 recipient of social service payments. For the  
5 purposes of this paragraph only, a "recipient of  
6 social service payments" is a person who is an  
7 eligible recipient of social services such as  
8 attendant care or day care services;

9 (8) Service performed without wages for a corporation  
10 without employees by a corporate officer in which the  
11 officer is at least a twenty-five per cent  
12 stockholder;

13 (9) Service performed by an individual for a corporation  
14 if the individual owns at least fifty per cent of the  
15 corporation; provided that no employer shall require  
16 an employee to incorporate as a condition of  
17 employment;

18 (10) Service performed by an individual for another person  
19 as a real estate salesperson or as a real estate  
20 broker, if all the service performed by the individual  
21 for the other person is performed for remuneration  
22 solely by way of commission;



1 (11) Service performed by a member of a limited liability  
2 company if the member is an individual and has a  
3 distributional interest, as defined in section 428-  
4 101, of not less than fifty per cent in the company;  
5 provided that no employer shall require an employee to  
6 form a limited liability company as a condition of  
7 employment;

8 (12) Service performed by a partner of a partnership, as  
9 defined in section 425-101, if the partner is an  
10 individual; provided that no employer shall require an  
11 employee to become a partner or form a partnership as  
12 a condition of employment;

13 (13) Service performed by a partner of a limited liability  
14 partnership if the partner is an individual and has a  
15 transferable interest as described in section 425-127  
16 in the partnership of not less than fifty per cent;  
17 provided that no employer shall require an employee to  
18 form a limited liability partnership as a condition of  
19 employment; and

20 (14) Service performed by a sole proprietor.

21 As used in this definition, "religious, charitable, educational,  
22 or nonprofit organization" means a corporation, unincorporated



1 association, community chest, fund, or foundation organized and  
2 operated exclusively for religious, charitable, or educational  
3 purposes, no part of the net earnings of which inure to the  
4 benefit of any private shareholder or individual."

5 SECTION 6. Section 387-1, Hawaii Revised Statutes, is  
6 amended by amending the definition of "employee" to read as  
7 follows:

8 "Employee" includes any individual employed by an  
9 employer, but shall not include any individual employed:

- 10 (1) At a guaranteed compensation totaling \$2,000 or more a  
11 month, whether paid weekly, biweekly, or monthly;
- 12 (2) In agriculture for any workweek in which the employer  
13 of the individual employs less than twenty employees  
14 or in agriculture for any workweek in which the  
15 individual is engaged in coffee harvesting;
- 16 (3) In domestic service in or about the home of the  
17 individual's employer on a casual basis, as defined in  
18 section 377-1, or as a house parent in or about any  
19 home or shelter maintained for child welfare purposes  
20 by a charitable organization exempt from income tax  
21 under section 501 of the federal Internal Revenue  
22 Code;



- 1           (4) By the individual's brother, sister, brother-in-law,  
2           sister-in-law, son, daughter, spouse, parent, or  
3           parent-in-law;
- 4           (5) In a bona fide executive, administrative, supervisory,  
5           or professional capacity or in the capacity of outside  
6           salesperson or as an outside collector;
- 7           (6) In the propagating, catching, taking, harvesting,  
8           cultivating, or farming of any kind of fish,  
9           shellfish, crustacean, sponge, seaweed, or other  
10          aquatic forms of animal or vegetable life, including  
11          the going to and returning from work and the loading  
12          and unloading of such products prior to first  
13          processing;
- 14          (7) On a ship or vessel and who has a Merchant Mariners  
15          Document issued by the United States Coast Guard;
- 16          (8) As a driver of a vehicle carrying passengers for hire  
17          operated solely on call from a fixed stand;
- 18          (9) As a golf caddy;
- 19          (10) By a nonprofit school during the time such individual  
20          is a student attending such school;
- 21          (11) In any capacity if by reason of the employee's  
22          employment in such capacity and during the term



1           thereof the minimum wage which may be paid the  
2           employee or maximum hours which the employee may work  
3           during any workweek without the payment of overtime,  
4           are prescribed by the federal Fair Labor Standards Act  
5           of 1938, as amended, or as the same may be further  
6           amended from time to time; provided that if the  
7           minimum wage which may be paid the employee under the  
8           Fair Labor Standards Act for any workweek is less than  
9           the minimum wage prescribed by section 387-2, then  
10          section 387-2 shall apply in respect to the employees  
11          for such workweek; provided further that if the  
12          maximum workweek established for the employee under  
13          the Fair Labor Standards Act for the purposes of  
14          overtime compensation is higher than the maximum  
15          workweek established under section 387-3, then section  
16          387-3 shall apply in respect to such employee for such  
17          workweek; except that the employee's regular rate in  
18          such an event shall be the employee's regular rate as  
19          determined under the Fair Labor Standards Act;

20          (12) As a seasonal youth camp staff member in a resident  
21          situation in a youth camp sponsored by charitable,  
22          religious, or nonprofit organizations exempt from



1 income tax under section 501 of the federal Internal  
2 Revenue Code or in a youth camp accredited by the  
3 American Camping Association; or

4 (13) As an automobile salesperson primarily engaged in the  
5 selling of automobiles or trucks if employed by an  
6 automobile or truck dealer licensed under chapter  
7 437."

8 SECTION 7. The department of labor and industrial  
9 relations shall submit a report to the legislature no later than  
10 twenty days prior to the convening of the regular session of  
11 2014 on the feasibility and practicality of allowing domestic  
12 workers to organize for the purposes of collective bargaining.

13 In preparing the report, the department of labor and  
14 industrial relations shall consult with representatives of  
15 domestic workers, individuals and agencies that employ domestic  
16 workers, and relevant state agencies. The report shall address:

- 17 (1) The feasibility of an employee organization formed in  
18 accordance with the Hawaii employment relations act;
- 19 (2) How bargaining units for domestic worker organizations  
20 could be formed;
- 21 (3) Whether there are any unique issues relating to  
22 collective bargaining for domestic workers; and



1           (4) Whether there are other possible frameworks for  
 2           collective organization or for ensuring the benefits  
 3           that accompany organization for domestic workers.

4           The report shall also determine the best means of providing  
 5 easily accessible educational and informational material for  
 6 domestic workers and their employers. The educational and  
 7 informational material shall cover employment benefits, tax, and  
 8 insurance laws.

9           SECTION 8. Statutory material to be repealed is bracketed  
 10 and stricken. New statutory material is underscored.

11           SECTION 9. This Act shall take effect upon its approval.

12

INTRODUCED BY: *Randy De Bebe*

*[Signature]*  
*Frances Chrus Alford*



# S.B. NO. 535

**Report Title:**

Domestic Workers Bill of Rights; Report

**Description:**

Establishes rights for domestic workers. Directs DLIR to report on feasibility of allowing domestic workers to organize for the purposes of collective bargaining.

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

