
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)."

3 SECTION 4. Section 378-2, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) It shall be an unlawful discriminatory practice:

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

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

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

21 (C) For any employer or employment agency to print,
22 circulate, or cause to be printed or circulated



1 any statement, advertisement, or publication or
2 to use any form of application for employment or
3 to make any inquiry in connection with
4 prospective employment, that expresses, directly
5 or indirectly, any limitation, specification, or
6 discrimination;

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

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

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



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

1 milk at the workplace. For purposes of this
2 paragraph, the term "breastfeeds" means the feeding of
3 a child directly from the breast; [~~or~~]

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

13 (9) For any employer to discharge from employment, or
14 otherwise to discriminate against any individual
15 employed as a domestic worker, in compensation or in
16 terms, conditions, or privileges of employment because
17 of the individual's race, sex, including gender
18 identity or expression, sexual orientation, age,
19 religion, color, ancestry, disability, or marital
20 status."



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

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

- 8 (1) Service of public officials, whether elected or under
9 any appointment or contract of hire, express or
10 implied[-]; and
- 11 (2) Service of domestic workers, as defined in section
12 377-1.

13 "Employment" does not include:

- 14 (1) Service for a religious, charitable, educational, or
15 nonprofit organization if performed in a voluntary or
16 unpaid capacity;
- 17 (2) Service for a religious, charitable, educational, or
18 nonprofit organization if performed by a recipient of
19 aid therefrom and the service is incidental to or in
20 return for the aid received;
- 21 (3) Service for a school, college, university, college
22 club, fraternity, or sorority if performed by a



1 student who is enrolled and regularly attending
2 classes and in return for board, lodging, or tuition
3 furnished, in whole or in part;

4 (4) Service performed by a duly ordained, commissioned, or
5 licensed minister, priest, or rabbi of a church in the
6 exercise of the minister's, priest's, or rabbi's
7 ministry or by a member of a religious order in the
8 exercise of nonsecular duties required by the order;

9 (5) Service performed by an individual for another person
10 solely for personal, family, or household purposes if
11 the cash remuneration received is less than \$225
12 during the current calendar quarter and during each
13 completed calendar quarter of the preceding twelve-
14 month period;

15 (6) Domestic, in-home and community-based services for
16 persons with developmental and intellectual
17 disabilities under the medicaid home and community-
18 based services program pursuant to Title 42 Code of
19 Federal Regulations sections 440.180 and 441.300, and
20 Title 42 Code of Federal Regulations, Part 434,
21 Subpart A, as amended, or when provided through state
22 funded medical assistance to individuals ineligible



1 for medicaid, and identified as chore, personal
2 assistance and habilitation, residential habilitation,
3 supported employment, respite, and skilled nursing
4 services, as the terms are defined by the department
5 of human services, performed by an individual whose
6 services are contracted by a recipient of social
7 service payments and who voluntarily agrees in writing
8 to be an independent contractor of the recipient of
9 social service payments;

10 (7) Domestic services, which include attendant care, and
11 day care services authorized by the department of
12 human services under the Social Security Act, as
13 amended, or when provided through state-funded medical
14 assistance to individuals ineligible for medicaid,
15 when performed by an individual in the employ of a
16 recipient of social service payments. For the
17 purposes of this paragraph only, a "recipient of
18 social service payments" is a person who is an
19 eligible recipient of social services such as
20 attendant care or day care services;

21 (8) Service performed without wages for a corporation
22 without employees by a corporate officer in which the



- 1 officer is at least a twenty-five per cent
2 stockholder;
- 3 (9) Service performed by an individual for a corporation
4 if the individual owns at least fifty per cent of the
5 corporation; provided that no employer shall require
6 an employee to incorporate as a condition of
7 employment;
- 8 (10) Service performed by an individual for another person
9 as a real estate salesperson or as a real estate
10 broker, if all the service performed by the individual
11 for the other person is performed for remuneration
12 solely by way of commission;
- 13 (11) Service performed by a member of a limited liability
14 company if the member is an individual and has a
15 distributional interest, as defined in section
16 428-101, of not less than fifty per cent in the
17 company; provided that no employer shall require an
18 employee to form a limited liability company as a
19 condition of employment;
- 20 (12) Service performed by a partner of a partnership, as
21 defined in section 425-101, if the partner is an
22 individual; provided that no employer shall require an



1 employee to become a partner or form a partnership as
2 a condition of employment;

3 (13) Service performed by a partner of a limited liability
4 partnership if the partner is an individual and has a
5 transferable interest as described in section 425-127
6 in the partnership of not less than fifty per cent;
7 provided that no employer shall require an employee to
8 form a limited liability partnership as a condition of
9 employment; and

10 (14) Service performed by a sole proprietor.

11 As used in this definition, "religious, charitable, educational,
12 or nonprofit organization" means a corporation, unincorporated
13 association, community chest, fund, or foundation organized and
14 operated exclusively for religious, charitable, or educational
15 purposes, no part of the net earnings of which inure to the
16 benefit of any private shareholder or individual."

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

20 "Employee" includes any individual employed by an
21 employer, but shall not include any individual employed:



- 1 (1) At a guaranteed compensation totaling \$2,000 or more a
2 month, whether paid weekly, biweekly, or monthly;
- 3 (2) In agriculture for any workweek in which the employer
4 of the individual employs less than twenty employees
5 or in agriculture for any workweek in which the
6 individual is engaged in coffee harvesting;
- 7 (3) In domestic service in or about the home of the
8 individual's employer on a casual basis, as defined in
9 section 377-1, or as a house parent in or about any
10 home or shelter maintained for child welfare purposes
11 by a charitable organization exempt from income tax
12 under section 501 of the federal Internal Revenue
13 Code;
- 14 (4) By the individual's brother, sister, brother-in-law,
15 sister-in-law, son, daughter, spouse, parent, or
16 parent-in-law;
- 17 (5) In a bona fide executive, administrative, supervisory,
18 or professional capacity or in the capacity of outside
19 salesperson or as an outside collector;
- 20 (6) In the propagating, catching, taking, harvesting,
21 cultivating, or farming of any kind of fish,
22 shellfish, crustacean, sponge, seaweed, or other



1 aquatic forms of animal or vegetable life, including
2 the going to and returning from work and the loading
3 and unloading of such products prior to first
4 processing;

5 (7) On a ship or vessel and who has a Merchant Mariners
6 Document issued by the United States Coast Guard;

7 (8) As a driver of a vehicle carrying passengers for hire
8 operated solely on call from a fixed stand;

9 (9) As a golf caddy;

10 (10) By a nonprofit school during the time such individual
11 is a student attending such school;

12 (11) In any capacity if by reason of the employee's
13 employment in such capacity and during the term
14 thereof the minimum wage which may be paid the
15 employee or maximum hours which the employee may work
16 during any workweek without the payment of overtime,
17 are prescribed by the federal Fair Labor Standards Act
18 of 1938, as amended, or as the same may be further
19 amended from time to time; provided that if the
20 minimum wage which may be paid the employee under the
21 Fair Labor Standards Act for any workweek is less than
22 the minimum wage prescribed by section 387-2, then



1 section 387-2 shall apply in respect to the employees
2 for such workweek; provided further that if the
3 maximum workweek established for the employee under
4 the Fair Labor Standards Act for the purposes of
5 overtime compensation is higher than the maximum
6 workweek established under section 387-3, then section
7 387-3 shall apply in respect to such employee for such
8 workweek; except that the employee's regular rate in
9 such an event shall be the employee's regular rate as
10 determined under the Fair Labor Standards Act;

11 (12) As a seasonal youth camp staff member in a resident
12 situation in a youth camp sponsored by charitable,
13 religious, or nonprofit organizations exempt from
14 income tax under section 501 of the federal Internal
15 Revenue Code or in a youth camp accredited by the
16 American Camping Association; or

17 (13) As an automobile salesperson primarily engaged in the
18 selling of automobiles or trucks if employed by an
19 automobile or truck dealer licensed under chapter
20 437."

21 SECTION 7. The department of labor and industrial
22 relations shall submit a report to the legislature no later than



1 twenty days prior to the convening of the regular session of
2 2014 on the feasibility and practicality of allowing domestic
3 workers to organize for the purposes of collective bargaining.

4 In preparing the report, the department of labor and
5 industrial relations shall consult with representatives of
6 domestic workers, individuals and agencies that employ domestic
7 workers, and relevant state agencies. The report shall address:

- 8 (1) The feasibility of an employee organization formed in
9 accordance with the Hawaii employment relations act;
- 10 (2) How bargaining units for domestic worker organizations
11 could be formed;
- 12 (3) Whether there are any unique issues relating to
13 collective bargaining for domestic workers; and
- 14 (4) Whether there are other possible frameworks for
15 collective organization or for ensuring the benefits
16 that accompany organization for domestic workers.

17 The report shall also determine the best means of providing
18 easily accessible educational and informational material for
19 domestic workers and their employers. The educational and
20 informational material shall cover employment benefits, tax, and
21 insurance laws.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2050.

4



Report Title:

Domestic Workers Bill of Rights; Report

Description:

Establishes rights for domestic workers. Directs the department of labor and industrial relations to report on feasibility of allowing domestic workers to organize for the purposes of collective bargaining. Effective on 07/01/50. (SD1)

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

