



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 1, 2013

GOV. MSG. NO. 1351

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 1, 2013, the following bill was signed into law:

SB535 SD1 HD2 CD1

RELATING TO LABOR
ACT 248 (13)

Aloha
Signers
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Section 378-1, 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, express or
6 implied, oral or written, whether lawfully or unlawfully entered
7 into. Employment does not include services by an individual
8 employed as a domestic in the home of any person[-], except as
9 provided in section 378-2(a)(9)."

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

12 "(a) It shall be an unlawful discriminatory practice:
13 (1) Because of race, sex[-] including gender identity or
14 expression, sexual orientation, age, religion, color,
15 ancestry, disability, marital status, arrest and court
16 record, or domestic or sexual violence victim status
17 if the domestic or sexual violence victim provides



1 notice to the victim's employer of such status or the
2 employer has actual knowledge of such status:

3 (A) For any employer to refuse to hire or employ or
4 to bar or discharge from employment, or otherwise
5 to discriminate against any individual in
6 compensation or in the terms, conditions, or
7 privileges of employment;

8 (B) For any employment agency to fail or refuse to
9 refer for employment, or to classify or otherwise
10 to discriminate against, any individual;

11 (C) For any employer or employment agency to print,
12 circulate, or cause to be printed or circulated
13 any statement, advertisement, or publication or
14 to use any form of application for employment or
15 to make any inquiry in connection with
16 prospective employment, that expresses, directly
17 or indirectly, any limitation, specification, or
18 discrimination;

19 (D) For any labor organization to exclude or expel
20 from its membership any individual or to
21 discriminate in any way against any of its
22 members, employer, or employees; or



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

6 (2) For any employer, labor organization, or employment
7 agency to discharge, expel, or otherwise discriminate
8 against any individual because the individual has
9 opposed any practice forbidden by this part or has
10 filed a complaint, testified, or assisted in any
11 proceeding respecting the discriminatory practices
12 prohibited under this part;

13 (3) For any person, whether an employer, employee, or not,
14 to aid, abet, incite, compel, or coerce the doing of
15 any of the discriminatory practices forbidden by this
16 part, or to attempt to do so;

17 (4) For any employer to violate the provisions of section
18 121-43 relating to nonforfeiture for absence by
19 members of the national guard;

20 (5) For any employer to refuse to hire or employ or to bar
21 or discharge from employment any individual because of
22 assignment of income for the purpose of satisfying the



1 individual's child support obligations as provided for
2 under section 571-52;

3 (6) For any employer, labor organization, or employment
4 agency to exclude or otherwise deny equal jobs or
5 benefits to a qualified individual because of the
6 known disability of an individual with whom the
7 qualified individual is known to have a relationship
8 or association;

9 (7) For any employer or labor organization to refuse to
10 hire or employ, bar or discharge from employment,
11 withhold pay from, demote, or penalize a lactating
12 employee because the employee breastfeeds or expresses
13 milk at the workplace. For purposes of this
14 paragraph, the term "breastfeeds" means the feeding of
15 a child directly from the breast; [ex]

16 (8) For any employer to refuse to hire or employ, bar or
17 discharge from employment, or otherwise to
18 discriminate against any individual in compensation or
19 in the terms, conditions, or privileges of employment
20 of any individual because of the individual's credit
21 history or credit report, unless the information in
22 the individual's credit history or credit report



1 directly relates to a bona fide occupational
 2 qualification under section 378-3(2) [-]; or
 3 (9) For any employer to discriminate against any
 4 individual employed as a domestic, in compensation or
 5 in terms, conditions, or privileges of employment
 6 because of the individual's race, sex including gender
 7 identity or expression, sexual orientation, age,
 8 religion, color, ancestry, disability, or marital
 9 status."

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

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

14 "Casual basis" means employment that is:

15 (1) Irregular or intermittent; and

16 (2) Performed for a family or household who directly
 17 employs the individual providing the services.

18 Employment is not on a casual basis, whether performed for
 19 one or more family or household employers, if the employment for
 20 all employers exceeds twenty hours per week in the aggregate.

21 For babysitting or companionship services for the aged or
 22 infirm, employment is not on a casual basis if the service is



1 performed by an individual whose vocation is the provision of
2 babysitting or companionship services.

3 "Companionship services for the aged or infirm" means those
4 services that provide fellowship, care, and protection for an
5 individual who, because of advanced age or physical or mental
6 infirmity, cannot care for the individual's own needs.

7 "Companionship services for the aged or infirm" does not include
8 services relating to the care and protection of the aged or
9 infirm that require and are performed by trained personnel, such
10 as a registered or practical nurse.

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

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

21 "Employee" includes any individual employed by an
22 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 [~~or as a house parent in or~~
9 ~~about any home or shelter maintained for child welfare~~
10 ~~purposes by a charitable organization exempt from~~
11 ~~income tax under section 501 of the federal Internal~~
12 ~~Revenue Code~~];

13 (A) In domestic service on a casual basis; or

14 (B) Providing companionship services for the aged or
15 infirm;

16 (4) As a house parent in or about any home or shelter
17 maintained for child welfare purposes by a charitable
18 organization exempt from income tax under section 501
19 of the federal Internal Revenue Code;

20 [-4-] (5) By the individual's brother, sister, brother-in-
21 law, sister-in-law, son, daughter, spouse, parent, or
22 parent-in-law;



1 ~~[(5)]~~ (6) In a bona fide executive, administrative,
2 supervisory, or professional capacity or in the
3 capacity of outside salesperson or as an outside
4 collector;

5 ~~[(6)]~~ (7) In the propagating, catching, taking, harvesting,
6 cultivating, or farming of any kind of fish,
7 shellfish, crustacean, sponge, seaweed, or other
8 aquatic forms of animal or vegetable life, including
9 the going to and returning from work and the loading
10 and unloading of such products prior to first
11 processing;

12 ~~[(7)]~~ (8) On a ship or vessel and who has a Merchant
13 Mariners Document issued by the United States Coast
14 Guard;

15 ~~[(8)]~~ (9) As a driver of a vehicle carrying passengers for
16 hire operated solely on call from a fixed stand;

17 ~~[(9)]~~ (10) As a golf caddy;

18 ~~[(10)]~~ (11) By a nonprofit school during the time such
19 individual is a student attending such school;

20 ~~[(11)]~~ (12) In any capacity if by reason of the employee's
21 employment in such capacity and during the term
22 thereof the minimum wage which may be paid the



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

19 [~~(12)~~] (13) As a seasonal youth camp staff member in a
20 resident situation in a youth camp sponsored by
21 charitable, religious, or nonprofit organizations
22 exempt from income tax under section 501 of the



1 federal Internal Revenue Code or in a youth camp
2 accredited by the American Camping Association; or
3 [~~(13)~~] (14) As an automobile salesperson primarily engaged
4 in the selling of automobiles or trucks if employed by
5 an automobile or truck dealer licensed under chapter
6 437."

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

9 SECTION 5. This Act shall take effect upon its approval.

APPROVED this 1 day of JUL, 2013



GOVERNOR OF THE STATE OF HAWAII