

JAN 28 2015

A BILL FOR AN ACT

RELATING TO WAGE AND HOUR LAW.

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

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

4 "Employee" includes any individual employed by an employer,
5 but shall not include any individual employed:

6 (1) At a guaranteed compensation totaling [~~\$2,000 or more~~
7 ~~a month,~~] a monthly minimum of the amount of the
8 applicable minimum wage under section 387-2 multiplied
9 by two hundred seventy-six, whether paid weekly,
10 biweekly, or monthly;

11 (2) In agriculture for any workweek in which the employer
12 of the individual employs less than twenty employees
13 or in agriculture for any workweek in which the
14 individual is engaged in coffee harvesting;

15 (3) In or about the home of the individual's employer:
16 (A) In domestic service on a casual basis; or

S.B. NO. 1122

- 1 (B) Providing companionship services for the aged or
2 infirm;
- 3 (4) As a house parent in or about any home or shelter
4 maintained for child welfare purposes by a charitable
5 organization exempt from income tax under section 501
6 of the federal Internal Revenue Code;
- 7 (5) By the individual's brother, sister, brother-in-law,
8 sister-in-law, son, daughter, spouse, parent, or
9 parent-in-law;
- 10 (6) In a bona fide executive, administrative, supervisory,
11 or professional capacity or in the capacity of outside
12 salesperson or as an outside collector;
- 13 (7) In the propagating, catching, taking, harvesting,
14 cultivating, or farming of any kind of fish,
15 shellfish, crustacean, sponge, seaweed, or other
16 aquatic forms of animal or vegetable life, including
17 the going to and returning from work and the loading
18 and unloading of such products prior to first
19 processing;
- 20 (8) On a ship or vessel and who has a Merchant Mariners
21 Document issued by the United States Coast Guard;

- 1 (9) As a driver of a vehicle carrying passengers for hire
2 operated solely on call from a fixed stand;
- 3 (10) As a golf caddy;
- 4 (11) By a nonprofit school during the time such individual
5 is a student attending such school;
- 6 (12) In any capacity if by reason of the employee's
7 employment in such capacity and during the term
8 thereof the minimum wage which may be paid the
9 employee or maximum hours which the employee may work
10 during any workweek without the payment of overtime,
11 are prescribed by the federal Fair Labor Standards Act
12 of 1938, as amended, or as the same may be further
13 amended from time to time; provided that if the
14 minimum wage which may be paid the employee under the
15 Fair Labor Standards Act for any workweek is less than
16 the minimum wage prescribed by section 387-2, then
17 section 387-2 shall apply in respect to the employees
18 for such workweek; provided further that if the
19 maximum workweek established for the employee under
20 the Fair Labor Standards Act for the purposes of
21 overtime compensation is higher than the maximum
22 workweek established under section 387-3, then section

S.B. NO. 1122

1 387-3 shall apply in respect to such employee for such
2 workweek; except that the employee's regular rate in
3 such an event shall be the employee's regular rate as
4 determined under the Fair Labor Standards Act;

5 (13) As a seasonal youth camp staff member in a resident
6 situation in a youth camp sponsored by charitable,
7 religious, or nonprofit organizations exempt from
8 income tax under section 501 of the federal Internal
9 Revenue Code or in a youth camp accredited by the
10 American Camping Association; or

11 (14) As an automobile salesperson primarily engaged in the
12 selling of automobiles or trucks if employed by an
13 automobile or truck dealer licensed under chapter 437."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act, upon its approval, shall take effect
17 on July 1, 2015.

18 INTRODUCED BY: Anna Drevada Kij

19 BY REQUEST

Report Title:

Wage and Hour Law; Minimum Compensation Exemption

Description:

Increases the amount of guaranteed monthly compensation required to exempt an individual from minimum wage, overtime, and record keeping requirements under the Hawaii Wage and Hour Law by way of a formula.

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

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO WAGE AND HOUR LAW.

PURPOSE: To make increases to the guaranteed salary exemption for overtime, consistent with increases to the minimum wage.

MEANS: Amend section 387-1, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This housekeeping measure would correct the inequity of guaranteed compensation remaining at the same level, while the minimum wage increases over the next three years. Act 43, Session Laws of Hawaii 2002, similarly raised the minimum compensation due to scheduled increases in the minimum wage.

The Hawaii Wage and Hour Law safeguards existing minimum wage and maximum hour standards to maintain the health, efficiency and general well-being of workers. Under the current definition of an "employee" in section 387-1, HRS, an individual who receives a guaranteed compensation of \$2,000 or more per month is excluded from the overtime requirements of the law. By paying a guaranteed compensation, employers who are subject to the state law may schedule such individuals to work unlimited hours without being required to pay overtime compensation.

To maintain a consistent wage proportion, this proposal uses a multiplier mechanism to keep the minimum guaranteed compensation on par with increases to the minimum wage. The number 276 is derived by dividing the current guaranteed compensation of \$2,000 by \$7.25. Moreover, this mechanism will ensure the guaranteed compensation will keep pace

with increases in the minimum wage moving forward.

Impact on the public: Workers paid at the guaranteed compensation will have their health, efficiency, and general well-being safeguarded. Employers will have to pay guaranteed compensation workers more to be exempt from overtime requirements. Further, an increase in the guaranteed compensation will boost consumer demand and jobs because guaranteed compensation workers spend most, if not all, of their increased wages and therefore, will generate economic activity.

Impact on the department and other agencies: Chapter 387, HRS, does not apply to the State as an employer.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR-152.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2015.