

---

---

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

H.B. NO. 953

- 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

H.B. NO. 953

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:

A handwritten signature in black ink, appearing to read "Jon S. ...", is written over a horizontal line.

19 BY REQUEST

JAN 26 2015

# H.B. NO. 953

**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.