

Worker Protective Labor Laws in Hawai'i, Part 3

FMLA & Wage and Hour Laws

Center for Labor Education & Research
University of Hawai'i - West O'ahu
91-1001 Farrington Highway, Kapolei, HI 96707
(808) 689-2760 - FAX (808) 689-2761

E-Mail: clear@hawaii.edu;
To visit CLEAR's [Home Page](#)

[Click here for access to a helpful Glossary of Labor and Legal Terminology](#)

Hawai'i's Family Leave Act, [HRS 398](#)

see also [FAQs on the Hawai'i Family Leave Law \(HFLL\)](#)

and [Administrative Rules, Title 12, Chapter 27](#)

Two years before the federal law (FMLA) was passed, Hawai'i enacted its own Family Leave law to allow up to four weeks of unpaid leave a year to employees who need to take care of a new baby or a sick family member. The law now covers only private sector employers in the State who have 100 or more workers for each working day of twenty or more weeks in the current or proceeding year.

[Certification of Serious Health Condition](#) (Form HFLL-1)

To be eligible for this leave, employees must have been working for six months. Employees are expected to give "reasonable notice" in cases where the leave is "foreseeable." Employers may require applicants to provide certification from an appropriate authority. Upon return from statutory family leave, employees must be returned to their former position or equivalent position with the same pay, benefits, and other conditions of employment.

An aggrieved employee must file a "verified complaint in writing" the State Department of Labor and Industrial Relations.

State of Hawai'i Wage & Hour Enforcement Division:

On O'ahu call 586-8777 [note: wait for the long recorded message to finish]

State Dept. of Labor District Offices:

On Maui call 243-5322

In Hilo call 974-6464

For West Hawai'i call 322-4808

On Kaua'i call 274-3351

To a large degree, this state law has been overshadowed by the federal Family and Medical Leave Act of 1993 which covers employers with even less 100 employees and provides more weeks of unpaid leave.

Family and Medical Leave Act of 1993 (Pub. L. 103-3)([29 U.S.C. Chapter 28](#))

This federal law requires employers of 50 or more employees within a 75 mile area to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons, such as:

- The birth or placement of a child for adoption or foster care;
- The care of an immediate family member (spouse, child or parent, or someone who stands or stood in place of such a family member); or
- Medical leave when the employee is unable to work because of a 'serious health condition'.

Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months. [Rules & Regs. at 29 C.F.R. 825 & LRX 403:7101]

[U.S. Department of Labor's FMLA Web Site](#)

Federal DOL Wage & Hour Enforcement:
call this O'ahu number, 541-1361

The employee may be required, where the leave is 'foreseeable', to provide 30 days advance notice and medical certification. Leave may be intermittent or a reduction in the usual number of hours worked per day or week. Upon return from FMLA leave, the employee must ordinarily be restored to his/her former position/pay/benefits and other terms of employment.

For the duration of the FMLA leave, the employer must maintain the employee's medical insurance coverage, though the employee may be liable to reimburse the employer for such premium payments if he/she does not return to work. And it is unlawful for the employer to discharge, discriminate, restrain or coerce an employee for using the leave.

Resource Note: [The FMLA Handbook: A Practical Guide to the Family and Medical Leave Act for Union Members and Stewards](#) by Boston labor lawyer Robert M. Schwartz
This FMLA Handbook uses questions and answers, examples, tips, illustrations, sample letters, and other easy-to-use materials to explain the law and the complicated regulations issued by the U.S. Department of Labor.

The Fair Labor Standards Act of 1938 ([29 U.S.C. 201 et seq.](#))

The FLSA was enacted to regulate wages and hours and the employment of child labor. Commonly referred to as the federal wage and hour law, the FLSA sets the federal minimum wage and was amended in 1963 by the Equal Pay Act to prohibit sex-based wage discrimination as well.

Federal DOL Wage & Hour Enforcement:
On O'ahu call 541-1361

• **Link to the federal Wage & Hour Web-site:**

U.S. Department of Labor, ESA -Wage & Hour:
www.dol.gov/whd/

Today the law provides compensation standards and regulation in four basic areas: 1) minimum wages; 2) overtime compensation; 3) sex-based wage discrimination; and 4) child labor. It applies generally to interstate commerce and industry (liberally construed) and operates independently of individual state laws and other federal acts which apply compensation standards to public works contracts ([Davis-Bacon](#)), government service contracts ([Service Contract Act](#)), and government supply contracts ([Walsh-Healey](#)).

Higher state minimum wage acts are not superseded or preempted, and federal standards cannot be used to excuse non-compliance with the higher state minimums. For instance, as of 7/24/09 the federal minimum wage was raised to **\$7.25**. The Hawai'i State minimum wage, however, rose to **\$12.00** on 10/1/22. The federal wage and hour laws do not limit the number of hours that an employee can work in a week, but the employee must be paid time-and-one-half the regular rate for each hour worked over 40 hours in a workweek.

[U.S. Department of Labor's Minimum Wage Web Poster Site](#)

www.dol.gov/whd/minwage/q-a.htm

(US DOL's "Questions and Answers About the Minimum Wage")

[Wage & Hour Laws and Regulations](#)

Federal law defines 'oppressive child labor' through the use of age restrictions. Essentially minors under 14 cannot be employed except in agriculture; minors 14 to 16 can work limited hours outside of their school hours in a limited class of jobs; and minors 16 to 18 cannot be employed in certain hazardous occupations. Under the federal law, an employee may sue for back wages within two years (three in the case of willful violations), while the state provides workers up to six years to file suit.

COVERAGE & EXEMPTIONS:

The FLSA uses rather complicated formulae in determining which workers are covered. Exemptions may apply to classes of employees or types of industries, or may exempt certain workers from some, but not all provisions of the act. For example agricultural workers employed by members of the immediate family; a hand-harvest laborer paid on a piece-rate basis and who commutes daily to the farm at which he's employed; an employee of an employer who did not use more than 500 man-days of agricultural labor during the calendar year, etc. [see for instance "Miscellaneous Exemptions", [29 CFR 786](#)]

As of August 23, 2004 the regulations governing which white collar employees are exempt from the overtime provisions of the FLSA are as follows:

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary basis](#) (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:

1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to 'white collar' employees who meet the salary and duties tests set forth in the [Part 541 regulations](#).

Salaried Workers

Since Salaried workers are usually exempt from the over-time provisions of the law, particularly important is the definition of salary basis in [Part 541.602](#), which provides in relevant part:

An employee will be considered to be paid on a "salary basis" within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

In 1947 the Portal to Portal Act (29 U.S.C. 251-262) amended FLSA to give clearer definition the term "workday" and to answer questions regarding employers' liability to compensate workers.

HOURS WORKED ([29 CFR Part 785](#))

Voluntary late work -29 CFR 785.11

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a piece worker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets,

prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time.

Rest breaks -29 CFR 785.18

Rest periods of short duration, running from 5 minutes to about 20 minutes are common in industry. ... They must be counted as hours worked.

Meal breaks -29 CFR 785.19

Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. ... The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating.

Lectures/meetings -29 CFR 785.27

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following criteria are met: (a) Attendance is outside of the employee's regular working hours; (b) Attendance is in fact voluntary; (c) The course, lecture or meeting is not directly related to the employee's job; (d) The employee does not perform any productive work during attendance.

Training programs -29 CFR 785.31

The training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill.

Changing clothes at work -29 CFR 785.24 and 790.8(c)

Among the activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance. If an employee in a chemical plant for example, cannot perform his principal activities without putting on certain clothes, changing clothes on the employer's premises at the beginning and end of the workday would be an integral part of the employee's activity.

Changing clothes off work -29 CFR 785.24 and 790.8(c)

On the other hand, if changing clothes is merely a convenience to the employee and not directly related to his primary activities, it would be considered as a 'preliminary' or 'postliminary' activity rather than a principal part of the activity.

Travel time to/from work -29 CFR 785.35

... travel time at the commencement or cessation of the workday need not be counted as worktime unless it is compensable by contract, custom or practice. On the other hand, 29 CFR 785.36 provides, if an employee who has gone home after completing his day's work is subsequently called out at night to travel a substantial distance to perform an emergency job ... all time spent on such travel is work time.

Travel time during work -29 CFR 785.38

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked.

Civic work -co. requested -29 CFR 785.44

Time spent in work for public or charitable purposes at the employer's request, or under his direction or control, or while the employee is required to be on the premises, is working time.

Medical attention -29 CFR 785.43

Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked.

On call time -29 CFR 785.17

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while 'on call'. An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

INDUSTRIAL HOMEWORK ([29 CFR, Part 530](#))

One of the earliest and longest struggles of the labor movement has been the fight against industrial sweatshops and unregulated piecework doled out as homework to workers at low or subminimum wage rates. The FLSA defines homework as work done in or about a home, apartment, tenement, or room in a residential establishment.

Homeworkers must be paid at least the hourly minimum wage and overtime in accordance with the act, unless the employer has a certificate permitting the employment of a particular disabled worker at less than the minimum wage.

There is no general ban on homework; however, regulations do require employers to obtain certification from the DOL for garment industry and jewelry manufacturing workers.

The Hawai'i Wage and Hour Law, [HRS 387](#)

The Hawai'i State Wage & Hour Law employs its own system of tests/formulae to determine which workers are covered, but does not cover any State and County employees.

State of Hawai'i Wage & Hour Enforcement Division:

email: dlir.wages@hawaii.gov

On O'ahu call 586-8777 [note: wait for the long recorded message to finish]

State Dept. of Labor District Offices:

On Maui call 243-5322

In Hilo call 974-6464

For West Hawai'i call 322-4808

On Kaua'i call 274-3351

MIMIMUM WAGE:

Act 214 (2022) amended HRS 387 to raise the State minimum to **\$12.00 an hour** on October 1st. On January 1, 2024, it will rise to \$14.00 per hour; then on January 1, 2026 to \$16.00 per hour; and to \$18.00 per hour beginning January 1, 2028.

EXEMPTIONS:

Persons at guaranteed monthly salary of \$2000/month; State and County workers (who are covered instead by HRS 78 and HRS 89); workers in coffee harvesting operations; agricultural workers if employer has fewer than 20 employees; domestic workers; houseparents in charitable organizations; employer's relatives (brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, parent-in-law); those employed in bona fide executive, administrative, supervisory, or professional capacity; outside salespersons or collectors; those in fish or aquatic farming industry prior to first processing;

seafarers; on-call, fixed stand vehicle drivers; golf caddies; student employees of nonprofit school; seasonal employees of certain nonprofit youth camps; and automobile or truck salespersons for licensed dealer.

CREDITS:

Meals and Lodging --Credits permitted for reasonable cost, as determined by the department, of furnishing employee meals, lodging, and other facilities customarily furnished by the employer.

Tips and Gratuities -- 75¢ an hour less than minimum wage allowed for tipped employees if combined wages and tips are at least 50 cents an hour more than the minimum wage, provided that the combined amount the employee receives from the employee's employer and in tips is at least \$7.00 more than the minimum wage.

SUBMINIMUM:

Less than minimum wage for learners, apprentices, those impaired by old age or physical or mental handicap, certain students, and paroled wards of the state youth correctional facility may be paid according to rules provided by the Director of DLIR.

OVERTIME:

1 and 1/2 times regular pay for hours in excess of 40 hours per week. Employers in certain industries may select 20 work-weeks per year during which they shall be exempt from the overtime compensation requirement, although they must pay 1 and 1/2 times the regular rate for hours in excess of 48 per week. These industries are agriculture; first processing of dairy products; processing of sugar cane molasses or sugar cane; first processing or canning or packing and agricultural or horticultural commodity; handling, slaughtering, or dressing poultry or livestock; agriculture and processing of agricultural products seasonally; or first processing or canning or packing of seasonal fresh fruits.

[State of Hawai'i Information on "White Collar Exemptions", and Federal/State Overtime Coverage by Occupation or Category of Workers](#)

EQUAL PAY:

Under [Section 387-4](#), it is unlawful to discriminate in payment of wages on the basis of race or religion, or to pay any female employee at a rate less than that paid to a male employee for the same quality and quantity of work in the same work classification. Variation of rates are not prohibited if based on seniority of length of service, substantial difference in duties or services performed, difference in shift. The employer may not reduce the rate of pay of a higher paid worker in order to comply with this section.

ENFORCEMENT: Under [Section 387-12\(b\)](#) any employer who violates the minimum wage or overtime provisions of this law is liable to the employee or employees affected in the amount of their unpaid minimum wages or unpaid overtime compensation, and in the case of wilful violation in an additional amount as liquidated damages.

**If you have an *Adobe Acrobat Reader*, you can download
The State Administrative Rules for Hawaii's Wage & Hour Law
[\[Title 12, Chapter 20\]](#).**

and the Employee's Notices:

- [Minimum Wage Notice](#)

- **Payment of Wages Law Notice**

Hawai'i Payment of Wages Law, (HRS 388)

Requires employers to pay wages regularly at least twice each calendar month and within 7 days after the end of each pay period. Payment must be in cash or check convertible to cash on demand. If the paycheck bounces, the employer is liable for any special handling fee assessed by the bank. Discharged employees must be paid in full on the day of discharge or no later than the next work day. Employees who quit or resign must be paid no later than the next regular pay day. Employees must be notified in writing or through a posted notice of any changes in pay arrangements prior to the change, and employees must be furnished with a pay statement at payday showing gross wages, itemized deductions, net pay, and pay period. And Employers may not deduct for fines, cash shortages, breakage charges, bad checks accepted or the cost of required physical exams, nor may the employer or prospective employer require payment of job application processing fees.

On O'ahu call 586-8777

State Dept. of Labor District Offices:

On Maui call 243-5322

In Hilo call 974-6464

For West Hawai'i call 322-4808

On Kaua'i call 274-3351

**If you have an *Adobe Acrobat Reader*, you can download
The State Administrative Rules for Hawaii's Payment of Wages Law
[Title 12, Chapter 21].**

State of Hawai'i Payment of Wages Law Poster

It must be noted, however, that the law does not cover State and County employees and allows a variety of exceptions to the above provisions which need to be weighed in light of the specific details of each case.

Hawai'i Garnishment of Wages Law, (HRS 652)

Under the Garnishment Law, an employee who has major debts or creditors may have a portion of his/her wages withheld by court order until the debt is paid. The law allows for the portion withheld to be 5% of the first \$100 per month, 10% of the next \$100, and 20% of the amount exceeding \$200 per month.

The federal wage garnishment law (Title III of the Consumer Credit Protection Act) further limits the amount of an employee's weekly earnings which may be garnished to 25% of his/her disposable earnings. The federal law and the Hawai'i Employment Practices Act (HRS §378-32) also prohibit employers from discharging any employee because of the garnishment.

Hawai'i Child Labor Law, HRS 390

The federal law (FLSA) defines "oppressive child labor" through the use of age restrictions. ; minors 14 to 16 can work limited hours outside of their school hours in a limited class of jobs; and minors 16 to 18 cannot be employed in certain hazardous occupations. Under the federal law, an employee may sue for back wages within two years (three in the case of willful violations), while the state provides workers up to six years to file suit.

**If you have an *Adobe Acrobat Reader*, you can download
The State Administrative Rules for Hawaii's Child Labor Law
[\[Title 12, Chapter 25\]](#).**

On O'ahu call 586-8777
State Dept. of Labor District Offices:
On Maui call 243-5322
In Hilo call 974-6464
For West Hawai'i call 322-4808
On Kaua'i call 274-3351

Under Hawai'i's law, generally minors under 14 cannot be employed except in theatrical or coffee harvesting. Employers are required to obtain certificates of age and employment for children under the age of 18 who are working in compliance with the federal and state limitations. Minors 14 and 15 years of age may only be employed between the hours of 7:00 a.m. and 7:00 p.m., except from June 1 to the day before Labor Day, when they may work between 6:00 a.m. and 9:00 p.m. The law also requires minors 14 and 15 years of age be given a rest period of at least thirty consecutive minutes after working five hours continuously. The state law does not cover minors selling or distributing newspapers, golf caddies, those employed by their parents, or minors working at a private residence.

[Back to CLEAR Home Page](#)