

HAWAII ADMINISTRATIVE RULES
TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

CHAPTER 20

WAGE AND HOUR

Subchapter 1 The Administration and Enforcement of the Wage and Hour Law

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SUBCHAPTER 1

THE ADMINISTRATION AND ENFORCEMENT OF THE
WAGE AND HOUR LAW

Historical Note: Subchapter 1, chapter 20 of title 12 is based substantially upon "Rule XIII, Relating to the Administration and Enforcement of the Hawaii Wage and Hour Law" of the Department of Labor and Industrial Relations. [Eff. 11/1/51; am 10/15/62; am 3/1/66; am 1/1/68; am 1/1/70; am 7/19/75; R 10/2/81]

§12-20-1 Definitions. As used in this chapter:

"Department" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Director" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employ" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employee" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employer" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Tip" means a sum of money determined solely by a customer and given in recognition of service performed by an employee who retains it as a gift or gratuity. It may be paid in cash, bank check, or other negotiable instrument payable at par as well as amounts transferred by employer to employee by direction of the credit customer who designates amounts to be added to the customer's bill as tips. Compulsory or negotiated service charges and special gifts in forms other than described above are not counted as tips.

"Tip credit" is the amount by which the wage paid a tipped employee is deemed to be increased because of tips received by the employee.

"Tipped employee" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Wage" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Week" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Workweek" shall be as defined in section 387-1, Hawaii Revised Statutes. [Eff. Oct. 2, 1981]

(Auth: HRS §387-11) (Imp: HRS §387-11)

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§12-20-2 Bona fide executive capacity. The term "individual employed...in a bona fide executive...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities);
- (2) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more employees;
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
- (5) Who customarily and regularly exercises discretionary powers. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-3 Bona fide administrative capacity. The term "individual employed...in a bona fide...administrative ...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); and
- (2) Whose primary duty consists of the performance of office or non-manual field work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment. The individual may be a person:
 - (A) Who regularly and directly assists a proprietor or an individual employed in a bona fide executive or administrative capacity (as the terms are defined in this subchapter); or
 - (B) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or
 - (C) Who executes under only general supervision special assignments or tasks. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-4 Bona fide supervisory capacity. The term "individual employed...in a bona fide...supervisory ...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities);
- (2) Whose primary duty consists of the supervision or direction of other employees; and
- (3) Who customarily and regularly directs the work of at least five employees in the enterprise in which the individual is employed. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-5 Bona fide professional capacity. The term "individual employed...in a bona fide...professional capacity" means any individual:

- (1) Who is compensated on a fixed salary or fixed fee of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); provided that the salary requirement shall not apply in the case of an individual:
 - (A) Who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof; or
 - (B) Who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or residency program pursuant to the practice of medicine or any of its branches; or
 - (C) Who is employed and engaged as a teacher as provided in paragraph (2)(C);
- (2) Whose primary duty consists of the performance of:
 - (A) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

- (B) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the individual; or
- (C) Teaching, tutoring, instructing, or lecturing and who is employed and engaged in this activity as a teacher certified or recognized in the school system or educational establishment or institution by which the person is employed;
- (3) Whose work requires the consistent exercise of discretion and judgment in its performance; and
- (4) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. [Eff. Oct. 2, 1981; am Aug. 8, 1988] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-6 Outside salesman capacity. The term "individual employed...in the capacity of outside salesman" means any individual:

- (1) Who is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in:
 - (A) Making sales; or
 - (B) 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
- (2) Whose hours of work of a nature other than that described in paragraphs (1)(A) and (1)(B) do not exceed forty per cent of the hours worked in the workweek by non-exempt employees of the employer; provided that the hours of work do not include hours of work of a nature other than sales or solicitations which are in excess of five per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside sales or solicitations. The term "sales" shall include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition with respect to tangible and intangible property. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-7 Outside collector. The term "individual employed...as an outside collector" means any individual:

- (1) Who is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in:
 - (A) Collecting money for goods or services previously or presently furnished by the employer; or
 - (B) Collecting money for an account placed in the hands of the employer for collection; and
- (2) Whose hours of work of a nature other than that described in paragraphs (1)(A) and (1)(B) do not exceed twenty per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside collections. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §387-1)

§12-20-8 Record keeping requirements. (a) Every employer shall maintain and keep in or about the premises where any employee is employed, records in English containing the following information on each employee to whom sections 387-2 and 387-3, Hawaii Revised Statutes, apply:

- (1) Name in full, social security number, and any identifying symbol or number used in place of or in addition to a name on any record kept by the employer relating to the employee;
- (2) Home address;
- (3) Date of birth, if under nineteen;
- (4) Occupation in which employed;
- (5) Rate of pay and length of pay period;
- (6) Hours worked each workday and total hours worked each workweek;

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- (7) Total daily or weekly straight-time wages;
 - (8) Total weekly overtime wages;
 - (9) The amount and purpose of additions to or deductions from wages paid each pay period;
 - (10) Total wages paid each pay period, date of payment, and pay period covered;
 - (11) Date of hire; and
 - (12) Date of termination.
- (b) These records shall be preserved by the employer for at least six years. [Eff. Oct. 2, 1981] (Auth: HRS

§§387-6, 387-11) (Imp: HRS §387-6)

§12-20-9 Reasonable cost of board, lodging, or other facilities. (a) The reasonable cost to the employer of furnishing an employee with board, lodging, or other facilities is the actual cost of providing the board, lodging, or other facilities and shall not include a profit to the employer or to any affiliated person.

(b) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be calculated in accordance with generally accepted accounting principles. The term "depreciation" shall include obsolescence.

(c) The cost of furnishing facilities which are primarily for the benefit or convenience of the employer shall not be included as wages. These facilities may include, but are not limited to:

- (1) Tools of the trade and other materials and services incidental to carrying on the employer's business; and
 - (2) Uniforms and their laundering, where the nature of the business requires the employee to wear a uniform.
- [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-1 to 387-3)

§12-20-10 Reduction of wages. No employer shall reduce a wage paid to an employee which is in excess of the minimum wage under chapter 387, Hawaii Revised Statutes, for the purpose of evading the overtime provisions of section 387-3, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-3, 387-11)

§12-20-11 Payment of wages to tipped employees. (a) Where employees practice tip-splitting, each employee shall be considered tipped only to the extent of the proportionate share received and retained by each. Similarly, where an employer in furtherance of a tip-pooling arrangement redistributes the tips to the employees upon some basis mutually agreed by the employees themselves, only the amounts actually received and retained by each individual shall be considered tips.

(b) Where an employee is employed in two or more different occupations for the same employer, tip credit may be taken only for hours worked in the occupation in which the employee customarily and regularly receives more than \$20 a month in tips.

(c) The employer shall notify all employees in writing at the time of hire if tip credit is to be used. The employer's policy on tip credit may be changed if the change is intended to be permanent and not designed to evade the requirements of the law. Notification of changes shall be given to the employees in writing or through a posted notice prior to the commencement of the pay period.

(d) The regular rate of a tipped employee who works overtime shall be determined as provided in section 387-3, Hawaii Revised Statutes. Tips received in excess of the tip credit shall not be included in the regular rate.

(e) An employee who customarily and regularly receives more than \$20 a month in tips remains a tipped employee even though sickness, vacation, or the like reduces the amount of tips received in a particular month to \$20 or less. The employee must actually receive more than \$20 a month in tips and shall not be considered a tipped employee solely because of employment in an occupational group which has a record of receiving more than \$20 a month in tips. An employee may qualify as a tipped employee in the initial or terminal month of employment provided that tips received in a particular week or weeks of a month is at a rate in excess of \$20 a month. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-1, 387-2, 387-3)

§12-20-12 Record keeping requirements; tipped employees. Every employer claiming tip credit shall, in addition to records required by section 12-20-8, maintain and preserve payroll or other records containing the following information and data with respect to each tipped employee:

- (1) A symbol placed on the pay records identifying each employee whose wage is partially determined by tips;
- (2) Weekly amount of tips received by the employee;
- (3) Amount by which the wages of each tipped employee have been increased because of tips as determined by the employer;
- (4) The amount per hour which the employer takes as tip credit. This amount shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week;
- (5) Hours worked each workday in any occupation in which the employee does not receive tips, and total weekly straight-time payment made by the employer for these hours; and
- (6) Hours worked each workday in occupations in which the employee receives tips, and total weekly straight-time wages for these hours. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §§387-1, 387-2, 387-6)

§12-20-13 Computation of time. The time in which any act provided by this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this chapter, "holiday" includes any day designated as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff. Oct. 2, 1981] (Auth: HRS §387-11) (Imp: HRS §387-9)

§§12-20-14 to 12-20-50. (Reserved)