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What’s New

081505 – Hawaii minimum wage will rise from $6.25 per hour to $6.75 per hour on January 1, 2006, then to $7.25 per hour on January 1, 2007.

091505 – For each paycheck, Hawaii employers must provide detailed information including hours worked, amount and purpose of each deduction, total net compensation, date of payment, and pay period covered. This may be provided either in printed form or electronically.

112612 - Changes were made to the following sections: Military Leave, Jury Duty, Discrimination, Family Leave, Payment of Wages and Minimum Wage. The following sections were added: New Hire Reporting, Job Reference Liability, Smoking and Domestic Violence Leave.

072213 - Recordkeeping requirements were added, as was a section on Breastfeeding Rights. Changes were made to the sections entitled Payment of Wages and Discrimination.

101813 - Changes were made to the following section: New Hire Reporting

010114 – Changes were made to the following section: Discrimination
Introduction

Employment laws vary from state to state with some being more employee-friendly than others. Federal regulations set minimum standards of worker protections that all employers of a given size must meet. Individual states, however, are free to grant workers additional or expanded rights or protections above this federal minimum.

Virtually all employers in the U.S. are subject to federal employment regulations. Only the smallest, strictly local employers are not subject to federal regulations. If an employer does any of the following, they are participating in interstate commerce and are subject to federal employment regulations:

- Production of goods for commerce, such as transportation or communication
- Use of mail over state lines
- Interstate communications using the telephone
- Use of the Internet over state lines
- Interstate communications using electronic mail
- Make purchases from out-of-state vendors
- Sell to customers in other states

This summary of employment regulations does not include information for those few employers not subject to the federal minimum employment regulations.

Many states have regulations for public employers that are different than those for employers in the private sector. This document also does not include information on regulations (federal and state) that apply only to public sector employers.

In this document we summarize the workplace regulations and worker protections available in Hawaii. Although not an exhaustive list, it covers the major topics small to mid-sized employers must deal with on a regular basis. Covered areas include:

- Wage, hour and overtime rules (including child labor and break rules);
- Leaves of absence (family leaves, voting time and jury duty);
- Discrimination and harassment regulations; and
- State rules on continuation of benefits.

The federally mandated, but state run new-hire reporting requirements are covered under a separate document, available for download from Libretto or from the Agent 77 store.

The following Quick View table summarizes these regulations. This is followed by a more detailed description of these regulations. Please be sure to read both carefully to understand your responsibilities under Hawaii and federal law. Also, see the resources section below for reference websites and Libretto tools that can help you comply with these regulations.
<table>
<thead>
<tr>
<th>Topic</th>
<th>Hawaii Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Wage</td>
<td>• $7.25 / hour</td>
</tr>
<tr>
<td></td>
<td>• Tipped employees may be paid $0.25 less per hour provided that tips plus wages come to at 50 cents more than the minimum.</td>
</tr>
<tr>
<td>Overtime</td>
<td>Non-exempt employees must be paid at least 1.5 times their regular rate for hours worked over 40 in a given week.</td>
</tr>
<tr>
<td>Payment of Wages</td>
<td>• Employees must be paid at least semi-monthly, no more than 7 days after the close of the period.</td>
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<tr>
<td></td>
<td>• Employers must provide detailed information about each paycheck either printed or electronically.</td>
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<td></td>
<td>• Final paychecks must be delivered no later than the following payday for voluntary terminations, layoffs or suspensions for labor disputes, and on the last day of employment for dismissals.</td>
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<td>• Employers are required to notify employees about their policies regarding vacation pay.</td>
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<tr>
<td></td>
<td>• Certain recordkeeping requirements apply.</td>
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<tr>
<td>Work Hours and Breaks</td>
<td>• Employers must allow nursing mothers to breastfeed or express breast milk during their breaks or mealtime.</td>
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<td></td>
<td>• Hawaii has no other break time rules, except for minors.</td>
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<tr>
<td>Child Labor</td>
<td>• Employers employing minors under 16 must keep an employment certificate on file, and an age certificate on file for minors under 18.</td>
</tr>
<tr>
<td></td>
<td>• Required 30-minute break for every 5 hours worked for minors less than 16 years old.</td>
</tr>
<tr>
<td></td>
<td>• Federal and Hawaii law prohibit minors in certain occupations. See the U.S. Department of Labor and the Hawaii Department of Labor &amp; Industrial Relations for information on these prohibitions (contact information is in the reference section).</td>
</tr>
<tr>
<td></td>
<td>• See the details section below for restrictions on hours minors may work.</td>
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<tr>
<td>Military Leave</td>
<td>Hawaii has a military leave law which applies to national Guard service</td>
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<tr>
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<td>The Federal Law is outlined below:</td>
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<td>• Employers must grant up to 5 years of military leave.</td>
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<td></td>
<td>• Employee must be reinstated to same or equivalent position after completion of military leave.</td>
</tr>
<tr>
<td></td>
<td>• Employers may not terminate or threaten to terminate any employee called to military service.</td>
</tr>
<tr>
<td></td>
<td>• Special benefit rules apply for military leave.</td>
</tr>
</tbody>
</table>
### Domestic Violence Leave

Employers must allow employees to take unpaid leave. The number of days required for the leave is detailed below and depends on employer size.

### Jury Duty

- Leave is required, but is unpaid.
- Employee must be reinstated to same position after completion of jury duty.

### Voting Time

2 hours for any election where employee is qualified to vote, provided employees do not have 2 hours of unscheduled time when polls are open.

### Family Leave/Parental Leave

- Federal Family Medical Leave Act (FMLA) requires employers with 50 or more employees:
  - To grant up to 12 weeks of unpaid family medical leave to employees who have completed a year of service or 1250 hours.
  - Leave must be granted for birth or adoption of a child, serious medical condition of the employee, to care for a family member with a serious medical condition, qualifying exigency for military leave and serious illness/injury of covered service member for military leave.
  - Employee must be reinstated to same or equivalent position after completion of leave.
  - Benefits must be maintained during leave.
- Hawaii Family Leave Law (HFLL) requires employers with 100 or more employees:
  - To grant up to 4 weeks of unpaid family medical leave to any employee who has completed 6 months of continuous service (regardless of the number of hours during that time).
  - Leave must be granted for birth or adoption of a child, serious medical condition of the employee, or to care for a family member with a serious medical condition.
  - Spouses working for the same employer must both be granted up to 4 weeks leave.
  - Employee must be reinstated to same or equivalent position after completion of leave.
  - Benefits must be maintained during leave.
  - Parents are entitled to up to two hours of paid school visitation leave twice per year per child.

### New Hire Reporting

- New Hire information must be reported to the state within 20 days of hire or rehire.

### Job Reference Liability

- Employers that in good faith provide information about former employees are generally protected from defamation claims.

### Smoking in the Workplace

- Smoking is prohibited in the workplace.
- Posting requirements apply.
## Breastfeeding Rights

- Employers are required to provide reasonable break times in a private location for employees to express breast milk.
- Posting requirements apply.

## Discrimination and Harassment

- Hawaii prohibits employers from discriminating based on ancestry, race or color, religion, age, physical or mental disability, genetic information, domestic worker status, marital status including civil unions, female employees who breastfeed, arrest or court records, using sick leave, sexual orientation or sex (including sexual harassment, pregnancy, childbirth, and other pregnancy-related conditions), lifestyle, whistleblowing
- In addition testing for AIDS or lie detector tests are prohibited as a condition of employment
- Same sex marriage is recognized in Hawaii.

## Continuation of Benefits

- Employees allowed to continue health care coverage during a hospitalization or sickness disability
- Employers must continue to pay their portion of premiums
- Continuation coverage lasts up to 3 months following the month the employee became disabled or was hospitalized
Wage, Hour and Overtime Rules

Employers are subject to the federal minimum wage, hour and overtime rules through the Fair Labor Standards Act. This act specifies that businesses that do at least $500,000 in gross revenue, as well as all health care facilities and schools are subject to the federal rules. Also, employers involved in interstate commerce are subject to the federal rules.

Minimum Wage

Hawaii minimum wage is $7.25 per hour. Employers may pay tipped employees a minimum of $7.00 per hour, provided that the total wages plus tips come to at least 50 cents more than the applicable minimum wage.

Finally, both federal and Hawaii regulations allow employers to apply for licenses to pay sub-minimum wages to certain disabled persons. Please contact the U.S. Department of Labor or the Hawaii Department of Labor & Industrial Relations for more information on applying for these licenses. (Contact information for both are listed in the reference section below.)

Overtime

Hawaii has the same overtime rules as the federal government. That is, for any hours worked over 40 in a given week, non-exempt employees must be paid at least one and one-half times their regular pay.

Like the federal rules Hawaii exempts certain employees from minimum wage and overtime rules. Excluded employee classes include: executive, administrative, professional, outside salespeople and computer professionals. (Use Libretto's FLSA Resource Package for help in determining whether a given employee is exempt). Hawaii also permits exemptions for certain small employers not involved in interstate commerce. See the Hawaii Department of Labor & Industrial Relations web site for a list of these exemptions.

Payment of Wages

Hawaii law requires that employees be paid at least semi-monthly (unless by collective bargaining agreement a monthly payday is established), and payment must be made no more than 7 days after the close of that period. These regular pay periods must be established and published for all employees. For each paycheck, Hawaii employers must provide detailed information showing total hours worked, overtime hours, straight-time compensation, overtime compensation, other compensation, total gross compensation, amount and purpose of each deduction, total net compensation, date of payment, and pay period covered. This may be provided either in printed form or electronically.

Effective January 1, 2014, employers must furnish each employee at every pay period a legible copy showing: 1) the name of the employee; 2) the name of the employer; 3) address and telephone number of the employer; 4) the employee's total hours worked; 5) the employee's regular and overtime hours; 6) the employee's straight time compensation; 7) the employee's overtime compensation; 8) any other compensation including allowances, if any, claimed as part of the minimum wage; 9) the employee's total gross compensation; 10) the amount and purpose of each deduction; 11) the employee's total net compensation; 12) the date of payment; 13) the pay period covered; and 14) the rate or rates of pay and basis thereof.

In addition, employers must 1) notify each employee in writing, at the time of hiring of the rate of pay, and of the day, hour and place of payment; 2) notify each employee in writing or though a posted notice maintained in a pace accessible to employees of any changes prior to the time of the change; 3) provide to each employee in writing or through a posted notice
policies with regard to vacation and sick leave; 4) keep posted in a place accessible to employees the notices pertaining to the application of payment of wages; and 5) make and keep records of all employees as indicated in the paragraph above.

Employers may not require that employers be paid electronically.

Final paychecks must be delivered no later than the following payday when the employee leaves voluntarily, is temporarily laid off, or is suspended due to a labor dispute or at once if the employee provided a pay period's notice. When an employee is discharged, final paychecks must be delivered the last day of employment. Deductions from the final paycheck may not be made without the employees written consent, unless required by law.

Although there is no provision requiring the payment of vacation pay following an employee's termination, courts have indicated that wages be paid in lieu of vacation benefits if an employer's handbook so provides. Employers are required to notify employees of the policy regarding vacation pay by posting such a policy or providing it in writing.

Employees are prohibited from discriminating against domestic workers in compensation or other terms of conditions of employment.

**Work Hours and Breaks**

Hawaii requires that nursing mothers be able to breastfeed or to express breast milk during their meal period or break time.

Hawaii has no other break time rules, except for minors (see below).

**Child Labor**

Hawaii child labor law requires all employers employing minors under the age of 16 to have employment certificates on file and certificate of age for minors 16 and 17 years old (issued by the Hawaii Department of Labor & Industrial Relations).

Employers who employ minors less than 16 years of age are subject to strict limits for hours worked per day and per week for their minor employees:

1. When school is in session, minors 14 and 15 years of age may NOT work:
   - During school hours, unless employment is part of a vocational training program;
   - More than 6 consecutive days per week;
   - More than 3 hours per day, and
   - More than 18 hours per week.

2. When school is NOT in session (including summer vacations and holidays), children under the age of 16 may NOT work.
   - More than 6 days per week;
   - More than 8 hours per day; nor
   - More than 40 hours per week.

3. Daily hours of work may not be before 7:00 AM or after 7:00 PM except between June 1st and Labor Day when working hours may be extended to 6:00 AM and 9:00 PM.

4. The maximum combined hours of work and hours in school must not exceed ten (10) in a day.

There are special provisions for theatrical employment, coffee harvesting and pineapple harvesting.

There are no work hour restrictions for minors 16 and 17 years of age.
Both federal and Hawaii law prohibits minors from working in hazardous or certain other occupations. Please contact the U.S. Department of Labor or the Hawaii Department of Labor & Industrial Relations for more information on restricted occupations for minor employees.

Hawaii law also requires that any minor less than 16 years of age working 5 or more continuous hours in a day be given a 30-minute meal break.

Leaves of Absence

Military Leave

Hawaii provides that no employer may refuse to allow an employee to take leave of absence to fulfill National Guard duties. Employees absent for military leave must be restored or reemployed, without loss of seniority or other benefits to which they are entitled, to their original job or another position most similar to the original job, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Employees may not be discharged without cause for one year after reinstatement.

Federal law requires that employees must be granted up to 5 years of military leave and must be restored to their position (or an equivalent position) within the company as if they had been on furlough. Also, employers may not terminate or threaten to terminate any employee called to military service, Please see Libretto’s White Paper on USERRA for more details on military leave.

Domestic Violence Leave

Employers with 50 or more employees must allow an employee to take up to 30 days of unpaid victim leave from work per calendar year. An employer who employees 49 employees or less must allow an employee to take up to five (5) days of unpaid leave from work per calendar year if the employee or the employee's child, who is a minor, is a victim of domestic or sexual violence, for the following reasons: 1) to seek medical attention to recover from physical or psychological injury or disability caused by domestic or sexual violence; 2) to obtain services from a victim services organization; 3) to obtain counseling; 4) to relocate; or 5) to take legal action relating to or resulting from domestic or sexual violence.

An employer can't discriminate against the victim of sexual or domestic violence and must make reasonable accommodations for the employee.

Jury Duty

Employers must provide leave for jury duty or to act as a witness, but need not pay for the leave. Also, employers may not terminate or threaten to terminate any employee called to jury duty, and employees must be restored to their position within the company as if they had been on furlough.

Employees covered by FLSA exemptions serving on jury must be paid their full salary (minus jury stipend) or risk losing their exemption status.

Voting Time

Employees must be granted up to two hours of paid leave for any election in which they are eligible to vote if the employee does not have 2 hours of unscheduled time when polls are open.
Family Leave

The federal Family Medical Leave Act (FMLA) affects employers with 50 or more employees in one or more facilities within a 75-mile radius. These employers must grant up to 12 weeks of unpaid family medical leave to employees who have completed a year of service or 1250 hours. This leave must be granted for the birth or adoption of a child, serious medical condition of the employee, to care for a family member with a serious medical condition, qualifying exigency for military leave and serious injury/illness of covered service member for military leave. After completion of the leave the employee must be reinstated to the same or an equivalent position (as regards to salary, benefits and seniority). Also, benefits, such as health care coverage and retirement benefits, must be maintained during leave.

The Hawaii Family Leave Law (HFLL) affects employers with 100 or more employees (there is no geographic requirement – employees may be anywhere in Hawaii). These employers must grant up to 4 weeks of unpaid family medical leave in a 12-month period to all employees (full-time, part-time, temporary casual, intermittent or on-call, including those who have entered into civil unions) who have completed 6 months of continuous service, regardless of the number of hours worked in that time. This leave must be granted for the birth or adoption of a child, serious medical condition of the employee, or to care for a family member with a serious medical condition. Hawaii’s HFLL is also a little more liberal on the definition of parent (it also includes parent-in-laws). Unlike the federal FMLA, Hawaii’s HFLL allows both a husband and wife working for the same company to take the full amount of leave. After completion of the leave the employee must be reinstated to the same or an equivalent position (as regards to salary, benefits and seniority). Also, benefits, such as health care coverage and retirement benefits, must be maintained during leave.

Further, leave may consist of unpaid leave, paid leave, or a combination of both. An employee may elect to substitute any of his/her accrued paid leave for any part of the four-week period. Employers can't bar or discharge from employment, withhold pay from, or demote an employee because he/she uses accrued or available sick leave. Employers that provide sick leave must permit employees to use up to ten (10) days per year for family leave.

Parents are entitled to up to two (2) hours of paid school visitation leave for PTA conferences for children in grades K-12 and for parent-caregiver conferences for preschool children attending a licensed group child care center. Employees are limited to two (2) conferences per child per year.

Employers must notify employees in writing at time of hire of their rights and responsibilities regarding family leave, including employer policies.

Other Employment Regulations

New Hire Reporting

Employee's name, address, SSN, date of hire and employer's name, address, FEIN and state UC number must be reported to Child Support Enforcement Agency New Hire Reporting within 20 days of hire or rehire, on federal form W-4 or equivalent. A new hire is an employee who has not previously been employed by the employers or was previously employed but has been separated from the prior employment for at least 60 consecutive days.
Job Reference Liability

It is an unfair labor practice for an employer to make, circulate, or cause to be circulated a blacklist. Employers that, in good faith, candidly provide information or opinions about former employees to prospective employers are generally protected from defamation claims. Employers may request notification from the state if job applicants are arrested in the future.

Smoking in the Workplace

Hawaii law prohibits smoking in enclosed or partially enclosed facilities including places of employment, with limited exceptions. To prevent second-hand smoke from drifting into facilities that are smoke-free, smoking is not allowed within 20 feet of windows, doorways and ventilation intakes.

No smoking signs must be conspicuously posted at the entrance to every place open to the public and place of employment.

Breastfeeding Rights

Effective July 1, 2013, employers are required to provide reasonable break times and a private location, other than a restroom, for an employee to express breast milk for the employee’s nursing child, for one year after the child’s birth. This law would not apply to an employer who has fewer than twenty (20) employees if the employer can show that meeting these requirements would impose undue hardship.

Covered employers must post a notice in a conspicuous place accessible to employees and use other appropriate means to keep the employer’s employees informed of the protections and obligations relating to breastfeeding accommodations in the workplace.

Discrimination and Harassment

Hawaii prohibits discrimination or harassment based on:

- Ancestry
- Race or color
- Religion
- Age
- Mental or physical disability
- Genetic information
- Whistleblowing
- Marital status, including employees who enter into civil unions
- Female employees breastfeeding or expressing breast milk at work
- Arrest or court records
- Using sick leave
- Domestic worker status
- Lifestyle (employers must respect employees’ right to use lawful consumables off their premises during non-working hours)
- Sexual orientation, or
- Sex, including gender identity or expression (including sexual harassment, pregnancy, childbirth, and other pregnancy-related conditions)
The following are prohibited as a condition of employment:

- Testing for AIDS or releasing records indicating a person has AIDS, ARC or HIV
- Polygraph (Lie Detector) tests.

Employers with more than 15 employees are also covered by GINA, which prohibits discrimination based on genetic testing information.

Employers shall post and keep posted notices clearly setting forth the rights of employees in a form prescribed by the Director of Labor in conspicuous places in every establishment where any employee is employed.

Effective January 1, 2014, employers must keep in or about the premises wherein any employee is employed a contemporaneous, true and accurate record of 1) the name, address and occupation of each employee; 2) the amount paid each pay period to each employee; 3) the hours worked each day and each workweek by each employee; 4) the rate of pay for each employee and basis thereof, whether paid by the hour or shift, day, week, salary, piece, commission or other basis; gross wages; deductions; allowances, if any claimed as part of the minimum wage, and net wages; and 5) any other information and for the periods of time as the director may by rule prescribe.

Effective December 2, 2013, Hawaii recognizes marriages between individuals of the same sex and extends to same-sex couples the same rights, benefits, protections and responsibilities of marriage that opposite-sex couples receive.

**State Continuation of Benefits**

Employees in Hawaii must be allowed to continue health care coverage during a hospitalization or if they are prevented by sickness from working. Employers must continue to pay any portion of the premiums that they were paying prior to the employee’s absence from work due to sickness or hospitalization. This continuation of coverage lasts up to 3 months following the month the employee became disabled or was hospitalized.

**Resources/Posters**

- **Hawaii Department of Labor & Industrial Relations**

- **United States Department of Labor**

- **Hawaii Civil Rights Commission**
  [www.hawaii.gov/labor/hcrc](http://www.hawaii.gov/labor/hcrc)

- **Child Support Enforcement Agency New Hire Reporting**
  [www.hawaii.gov/ag/csea](http://www.hawaii.gov/ag/csea)

**Related Libretto Products**

- FLSA Resource Package (for help in determining overtime exempt / non-exempt status of employees)
- Overtime Guidelines
- Break Period Guidelines
- Family Medical Leave of Absence Policy
STATE EMPLOYMENT REGULATIONS FOR HAWAII

Military Leave of Absence Policy
Jury Duty-Witness Leave Policy
Voting Time Policy
Prohibited Harassment and Nondiscrimination Policy & Employee Acknowledgement
Drug & Alcohol Testing Policy & Release Forms
Guidelines on Smoking In the Workplace
Guidelines on Verification of Employment and Providing References
COBRA Continuation Coverage Policy
General Notice of COBRA Continuation Coverage Rights
COBRA Continuation Coverage Election Information: Notice And Form
New Hire Reporting for Hawaii