FACING THE CHALLENGES
PAYING YOUR EMPLOYEES
Common Mistakes to Avoid

Department of Labor and Industrial Relations
Wage Standards Division (WSD)
Pamela Martin, Administrator

Honolulu Liquor Commission 2018 Symposium
April 13, 2018
### The 6 Different Laws we enforce:

<table>
<thead>
<tr>
<th>Law Description</th>
<th>Relevant Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keep young workers safe in the workplace</td>
<td>Child Labor Law, Chapter 390, HRS</td>
</tr>
<tr>
<td>Ensure employees are paid their wages due</td>
<td>Wage and Hour Law, Chapter 387, HRS; Payment of Wages and Other Compensation, Chapter 388, HRS; Wages and Hours of Employees on Public Works, Chapter 104, HRS</td>
</tr>
<tr>
<td>Provide job protection when family members need care</td>
<td>Hawaii Family Leave Law, Chapter 398, HRS</td>
</tr>
<tr>
<td></td>
<td>or an employee is fired or discriminated against because of a lie detector test, a workers compensation injury, taking an on-site drug test, Employment Practices Law Chapter 378, Part II – Lie Detector Test and Part III – Unlawful Suspension or Discharge</td>
</tr>
</tbody>
</table>
Wage Standards Division, DLIR
Claims Taken and $ Found Due

- Prevailing wages (Ch. 104)
- Unpaid wages (Ch. 388)
- Min. wage & OT (Ch. 387)
- Unlawful Termination (Ch. 378-Part III)
- Other (child labor; family leave; lie detector tests)
- Back Wages and Penalties Found Due

 FY12 | FY13 | FY14 | FY15 | FY16 | FY17 | YTD FY18
-----|-----|-----|-----|-----|-----|-------
  86 | 155 |  66 |  48 |  34 | 100 |  40

$1,303,782

$1,009,212
TYPE OF SECTION 388-10(B) PAYMENT OF WAGES PENALTIES
$500 MINIMUM PENALTY

- Not paid 2 times per mo.: 4%
- Not paid w/in 7 days: 36%
- Not paid Day of discharge: 15%
- Quits/no last paycheck: 13%
- Illegal Deduction: 4%
- Change not in writing: 6%
- No writing at time of hire: 9%
- No Pay Statement: 4%
- No 6 yrs records: 7%
- Bank fee: 2%
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Hawaii Minimum Wage Rate per hour

$10.10

Applies to all businesses operating in Hawaii

(See definition of “employer” (12))
Minimum Wage and Overtime

Wage & Hour Law (Chapter 387, HRS)
- Minimum wage
  - $10.10 per hour effective 1/1/2018
- Overtime after 40 hrs. in one week*
  - 1-1/2 times hourly rate

*Exceptions for agriculture: 20 weeks after 48 hours; public works 8 hrs a day, Sat., Sun. and State holidays
TIP CREDIT = 75 cents

- Employee receives more than $20 per month in tips (HAR 12-20-11)
- Receives more than $7.00 above Min. Wage with cash wage and tips

$9.35 cash wage paid by employer
$7.75 tips paid by customers
$17.10 per hour
EXEMPTIONS FROM OT

**STATE EXEMPTIONS**

Employers NOT subject to FLSA

- White collar – Exec; Admin, Prof. and Outside Sales Duties & 210 per week (HAR 12-20-3,4,5,6)
- Supervisor – supervises at least 5 people and is paid $210 per week. (HAR 12-20-4)
- Outside collectors (HAR 12-20-7)
- $2,000 salary a month. (387-1, HRS)

**FEDERAL EXEMPTIONS**

- White collar – Exec; Admin, Prof. and Outside Sales Duties - $455 per week
- Computer Employees - $27.63 per hour
- Agriculture workers
Review of common penalties

- Timeliness of pay – twice a month, within 7 days of pay period ending
- Pay right away when fired or if quit next regular pay day.
- Pay statements – must have employer’s and employee’s name, detailed info of hours, rate, pay period and any deductions explained, and net pay
- Written notification of pay rates and times & any changes before the change starts; any vacation or sick leave policy
- No illegal deductions – ex. walk out on check; crash truck; break a glass or plate; short drawer that is shared; other fines or damages
- Record keeping – 6 years
# WAGE AND PENALTY ASSESSMENT

## I. WAGES, PENALTY, AND INTEREST TO EMPLOYEE

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpaid Wages</td>
<td>$230.18</td>
</tr>
<tr>
<td>Penalty Equal to Unpaid Wages</td>
<td>$230.18</td>
</tr>
<tr>
<td>Interest (6% per year x unpaid wages x 151 days past due)</td>
<td>$5.71</td>
</tr>
<tr>
<td><strong>TOTAL DUE TO EMPLOYEE</strong></td>
<td><strong>$466.07</strong></td>
</tr>
</tbody>
</table>

## II. CHAPTER 388, HRS. VIOLATIONS AND PENALTY

<table>
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<tr>
<th>Description</th>
<th>Viol.</th>
<th>Penalty</th>
</tr>
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<tbody>
<tr>
<td>a. Pay all wages at least twice a month on regular paydays [§388-2(a)]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>b. Pay earned wages within seven days after the end of the pay period [§388-2(b)]</td>
<td>☒</td>
<td>$100.00</td>
</tr>
<tr>
<td>c. Discharged employee: pay at time of discharge or no later than the next workday [§388-3(a)]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>d. Employee quits or resigns:</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>1. Pay no later than the next regular payday [§388-3(b)]</td>
<td>☒</td>
<td>$100.00</td>
</tr>
<tr>
<td>2. If one pay period notice given, then pay on last day [§388-3(b)]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>e. Employer liable for any bank's special handling fee when insufficient amounts available in the employer's bank account [§388-5.5]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>f. No deduction from wages except when required by law or court process or when authorized in writing by the employee. Prohibited deductions: fines, cash shortages, breakage, lost/stolen property, damage to property, default of customer credit, non-payment for goods or services [§388-6]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>g. Chapter 388, HRS. Notice to Employees (poster) [§388-7(5)]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>h. Notify employees:</td>
<td></td>
<td>$100.00</td>
</tr>
<tr>
<td>1. In writing, at time of hire, of rate of pay, and day, hour, and place of payment of wages [§388-7(1)]</td>
<td>☒</td>
<td></td>
</tr>
<tr>
<td>2. In writing or by posted notice prior to any changes in above [§388-7(2)]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>i. Policies on vacation and sick leave in writing or through a posted notice maintained in a place accessible to the employees [§388-7(3)]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>j. Pay data showing name of employer, name of employee, gross earnings, amount and purpose of each deduction, net pay, payment date, pay period covered [§388-7(4), §12-21-5]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>k. Records must be preserved for six years [§388-7(4), (6)]</td>
<td>☒</td>
<td>$100.00</td>
</tr>
<tr>
<td>l. No provision of this chapter may be contravened or set aside by private agreement [§389-8]</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td>m. Other</td>
<td></td>
<td>$0.00</td>
</tr>
<tr>
<td><strong>Total # violations @ $100 for each violation</strong></td>
<td>4</td>
<td><strong>$400.00</strong></td>
</tr>
</tbody>
</table>

## TOTAL CIVIL PENALTY TO GENERAL FUND

(Not less than $500 or $100 for each violation, whichever is greater)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL CIVIL PENALTY TO GENERAL FUND</strong></td>
<td><strong>$500.00</strong></td>
</tr>
</tbody>
</table>
NO State law requiring Meal/Rest Breaks except under the Child Labor Law for 14 and 15 year olds get 30 minutes after 5 hours
• HAWAII ADMINISTRATIVE RULES §12-25-48 Occupations involved in the operation of certain power-driven bakery machines. The following occupations are declared hazardous for minors under eighteen years of age: (1) Operating, assisting to operate, or setting up, adjusting, repairing, oiling, or cleaning any horizontal or vertical dough mixer, batter mixer, bread dividing, rounding, or molding machine, dough brake, dough sheeter, combination bread slicing and wrapping machine, or cake cutting-band saw; and (2) Setting up or adjusting a cookie or cracker machine.
OTHER Labor Laws at DLIR

- Worker’s Compensation – 808-586-9174
- Temporary Disability Insurance – 808-586-9188
- Prepaid Health Care – 808-586-9188
- HIOSH – 808-586-9100 (Consultation & Training)
- Unemployment Insurance – 808-586-8926 (‘er info)
Disability Compensation Division (DCD)

**Temporary Disability Insurance**
- Non work related
- Wage loss benefits only
- 20 hours + per week
- 14 weeks of work in base period

**Prepaid Health Care**
- Mandatory coverage
- 20 hours + per week
- 4 consecutive weeks eligibility
- Continuous weeks at 20 + hours

**Workers’ Compensation**
- Arise out of and in the course of employment
- Not due to intoxication or wilful intent to injure oneself
- Mental stress solely due to employer’s disciplinary action not allowed
RESOURCES

- Call WSD 808-586-8777
- EMAIL: dlir.wages@Hawaii.gov
- WEBSITE: labor.hawaii.gov/wsd
- BLOG: Inside Hawaii Wage Standards and the DLIR
  http://hawaiiwagestandards.blogspot.com/
- Facebook: Hawaii Teens at Work