

# EMPLOYMENT LAW SUMMARY

## Hawaii Minimum Wage and Overtime Pay Laws



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Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is \$7.25 per hour for nonexempt employees. Hawaii law complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. Under the FLSA, whenever employers are subject to both state and federal laws, the law most favorable to the employee will apply.

The [Hawaii Department of Labor and Industrial Relations](#) (HDLIR) enforces compliance with minimum wage and overtime pay requirements throughout the state.

### Minimum Wage Rates

Hawaii law requires employers to pay wages that are at least equal to the state's minimum wage rate. On June 23, 2022, Hawaii adopted [House Bill \(HB\) 2510](#). Among other things, HB 2510 raises the state's minimum wage to \$18 per hour by Jan. 1, 2028, as shown in the table below.

Effective Date	Oct. 1, 2022	Jan. 1, 2024	Jan. 1, 2026	Jan 1, 2028
Minimum Wage Rate	\$12	\$14	\$16	\$18

Minimum wage pay requirements cannot be contravened or set aside by private agreements.

### Tipped Employee Wages

Hawaii employers may pay a lower cash wage to their tipped employees. Tipped employees are employees who customarily and regularly receive more than \$20 a month in tips. However, employers may take the tip credit only if the combined amount tipped employees receive from cash wages and tips is at least \$7 more than the applicable minimum wage.

The cash wage is the difference between the state's minimum wage and the allowed tip credit. The tip credit is scheduled to increase as shown in the table below. For additional information, employers may consult this [HDLIR notice](#).

Effective Date	Oct. 1, 2022	Jan. 1, 2024	Jan. 1, 2026	Jan. 1, 2028
Tip credit (per hour)	\$1	\$1.25	\$1.25	\$1.5
Cash wage (per hour)	\$11	\$12.75	\$14.75	\$16.50
Minimum required earnings (per hour)	\$19	\$21	\$23	\$25

Under state [law](#), a hotel that applies a service charge for porterage services must distribute the service charge directly to its employees as tip income or clearly disclose to the purchaser of the services that the service charge is being used to pay for costs or expenses other than wages and tips of employees. "Porterage" means the act of moving luggage, bags, or parcels between a guest room and a lobby, front desk or any area with vehicular access at a [hotel, hotel-condominium or condominium-hotel](#).

## ***Workers with Disabilities***

Hawaii has repealed the ability of employers in the state to pay lower wage rates to employees with disabilities. As a result, employers in Hawaii are now required to pay their disabled employees a wage rate at or above the minimum wage rate.

## ***Other Subminimum Wage Rates***

Under state law, employers may pay wages at a rate below the state minimum wage rate to:

- Learners and apprentices;
- Part-time employees who are full-time students attending public or private schools other than colleges, universities, business schools or technical schools; and
- Wards paroled from the Hawaii youth correctional facility, under special certificates issued by the HDLIR.

## ***Minimum Wage Rate Exemptions***

Hawaii's minimum wage rate requirements do not apply to employees in certain occupations and industries. Minimum wage exceptions in the state apply to individuals who work:

- At a guaranteed compensation totaling \$4,000 or more a month, whether paid weekly, biweekly or monthly;
- In agriculture for any workweek in which their employer employs fewer than 20 employees or in coffee harvesting;
- In domestic service on a casual basis or provide companionship services for those who are aged or infirm in or about the home of their employer;
- As a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization that is exempt from income tax under section 501 of the federal Internal Revenue Code;
- For their brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent or parent-in-law;
- In a bona fide executive, administrative, supervisory or professional capacity or in the capacity of an outside salesperson or as an outside collector;
- In the propagating, catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacean, sponge, seaweed or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;
- On a ship or vessel and who have a Merchant Mariners Document issued by the United States Coast Guard;
- As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;
- As a golf caddy;
- For a nonprofit school during the time the individual is a student attending such school;
- Under an exemption from the FLSA;
- As a seasonal youth camp staff member in a resident situation in a youth camp sponsored by charitable, religious or nonprofit organizations exempt from income tax under section 501 of the federal Internal Revenue Code or in a youth camp accredited by the American Camping Association; and
- As an automobile salesperson primarily engaged in the selling of automobiles or trucks if employed by an automobile or truck dealer licensed under chapter 437.

## Overtime Pay

Employers must compensate their employees for overtime work at a rate of one and one-half times their regular rate for any work that exceeds 40 hours during a workweek. To determine overtime compensation for employees who perform two or more different kinds of work for the same employer, employers must consider the total earnings from all kinds of work as if they were earned by performing one kind of work. In general, working more than eight hours per day is not considered overtime work, except when work is performed on a State or county public works construction project.

"Salary" means "a predetermined wage, exclusive of the reasonable cost of board, lodging, or other facilities, at which an employee is employed each pay period." The regular rate of an employee who is employed on a salary basis must be computed as follows:

- If the employee is employed on a weekly salary, the weekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, must be divided by 40;
- If the employee is employed on a biweekly salary, the biweekly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, must be divided by two and the quotient divided by 40;
- If the employee is employed on a semi-monthly salary, the semi-monthly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, must be multiplied by 24, the product divided by 52 and the quotient divided by 40; and
- If the employee is employed on a monthly salary, the monthly salary and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, must be multiplied by 12, the product divided by 52 and the quotient divided by 40.

If an employee's compensation and the reasonable cost of board, lodging, or other facilities, if furnished to the employee, are less than 50% of the employee's total earnings for the pay period, the total earnings must be "reduced to a regular rate as described above, except that the actual number of hours worked in the workweek shall be substituted for the final divisor of 40."

## **Air Carriers**

State overtime pay requirements do not apply to any overtime hours worked by employees who work for air carriers subject to title II of the Railway Labor Act if such overtime hours are the result of a voluntary agreement between employees to exchange work time or days off.

## **Overtime Exemption**

A limited exemption applies to employers that are:

- Engaged in agriculture and in the first processing of milk, buttermilk, whey, skim milk, or cream into dairy products, or in the processing of sugar cane molasses or sugar cane into sugar (but not refined sugar) or into syrup, or in the first processing of or in canning or packing any agricultural or horticultural commodity, or in handling, slaughtering, or dressing poultry or livestock;
- Engaged in agriculture and whose agricultural products are processed by an employer who is engaged in a seasonal pursuit or in processing, canning, or packing operations; or
- At any place of employment engaged primarily in the first processing of, or in canning or packing seasonal fresh fruits.

This limited exemption for overtime compensation for hours in excess of 40 in a workweek applies for up to 20 different workweeks. Employers may select when to claim this exemption in any yearly period commencing July 1.

However, employers are required to pay overtime compensation during these exempt workweeks for any overtime work in excess of 48 hours in a workweek. Unless an extraordinary emergency applies, state law prohibits employers from scheduling their employees in split shifts unless all of the shifts within a period of 24 hours fall within a period of 14 consecutive hours.

## **Compensatory Time Off**

Under state law, there is no provision for compensatory time off. However, the HDLIR recognizes the use of compensatory time or "comp time" in lieu of overtime if:

- The compensatory time is applicable only to employees who are on a salary;
- The employee must be allowed to take the compensatory time off within the same pay period in which the overtime is worked; and
- The compensatory time is earned at one and one-half times the number of overtime hours worked.

## **Notice and Postings**

Employers must post and maintain updated information on the state's minimum wage rate in their employees' workplaces. Employers may use this [poster](#) to satisfy the posting requirement.

## **Enforcement and Penalties**

The HDLIR has the authority to enforce compliance with Hawaii's minimum wage laws. Employers that violate these laws will be required to compensate their employees for unpaid wages and may be subject to:

- Criminal charges punishable by fines, imprisonment or both;
- Liquidated damages (for willful violations);
- Employee lawsuits; and
- Injunctions for the collection of unpaid wages.

In addition, employers are prohibited from discharging or in any other manner discriminating against employees who file a claim for unpaid wages or initiate, participate or testify in a proceeding for the collection of unpaid wages.

Finally, employers that willfully hinder or delay the HDLIR in their duty to enforce compliance with the state's minimum wage laws may be subject to a fine of up to \$10,000, imprisonment for up to 90 days or both. Hindering or delaying enforcement includes but is not limited to refusing to admit HDLIR personnel to a place of employment, failing to keep required records, falsifying required records or refusing to make required records accessible to HDLIR personnel.

## **More Information**

Please contact Heffernan Insurance Brokers for more information on labor and employment laws in Hawaii.

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