

Approved by the Governor

on JUL 1 2013

THE SENATE  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

ACT 248

S.B. NO. 535  
S.D. 1  
H.D. 2  
C.D. 1

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## A BILL FOR AN ACT

RELATING TO LABOR.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 378-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "employment" to read as  
3 follows:

4 "Employment" means any service performed by an individual  
5 for another person under any contract of hire, express or  
6 implied, oral or written, whether lawfully or unlawfully entered  
7 into. Employment does not include services by an individual  
8 employed as a domestic in the home of any person[-], except as  
9 provided in section 378-2(a)(9)."

10 SECTION 2. Section 378-2, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12 "(a) It shall be an unlawful discriminatory practice:  
13 (1) Because of race, sex[-] including gender identity or  
14 expression, sexual orientation, age, religion, color,  
15 ancestry, disability, marital status, arrest and court  
16 record, or domestic or sexual violence victim status  
17 if the domestic or sexual violence victim provides



1 notice to the victim's employer of such status or the  
2 employer has actual knowledge of such status:

3 (A) For any employer to refuse to hire or employ or  
4 to bar or discharge from employment, or otherwise  
5 to discriminate against any individual in  
6 compensation or in the terms, conditions, or  
7 privileges of employment;

8 (B) For any employment agency to fail or refuse to  
9 refer for employment, or to classify or otherwise  
10 to discriminate against, any individual;

11 (C) For any employer or employment agency to print,  
12 circulate, or cause to be printed or circulated  
13 any statement, advertisement, or publication or  
14 to use any form of application for employment or  
15 to make any inquiry in connection with  
16 prospective employment, that expresses, directly  
17 or indirectly, any limitation, specification, or  
18 discrimination;

19 (D) For any labor organization to exclude or expel  
20 from its membership any individual or to  
21 discriminate in any way against any of its  
22 members, employer, or employees; or



- 1 (E) For any employer or labor organization to refuse  
2 to enter into an apprenticeship agreement as  
3 defined in section 372-2; provided that no  
4 apprentice shall be younger than sixteen years of  
5 age;
- 6 (2) For any employer, labor organization, or employment  
7 agency to discharge, expel, or otherwise discriminate  
8 against any individual because the individual has  
9 opposed any practice forbidden by this part or has  
10 filed a complaint, testified, or assisted in any  
11 proceeding respecting the discriminatory practices  
12 prohibited under this part;
- 13 (3) For any person, whether an employer, employee, or not,  
14 to aid, abet, incite, compel, or coerce the doing of  
15 any of the discriminatory practices forbidden by this  
16 part, or to attempt to do so;
- 17 (4) For any employer to violate the provisions of section  
18 121-43 relating to nonforfeiture for absence by  
19 members of the national guard;
- 20 (5) For any employer to refuse to hire or employ or to bar  
21 or discharge from employment any individual because of  
22 assignment of income for the purpose of satisfying the



- 1 individual's child support obligations as provided for  
2 under section 571-52;
- 3 (6) For any employer, labor organization, or employment  
4 agency to exclude or otherwise deny equal jobs or  
5 benefits to a qualified individual because of the  
6 known disability of an individual with whom the  
7 qualified individual is known to have a relationship  
8 or association;
- 9 (7) For any employer or labor organization to refuse to  
10 hire or employ, bar or discharge from employment,  
11 withhold pay from, demote, or penalize a lactating  
12 employee because the employee breastfeeds or expresses  
13 milk at the workplace. For purposes of this  
14 paragraph, the term "breastfeeds" means the feeding of  
15 a child directly from the breast; [ex]
- 16 (8) For any employer to refuse to hire or employ, bar or  
17 discharge from employment, or otherwise to  
18 discriminate against any individual in compensation or  
19 in the terms, conditions, or privileges of employment  
20 of any individual because of the individual's credit  
21 history or credit report, unless the information in  
22 the individual's credit history or credit report



1 directly relates to a bona fide occupational  
2 qualification under section 378-3(2) [-]; or  
3 (9) For any employer to discriminate against any  
4 individual employed as a domestic, in compensation or  
5 in terms, conditions, or privileges of employment  
6 because of the individual's race, sex including gender  
7 identity or expression, sexual orientation, age,  
8 religion, color, ancestry, disability, or marital  
9 status."

10 SECTION 3. Section 387-1, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By adding three new definitions to be appropriately  
13 inserted and to read:

14 "Casual basis" means employment that is:

15 (1) Irregular or intermittent; and

16 (2) Performed for a family or household who directly  
17 employs the individual providing the services.

18 Employment is not on a casual basis, whether performed for  
19 one or more family or household employers, if the employment for  
20 all employers exceeds twenty hours per week in the aggregate.  
21 For babysitting or companionship services for the aged or  
22 infirm, employment is not on a casual basis if the service is



1 performed by an individual whose vocation is the provision of  
2 babysitting or companionship services.

3 "Companionship services for the aged or infirm" means those  
4 services that provide fellowship, care, and protection for an  
5 individual who, because of advanced age or physical or mental  
6 infirmity, cannot care for the individual's own needs.

7 "Companionship services for the aged or infirm" does not include  
8 services relating to the care and protection of the aged or  
9 infirm that require and are performed by trained personnel, such  
10 as a registered or practical nurse.

11 "Domestic service" means services of a household nature  
12 performed by an employee in or about a private home (permanent  
13 or temporary) of the person by whom he or she is employed. The  
14 term includes, but is not limited to, services performed by  
15 employees such as cooks, waiters, butlers, valets, maids,  
16 housekeepers, governesses, janitors, laundresses, caretakers,  
17 handymen, gardeners, and chauffeurs of automobiles for family  
18 use. The term also includes babysitters whose employment is not  
19 on a casual basis."

20 2. By amending the definition of "employee" to read:

21 ""Employee" includes any individual employed by an  
22 employer, but shall not include any individual employed:



- 1 (1) At a guaranteed compensation totaling \$2,000 or more a  
2 month, whether paid weekly, biweekly, or monthly;
- 3 (2) In agriculture for any workweek in which the employer  
4 of the individual employs less than twenty employees  
5 or in agriculture for any workweek in which the  
6 individual is engaged in coffee harvesting;
- 7 (3) In [~~domestic service in~~] or about the home of the  
8 individual's employer [~~or as a house parent in or~~  
9 ~~about any home or shelter maintained for child welfare~~  
10 ~~purposes by a charitable organization exempt from~~  
11 ~~income tax under section 501 of the federal Internal~~  
12 ~~Revenue Code,~~];
- 13 (A) In domestic service on a casual basis; or  
14 (B) Providing companionship services for the aged or  
15 infirm;
- 16 (4) As a house parent in or about any home or shelter  
17 maintained for child welfare purposes by a charitable  
18 organization exempt from income tax under section 501  
19 of the federal Internal Revenue Code;
- 20 [+4] (5) By the individual's brother, sister, brother-in-  
21 law, sister-in-law, son, daughter, spouse, parent, or  
22 parent-in-law;







1 employee or maximum hours which the employee may work  
2 during any workweek without the payment of overtime,  
3 are prescribed by the federal Fair Labor Standards Act  
4 of 1938, as amended, or as the same may be further  
5 amended from time to time; provided that if the  
6 minimum wage which may be paid the employee under the  
7 Fair Labor Standards Act for any workweek is less than  
8 the minimum wage prescribed by section 387-2, then  
9 section 387-2 shall apply in respect to the employees  
10 for such workweek; provided further that if the  
11 maximum workweek established for the employee under  
12 the Fair Labor Standards Act for the purposes of  
13 overtime compensation is higher than the maximum  
14 workweek established under section 387-3, then section  
15 387-3 shall apply in respect to such employee for such  
16 workweek; except that the employee's regular rate in  
17 such an event shall be the employee's regular rate as  
18 determined under the Fair Labor Standards Act;

19 ~~[-(12)]~~ (13) As a seasonal youth camp staff member in a  
20 resident situation in a youth camp sponsored by  
21 charitable, religious, or nonprofit organizations  
22 exempt from income tax under section 501 of the



1 federal Internal Revenue Code or in a youth camp  
2 accredited by the American Camping Association; or  
3 [~~13~~] (14) As an automobile salesperson primarily engaged  
4 in the selling of automobiles or trucks if employed by  
5 an automobile or truck dealer licensed under chapter  
6 437."

7 SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect upon its approval.



S.B. NO. 535  
S.D. 1  
H.D. 2  
C.D. 1

**Report Title:**

Domestic Workers Bill of Rights

**Description:**

Establishes basic rights and protections for domestic workers.  
(CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

