

# LABOR / WORKFORCE RECRUITMENT, RELATIONS AND DEVELOPMENT

## Domestic Workers Bill of Rights

This act extends certain basic labor rights and protections to domestic workers. Specifically, this measure:

- Prohibits an employer from discharging or discriminating against an individual employed as a domestic in compensation or in terms, conditions, or privileges of employment because of that individual's race, sex including gender identity or expression, sexual orientation, age, religion, color, ancestry, disability, or marital status;
- Applies the wage and hour laws to domestic workers except for individuals employed in domestic services on a casual basis and individuals providing companionship services for the aged or infirm; and
- Adds definitions of “casual basis”, “companionship services for the aged or infirm”, and “domestic service” to the state’s wage and hour laws.

Submitted as:

Hawaii

[SB 535](#)

Status: Signed into law on July 9, 2013.

### Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] Domestic Workers Bill of Rights.

2

3 Section 2. [*Definitions.*]

4

5 "Employment" means any service performed by an individual for another person under any  
6 contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered  
7 into. Employment does not include services by an individual employed as a domestic in the  
8 home of any person, except as provided in Section 3 2(9).

9

10 Section 3. [*Unlawful discriminatory practice.*]

11 (a) It shall be an unlawful discriminatory practice:

- 12 (1) Because of race, sex including gender identity or expression, sexual orientation, age,  
13 religion, color, ancestry, disability, marital status, arrest and court record, or domestic or  
14 sexual violence victim status if the domestic or sexual violence victim provides notice to  
15 the victim's employer of such status or the employer has actual knowledge of such status:  
16 (A) For any employer to refuse to hire or employ or to bar or discharge from employment,  
17 or otherwise to discriminate against any individual in compensation or in the terms,  
18 conditions, or privileges of employment;  
19 (B) For any employment agency to fail or refuse to refer for employment, or to classify or  
20 otherwise to discriminate against, any individual;

1 (C) For any employer or employment agency to print, circulate, or cause to be printed or  
2 circulated any statement, advertisement, or publication or to use any form of  
3 application for employment or to make any inquiry in connection with prospective  
4 employment, that expresses, directly or indirectly, any limitation, specification, or  
5 discrimination;

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

8 (E) For any employer or labor organization to refuse to enter into an apprenticeship  
9 agreement as defined in [insert citation]; provided that no apprentice shall be younger  
10 than sixteen years of age;

11 (2) For any employer, labor organization, or employment agency to discharge, expel, or  
12 otherwise discriminate against any individual because the individual has opposed any  
13 practice forbidden by this part or has filed a complaint, testified, or assisted in any  
14 proceeding respecting the discriminatory practices prohibited under this part;

15 (3) For any person, whether an employer, employee, or not, to aid, abet, incite, compel, or  
16 coerce the doing of any of the discriminatory practices forbidden by this part, or to  
17 attempt to do so;

18 (4) For any employer to violate the provisions of [insert citation] relating to nonforfeiture for  
19 absence by members of the national guard;

20 (5) For any employer to refuse to hire or employ or to bar or discharge from employment any  
21 individual because of assignment of income for the purpose of satisfying the individual's  
22 child support obligations as provided for under [insert citation];

23 (6) For any employer, labor organization, or employment agency to exclude or otherwise  
24 deny equal jobs or benefits to a qualified individual because of the known disability of an  
25 individual with whom the qualified individual is known to have a relationship or  
26 association;

27 (7) For any employer or labor organization to refuse to hire or employ, bar or discharge from  
28 employment, withhold pay from, demote, or penalize a lactating employee because the  
29 employee breastfeeds or expresses milk at the workplace. For purposes of this paragraph,  
30 the term "breastfeeds" means the feeding of a child directly from the breast;

31 (8) For any employer to refuse to hire or employ, bar or discharge from employment, or  
32 otherwise to discriminate against any individual in compensation or in the terms,  
33 conditions, or privileges of employment of any individual because of the individual's  
34 credit history or credit report, unless the information in the individual's credit history or  
35 credit report directly relates to a bona fide occupational qualification under [insert  
36 citation], or

37 (9) For any employer to discriminate against any individual employed as a domestic, in  
38 compensation or in terms, conditions, or privileges of employment because of the  
39 individual's race, sex including gender identity or expression, sexual orientation, age,  
40 religion, color, ancestry, disability, or marital status.

1 Section 4. [*Employment.*]

2 “Casual basis” means employment that is:

- 3 (1) Irregular or intermittent; and
- 4 (2) Performed for a family or household who directly employs the individual providing the  
5 services.

6 Employment is not on a casual basis, whether performed for one or more family or household  
7 employers, if the employment for all employers exceeds twenty hours per week in the aggregate.  
8 For babysitting or companionship services for the aged or infirm, employment is not on a casual  
9 basis if the service is performed by an individual whose vocation is the provision of babysitting  
10 or companionship services.

11  
12 “Companionship services for the aged or infirm” means those services that provide fellowship,  
13 care, and protection for an individual who, because of advanced age or physical or mental  
14 infirmity, cannot care for the individual's own needs. “Companionship services for the aged or  
15 infirm” does not include services relating to the care and protection of the aged or infirm that  
16 require and are performed by trained personnel, such as a registered or practical nurse.

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

24  
25 “Employee” includes any individual employed by an employer, but shall not include any  
26 individual employed:

- 27 (1) At a guaranteed compensation totaling \$2,000 or more a month, whether paid weekly,  
28 biweekly, or monthly;
- 29 (2) In agriculture for any workweek in which the employer of the individual employs less  
30 than twenty employees or in agriculture for any workweek in which the individual is  
31 engaged in coffee harvesting;
- 32 (3) In or about the home of the individual's employer:
  - 33 (A) In domestic service on a casual basis; or
  - 34 (B) Providing companionship services for the aged or infirm;
- 35 (4) As a house parent in or about any home or shelter maintained for child welfare purposes  
36 by a charitable organization exempt from income tax under section 501 of the federal  
37 Internal Revenue Code;
- 38 (5) By the individual's brother, sister, brother-in-law, sister-in-law, son, daughter, spouse,  
39 parent, or parent-in-law;
- 40 (6) In a bona fide executive, administrative, supervisory, or professional capacity or in the  
41 capacity of outside salesperson or as an outside collector;
- 42 (7) In the propagating, catching, taking, harvesting, cultivating, or farming of any kind of  
43 fish, shellfish, crustacean, sponge, seaweed, or other aquatic forms of animal or vegetable  
44 life, including the going to and returning from work and the loading and unloading of  
45 such products prior to first processing;

- 1 (8) On a ship or vessel and who has a Merchant Mariners Document issued by the United  
2 States Coast Guard;
- 3 (9) As a driver of a vehicle carrying passengers for hire operated solely on call from a fixed  
4 stand;
- 5 (10) As a golf caddy;
- 6 (11) By a nonprofit school during the time such individual is a student attending such  
7 school;
- 8 (12) In any capacity if by reason of the employee's employment in such capacity and  
9 during the term thereof the minimum wage which may be paid the employee or  
10 maximum hours which the employee may work during any workweek without the  
11 payment of overtime, are prescribed by the federal Fair Labor Standards Act of 1938, as  
12 amended, or as the same may be further amended from time to time; provided that if the  
13 minimum wage which may be paid the employee under the Fair Labor Standards Act for  
14 any workweek is less than the minimum wage prescribed by [insert citation], [insert  
15 citation] shall apply in respect to the employees for such workweek; provided further that  
16 if the maximum workweek established for the employee under the Fair Labor Standards  
17 Act for the purposes of overtime compensation is higher than the maximum workweek  
18 established under [insert citation], then [insert citation] shall apply in respect to such  
19 employee for such workweek; except that the employee's regular rate in such an event  
20 shall be the employee's regular rate as determined under the Fair Labor Standards Act;
- 21 (13) As a seasonal youth camp staff member in a resident situation in a youth camp  
22 sponsored by charitable, religious, or nonprofit organizations exempt from income tax  
23 under section 501 of the federal Internal Revenue Code or in a youth camp accredited by  
24 the American Camping Association; or
- 25 (14) As an automobile salesperson primarily engaged in the selling of automobiles or  
26 trucks if employed by an automobile or truck dealer licensed under [insert citation].

27  
28 Section 5. [*Severability.*] Insert severability clause.

29  
30 Section 6. [*Repealer.*] Insert repealer clause.

31  
32 Section 7. [*Effective Date.*] Insert effective date.