



# HAWAII

## QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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*Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.*

## At-Will Employment

In Hawaii, the employer/employee relationship is governed by the at-will employment doctrine. *Parnar v. Americana Hotels, Inc.*, 65 Haw. 370, 652 P.2d 625 (1982); Haw. Rev. Stat. § 378-3. This means that either party may terminate the relationship at any time, with or without cause, and with or without notice. Hawaii does, however, recognize some exceptions when a termination violates a clear mandate of public policy grounded in judicial opinions, constitutional law, statutes, and regulations. The Hawaii Whistleblower Protection Act is also an exception to the at-will employment doctrine and provides a cause of action against employers who wrongfully discharge an employee because the employee reports or was about to report the employer for a suspected violation. Haw. Rev. Stat. § 378-62.

## Immigration Verification

Hawaii employers are required to comply with all federal immigration laws. Hawaii does not have a law that addresses immigration verification separately. E-Verify is voluntary for employers in Hawaii.

## Drug Testing

Hawaii laws and regulations do not require an employer to conduct drug or alcohol testing. To the extent an employer wishes to drug test its employees, Hawaii law does mandate how tests should be conducted. Hawaii is a “mandatory” state, which means any private employer wishing to conduct drug and/or alcohol testing of non-regulated employees must do so according to the state constitution, statutes, regulations, local ordinances, and court decisions that apply. Haw. Rev. Stat. §§ 329B-1 to 8. Employers must use licensed testing laboratories. If an employee refuses to submit to drug and alcohol testing, the employer may take adverse action against the employee up to and including termination of employment.

## Jury Duty Leave

An employer may not discharge, penalize, threaten, or otherwise coerce an employee who receives and/or responds to a jury summons or who serves on a jury. Haw. Rev. Stat. § 612-25. Employers are not required by law to pay an employee on jury duty service.

## Voting Leave

Hawaii does not currently have a law establishing a right-to-voting leave. The state repealed its voting leave law in 2020 after shifting to voting by mail for all elections.

## Family Leave

Hawaii employers with more than 100 employees must provide employees with family leave. An employee is entitled to four weeks of family leave during any calendar year for the following qualifying reasons:

- for the birth of a child of the employee, which expires 12 months after the child’s birth;
- for the adoption of a child by the employee, with entitlement to family leave available upon the placement of the child for adoption;
- to care for the employee’s child who has a serious health condition;
- to care for the employee’s spouse or reciprocal beneficiary who has a serious health condition; or
- to care for the employee’s parent who has a serious health condition.

Haw. Rev. Stat. § 398-3. The leave may be paid or unpaid and may be taken intermittently.

Additionally, there is proposed legislation to extend leave to eight weeks for parents who are unable to perform their employment duties resulting from the birth of a child who is required to stay in a neonatal intensive care unit. The parent would be entitled to additional family leave equivalent to the duration of time that the child is in a neonatal intensive care unit, for up to eight weeks. If passed, the legislation would become effective June 30, 2032.

## Education of Children

Employees are eligible to receive up to two hours of paid leave during business hours to attend a mutually scheduled parent-teacher or parent-caregiver conference.

The time off is not to be credited against vacation or sick leave or interfere with work operations. Employees are entitled to no more than two mutually scheduled conferences, per child, in a single calendar year. Travel time is included as part of the two hours permitted. Haw. Rev. Stat. § 78-31.

### **Organ, Bone Marrow, and Peripheral Blood Stem Cell Donor Leave**

Hawaii employers with 50 or more employees must allow employees to take leave to donate bone marrow, peripheral blood stem cells, or an organ. Employees are entitled to seven days of leave to donate bone marrow or peripheral blood stem cells and 30 days to donate an organ. Donor leave must not be taken concurrently with federal FMLA leave or Hawaii family leave. Haw. Rev. Stat. § 398A-3.

### **National Guard Leave**

All Hawaii employers must provide leave to employees who are members of the Hawaii National Guard and are going to, returning from, or performing National Guard service ordered by the governor or the governor's representative. Haw. Rev. Stat. § 121-43.

### **Witness Leave**

All Hawaii employers must provide leave to employees who serve as witnesses or attend court as prospective witnesses. An employer may not discharge, threaten, or coerce any employee for receiving or responding to a witness summons, serving as a witness, or attending court as a prospective witness. Haw. Rev. Stat. § 612-25.

### **Pregnancy Disability Leave**

Hawaii employers with one or more employees must allow a female employee to take leave for a reasonable time due to and resulting from pregnancy, childbirth, or a related medical condition. Haw. Code R. § 12-46-108.

### **Domestic or Sexual Violence Leave**

An employer with 50 or more employees shall allow an employee to take up to 30 days of unpaid victim leave per calendar year. An employer with no more than 49 employees shall allow an employee to take up to five days of unpaid leave per calendar year. Victim leave is available to an employee if the employee or the employee's minor child is a victim of domestic or sexual violence and the leave is to either seek medical attention for the employee or the employee's minor child to recover from physical or psychological injury or disability caused by domestic or sexual violence; obtain services from a victim services organization; obtain psychological or other counseling; temporarily or permanently relocate; or take legal action relating to the domestic violence. Haw. Rev. Stat. § 378-72.

### **Other Leave**

Hawaii does not require employers to provide employees with sick leave benefits, whether paid or unpaid. If an employer chooses to provide employees with sick leave benefits, the employer must provide employees with written notice of the terms of the policy. Haw. Rev. Stat. § 388-7. Similarly, employers are not required to provide employees with vacation benefits, whether paid or unpaid. If an employer chooses to provide such benefits, they must comply with the terms of their established policy or employment contract. An employer must provide employees with written notice of the terms of its vacation policy. Haw. Rev. Stat. § 388-7. Bereavement leave is also not required by Hawaii law. Employers may choose to provide bereavement leave and may be required to comply with their stated policy.

### **Non-Compete Agreements**

Hawaii does allow the use of non-compete agreements. To be enforceable under Hawaii law, a non-compete agreement must:

- be ancillary to a legitimate purpose that does not violate Chapter 480 of the Hawaii Revised Statutes;
- be effective only for a reasonable time; and
- not impose an undue hardship on the employee.

Haw. Rev. Stat § 480-4(c)(4).

## **Salary Transparency**

Effective January 1, 2024, Hawaii will require employers with 50 or more employees to disclose a position's hourly rate or salary range in certain job postings. S.B. 1057.

## **Smoking Laws**

Under Hawaii law, smoking, including using electronic smoking devices also known as e-cigarettes, is prohibited in all enclosed or partially enclosed areas at places of employment. Haw. Rev. Stat. §§ 328J-1, 328J-4.

## **Break Time to Express Milk**

The Hawaii Breastfeeding in the Workplace Act prohibits discrimination against a lactating employee. Haw. Rev. Stat. § 378-2. The law requires that employers in Hawaii support breastfeeding employees by providing break time and a space (other than a bathroom) to express milk at work. Haw. Rev. Stat. §§ 378-91, 92, 93. Employers with fewer than 20 employees may be exempt from the requirement to provide break time, and a location shielded from view if the employer can show that the requirements would impose an undue hardship on the employer.

## **Meal Breaks**

In Hawaii, the only statutory requirement for breaks pertains to minors. Haw. Rev. Stat. § 390-2(c)(3) requires that employers provide minors (14 or 15 years of age) with a 30-minute rest or meal period after five consecutive hours of work. The Hawaii Department of Labor and Industrial Relations specifies, however, that rest breaks of five to 20 minutes are compensable as hours worked. If an employer provides a meal break, the period is not compensable if it is 30 minutes or more, or if the employee is completely relieved of duty. More information can be found at DLIR: Breaks: Meal & Rest.

## **Minimum Wage**

Hawaii's minimum wage, effective October 1, 2022, is \$12.00 per hour. Haw. Rev. Stat. § 387-2.

## **Final Payments**

Under Haw. Rev. Stat. § 388-3(b), when an employee quits or resigns, the employer shall pay the employee's wages in full no later than the next regular payday, except that if the employee gives at least one pay period's notice of intention to quit, the employer shall pay all wages earned at the time of quitting.

## **Unemployment Insurance**

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The website to establish employment insurance benefits or to reopen an existing claim is [uicclaims.hawaii.gov](http://uicclaims.hawaii.gov).

## **Workers' Compensation**

Hawaii's Workers' Compensation law was enacted in 1915, and its purpose is to provide wage loss compensation and medical care to those employees who suffer a work-related injury. Any employer, other than those excluded under Haw. Rev. Stat. § 386-1, having one or more employees, no matter their status, is required to provide workers' compensation coverage for its employees. Employers are required to provide certain benefits without regard to the employer's fault. Further, employees are prohibited from filing civil actions against the employer for work-related injuries or illnesses. The injuries covered are listed at Haw. Rev. Stat. § 386-3.

## **Additional Laws and Regulations**

### **Record-Keeping**

Hawaii has specific laws regarding the time and manner in which certain records must be maintained.

- Payroll data: A record must be kept of information on the rate of pay, hours, straight-time earnings, overtime earnings, deductions, authorizations for deductions, total wages per pay period, and tax withholding forms. Haw. Rev. Stat. §§ 371-11, 387-6, and 388-7.

- Child labor: Copies of minors' certificates of employment and ages must be retained for as long as the minor is employed. Upon separation, the document must be returned to the Department of Labor and Industrial Relations. Haw. Rev. Stat. § 390-3.
- Benefit information: This information includes records of all work-related injuries and illnesses, as well as medical and other records pertaining to workers' compensation claims, and copies of any Waiver of Health Care Coverage. Haw. Rev. Stat. §§ 386-95, 386-96, and 393-21.
- Employment records: A record must be kept of recruitment and hiring records (advertisements, vacancy announcements and postings, referrals, employment applications and/or résumés, and dates of hire); training or apprenticeship; a change in status (promotions, demotions, transfers); and documents on employee separations (layoffs, resignations, terminations, and dates of separation). Haw. Rev. Stat. §§ 371-11, 378-6(b), and 383-94(c).
- Occupational injuries and illnesses: Documents to be kept include those pertaining to safety and health programs and records of deaths, injuries, and illnesses. Haw. Rev. Stat. § 396-6(e).
- Physical addresses: Former and current addresses, as well as the applicable North American Industry Classification System code, must be kept. Haw. Rev. Stat. § 371-11.

### **Reference Immunity**

Under Hawaii law, employers and their authorized designees are presumed to act in good faith and are immune from civil liability when they make disclosures at the request of a current/former employee, or any prospective new employer, regarding factual information or opinion about the current or former employee's job performance. Haw. Rev. Stat. § 663-1.95. The presumption of good faith can be rebutted only by showing that the employer intentionally disclosed information it knew was false or misleading. Also, the Hawaii Supreme Court has refused to recognize a claim of defamation based on a former employee's need to communicate the reason for their termination to a prospective employer. *Gonsalves v. Nissan Motor Corp.*, 58 P.3d 1196 (Haw. 2002).

### **Child Labor Laws**

Hawaii law defines a "minor" as any person under 18 years of age. Except in limited situations (theatrical work and coffee harvesting), minors must be at least 14 years of age to begin working, and minors under the age of 18 may not work in positions that are considered "hazardous" and will have limitations on the work schedule. Haw. Rev. Stat. §§ 390-2, 390-3.

### **Wage Rate Discrimination Prohibited**

Employers cannot discriminate in the payment of wages between sexes or employ a person at a pay rate less than what an employee of the opposite sex earns for substantially similar work (skills, effort, responsibility, and similar working conditions). Haw. Rev. Stat. § 378-2.3.