

Corrections to THE HAWAII WAGE AND HOUR LAW  
Report No. 2, 1968  
Legislative Reference Bureau

Page 6

Last paragraph should read as follows:

Based on the estimated distribution of workers by hourly wage and industry in January, 1967, the total annual increase in direct wage bills which will result from an eventual increase in both the state and the federal minimum to \$1.60 per hour is roughly estimated at \$20,214,740. This amounts to a 2.2 per cent increase in total direct wage bills. The FLSA amendments of 1966 will account for a large portion of the increase in annual wage bills when it becomes fully effective in 1971. It is estimated that the increase in the state minimum will account for approximately \$9,703,075 or 48 per cent of the total increase in annual direct wage bills. It must be emphasized at this point that these cost estimates are very rough approximations subject to certain qualifications and assumptions since they were derived from data containing certain limitations when used for estimating the annual increase in direct wage bills.

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Third paragraph should read as follows:

The total annual increase in direct wage bills is estimated at \$20,214,740. The monthly average of total direct wage bills for the first quarter of 1967, derived from the Department of Labor's ES202 Report on Employment and Payroll, is \$76,722,080. Using this as the monthly average for the year, the total annual direct wage bill is estimated at \$920,664,960. Based on this, an overall increase in the minimum wage to \$1.60 will result in a 2.2 per cent increase in total direct wage bills in Hawaii. The FLSA amendments of 1966 will account for a large portion of the annual increase in wage bills when they become fully effective in 1971 since almost all laundries, construction enterprises, hospitals and nursing homes, and enterprises doing more than \$250,000 gross volume of business annually will be subject to the FLSA \$1.60 minimum. While it is not possible to determine precisely the amount of increase which may be attributed to an increase in the state minimum to \$1.60, a rough estimate of the probable percentage increase in annual wage bills may be derived

if the assumptions based on the statements below may reasonably be made:

1. An estimated 23,000 workers are subject to the state minimum (Table 4, Chapter III). This is approximately 14 per cent of the total number of nonsupervisory workers in the private sector.
2. According to the latest U.S. Census Bureau estimates on County Business Patterns,<sup>1</sup> 20,955 workers out of a total of 151,633 in the State were employed in establishments employing 7 or less workers in 1965. This is also approximately 14 per cent of the total number of workers in the private sector. This percentage relationship will probably be true also for 1966.

Pages 46 and 47

Tables 9 and 10 should read as follows on the accompanying pages.

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Second paragraph should read as follows:

Given the above, this would mean that 23,000 of the 47,500 workers below \$1.60 are covered by HWWHL. It then becomes possible to provide a rough estimate that approximately \$9,703,075 or 48 per cent ( $23,000 \div 47,500$ ) of the total annual increase in direct wage bills of a \$1.60 minimum may be attributed to the increase in the state minimum.

Table 9

ESTIMATED ANNUAL INCREASE IN DIRECT WAGE BILLS OF A  
\$1.60 MINIMUM BY INDUSTRY, STATE OF HAWAII

(Excludes government, self-employed,  
unpaid family and domestic workers)

(Average Cost to Increase Wages to \$1.60)	Industry	Total	Hourly Wage Distribution			
			(.325) (\$1.25)-1.29	(.25) \$1.30-1.39	(.15) \$1.40-1.49	(.05) \$1.50-1.59
TOTAL WORKERS UNDER \$1.60		47,550	16,875	8,669	9,667	12,339
ESTIMATED INCREASE IN WAGE BILLS		\$20,214,740	\$11,407,500	\$4,507,880	\$3,016,104	\$1,283,256
Agricultural Workers		2,425	1,002	571	424	428
Estimated Increase in Wage Bills		\$ 1,151,078	\$ 677,352	\$ 296,926	\$ 132,288	\$ 44,512
Construction Workers		--	--	--	--	--
Estimated Increase in Wage Bills		--	--	--	--	--
Manufacturing Workers		2,549	677	525	728	619
Estimated Increase in Wage Bills		1,022,169	457,652	273,005	227,136	64,376
Transportation, Communication, Public Utilities Workers		361	121	--	127	113
Estimated Increase in Wage Bills		133,172	81,796	--	39,624	11,752
Trades:						
Wholesale Workers		2,467	662	530	468	807
Estimated Increase in Wage Bills		953,062	447,512	275,606	146,016	83,928
Retail Workers		22,686	8,830	3,999	4,345	5,512
Estimated Increase in Wage Bills		9,977,490	5,969,080	2,079,522	1,355,640	573,248
Finance, Insurance, Real Estate Workers		1,988	438	78	539	933
Estimated Increase in Wage Bills		601,849	296,088	40,561	168,168	97,032
Service Workers		15,074	5,145	2,966	3,036	3,927
Estimated Increase in Wage Bills		6,376,011	3,478,020	1,542,351	947,232	408,408

Table 10

ESTIMATED ANNUAL INCREASE IN DIRECT WAGE BILLS OF A  
\$1.60 MINIMUM BY COUNTY, STATE OF HAWAII

(Excludes government, self-employed,  
unpaid family and domestic workers)

(Average Cost to Increase Wages to \$1.60)		Hourly Wage Distribution			
		(.325)	(.25)	(.15)	(.05)
County	Total	(\$1.25)-1.29	\$1.30-1.39	\$1.40-1.49	\$1.50-1.59
TOTAL WORKERS UNDER \$1.60	47,550	16,875	8,669	9,667	12,339
ESTIMATED INCREASE IN WAGE BILLS	\$20,214,740	\$11,407,500	\$4,507,880	\$3,016,104	\$1,283,256
Honolulu	36,744	12,053	6,260	7,990	10,441
Estimated Increase in Wage Bills	\$14,981,772	\$ 8,147,828	\$3,255,200	\$2,492,880	\$1,085,864
Hawaii	5,419	2,247	1,264	890	1,018
Estimated Increase in Wage Bills	2,559,804	1,518,972	657,280	277,680	105,872
Maui	3,269	1,594	664	365	646
Estimated Increase in Wage Bills	1,603,888	1,077,544	345,280	113,880	67,184
Kauai	2,118	981	481	422	234
Estimated Increase in Wage Bills	1,069,276	663,156	250,120	131,664	24,336

# **THE HAWAII WAGE AND HOUR LAW**

**Employee Coverage  
and Economic Effects**

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**Report No. 2, 1968**

**LEGISLATIVE REFERENCE BUREAU**

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**Price \$1.00**

## FOREWORD

This report on minimum wages in Hawaii has been prepared in response to Act 198, Session Laws of Hawaii 1967, which directed the Legislative Reference Bureau to conduct a study on minimum wages in Hawaii, including the presentation of certain specific information, for presentation to the 1969 Legislature. However, this report has been rushed to completion in time for the 1968 session because of the many inquiries and requests received regarding the possibility of this report being submitted earlier.

The completion of this report at this time would not have been possible without the assistance of many individuals and agencies who contributed both their time and knowledge. We are grateful to representatives of labor unions, business associations and other governmental agencies who gave so generously of their time in reviewing and commenting on the preliminary draft of the report.

We are indebted to the staff of the Research and Statistics Office, Department of Labor and Industrial Relations, for providing much of the statistical data used in the report on wages and employment and to Miss Jane Tsuchiyama for her assistance in the preparation of the charts and tables. A special note of appreciation is extended to Mr. Antone Rodrigues, Administrator, and Mr. Orlando Watanabe, Labor Law Staff Specialist, of the Enforcement Division, Department of Labor and Industrial Relations and Mr. Thomas Moriki, Investigator-in-Charge, of the Wage and Hour and Public Contracts Divisions, U. S. Department of Labor (Honolulu Office), who so graciously contributed a great deal of their time and knowledge in providing data and invaluable assistance in the analysis of specific statutory provisions and the incidence of minimum wage violations in Hawaii, and to Mrs. Betty Hirozawa of the Hawaii Employers Council for her invaluable advice and assistance.

Herman S. Doi  
Director

February 1968

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## INTRODUCTION

Act 198, Session Laws of Hawaii 1967, directed the Legislative Reference Bureau to conduct a study on minimum wages in Hawaii which "shall include, but not be limited to, the following areas: the number of workers excluded from the minimum wage act, the number of workers who are included within the minimum wage act but who are not receiving minimum wages; the pay rate at which these excluded and included workers are being paid; the number of workers being paid minimum rates of pay; the effect upon the economy of paying higher minimum wages to workers in terms of the monetary outlay by employers, upon the standard of living and in terms of the economic development of the community; and such other pertinent data as the Bureau may deem pertinent to the report".

It was thought initially that this study would take two years and that it would be prepared for the 1969 legislative session. However, it was decided to complete the study in time for the 1968 session in view of the many inquiries and requests received regarding the possibility of this report being submitted to the 1968 session. During the conduct of this study, it was found that a thorough and extensive examination of the effects of an increase in minimum wages would be exceedingly difficult to complete by the start of the 1968 session because of a lack of readily available data. Very little data of the type needed for such a study could readily be obtained or extracted from the wealth of statistical data compiled on business and employment activity.

Despite this handicap it was decided to proceed toward the completion of this report, utilizing whatever data were readily available. This was done in the belief that some basis for deliberation on the question of an increase in the state minimum should be provided to the legislature as soon as possible. To the extent that the data used and the analyses presented in this report are not misrepresented as being precise or unimpeachable and the limitations regarding their use are brought to the reader's attention, this report is believed to be of sufficient value for its intended purpose.

This report attempts to: (1) acquaint the reader with the recent changes in minimum wage coverage in Hawaii resulting from the changes made by the 1966 amendments to the Fair Labor Standards Act; (2) present the arguments on the effects of an increase in the minimum advanced by proponents and opponents of the minimum wage in summary form; (3) identify the various issues involved regarding the effects of an increase; and (4) determine the applicability or validity of current arguments as they relate to both past experience and present conditions in Hawaii.

## THE HAWAII WAGE AND HOUR LAW

Chapter I contains a summary of the pertinent changes made by the 1966 amendments to the Fair Labor Standards Act to first acquaint the reader with the nature and scope of the extensive changes made.

Chapter II provides a review of certain provisions of the Hawaii Wage and Hour Law which are pertinent or applicable to the changes in relative coverage provided by the Hawaii Wage and Hour Law (HWHL) and the Fair Labor Standards Act (FLSA) as a result of the 1966 FLSA amendments. There is also an analysis of the problems arising out of the changes in HWHL-FLSA relationships and the identification of certain specific HWHL provisions which appear to require revision.

Chapter III deals with the scope and extent of HWHL and FLSA coverage of workers in Hawaii and also the incidence of minimum wage violations in Hawaii. The interpretation of data on past experience is relied upon to estimate the incidence and nature of such violations in the next few years.

Chapter IV presents arguments on the effects of a minimum wage increase and attempts to establish the validity and applicability of such arguments as they relate to past experience and present economic conditions in Hawaii.

## SUMMARY

Most of the nonsupervisory workers employed in Hawaii's private sector are subject to the minimum wage and maximum hours provisions of the Hawaii Wage and Hour Law or the federal Fair Labor Standards Act, and in certain cases, to both. The 1966 amendments to the Fair Labor Standards Act greatly expanded the coverage of the Act to include a substantial number of workers. It did this by bringing under the Act's coverage many categories of employment which were previously excluded and by reducing the dollar volume test used to determine coverage of an enterprise from \$1,000,000 in sales to \$500,000 in gross volume of business done as of February 1, 1967 and to \$250,000 in gross volume of business done as of February 1, 1969. The minimum wage and overtime standards for work covered prior to February 1, 1967 differ, for a limited time period, from the standards for newly covered work. Workers covered by the Act are to be paid in accordance with the following rate schedules:

<u>Effective Date</u>	<u>Hourly Wage for Old Coverage</u>	<u>Hourly Wage for New Non- farm Coverage</u>	<u>Hourly Wage for New Farm Coverage</u>
February 1, 1967	\$1.40	\$1.00	\$1.00
February 1, 1968	1.60	1.15	1.15
February 1, 1969		1.30	1.30
February 1, 1970		1.45	
February 1, 1971		1.60	

Farm work is excluded from overtime coverage. Newly covered nonfarm workers subject to the overtime provisions for the first time must be paid one and one-half times their regular rate of pay as follows:

After 44 hours in a workweek, beginning February 1, 1967.

After 42 hours in a workweek, beginning February 1, 1968.

After 40 hours in a workweek, beginning February 1, 1969.

The expansion of coverage by the FLSA has resulted in displacing some of the relationships on wage and hour coverage which previously existed between the Fair Labor Standards Act and the Hawaii Wage and Hour Law.

The Hawaii Wage and Hour Law excludes a worker covered by the FLSA but provides that if the Hawaii minimum wage is higher, or if the Hawaii maximum workweek is lower than that applicable under the FLSA, the Hawaii standards shall apply with respect to such worker.

## THE HAWAII WAGE AND HOUR LAW

This "dual coverage" provision of section 94-2(k), however, is not as simple in application as it appears to be, especially with the changes made by the 1966 FLSA amendments. In attempting to relate the effects of the changes made by the 1966 FLSA amendments to coverage provided by the HWWHL, it was found that this dual coverage provision, among others, may possibly originate complex situations and some degree of confusion among employers as to the proper application of the dual coverage provision in specific situations. This is due in part to the differences in definition of terms used, such as "wages" and "regular rate of pay" in some cases, and to differences in exemptions or degree of exemptions provided by the federal and state wage and hour laws. A review of the Hawaii Wage and Hour Law in the light of changes made to the Fair Labor Standards Act suggests that consideration be given to making certain changes which appear to be needed to reduce the incidence of unintentional violations of the wage and hour law and, in some cases, to reaffirming the intent of certain provisions by considering the amendment or retention of the language of such provisions.

No specific recommendations are made regarding the amendment of specific provisions of the Hawaii Wage and Hour Law. However, the analysis of certain provisions suggests that consideration should be given to the following possibilities:

1. Deletion of the overtime exemption of workers guaranteed \$550 or more per month in section 94-2(a). The exclusion of executive, administrative, supervisory and professional employees, and outside salesmen and collectors from overtime coverage in section 94-2(e) adequately provides for the exclusion of "high salaried" employees. Section 94-2(a) has the potential to work an inequity on many nonsupervisory workers paid on a salary basis who may be required to work much more than 40 hours a week without any overtime compensation.
2. Amendment of the agriculture exemption in section 94-2(b) which excludes a worker from minimum wage and overtime coverage if his employer employs less than 20 workers in a workweek. The FLSA generally excludes a farm worker from minimum wage coverage if his employer did not use more than 500 man-days of agricultural labor in any quarter of the previous calendar year. The differences in exclusion, minimum wage rates and overtime coverage of the two laws, together with the dual coverage provision of section 94-2(k), make understanding of the statutory

## SUMMARY

requirements applicable to changes in the number of workers employed quite complicated for farm employers. However, the FLSA provision is not necessarily better or simpler to understand than the HWHL provision and mere incorporation of the FLSA language may not be advisable.

3. Deletion of the minimum wage exemption of taxicab drivers in section 94-2(h). The prior exemption of taxicab drivers by the FLSA was eliminated by the 1966 FLSA amendments. Taxicab drivers are exempt from HWHL coverage but are covered by the FLSA minimum wage provisions if they are employed by an enterprise doing more than \$500,000 in gross volume of business at present, and more than \$250,000 in 1969. Taxicab drivers in such enterprises are being provided minimum wage coverage while those in enterprises doing less than \$250,000 in gross volume of business are provided no minimum wage coverage. Most of the other categories of employment covered by the FLSA are not provided such differential treatment by the HWHL.
4. Amendment of the partial overtime exemption for employers engaged in agricultural processing operations in section 94-4(e) which provides such employers 20 weeks in a fiscal year during which period overtime may be paid after 48 hours a week instead of after 40 hours. The 1966 FLSA amendments eliminated the partial exemptions previously provided employers engaged in agricultural processing operations and now provide such covered employers with only a 14-week period of partial overtime exemption during which overtime must be paid after 10 hours a day and 48 hours a week. At present, this means that Hawaii employers covered by the FLSA are allowed only the FLSA partial overtime exemption of 14 weeks, while employers not covered by the FLSA are allowed the HWHL 20-week partial overtime exemption. As in the case of the exemption provided taxicab drivers, this is one of the few employment categories covered by the FLSA which is permitted such differential treatment.

In addition to the above, the analysis made also suggests that consideration be given to: (1) amending the overtime calculation provision of section 94-2(k) to permit the fullest application of higher state standards; (2) possibly reviewing the question of allowing a percentage of tips to be claimed against wages; and (3) amending the language of other provisions relating to excluded employment in section 94-2 so as to have such exclusions conform to those in the

## THE HAWAII WAGE AND HOUR LAW

FLSA as closely as possible without adversely affecting present coverage. This would do much to assist employers in better understanding and complying with the minimum wage and maximum hours provisions of both the HWHL and the FLSA which are applicable to their operations. It would also do much to simplify the transition from HWHL to FLSA coverage for those employers who may eventually become subject to the FLSA because of business growth and, in addition, make the application of the dual coverage provision of section 94-2(k) to most situations much simpler than it is now. Not to be overlooked is the benefit of also easing the task of administration and enforcement officials in ensuring compliance with the wage and hour laws.

As of February 1, 1967, approximately 126,000 workers in Hawaii (including those to be covered in 1967 and 1969) are covered by the minimum wage standards of the FLSA, according to estimates based on 1966 employment data. An estimated 23,000 workers are provided minimum wage coverage by the HWHL while approximately 13,000 workers, primarily domestics and small farm employees, are not covered by either FLSA or HWHL. Past experience on minimum wage and overtime violations indicates that approximately 1,500 workers covered under the FLSA will be involved in violations by employers and approximately 4,000 workers covered under HWHL (including those covered under FLSA who are subject to the dual coverage provisions of section 94-2(k)) will be involved in violations by employers. About 15 per cent of the total dollar amounts involved will be for minimum wage violations while 85 per cent will be for overtime violations. Most of the violations may be expected to occur in the wholesale and retail trade category and the service category. An increase in the number of violations in these categories over the next few years is also possible because of the recent extension of FLSA coverage in these areas which greatly increased the number of employees newly covered.

Based on the estimated distribution of workers by hourly wage and industry in January, 1967, the total annual increase in direct wage bills which will result from an eventual increase in both the state and the federal minimum to \$1.60 per hour is roughly estimated at \$12,141,000. This amounts to a 1.3 per cent increase in total direct wage bills. The FLSA amendments of 1966 will account for a large portion of the increase in annual wage bills when it becomes fully effective in 1971. It is estimated that the increase in the state minimum will account for approximately \$5,779,200 or 48 per cent of the total increase in annual direct wage bills. It must be emphasized at this point that these cost estimates are very rough approximations subject to certain qualifications and assumptions since they were derived from data containing certain limitations when used for estimating the annual increase in direct wage bills.

## SUMMARY

The employment effects of past minimum wage increases in Hawaii were examined by studying employment data for the years from 1958 to 1966 and unemployment figures for the period January, 1958 to July, 1967. During these periods there were three increases each in the state and federal minimums. The analysis of such data indicates that on an overall basis no evident adverse employment effects have been experienced in Hawaii as a result of past increases in the minimum wage. There appeared to be no correlation between increases in unemployment and past minimum wage increases. However, this may be because of the relatively rapid and substantial overall rise in our economy which would tend to minimize the adverse effects of a minimum wage increase, if any.

The analyses of the applicability of various arguments pertaining to an increase in the state minimum, based on past experience with such increases and an evaluation of the past and present status of business activity in the State, indicate that the effects of an increase in the state minimum on the overall economy may tend to be minimal. However, a drastic change in the business climate in the near future may reverse this tendency and such a possibility should be deliberated in any consideration of an increase in the state minimum.

There is no doubt that an increase in the minimum has the potential of producing possible adverse effects on specific workers or employers. In certain cases, some workers may lose their jobs and some marginal businesses may encounter real difficulties because of an increase. In the final analysis, the question is a relative one of determining the objective desired and of weighing beneficial and adverse effects in the means taken to achieve the objective.

This report is somewhat limited with respect to providing a closer or more precise measure of the economic effects of an increase in the state minimum wage because of the lack of readily available data applicable for such purposes. The difficulties encountered in obtaining needed data suggest that in view of the periodic need for data essential for a study of the economic effects of an increase in the state minimum wage, it would appear to be advisable to have the Department of Labor and Industrial Relations, with the cooperation of the Department of Taxation, establish a system for the collection of such data, and to collect, compile and update such data for ready analysis annually commencing not later than three months before the effective date of the next increase in the state minimum.

## Chapter I

# THE 1966 AMENDMENTS TO THE FEDERAL FAIR LABOR STANDARDS ACT

### Summary of Major Provisions

The federal Fair Labor Standards Act of 1938, as amended, establishes specific standards for minimum wages, maximum hours, overtime pay, equal pay and child labor for employment in enterprises covered by the Act. The 1966 amendments to the Act, effective February 1, 1967, expanded the scope of the Act to include many employees in activities previously excluded from the coverage of the Act and also increased the minimum wage for those employees covered by the Act prior to the 1966 amendments. The 1966 amendments revised and broadened the definition of a covered "enterprise" to include employees of enterprises previously excluded. It also made the Act applicable to other employees and increased the number protected by eliminating or narrowing some prior exemptions. The Act's coverage was also extended to the public sector to include certain employees of state and local hospitals and educational institutions, as well as federal employees whose wages are set by wage boards or those who are compensated from nonappropriated funds. Thus, for the first time, coverage was extended to employees in certain hotels, motels, and restaurants, in hospitals and nursing homes, and in schools. Certain agricultural workers, generally those employed by large farms, were also provided minimum wage protection.

The 1966 amendments established a time schedule for meeting the new minimum wage standards. Rates for employees covered prior to the 1966 amendments, for most of the newly covered federal employees, and for some employees working under federal service contracts were increased in two annual steps; rates for newly covered nonfarm workers are extended over a five-year period; and rates for covered farm workers are spread over a three-year period. Except where a specific exemption is provided, covered employees are to be paid in accordance with the following rate schedules:

<u>Effective Date</u>	<u>Hourly Wage for Old Coverage</u>	<u>Hourly Wage for New Non- farm Coverage</u>	<u>Hourly Wage for New Farm Coverage</u>
February 1, 1967	\$1.40	\$1.00	\$1.00
February 1, 1968	1.60	1.15	1.15
February 1, 1969		1.30	1.30
February 1, 1970		1.45	
February 1, 1971		1.60	



## 1966 AMENDMENTS TO THE FLSA

Overtime pay requirements of not less than one and one-half times the employee's regular rate of pay for hours worked beyond 40 in a workweek remain unchanged for most employees covered by the overtime provisions prior to February 1, 1967. Many of the newly covered non-farm employees subject to the overtime provisions for the first time are required to be paid not less than one and one-half times their regular rate of pay as follows:

After 44 hours in a workweek, beginning February 1, 1967.

After 42 hours in a workweek, beginning February 1, 1968.

After 40 hours in a workweek, beginning February 1, 1969.

The overtime provisions do not cover farm work. Employees of nursing homes, rest homes, and bowling alleys must receive time and one-half for hours worked over 48 in any workweek. Hospitals may adopt a 14-day period in lieu of the usual 7-day workweek, provided at least time and one-half is paid for hours in excess of 8 in any workday and in excess of 80 in the 14-day period.

For purposes of determining whether an employee was "previously covered" or is "newly covered", the provisions of the Act prior to, and after, the 1966 amendments must be considered. Generally, the above hourly rates and overtime requirements for old coverage are applicable to (1) all employees previously covered because they were engaged in interstate or foreign commerce or in the production of goods for such commerce, and (2) all other employees employed in any of the following enterprises which have employees engaged in commerce or in the production of goods for commerce, including work relating to goods that have been moved in or produced for commerce:

- (a) retail or service enterprises with an annual gross sales volume of at least \$1 million (exclusive of excise taxes at the retail level which are separately stated) and \$250,000 annual inflow of interstate goods;
- (b) local transit enterprises with an annual gross sales volume of at least \$1 million (exclusive of excise taxes at the retail level which are separately stated);
- (c) gasoline service stations with an annual gross sales volume of at least \$250,000 (exclusive of excise taxes at the retail level which are separately stated);
- (d) construction enterprises with a gross annual business of at least \$350,000;

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- (e) other establishments in other enterprises having an annual gross volume of at least \$1 million where the establishment has some employees engaged in interstate or foreign commerce or in the production of goods for such commerce.

The hourly rates and overtime requirements for new nonfarm coverage are applicable to all employees brought under the Act by the 1966 amendments who are not subject to the standards for covered employees because of the absence of prior coverage. Such employees include those newly covered by the 1966 amendments through elimination or narrowing of prior exemptions, or through the extension of coverage on an enterprise basis to the employees in enterprises having employees engaged in commerce or in the production of goods for commerce (including work relating to goods that have been moved in or produced for commerce), where on and after February 1, 1967, such an enterprise is one which:

- (1) has an annual gross volume of sales made or business done, exclusive of excise taxes at the retail level which are separately stated, of not less than \$500,000 (\$250,000 beginning February 1, 1969);
- (2) is engaged in laundering, cleaning, or repairing clothing or fabrics (regardless of dollar volume of business done);
- (3) is engaged in the business of construction or reconstruction, or both (regardless of dollar volume of business done); or
- (4) is engaged in the operation of a hospital (excluding federal government hospitals), nursing home or school regardless of whether such an institution is public, private, or nonprofit and regardless of dollar volume of business done.

Agricultural employees must be paid the minimum wage rates for new farm coverage if the employer used more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year. Man-day is defined by the Act as meaning any day during which an employee performs any agricultural labor for not less than one hour.

The 1966 amendments thus reduced the enterprise dollar volume test for coverage from \$1 million to \$500,000 effective February 1, 1967, and to \$250,000 beginning February 1, 1969. Coverage is extended without a dollar volume test to employees of laundries and dry

## 1966 AMENDMENTS TO THE FLSA

cleaning enterprises, construction enterprises, and to nonfederal hospitals, nursing homes, private and public schools and institutions of higher education, both profit and nonprofit. Employees of a retail or service establishment (except a hospital, nursing home, laundry or school) which makes more than 50 per cent of its sales within the state it is located in and is not in a covered enterprise or which has less than \$250,000 in annual sales continue to be exempt from the Act as are establishments which have as their only regular employees, the owner, his spouse, parents or children, or other members of the owner's immediate family.

A major feature of the amendments is the extension of minimum wage protection to workers employed on large farms. The amendments also narrow or repeal exemptions for employees of hotels, restaurants, laundries and dry cleaners, hospitals, nursing homes, schools, auto and farm implement dealers, local transit companies, taxicab companies, and agricultural processing and food service employees.

Changes made by the 1966 amendments to specific categories of employment which are, or may be, of some significance in Hawaii are summarized and presented below.

Agriculture. Agricultural employers who have used more than 500 man-days of agricultural labor in any calendar quarter of the preceding year are required to pay their employees the minimum wage. Generally, this means that only the larger farms which regularly use the equivalent of seven full-time employees are covered. A farm employing 7 workers on a regular basis, or 50 workers for ten days, or 25 workers for twenty days would be subject to the minimum wage requirements. However, the following four classes of workers are exempt from coverage and their work is not included in the man-day count:

- (1) Members of the employer's immediate family.
- (2) A hand harvest worker paid on a piece-rate basis who commutes daily from his home to his place of work and who has been employed in agriculture less than thirteen weeks during the preceding calendar year.
- (3) A migrant hand harvest worker under 17 years of age employed on the same farm as his parents and paid at the same piece-rate as adult workers.
- (4) Any employee principally engaged in the range production of livestock.

## THE HAWAII WAGE AND HOUR LAW

All agricultural workers continue to be exempt from the overtime provisions.

Agricultural Processing and Seasonal Industries. A 14-week overtime exemption limited to 10 hours a day and 48 hours a week is provided for workers employed in certain agricultural processing operations involving perishable agricultural or horticultural commodities in their raw or natural state. A 14-week overtime exemption limited to 10 hours a day and 50 hours a week is provided for workers in a seasonal industry which is not engaged in agricultural processing. Employers engaged in industries which are seasonal and who are also engaged in agricultural processing qualify for a 10-week overtime exemption under each of the above provisions and are permitted an overtime exemption for their employees for a period of 20 workweeks in the aggregate in a calendar year. Prior to the 1966 amendments, employers were able to claim either year-round or as much as two 14-week exemptions each year. The Act now permits, at most, two 10-week partial exemptions from the overtime requirements.

Automobile and Farm Implement Retailers. The previous exemption for retail automobile and farm implement sales establishments has been eliminated and they are now subject to the dollar volume test for new minimum wage coverage. An overtime exemption is provided for salesmen, partsmen, and mechanics primarily engaged in selling or servicing automobiles, trucks, trailers, farm implements or aircraft if employed by a nonmanufacturing establishment primarily engaged in selling such vehicles to ultimate purchasers.

Bowling Alley Establishments. Many bowling alleys are now subject to the dollar volume test for new minimum wage coverage. A partial overtime exemption permits payment of overtime for hours in excess of 48 in a workweek.

Construction. Previously, only workers employed in firms with annual gross receipts of \$350,000 or more were covered by the Act. Minimum wage and overtime coverage now is extended to all construction firms regardless of the dollar volume of business.

Hospitals and Nursing Homes. A previous exemption for hospitals and nursing homes has been deleted and coverage is now extended to nonsupervisory employees of nonfederal hospitals and to institutions primarily engaged in the care of the sick, the aged, and the mentally ill or defective who reside on the premises of such institution regardless of whether such employees work in a private or public institution or whether it is a profit or nonprofit organization.

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Overtime requirements differ for these institutions because of scheduling problems. Such nursing home employees must be paid overtime after 48 hours a week. Hospitals may adopt a 14-day period for calculating a standard workweek for overtime purposes, in lieu of the usual 7-day workweek, provided such a 14-day period is agreed to in advance by the hospital and its employees. Overtime compensation must then be paid for hours worked over 8 in a day and 80 in the 14-day period.

Hotels and Motels. Hotel and motel employees are covered for the first time by the new minimum wage requirements but are excluded from the overtime provisions. Employees' tips are counted in determining the wages of tipped employees. If an employee regularly receives more than \$20 a month in tips, his employer may credit an amount not in excess of 50 per cent of the applicable minimum wage as tips counting toward the minimum wage. However, if the employee is able to show that he is receiving less than the amount of tips so credited, the employer must pay him the balance so that the employee is paid not less than the minimum wage. The employee's wages may also include the reasonable cost of board, lodging and other facilities customarily provided by the employer.

Laundries. Most laundry and dry cleaning workers are newly covered by the minimum wages and overtime provisions of the Act. There is a small group of workers--primarily in industrial laundries and linen supply plants--who were covered prior to the 1966 amendments and are entitled to be paid the minimum wage for previously covered employment.

Logging and Forestry. Employees planting or tending trees and logging employees who are employed by a lumbering operation that hires not more than eight people are excluded from the Act's coverage. This exclusion was previously provided employers of 12 or less prior to the 1966 amendments.

Manufacturing. Most manufacturing employees traditionally were covered by the Act primarily because of their involvement in interstate commerce. The 1966 amendments established a dollar volume test which serves to extend coverage to all employees of manufacturing firms with annual sales of \$500,000 (\$250,000 effective February 1, 1969).

Newspapers. Newspaper employees are exempt from coverage of the Act if they work for a newspaper having a circulation of less than 4,000 and the major part of its circulation is within the county where published or contiguous counties. However, any employee engaged in

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the delivery of newspapers to the consumer is exempt from coverage of the Act regardless of the size of the newspaper firm.

Restaurants. Restaurant employees are newly covered by the minimum wage provisions of the Act. As in the case of a hotel or motel worker, if an employee customarily and regularly receives more than \$20 a month in tips, the employer may take credit for the actual amount of tips received by the worker up to a maximum of 50 per cent of the applicable minimum wage. Restaurant workers and other food service workers are exempt from the overtime provisions of the Act. Wages may also include the reasonable cost of board, lodging and other facilities customarily provided by the employer to his employees.

Retail Trade. Retail or service firms with annual sales of \$1 million or more were covered prior to the 1966 amendments. The new amendments extended coverage to firms with sales of \$500,000 or more effective February 1, 1967, and to those with sales of \$250,000 or more effective February 1, 1969. Employees of previously exempt restaurants, hotels, motels, and automobile dealerships are now covered in those firms meeting the sales volume test. A worker employed in a small store which does less than \$250,000 of business annually is exempt from the provisions of the Act. This exemption does not apply to laundries, dry cleaners, hospitals, nursing homes or schools. Employees of motion picture theaters and seasonal amusement or recreational establishments continue to be exempt from the provisions of the Act.

Schools. Employees of elementary and secondary schools and institutions of higher education, both public and private, are newly covered by the Act. Academic administrative personnel and teachers continue to be exempt from the provisions of the Act.

Service Stations. Gas service stations with annual sales of \$250,000 or more were previously covered by the minimum wage provisions of the Act but were exempt from the overtime provisions. The 1966 amendments removed the overtime exemption so that workers employed by such stations are now fully covered.

Taxicab Companies and Local Transit Operations. Employees of taxicab companies and local transit operations whose rates and service are subject to regulations by a state or local agency are now provided minimum wage coverage under the dollar volume test. Prior to the 1966 amendments, only transit firms doing \$1 million worth of business annually were covered. Taxicab drivers and operating employees of transit firms such as drivers, operators and conductors are exempt from the overtime provisions of the Act.

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Wholesale Trade. Most workers in wholesale trade have traditionally been covered by the Act because such employees usually handle goods that move through interstate commerce. Additional protection is newly provided for an individual worker in large firms meeting the dollar volume test regardless of whether his activities are actually involved in commerce.

Apprentices. The Secretary of Labor may issue special certificates permitting the payment of wages lower than the minimum wage to learners, apprentices and messengers employed primarily in delivering letters and messages but only "to the extent necessary in order to prevent curtailment of opportunities for employment".

Handicapped Workers. The Secretary of Labor may issue special certificates authorizing the payment of not less than 50 per cent of the applicable minimum wage to handicapped workers in sheltered workshops. Wages lower than the above may be allowed to handicapped workers engaged in work incidental to training or evaluation programs, or to multi-handicapped individuals and others whose earning capacity is so impaired that they cannot engage in competitive employment, provided such wages are related to the workers' productivity. For those "whose physical or mental impairment is so severe as to make their productive capacity inconsequential", employment at lower wages is also authorized in "work activity centers" provided such wages constitute equitable compensation.

Student Workers. Full-time students of any age may be employed part time on farms or in retail or service establishments at 85 per cent of the applicable minimum wage subject to certain restrictions prescribed by the Act.

The above is by no means a complete or comprehensive analysis of the provisions of the Fair Labor Standards Act. For example, executive, administrative and professional employees, outside salesmen, domestics, and fishermen were not affected by the changes and continue to be excluded from the protection of the Act. The above is intended, rather, to provide the reader with some idea of the recent increase in FLSA coverage which has resulted in altering certain relationships previously existing between the FLSA and the Hawaii Wage and Hour Law.

## Chapter II

### THE HAWAII WAGE AND HOUR LAW

The Hawaii Wage and Hour Law requires every employer to pay each of his employees not specifically excluded from the law's coverage not less than \$1.25 per hour. It also provides that no employer shall, except as otherwise provided in the law, employ any employee for a workweek longer than 40 hours unless such employee receives overtime compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed. Section 94-2(k) of the Hawaii law excludes from coverage any employee covered by the Fair Labor Standards Act but provides that if the minimum wage paid an employee covered by the federal act for any workweek is less than the minimum wage prescribed by the Hawaii law, the higher minimum shall apply to such employee for such workweek; and if the maximum workweek established for an employee under the federal act for purposes of overtime compensation is higher than the workweek for such purposes under the Hawaii law, then the maximum hours provision of the Hawaii law shall apply to such employee for such workweek, except that such employee's regular rate in such case shall be his regular rate as determined under the Fair Labor Standards Act. This provision for dual coverage of the same category of employees under both state and federal law with the higher standards prevailing is in accordance with section 18(a) of the FLSA, which states in part:

No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act. . . .

The Hawaii Wage and Hour Law exempts from coverage an employee who is employed:

- (1) at a guaranteed compensation of \$550 or more per month;
- (2) in agriculture for any workweek in which the employer employs less than 20 employees or in which the employee is engaged in coffee harvesting;
- (3) in domestic service in or about the home of his employer or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization;
- (4) by his brother, sister, brother-in-law, sister-in-law,



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son, daughter, spouse, parent or parent-in-law;

- (5) in a bona fide executive, administrative, supervisory or professional capacity or in the capacity of an outside salesman, or as an outside collector;
- (6) in the propagating, catching, harvesting, cultivating or farming of fish or other marine life including work prior to first processing;
- (7) as a seaman;
- (8) as a taxicab driver;
- (9) as a golf caddy;
- (10) by a nonprofit school during the time such individual is a student attending such school;
- (11) in any capacity if his employment is subject to the minimum wage or overtime provisions, or both, of the Fair Labor Standards Act and the applicable standards thereof are higher than the applicable standards of the Hawaii Wage and Hour Law.

The Hawaii law also provides a partial exemption from the overtime provisions of time and one-half after 40 hours for an employer:

- (1) who is engaged in agriculture and in the first processing of milk or cream into dairy products, or in the processing of sugar cane molasses or sugar cane into unrefined 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; or
- (2) who is employed 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 referred to in (1) above; or
- (3) who is at any place of employment engaged primarily in the first processing of or in canning or packing seasonal fresh fruits.

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Such an employer is not required to pay overtime after 40 hours to any of his employees during any of 20 different workweeks in a fiscal year but is required to pay overtime for work in excess of 48 hours in any such exempt workweek.

### **Employment Exclusions Common to State and Federal Law**

No minimum wage or overtime protection is provided certain types of employment which are excluded from coverage by both the Hawaii Wage and Hour Law and the federal Fair Labor Standards Act. Employment is excluded in the Hawaii law by specific reference to such employment while employment is excluded in the federal act either by specific reference to such employment or because it does not meet the criteria for coverage set forth in the Act. The language used to exclude specific types of employment in the Hawaii law is not exactly identical to the language used in the federal act for a similar exclusion. While such employment is commonly excluded in general, there may be a few minor differences regarding certain aspects of such excluded employment. The specific language of both laws in providing for excluded employment is shown below for comparative purposes.

#### Domestic Service.

HWHL: excludes an individual employed "in domestic service in or about the home of his employer or as a house parent in or about any home or shelter maintained for child welfare purposes by a charitable organization exempt from income tax under section 501 of the Federal Internal Revenue Code".

FLSA: the above activities are not specifically listed as excluded employment but are in effect excluded from coverage since they do not meet the criteria for coverage set forth in the FLSA.

#### Close Relative.

HWHL: excludes an individual employed "by his brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent or parent-in-law".

FLSA: excludes close relatives if they are the only regular employees of the owner of a covered enterprise. This is done by including in the definition of a "covered enterprise" a statement that "Any establishment which has as its only regular employees

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the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection."

### Executive and Administrative Employee.

HWHL: excludes an individual employed "in a bona fide executive, administrative, supervisory or professional capacity or in the capacity of an outside salesman, or as an outside collector".

FLSA: excludes an employee "in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (. . . except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 percentum of his hours worked in the workweek are devoted to such activities)".

### Fisherman.

HWHL: excludes an individual employed "in the propagating, catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds 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".

FLSA: excludes "any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal or vegetable life, or in the first processing, canning or packing of such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee".

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### Golf Caddy.

HWHL: excludes an individual employed "as a golf caddy".

FLSA: a golf caddy is not listed as a specific exclusion. It is possible that under certain conditions the employment of a golf caddy on a regular basis by an establishment may be subject to FLSA coverage. However, this is so remote that a golf caddy is usually considered to be excluded.

### Seaman.

HWHL: excludes an individual employed "as a seaman".

FLSA: excludes "any employee employed as a seaman on a vessel other than an American vessel". A seaman on an American vessel is covered by the minimum wage provisions but is exempt from the overtime provisions of the FLSA.

### Student Employed by a Nonprofit School.

HWHL: excludes a student employed by a nonprofit school during the time the student is attending such school.

FLSA: a full-time student employee of either a profit or nonprofit school who is not otherwise engaged in a specifically exempt employment category is covered by the minimum wage and overtime provisions of the FLSA. A student employee of a nonprofit school, not otherwise specifically exempt, must be paid the FLSA minimum wage applicable to newly covered employees. He may, however, be employed part time at a rate not less than 85 per cent of the applicable minimum wage subject to certain prescribed restrictions.

## **Extent of Wage and Hour Coverage for Specific Categories of Employment**

The 1966 amendments to the Fair Labor Standards Act have resulted in displacing some of the relationships on wage and hour coverage which previously existed between the FLSA and the Hawaii Wage and Hour Law. In order to determine the effect of the 1966 FLSA amendments upon the Hawaii Wage and Hour Law, it is necessary to examine certain provisions of both laws which may be applicable to the same category of employment. The extent of coverage provided certain types of employment which are covered by both the HWHL and the FLSA is dependent

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upon a determination of the governing provisions applicable in each case. It is almost impossible to cover the various conditions in each employment category which may contribute to dual coverage. However, the more obvious situations and those involving employment exempt from the Hawaii law which are newly covered under the FLSA may be examined to determine the extent of coverage provided such employment. This will be done by first setting forth a brief summary statement of the applicable provisions in each case and then a discussion of their effect on the category of employment covered. In doing so, the higher wage or overtime standards provisions of section 94-2(k) of the HWWL (hereafter referred to as section 94-2(k)) is not applied to employment newly covered by the FLSA where such employment is specifically excluded from the HWWL. This is in accordance with a determination by the State Labor Department that the HWWL in specifically excluding certain employment from coverage, in effect, also exempts such employment from the provisions of section 94-2(k). To apply the section to such excluded employment which is now newly covered under the FLSA would appear to subvert the intent of the specific exclusions.

### Employees Receiving a Guaranteed Salary.

HWWL: excludes any employee guaranteed \$550 or more monthly.

FLSA: excludes a retail or service employee from overtime coverage if his regular rate of pay is in excess of one and one-half times the minimum hourly rate applicable to him and if more than half his compensation for a representative period (not less than one) represents commissions on goods or services. (This generally is applicable to a commission salesman who is not an outside salesman.)

A nonsupervisory employee guaranteed a salary of \$550 or more may be required to work any number of hours in excess of 40 in a workweek without the payment of overtime under the HWWL. The FLSA provides overtime protection to all nonsupervisory employees not specifically excluded from such coverage regardless of the monthly salary guaranteed.

The FLSA does not establish any exemption from overtime coverage solely on the basis of a specific monthly salary level. When the above formula provision covering the high commission retail or service salesman who is not an outside salesman becomes fully effective, such a salesman will be exempt from overtime coverage only if his monthly guarantee is in excess of \$416 per

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month (equivalent to \$2.41 or more per hour or more than one and one-half times the minimum wage of \$1.60) and if his compensation for a representative month represents more than 50 per cent in commissions.

This HWHL exemption appears to periodically dilute the overtime protection of nonsupervisory employees not covered by the FLSA as evidenced by past necessity to increase the dollar figure from time to time since the law was enacted. The guaranteed compensation was set at \$150 in 1941; increased to \$200 in 1949; increased to \$300 in 1951; increased to \$350 in 1955; increased to \$450 in 1959 and finally increased to \$550 in 1965. At the present time, this \$550 monthly salary limitation has the effect of possibly excluding from overtime protection some employees in such occupations as clerk, senior clerk, order clerk, customer service clerk, switchboard operator, clerk-stenographer, secretary, tabulating machine operator, account clerk, cashier, bookkeeper, credit clerk, posting-billing machine operator, bookkeeping machine operator, payroll clerk, draftsman, etc., where the salary range for such occupations contains salaries in excess of \$550 monthly according to the September, 1966 report of the Hawaii Employers Council on Pay Rates in Hawaii.<sup>1</sup> Cooks, bakers, meat cutters and service station employees who often work six days a week on a 48-hour workweek schedule and receive a salary of \$550 monthly, in effect, are being paid only \$2.65 on an hourly basis. Such employees covered only by the HWHL are not entitled to overtime protection whereas employees receiving much higher hourly wages in other occupations must be paid overtime after 40 hours.

This exemption appears to be superfluous since the exemption for executive, administrative, supervisory or professional employees provides sufficient basis for the exemption of "high salaried" employees.

### Taxicab Driver.

HWHL: excludes taxicab drivers.

FLSA: a taxicab driver is subject to the minimum wage provisions for newly covered employees if his employer meets the enterprise dollar volume test. Taxicab drivers are exempt from overtime coverage.

A taxicab driver is covered under the FLSA minimum wage provisions for newly covered employees if his employer does

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more than \$500,000 in business at present and \$250,000 in business after February 1, 1969. Such a taxicab driver need not be paid overtime but must be paid, beginning February 1 of each successive year, an hourly wage of \$1 in 1967; \$1.15 in 1968; \$1.30 in 1969; \$1.45 in 1970; and \$1.60 in 1971. A taxicab driver whose employer does not meet the dollar volume test of the FLSA need not be paid a statutory minimum wage since he is excluded from both the Hawaii and federal laws (tour drivers may be subject to both FLSA and HWHL coverage).

### Agricultural Employment.

HWHL: excludes an individual employed in agriculture for any workweek in which his employer employs less than 20 employees or in which the employee is engaged in coffee harvesting. Covered employees must be paid overtime for any hours worked in excess of 40 except for a period of 20 weeks in a fiscal year during which overtime payment after 48 hours is permitted.

FLSA: excludes any employee employed (1) in agriculture by an employer who did not use more than 500 man-days of farm labor in any calendar quarter of the preceding calendar year; (2) as a hand harvest laborer (generally, nonmigrant type employed less than 13 weeks in agriculture in the previous year); (3) principally in the range production of livestock; and (4) in the growing of shade-grown tobacco. Exempts agricultural employees from overtime coverage.

An employer engaged in agriculture (including a coffee grower) who used more than 500 man-days of labor in any calendar quarter during the previous year is now subject to the FLSA and must pay his employees at least \$1 per hour beginning February 1, 1967; \$1.15 per hour as of February 1, 1968; and \$1.30 per hour as of February 1, 1969. However, if such employer, other than a coffee grower, uses 20 or more employees in any workweek, he must pay his employees not less than the state minimum of \$1.25 per hour for such workweek and also time and one-half for overtime work since he is no longer specifically exempt for such workweek and is subject to the provisions of section 94-2(k). After February 1, 1969, such employer must pay the FLSA minimum of \$1.30 per hour.

Employees who are principally engaged in range production of livestock are exempt from coverage under the FLSA. These are employees who are engaged in activities which require constant attendance such as herding and similar activities (not clerical,

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housekeeping, etc.) where the computation of hours worked would be difficult. However, if the employer employs more than 20 employees (not necessarily range employees) in any workweek, such employment becomes subject to the HWHL and he must pay his employees not less than the state minimum of \$1.25 for such workweek and time and one-half for overtime work.

The employment categories covered up to this point are those which are specifically excluded from the Hawaii Wage and Hour Law. The employment categories which will be covered from this point are those which are subject to dual coverage and therefore subject to the provisions of section 94-2(k). The common effect of section 94-2(k) upon employment subject to dual coverage would be as follows:

1. Employment covered by the FLSA prior to February 1, 1967, is subject to payment of minimum wages of at least \$1.40 an hour at present and \$1.60 an hour beginning February 1, 1968. Overtime compensation of not less than one and one-half times the employee's regular rate must be paid for hours worked over 40 in a workweek unless a specific exclusion applies. Employment exempt or partially exempt from the FLSA overtime provisions but not the HWHL overtime provisions is subject to section 94-2(k). Employees in such employment must be paid the overtime required by HWHL.
2. Nonagricultural employment brought under the FLSA as of February 1, 1967, by the 1966 amendments is subject to the minimum wage and overtime schedule established for newly covered employment unless a specific exclusion applies.

The schedule requires payment of at least:

- \$1.00 an hour, beginning February 1, 1967.
- 1.15 an hour, beginning February 1, 1968.
- 1.30 an hour, beginning February 1, 1969.
- 1.45 an hour, beginning February 1, 1970.
- 1.60 an hour, beginning February 1, 1971.

Overtime payment of not less than one and one-half times the employee's regular rate of pay is required:



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After 44 hours in a workweek, beginning February 1, 1967.

After 42 hours in a workweek, beginning February 1, 1968.

After 40 hours in a workweek, beginning February 1, 1969.

However, since Hawaii's minimum wage of \$1.25 is higher and its maximum hours workweek of 40 hours is lower than the applicable minimum wage and maximum hours standards established by the FLSA schedules for years prior to 1969, newly covered employment is subject to Hawaii's minimum wage of \$1.25 and maximum workweek of 40 hours for overtime purposes until February 1, 1969. Thereafter, the FLSA requirements better or equal the HWHL requirements and newly covered employment then generally becomes subject to the FLSA schedule.

The above, however, is a rather simplified version of the application of section 94-2(k) which would occur if no exceptions to the wage and hour schedule were provided an employment category by the FLSA. In many cases, the application of section 94-2(k) is somewhat involved because of the exemptions, partial exemptions and exceptions provided various employment categories by the FLSA and also by differences regarding the determination of "wages" and "regular rate of pay". In such cases, the effect of section 94-2(k) is modified to some extent by particular conditions involved for each employment category. This is illustrated in the examples below for certain specific categories of employment subject to dual coverage.

### Agricultural Processing and Seasonal Employment.

The HWHL limits overtime exemption for employers in certain agricultural processing operations to 20 weeks in a fiscal year during which overtime is to be paid after 48 hours in a workweek instead of after 40 hours.

The FLSA limits overtime exemption for covered employers in seasonal industries not engaged in agricultural processing to fourteen weeks in a calendar year during which overtime is to be paid after 10 hours a day and 50 hours a week. It also limits overtime exemption in certain agricultural processing operations, including seasonal agricultural processing operations, to fourteen weeks during which overtime is to be paid after 10 hours a day and 48 hours a week. Employers qualifying for both exemptions are limited to 10 weeks under each exemption for a total period not to exceed 20 weeks.

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Employers previously covered under the FLSA are subject to to the minimum wage rate for old coverage. Employers newly covered under the dollar volume test are subject to the FLSA minimum wage schedule for new coverage except for the period prior to February 1, 1969, during which the HWHL \$1.25 minimum applies since it exceeds the FLSA minimums.

An employer in a seasonal industry not engaged in agricultural processing is not provided a special overtime exemption under HWHL and therefore is subject to the lower HWHL workweek of 40 hours. An employer engaged in agricultural processing (including seasonal agricultural processing) who is covered by the FLSA and who qualifies for the partial agricultural processing exemption is subject to the lower FLSA maximum workweek of 10 hours a day and 48 hours a week for a 14-week period instead of the 48 hours a week for a 20-week period allowed by the HWHL.

An employer qualifying for both exemptions under FLSA would not benefit from the FLSA provisions for claiming both exemptions since the HWHL does not provide a purely seasonal exemption. This in effect negates the FLSA 20-week overtime exemption provisions for such employers in Hawaii.

### Bowling Establishments.

Bowling establishments may be previously covered but are mostly newly covered under the FLSA. They are provided a partial overtime exemption under FLSA which permits payment of overtime for hours in excess of 48 in a workweek instead of after 40 hours. Nevertheless, such establishments must pay for overtime after 40 hours a week in accordance with the HWHL. The HWHL minimum wage of at least \$1.25 applies until 1969 during the FLSA minimum wage escalation period for newly covered workers.

### Automobile Sales Establishments.

Salesmen, mechanics, and partsmen in FLSA covered establishments are subject to the new minimum wage coverage provisions but are exempt from overtime coverage. Such employees, however, must be paid overtime after 40 hours as required by HWHL. They must also be paid at least the HWHL minimum of \$1.25 per hour until 1969 during the FLSA minimum wage escalation period for new coverage.

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### Hospitals.

A hospital is permitted under the FLSA to enter into an agreement with its employees to pay overtime based on a 14-day workweek provided overtime is paid after 8 hours daily or after 80 hours in such workweek. The HWHL requirement of overtime after 40 hours in a workweek in effect negates any such agreement and hospitals therefore must observe the HWHL 40-hour workweek for overtime purposes. The HWHL minimum of \$1.25 also applies until 1969 during the FLSA minimum wage escalation period for newly covered employees. A government operated hospital is exempt under HWHL and therefore need comply only with the FLSA.

### Nursing Institutions.

Both public and private nursing institutions, other than hospitals, primarily engaged in the care of the sick, the aged, and the mentally ill or defective who reside in such institutions are newly covered by FLSA but are permitted to pay overtime after 48 hours a week. Such institutions, unless government operated, must pay overtime after 40 hours instead under HWHL requirements. They must also pay not less than the HWHL minimum of \$1.25 until 1969 during the FLSA minimum wage escalation period.

### Schools.

Both public and private schools are now covered by FLSA. Public schools are exempt from HWHL coverage and must comply only with the provisions of the FLSA. Private schools are subject, until 1969, to the HWHL minimums of \$1.25 and 40 hours instead of the FLSA requirements during the FLSA minimum wage and maximum hours escalation period.

### Food Service Employees.

The minimum wage for new coverage is provided food service employees of a retail or service establishment covered by FLSA but such employees are exempt from overtime coverage. However, such employees must be paid the HWHL minimum of \$1.25 until 1969 during the FLSA minimum wage escalation period and also overtime for all hours worked over 40 in a workweek as required by HWHL.

## THE HAWAII WAGE AND HOUR LAW

### Hotels, Motels, and Restaurants.

FLSA covered hotels, motels, and restaurants are subject to the FLSA minimum wage schedule for new coverage but are exempt from payment of overtime. However, such employers must observe the HWHL minimum wage of \$1.25 until 1969 during the FLSA minimum wage escalation period and must also pay overtime after 40 hours as required by HWHL.

The FLSA further provides that tips may be counted in determining the wages of a tipped employee (one who regularly receives more than \$20 a month in tips) in an amount not in excess of 50 per cent of the applicable minimum wage. Tips are not permitted to be counted as part of wages under HWHL. This difference and the effect of dual coverage produces one of the more complex problems in minimum wage administration and in the understanding and observance of legal requirements by local employers. For example, an employer may establish a regular rate of \$1.40 an hour under FLSA as follows:

\$1.00 cash and perquisites  
.40 tip offset claim  
\$1.40 total for regular hourly rate

Since the HWHL minimum is \$1.25, the employer must pay 25 cents more an hour in cash. His regular rate then would be \$1.25 cash and 40 cents tip offset claim.

The FLSA requires the employer to pay only the regular rate of \$1 or \$4 more in cash for four hours of work in excess of 40 in a workweek. Under the HWHL he must pay overtime for the four hours computed as follows:

\$1.40 FLSA wage  
.25 additional under HWHL  
\$1.65 ÷ 2 x 4 = \$3.30 additional in cash

He must pay a total of \$8.30 (4 hrs. x \$1.25 + \$3.30) in cash instead of the \$4 permitted under FLSA for the four hours over 40. Actually, the employer would be better off not claiming any tip allowance since he must pay the HWHL minimum in cash in any event and not claiming a tip allowance would reduce his overtime rate. The HWHL thus in effect negates the FLSA provision allowing employers to claim tips as part of wages.

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It can be seen from the above examples that the FLSA amendments of 1966 created certain complex situations because of the dual coverage provided by section 94-2(k) of the Hawaii Wage and Hour Law. It appears that there may possibly be some unequal treatment of like groups of employees (or employers), as well as confusion, in the manner in which overtime is calculated under section 94-2(k). For a simple illustration, assume that a worker covered by FLSA is exempt from its overtime provisions. He is employed at a weekly salary of \$100 for a 48-hour week. He is also covered under HWHL and must be paid overtime after 40 hours, except that his regular rate under FLSA is used to determine his overtime pay. His regular rate of pay under FLSA is  $\$100 \div 48$  or \$2.08 per hour. His additional pay for 8 hours of overtime is \$8.32 ( $1/2 \times \$2.08 \times 8$ ). Now if this same worker had not been covered under FLSA his regular rate of pay under HWHL would be  $\$100 \div 40$  or \$2.50 per hour. His pay for 8 hours of overtime would be \$30 ( $1-1/2 \times \$2.50 \times 8$ ).

There is a need for a review of the exemptions and partial exemptions provided by the HWHL as well as the overtime calculation provision of section 94-2(k) in order to eliminate complex or confusing situations arising out of dual coverage. The task of complying with the wage and hour provisions by employers and of administration and enforcement by officials should be made easier than it is now in order to attain maximum compliance with the HWHL. Some consideration should also be given to revising the HWHL to make the transition from HWHL coverage to FLSA coverage for employers less subject to confusion, e.g., possible elimination of the \$550 monthly salary exemption under HWHL, and adoption of FLSA wording in HWHL provisions relating to specific exemptions where such may be made without adversely affecting present coverage.

The question as to whether tips, or a certain percentage of tips, should be allowed as a claim against the minimum wage should possibly be considered anew in view of the FLSA allowance for such claims. However, the State Department of Labor and Industrial Relations, in commenting upon the question of tips, has stated that:

Any move to include tips in minimum wage consideration would be regressive in view of the fact that the HWHL in the 25 years of its existence has, by specific reference, excluded from wages tips a worker receives. The exclusion of tips has not retarded economic growth - in fact, since 1942 to the present, statistics show that the types of businesses where tipping is practiced increased in number by almost 100 percent while the total employment more than quadrupled.

The inclusion of tips in minimum wage considerations will also work against the smaller "nonprestige" operator where tips received are considerably less than that of a larger "prestige" establishment. The net result is to impose a greater wage cost requirement on the smaller operator.

### **Chapter III**

## **MINIMUM WAGE AND MAXIMUM HOURS COVERAGE IN HAWAII**

### **Coverage in Hawaii Under the Fair Labor Standards Act**

The data and format for the tables in this section were extracted or derived from a 1967 report of the U. S. Department of Labor on Minimum Wage and Maximum Hour Standards under the Fair Labor Standards Act.<sup>1</sup> This report contained the most recent and complete set of statistical data readily available on the subject of employee and industry coverage in Hawaii.

Tables 1 and 2 are estimates based on employment data for 1966. All employees are included except executive, administrative and professional employees and academic administrative personnel and teachers in elementary and secondary schools. Included in these estimates are employees added to the coverage in 1967 and 1969.

Table 3 is based on establishment and employment data for 1966. Establishments added to coverage in 1967 and 1969 are included and federal agencies and institutions are excluded. The "Services" category includes public and private hospitals, nursing homes and like institutions, and primary and secondary schools and institutions of higher education added to coverage by the 1966 amendments to the FLSA.

Table 4 is based on employment data for 1966. All nongovernment employees are included except executive, administrative and professional employees and academic administrative personnel and teachers in elementary and secondary schools. Except for the 24,000 government employees added to coverage by the 1966 amendments, which are excluded in this table, employees added to coverage by the 1966 amendments include those who will be covered in 1967 and 1969.

Thus, based on establishment and employment data for 1966, and including those to be covered in 1967 and 1969, minimum wage coverage in Hawaii under the federal Fair Labor Standards Act, as of February 1, 1967, is estimated to include:

- (1) 13,000 employees in 300 agriculture, forestry and fishery establishments.
- (2) 16,000 employees in 1,200 construction firms.

Table 1

ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES  
IN HAWAII BROUGHT UNDER THE MINIMUM WAGE PROVISIONS  
OF THE FAIR LABOR STANDARDS ACT BY THE 1966 AMENDMENTS,  
BY TYPE OF ACTIVITY, AS OF FEBRUARY 1, 1967

(in thousands)

Total	Agri- culture	RETAIL-SERVICE					Miscel- laneous Services	Laundries	All Other Indus- tries
		All Retail- Service	Restaurants	Other Retail Trade	Hotels and Motels	Hospitals, Nursing Home and like Institutions			
68	13	24	6	6	5	6	1	2	29

Table 2

ESTIMATED NUMBER OF NONSUPERVISORY EMPLOYEES IN HAWAII SUBJECT  
TO THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT,  
BY INDUSTRY, AS OF FEBRUARY 1, 1967

(in thousands)

Total	Agri- culture, Forestry, Fisheries	Mining	Contract Construc- tion	Manufac- turing	Transpor- tation, Communi- cation, Utilities	Whole- sale Trade	Retail Trade	Finance, Insurance, Real Estate	Services	Govern- ment
150	13	*	16	21	16	9	24	8	19	24

\*Less than 500 employees.

Table 3

ESTIMATED NUMBER OF ESTABLISHMENTS IN HAWAII WITH  
NONSUPERVISORY EMPLOYEES SUBJECT TO THE MINIMUM WAGE PROVISIONS  
OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY, AS OF FEBRUARY 1, 1967

(in thousands)

Total	Agri- culture, Forestry, Fisheries	Mining	Contract Construc- tion	Manufac- turing	Transpor- tation, Communi- cation, Utilities	Whole- sale Trade	Retail Trade	Finance, Insurance, Real Estate	Services
6.1	0.3	*	1.2	0.4	0.4	1.0	0.8	0.5	1.5

\*Less than 50 establishments.

Table 4

STATUS OF NONSUPERVISORY EMPLOYEES UNDER THE MINIMUM WAGE  
PROVISIONS OF THE FAIR LABOR STANDARDS ACT AND UNDER HAWAII'S MINIMUM  
WAGE LAW, EXCLUDING GOVERNMENT EMPLOYEES, AS OF FEBRUARY 1, 1967

(in thousands)

Total Number of Nonsupervisory Employees	Employees Covered by the FLSA			Number of Nonsupervisory Employees Not Covered by FLSA	Number of Nonsupervisory Employees Covered by State Law Only	Number of Nonsupervisory Employees Not Covered by FLSA or State Law
	Total Number Covered	Number Covered Prior to 1966 Amendments	Number Covered by the 1966 Amendments			
162	126	82	44	36	23	13



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- (3) 21,000 employees in 400 manufacturing firms.
- (4) 16,000 employees in 400 transportation, communication and utility establishments.
- (5) 9,000 employees in 1,000 wholesale establishments.
- (6) 24,000 employees in 800 retail establishments.
- (7) 8,000 employees in 500 finance, real estate and insurance companies.
- (8) 19,000 employees in 1,500 service establishments.

Included also are less than 500 employees in less than 50 mining establishments and 24,000 of the more than 64,000 government employees in Hawaii.

The extension of coverage under the 1966 FLSA amendments to such activities as laundries, hotels, restaurants, farms, hospitals and nursing homes, schools and agriculture resulted in an 83 per cent increase in employee coverage in Hawaii, where hotel, restaurant, sugar and pineapple plantations, and government employment predominates. This is the highest percentage increase among the individual states, although not the highest increase in terms of absolute number of workers added to coverage.

### **Employee Coverage Under the Hawaii Wage and Hour Law**

The dual coverage provided a number of employment categories by section 94-2(k) of the Hawaii Wage and Hour Law makes it difficult to arrive at any precise estimation of the number of employees provided minimum wage coverage by the HWHL. Table 4, based on employment data for 1966, provides an estimate of 23,000 employees covered only by the HWHL by 1969. If to this amount there are added the 44,000 non-government employees newly covered by the 1966 minimum wage amendments and to whom dual coverage will apply because of the lower FLSA minimum wage rates during the escalation period, the total number of employees provided minimum wage protection by the HWHL may be estimated at 67,000. This does not take into account those employees covered by the FLSA minimum wage provisions prior to the 1966 amendments who are still excluded from the maximum hours provision since this is not reflected in the preceding tables on FLSA coverage.

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While there is no estimate of the number of employees in this group, it is probable that when both minimum wage and maximum hour protection coverage under HWWHL is considered, the total number of employees covered by HWWHL may be substantially larger than 67,000.

There are approximately 13,000 employees not covered under either the FLSA or the HWWHL. These employees mostly are those engaged in domestic service in private homes, those working on small farms or in coffee harvesting, fishermen, close relatives of employers, and others specifically exempt under both FLSA and HWWHL wage and hour coverage. Those who are self-employed are not included in this group.

### **The Extent of Wage-Hour Violations**

Investigations of FLSA violations during the fiscal year ending June 30, 1967, disclosed that 761 employees in Hawaii received \$156,860 less than they were entitled to under the national wage and hour law. Of this amount, \$137,865 (88 per cent) was involved in failure to pay overtime rates for work over the statutory maximum workweek and \$18,995 (13 per cent) was involved in minimum wage underpayments.<sup>2</sup>

Violations of the Hawaii Wage and Hour Law appear to be substantially higher than violations of the FLSA in proportion to the number of employees covered by the respective laws. Tables 5 and 6 contain data on HWWHL violations by county totals and by major employment categories, respectively, for the fiscal years 1963 to 1967. Both the number of employers and the number of employees involved in wage and hour violations have almost doubled since 1963 while the dollar amounts involved in minimum wage violations increased almost threefold. The dollar amounts involved in overtime violations declined substantially in 1964 and 1965 from 1963, the first full year in which section 94-2 (k) became effective, but has increased substantially in 1966 and 1967. In 1967 there were 243 employers and 2,023 employees involved in wage and hour violations totaling \$180,354. Of this amount, \$155,378 was for failure to pay overtime and \$24,976 was for failure to pay minimum wages. The number of employers and employees involved in wage and hour violations has substantially increased during the period covered in the tables. Whether this is due to more effective enforcement of the HWWHL or to actual increases in the number of violations annually cannot be determined positively. Overall estimates on the extent of compliance with the FLSA General Program indicate that actual investigations discover only half the violators. Using this as a basis, it may be estimated that the number of employees involved in wage and hour violations by employers annually, according to present

Table 5

## HAWAII WAGE AND HOUR LAW VIOLATIONS--TOTAL AND BY COUNTIES

	Total	Oahu	Hawaii	Maui	Kauai
<u>Fiscal Year 1963</u>					
Minimum Wage	\$ 8,436	\$ 7,969	\$ 284	--	\$ 183
Overtime	149,369	145,446	2,688	\$ 1,232	2
No. of Employers	147	131	8	2	6
No. of Employees (Statewide)	1,041	--	--	--	--
<u>Fiscal Year 1964</u>					
Minimum Wage	15,896	10,693	4,604	599	--
Overtime	87,069	69,287	15,687	1,318	777
No. of Employers	162	136	11	12	3
No. of Employees (Statewide)	1,169	--	--	--	--
<u>Fiscal Year 1965</u>					
Minimum Wage	20,991	16,962	3,616	217	196
Overtime	78,042	65,529	9,005	1,881	1,627
No. of Employers	182	160	11	7	4
No. of Employees (Statewide)	1,852	--	--	--	--
<u>Fiscal Year 1966</u>					
Minimum Wage	39,680	36,158	3,451	--	71
Overtime	160,174	152,162	7,604	373	35
No. of Employers	166	142	18	3	3
No. of Employees (Statewide)	1,596	--	--	--	--
<u>Fiscal Year 1967</u>					
Minimum Wage	24,976	20,523	2,011	2,190	252
Overtime	155,378	96,534	38,781	15,887	4,176
No. of Employers	243	208	9	20	6
No. of Employees (Statewide)	2,023	--	--	--	--

Source: State of Hawaii, Department of Labor and Industrial Relations, Enforcement Division, October, 1967.

Table 6

## HAWAII WAGE AND HOUR LAW VIOLATIONS BY MAJOR EMPLOYMENT CLASSIFICATIONS

	Fiscal Year 1963			Fiscal Year 1964			Fiscal Year 1965			Fiscal Year 1966			Fiscal Year 1967		
	No. of Em- ployers	Minimum Wage	Overtime	No. of Em- ployers	Minimum Wage	Overtime	No. of Em- ployers	Minimum Wage	Overtime	No. of Em- ployers	Minimum Wage	Overtime	No. of Em- ployers	Minimum Wage	Overtime
TOTAL	147	\$8,436	\$149,369	162	\$15,896	\$87,070	182	\$20,991	\$78,042	166	\$39,680	\$160,174	243	\$24,976	\$155,378
Agriculture, Forestry, Fisheries	1	--	\$ 29	1	\$ 2,848	\$ 32	3	\$ 2,519	\$ 1,200	2	--	\$ 3,704	3	--	\$ 413
Construction	23	\$ 8	14,963	24	23	16,334	38	654	10,734	15	\$ 56	7,338	15	--	6,370
Manufacturing	2	--	138	1	--	34	7	1,845	7,989	1	--	48	5	--	392
Transportation, Communica- tions, Utilities	8	1,593	42,845	7	689	18,202	10	454	9,802	8	15,736	26,236	3	--	5,530
Wholesale and Retail Trade	78	4,961	70,916	74	8,585	18,686	70	9,767	22,571	89	12,675	42,180	148	\$11,810	75,287
Finance, Insurance, Real Estate	5	27	3,243	7	--	743	1	11	1	8	57	5,748	5	4,355	4,842
Services	30	1,847	17,235	48	3,751	33,039	53	5,741	25,745	43	11,156	74,920	64	8,811	62,544

Source: State of Hawaii, Department of Labor and Industrial Relations, Enforcement Division, October, 1967.

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levels, will exceed 1,500 employees under FLSA and 4,000 employees under HWHL during the next few years. Approximately 15 per cent of the total dollar amounts involved will probably be for minimum wage violations while 85 per cent of the dollar amounts involved will be for maximum hours violations according to the average distribution of the dollar amounts involved in past wage and hour violations. Most of the violations may be expected to occur in the wholesale and retail trade category and the service category as indicated by the data in Table 6. A substantial increase in violations occurring in these categories over the next few years is also possible because of the recent extension of wage and hour coverage in these areas by the 1966 FLSA amendments which substantially increased the number of employees newly covered.

## Chapter IV

### ECONOMIC EFFECTS OF AN INCREASE IN THE MINIMUM WAGE

The material in this chapter dealing with the arguments on the economic effects of a minimum wage increase may appear to be an inadequate simplification of the controversy surrounding the minimum wage issue to the professional economist. However, it is not intended that a thorough and complete presentation of economic theories and analyses involved in the minimum wage issue be made here. The minimum wage issue appears to be a durable one and arguments over its economic impact seem to have equal durability. To adequately represent the theoretical arguments and empirical studies dealing with specific situations and locales which are advanced by both proponents and opponents of minimum wages to support their position would be to extend this chapter beyond the scope of the study. Those who are interested in a more extensive study of economic theories and empirical studies involved in the minimum wage issue may refer to some of the current materials on this subject which are listed in the bibliography attached at the end of this report.

The economic effects of a minimum wage increase will depend to a large degree on the magnitude of the change and on general economic conditions during a given period. The effects in a period of economic expansion or inflation will differ substantially from the effects in a period of depression. Substantial changes in prices or technology will also influence the effects considerably as will the degrees of freedom that business has to respond to a given increase, i.e., to change the technology of production; to change labor costs as a percentage of total cost; to increase prices; and to move or go out of business. There is general agreement that rising wages are not necessarily an added cost to the employer if the increases in wages can be offset by (1) an increase in productivity, (2) reduction of employment, (3) reduction in profit level, and (4) increased prices to the ultimate consumer.

In Hawaii, the increase in the FLSA minimum will eventually apply to approximately 78 per cent of the nonsupervisory employees in the private sector while the state minimum will apply to approximately a little over 14 per cent. Such effects as may be attributed to an increase in the minimum wage will be largely influenced by the increase in the FLSA minimum. What specific effects an increase in the state minimum will produce cannot be predicted with accuracy and confidence because of the many variables involved. What will be attempted is an analysis of the probable influence of an increase in the state minimum based upon available data and past experience, and

## ECONOMIC EFFECTS

also upon the applicability of theoretical arguments of proponents and opponents of minimum wages to the present economy of the State.

### Effect on Costs

Conventional economic theory predicts that an increase in minimum wages will result in one or more of the short-run changes: cost increases, reduced employment of labor, price increases, reduced output and a relative increase in other factors such as mechanization. Arguments on the effects of minimum wages tend to center around costs and employment and to a lesser degree on profits and price increases. The question of whether an increase in the State's minimum wage may be absorbed primarily by decreasing profits or increasing prices will be dealt with only briefly here (probably much to the consternation of those minimum wage advocates who insist that increases may be substantially absorbed through profit or price adjustments). Generally, there are few opportunities for absorbing increased labor costs by accepting reduced profits. One cannot give too much credence to the view that businessmen are both able and willing to accept a smaller return on investments in Hawaii than can be obtained elsewhere in view of the mobility of investment capital and alternative uses for replacement capital. There are also few opportunities to raise product prices except in a period of general inflation. In Hawaii where the cost of living is exceedingly high, substantial price increases will adversely affect the demand for products or services and the possibility that increased labor costs will be absorbed substantially by price rises is not likely.

Supporters of minimum wages argue that the major share of the cost, direct and indirect, will probably be absorbed by the employers, at least in the period immediately following an increase. This will be done primarily through increased productivity, i.e., the more efficient use of labor in a variety of ways. Although the ability of individual employers to effect increased productivity is likely to differ greatly and in some few cases may possibly result in the disemployment of some marginal workers, the percentage decrease in employment is not likely to be as great as the percentage increase in the minimum wage rates.

Opponents of minimum wages argue that a reduction in employment is almost always a necessary consequence of an increase in the minimum. They point out that many low wage businesses operate on a high cost, low profit basis and because of the nature of their operations have very limited access to mechanization and utilization of other

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labor saving methods to increase productivity. Any increase in minimum wages will require a reduction in labor costs. The marginal workers, those who receive low wages because of their limited productivity, are the ones who will have to be dropped. An increase in the minimum thus tends to work adversely against the very ones it is intended to help.

Another argument frequently heard for increasing the minimum is that this will increase the purchasing power of the lower paid workers who live at the poverty level. The wage increases that such workers get are not saved but are spent immediately for goods that are needed. The increased demand for these goods will lead to increased output of such goods and thereby generates an increase in employment by the amount of workers needed to increase output. It is obvious that this becomes a somewhat self-repeating process leading to an upward expansion of demand and output which will greatly increase activity and benefit both workers and employers. (However, there is no way of measuring the job-producing effects of increased purchasing power precisely.)

The opposition points to the deficiency in this argument by stating that such reasoning neglects the basic cost, price and output relationship. That is, if no reduction of labor occurs, an increase in selling price must be made. If demand is lowered as a result, then such prices must be reduced to the previous level. The cost of labor must then be reduced primarily by laying off the least productive workers and the marginal workers then become unemployed. This reduces total output by the amount such workers produced so that what results is an increase in income to some workers, loss of all income to those who lose their jobs, possible reallocation of demand preferences and reduced output of goods. Some people extend this argument further on the basis that if price increases are accepted, then the workers are no better off since wage gains will have been offset by price increases and no real increase in buying power occurs. However, economists tend to agree that inflation is one of the most negligible effects of an increase in the minimum wage. The reasons given being that (1) the increase is a one-time force, not a continuing one; (2) the output of marginal workers who might become unemployed is small in relation to their numbers, i.e., the one per cent of such workers who may lose their jobs contributes much less than one per cent of total output; and (3) the amount of price increase caused by an increase in the minimum will be relatively small as a whole.



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### **Estimated Increase in Direct Wage Bills of a \$1.60 Minimum**

Existing data on the distribution of employees by hourly wage rates do not permit a precise or close measure of the direct labor costs which would be attendant upon a given increase in the State's minimum wage. The wage surveys of various low wage industries in Hawaii which are available are quite dated and inapplicable for such purposes since the last series of surveys were conducted in 1962--two years prior to the latest increase to \$1.25 in the state minimum which was made in 1964.

The only data available upon which some general indications of the dollar cost impact of a minimum wage increase may be derived are contained in an unpublished report prepared by the State Department of Labor and Industrial Relations, Research and Statistics Office, on the estimated distribution of workers by hourly wage as of January, 1967. Tables 7 and 8 contain the estimates compiled by the Department as part of the report. There are certain limitations which must be considered in interpreting and using the data in the tables but as long as these limitations are recognized and accepted, no great offense is committed in attempting to extract as much as possible from the tables.

The limitations to be considered in the following examination of the data contained in the Department's tables are:

1. The total employment figure of 177,490 is 15,490 higher than the estimated employment total of 162,000 in Table 4 of Chapter III. The Department's tables possibly include a number of supervisory employees whereas Table 4 excludes all supervisory employees. If it is assumed that the difference is due to the inclusion of 15,490 supervisory employees and that such employees normally receive in excess of \$1.60 per hour (\$3,320 annually), then this difference is of no significance since our primary concern is with the figures for wages below \$1.60 per hour which would be unaffected.
2. While there may be a number of workers receiving less than \$1.25 in the "under \$1.29" column, the number of such workers cannot be determined. In order to provide an estimation of the annual increase in direct wage bills resulting from an increase in the minimum wage, it is necessary to assume that the range in this column is from the HWWL minimum of \$1.25 to \$1.29.

Table 7

ESTIMATED DISTRIBUTION OF WORKERS BY HOURLY WAGE  
AND INDUSTRY, STATE OF HAWAII, JANUARY, 1967\*

(Excludes government, self-employed,  
unpaid family and domestic workers)

Industry	Total	H o u r l y   W a g e				\$1.60 and Over
		Under \$1.29	\$1.30-1.39	\$1.40-1.49	\$1.50-1.59	
TOTAL	177,490	16,875	8,669	9,667	12,339	129,940
PER CENT DISTRIBUTION	100.0	9.5	4.9	5.4	7.0	73.2
Agriculture	12,650	1,002	571	424	428	10,225
Construction	17,200	--	--	--	--	17,200
Manufacturing	22,750	677	525	728	619	20,201
Transportation, Communication, Public Utilities	17,200	121	--	127	113	16,839
Trades:						
Wholesale	13,300	662	530	468	807	10,833
Retail	40,350	8,830	3,999	4,345	5,512	17,664
Finance, Insurance, Real Estate	13,450	438	78	539	933	11,462
Services	40,590	5,145	2,966	3,036	3,927	25,516

Source: State of Hawaii, Department of Labor and Industrial Relations,  
Research and Statistics Office, April, 1967.

\*LRB Note: Approximately 95 per cent of total workers employed full  
time according to Research and Statistics Office.

Table 8

ESTIMATED DISTRIBUTION OF WORKERS BY HOURLY WAGE  
AND COUNTY, STATE OF HAWAII, JANUARY, 1967  
(Excludes government, self-employed,  
unpaid family and domestic workers)

County	Total	H o u r l y   W a g e				
		Under \$1.29	\$1.30-1.39	\$1.40-1.49	\$1.50-1.59	\$1.60 and Over
TOTAL	177,490	16,875	8,669	9,667	12,339	129,940
PER CENT DISTRIBUTION	100.0	9.5	4.9	5.4	7.0	73.2
Honolulu	142,080	12,053	6,260	7,990	10,441	105,336
Per Cent Distribution	100.0	8.6	4.4	5.6	7.3	74.1
Hawaii	14,921	2,247	1,264	890	1,018	9,502
Per Cent Distribution	100.0	15.0	8.5	6.0	6.8	63.7
Maui	12,309	1,594	664	365	646	9,040
Per Cent Distribution	100.0	13.0	5.4	3.0	5.2	73.4
Kauai	8,180	981	481	422	234	6,062
Per Cent Distribution	100.0	12.0	5.9	5.1	2.9	74.1

Source: State of Hawaii, Department of Labor and Industrial Relations,  
Research and Statistics Office, April, 1967.

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3. The number of agricultural workers exempt from any minimum but included in the tables is not known. Estimates derived from the tables will thus be slightly inflated by the amount of such workers included. The alternative to exclude agricultural workers from any estimates would conversely understate such estimates.

The number of employees receiving less than \$1.60 per hour in January, 1967, amounts to 47,550 or 26.8 per cent of total employment according to the estimates provided in Tables 7 and 8. Their distribution by industry and by county is as follows:

<u>Industry</u>	<u>Number of Workers Under \$1.60</u>	<u>Per Cent of Industry Employment</u>	<u>Per Cent of Total Workers Receiving Less Than \$1.60</u>
Agriculture	2,425	19.2	5.1
Manufacturing	2,549	11.2	5.4
Transportation, Communication, Public Utilities	361	2.1	0.7
Wholesale Trade	2,467	18.5	5.2
Retail Trade	22,686	56.2	47.7
Finance, Insurance, Real Estate	1,988	14.8	4.2
Services	<u>15,074</u>	<u>37.1</u>	<u>31.7</u>
TOTAL	47,550	--	100.0

<u>County</u>	<u>Number of Workers Under \$1.60</u>	<u>Per Cent of County Employment</u>
Honolulu	36,744	25.9
Hawaii	5,419	26.3
Maui	3,269	26.6
Kauai	2,118	25.9

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The above distribution indicates that the impact of any increase in the minimum wage to \$1.60 will be greatest in the retail trade and service industries. It also indicates that on a percentage basis the impact upon the counties will be fairly uniform and in proportion to their total employment.

It is not possible to estimate the incremental annual increase in wage bills of a graduated minimum wage increase from Table 7 but it is possible to arrive at a rough estimation of the eventual annual increase in direct wage bills of an increase to a \$1.60 minimum in both state and federal coverage using the data in the tables as a base. Assuming that the lowest wage in the "under \$1.29" column is \$1.25, it is possible to calculate the increase in direct wage costs using the midpoint of the wage ranges in the columns as the average increase in hourly wages necessary to bring hourly wages up to \$1.60. This midpoint is then multiplied by the number of workers listed under each column and the result multiplied by 2,080 hours to arrive at the estimated annual direct wage increases necessary. The estimated annual increase in direct wage bills of a \$1.60 minimum derived by this method is presented by industry and by county in Tables 9 and 10.

The total annual increase in direct wage bills is estimated at \$12,141,000. The monthly average of total direct wage bills for the first quarter of 1967, derived from the Department of Labor's ES202 Report on Employment and Payroll, is \$76,722,080. Using this as the monthly average for the year, the total annual direct wage bill is estimated at \$920,664,960. Based on this, an overall increase in the minimum wage to \$1.60 will result in a 1.3 per cent increase in total direct wage bills in Hawaii. The FLSA amendments of 1966 will account for a large portion of the annual increase in wage bills when they become fully effective in 1971 since almost all laundries, construction enterprises, hospitals and nursing homes, and enterprises doing more than \$250,000 gross volume of business annually will be subject to the FLSA \$1.60 minimum. While it is not possible to determine precisely the amount of increase which may be attributed to an increase in the state minimum to \$1.60, a rough estimate of the probable percentage increase in annual wage bills may be derived if the assumptions based on the statements below may reasonably be made:

1. An estimated 23,000 workers are subject to the state minimum (Table 4, Chapter III). This is approximately 14 per cent of the total number of nonsupervisory workers in the private sector.

Table 9

ESTIMATED ANNUAL INCREASE IN DIRECT WAGE BILLS OF A  
\$1.60 MINIMUM BY INDUSTRY, STATE OF HAWAII  
(Excludes government, self-employed,  
unpaid family and domestic workers)

(Average Cost to Increase Wages to \$1.60)		Hourly Wage Distribution			
		(.175)	(.15)	(.10)	(.05)
Industry	Total	(\$1.25)-1.29	\$1.30-1.39	\$1.40-1.49	\$1.50-1.59
TOTAL WORKERS UNDER \$1.60	47,550	16,875	8,669	9,667	12,339
ESTIMATED INCREASE IN WAGE BILLS	\$12,141,220	\$6,142,500	\$2,704,728	\$2,010,736	\$1,283,256
Agriculture Workers	2,425	1,002	571	424	428
Estimated Increase in Wage Bills	\$ 675,584	\$ 364,728	\$ 178,152	\$ 88,192	\$ 44,512
Construction Workers	--	--	--	--	--
Estimated Increase in Wage Bills	--	--	--	--	--
Manufacturing Workers	2,549	677	525	728	619
Estimated Increase in Wage Bills	626,028	246,428	163,800	151,424	64,376
Transportation, Communication, Public Utilities Workers	361	121	--	127	113
Estimated Increase in Wage Bills	82,212	44,044	--	26,416	11,752
Trades:					
Wholesale Workers	2,467	662	530	468	807
Estimated Increase in Wage Bills	587,600	240,968	165,360	97,344	83,928
Retail Workers	22,686	8,830	3,999	4,345	5,512
Estimated Increase in Wage Bills	5,938,816	3,214,120	1,247,688	903,760	573,248
Finance, Insurance, Real Estate Workers	1,988	438	78	539	933
Estimated Increase in Wage Bills	392,912	159,432	24,336	112,112	97,032
Service Workers	15,074	5,145	2,966	3,036	3,927
Estimated Increase in Wage Bills	3,838,068	1,872,780	925,392	631,488	408,408

Table 10

ESTIMATED ANNUAL INCREASE IN DIRECT WAGE BILLS OF A  
\$1.60 MINIMUM BY COUNTY, STATE OF HAWAII

(Excludes government, self-employed,  
unpaid family and domestic workers)

(Average Cost to Increase Wages to \$1.60)		Hourly Wage Distribution			
County	Total	(.175) (\$1.25)-1.29	(.15) \$1.30-1.39	(.10) \$1.40-1.49	(.05) \$1.50-1.59
TOTAL WORKERS UNDER \$1.60	47,550	16,875	8,669	9,667	12,339
ESTIMATED INCREASE IN WAGE BILLS	\$12,141,220	\$6,142,500	\$2,704,728	\$2,010,736	\$1,283,256
Honolulu	36,744	12,053	6,260	7,990	10,441
Estimated Increase in Wage Bills	\$ 9,088,196	\$4,387,292	\$1,953,120	\$1,661,920	\$1,085,864
Hawaii	5,419	2,247	1,264	890	1,018
Estimated Increase in Wage Bills	1,503,268	817,908	394,368	185,120	105,872
Maui	3,269	1,594	664	365	646
Estimated Increase in Wage Bills	930,488	580,216	207,168	75,920	67,184
Kauai	2,118	981	481	422	234
Estimated Increase in Wage Bills	619,268	357,084	150,072	87,776	24,336

## THE HAWAII WAGE AND HOUR LAW

2. According to the latest U. S. Census Bureau estimates on County Business Patterns,<sup>1</sup> 20,955 workers out of a total of 151,633 in the State were employed in establishments employing 7 or less workers in 1965. This is also approximately 14 per cent of the total number of workers in the private sector. This percentage relationship will probably be true also for 1966.

Assume that in general (1) most establishments with 7 or less employees will probably have a gross volume of business of less than \$250,000; (2) such small establishments will mostly be exempt from the FLSA minimum and will thus be subject to the state minimum; (3) such establishments normally do not pay high wages and are inclined to be represented in the lower wage brackets below \$1.60; and (4) the workers employed in such establishments are proportionately distributed within the hourly wage ranges below \$1.60 in Table 9.

Given the above, this would mean that 23,000 of the 47,500 workers below \$1.60 are covered by HWHL. It then becomes possible to provide a rough estimate that approximately \$5,827,700 or 48 per cent ( $23,000 \div 47,500$ ) of the total annual increase in direct wage bills of a \$1.60 minimum may be attributed to the increase in the state minimum.

The above is of necessity based on a number of qualifications and assumptions which may not be entirely acceptable to the reader. A more precise or close measure of the annual increase in direct wages will require the conduct of extensive surveys of typically high cost, low profit and low wage industries and small businesses. The indirect wage increases to restore differentials for wages above the minimum, for fringe benefits and for increases in overtime costs which may be expected to accompany an increase in the minimum will add an indeterminate amount to the annual increase in wage bills. No attempt is made to provide an overall estimate for such indirect wage effects as any estimate will tend to be highly subjective. One reason is that it is impossible to predict what actions will be taken by an employer to offset the cost of an increase in the minimum. Another is that it is often asserted that an increase in the minimum will reduce the wide differential between the lowest and highest paid worker. The opposing view holds that an increase in the minimum will initially narrow or eliminate some of the pre-existing wage differentials, but this does not change the underlying realities that produced and maintained these differentials and that they can be counted on to reassert themselves to induce an upward adjustment of wage rates above levels not directly affected by the increase. It is possible to measure the short-term effects on differentials but practically



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impossible to measure the long-term effects because of the numerous changes occurring in various factors over the long run and the difficulty in isolating the effects of these factors. The effect of an increase in the minimum on wage differentials is, like many other issues in the minimum wage controversy, a subject of continuing debate and empirical studies of the effect on wage differentials have not been fully accepted by disputing parties as conclusive because of these difficulties.

### **Effect on Employment**

A traditional argument against increasing minimum wages is that this reduces employment in the industries affected. This is based on the assumption that a worker receives wages equal to the value of his productivity, or output, and that therefore workers with low productivities are the ones paid low wages. Increases cause unemployment by raising wages of low paid workers above the value of their output. An increase does not raise the wages of such marginal workers but causes such workers to become unemployed since they cannot be paid more than their economic worth to the employer. Thus, the very workers the minimum is supposed to help--the low paid workers--are the ones who become unemployed.

Advocates of minimum wages maintain that it results in higher wages for low paid workers and that employers will adjust to the increased wage bill primarily by improving productivity rather than by laying off workers. They hold that the contention that increases in the minimum increases unemployment is applicable only in terms of what would be the certain effects of an unreasonable and irresponsible raising of the statutory minimum. They point out that the analyses of past minimum wage increases under the Fair Labor Standards Act seem to establish that if such increases are modest and made during a period of rising or high business activity, no overall decline in employment occurs.

There appears to be general agreement that the earnings of certain low wage employees (those who do not lose their jobs according to opponents of minimum wages) can be increased through minimum wage increases. Most of the current arguments revolve around the question of costs involved to the employer in raising this minimum (in terms of higher wages to workers above and below the minimum) and decreases in employment which opponents claim that an increase may cause.

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In order to explore the employment effect of past increases in minimum wages in Hawaii, the employment data presented in Tables 11 to 14 for the period 1958-1966 were obtained from the reports on "Labor Force Estimates" issued by the Department of Labor and Industrial Relations. The employment data in the tables were then compared with the following increases in minimum wages which were made since 1958:

HAWAII WAGE AND HOUR LAW			FAIR LABOR STANDARDS ACT		
<u>Date</u>	<u>Minimum</u>	<u>Per Cent Increase</u>	<u>Date</u>	<u>Minimum</u>	<u>Per Cent Increase</u>
July 1, 1958	\$1.00	-	March 1, 1956	\$1.00	-
July 1, 1962	1.15	15	Sept. 3, 1961	1.15	15
July 1, 1964	1.25	8.6	Sept. 3, 1963	1.25	8.6
			Feb. 1, 1967*	1.40	12
			Feb. 1, 1968*	1.60	14

(\*old coverage only)

Table 11

## MONTHLY AVERAGE OF CIVILIAN LABOR FORCE IN HAWAII BY COUNTY: 1958 TO 1966

<u>Year</u>	<u>State Total</u>	<u>City-County of Honolulu</u>	<u>Hawaii County</u>	<u>Kauai County</u>	<u>Maui County</u>
1958	211,540	161,770	22,000	11,580	16,190
1959	222,980	172,800	22,190	11,570	16,420
1960	235,130	184,660	22,270	11,420	16,780
1961	242,850	192,060	22,180	11,480	17,130
1962	246,180	195,260	22,240	11,590	17,090
1963	250,890	199,140	22,400	11,880	17,470
1964	257,630	205,080	22,840	11,770	17,940
1965	269,020	214,610	24,090	11,750	18,580
1966	283,270	227,190	24,810	12,100	19,170

Table 12

MONTHLY AVERAGE OF CIVILIAN EMPLOYMENT  
IN HAWAII BY COUNTY: 1958 TO 1966

Year	State Total	City-County of Honolulu	Hawaii County	Kauai County	Maui County
1958	201,360	156,170	20,040	10,280	14,870
1959	216,140	167,540	21,590	11,180	15,830
1960	228,050	179,350	21,520	10,990	16,190
1961	232,910	184,320	21,300	10,980	16,310
1962	234,420	185,980	21,330	11,020	16,090
1963	238,630	189,640	21,310	11,250	16,440
1964	247,560	197,360	21,820	11,260	17,120
1965	259,680	207,450	23,100	11,260	17,870
1966	274,120	220,210	23,840	11,630	18,440

Table 13

MONTHLY AVERAGE OF CIVILIAN EMPLOYMENT IN HAWAII  
FOR SELECTED INDUSTRIES: 1958 TO 1966

Year	Agri- culture	Construc- tion	Manu- facturing	Transpor- tation	Trade	Services	Finance
1958	18,010	12,660	22,590	12,960	36,640	25,640	7,360
1959	19,880	15,080	24,900	13,380	39,810	27,100	8,090
1960	19,190	17,600	25,770	14,780	42,720	29,310	9,240
1961	18,550	17,170	25,730	14,850	44,000	31,470	10,160
1962	17,760	15,110	25,020	15,120	45,320	32,700	10,840
1963	17,010	15,050	25,030	15,370	46,040	34,210	11,040
1964	17,080	16,270	25,240	15,630	47,810	36,370	12,090
1965	16,794	17,920	24,520	16,380	50,650	38,850	13,280
1966	16,820	19,300	24,600	17,370	54,210	41,580	13,770
1966 Per Cent of Total Employment	6.1	7.0	8.9	6.3	19.7	15.2	5.0

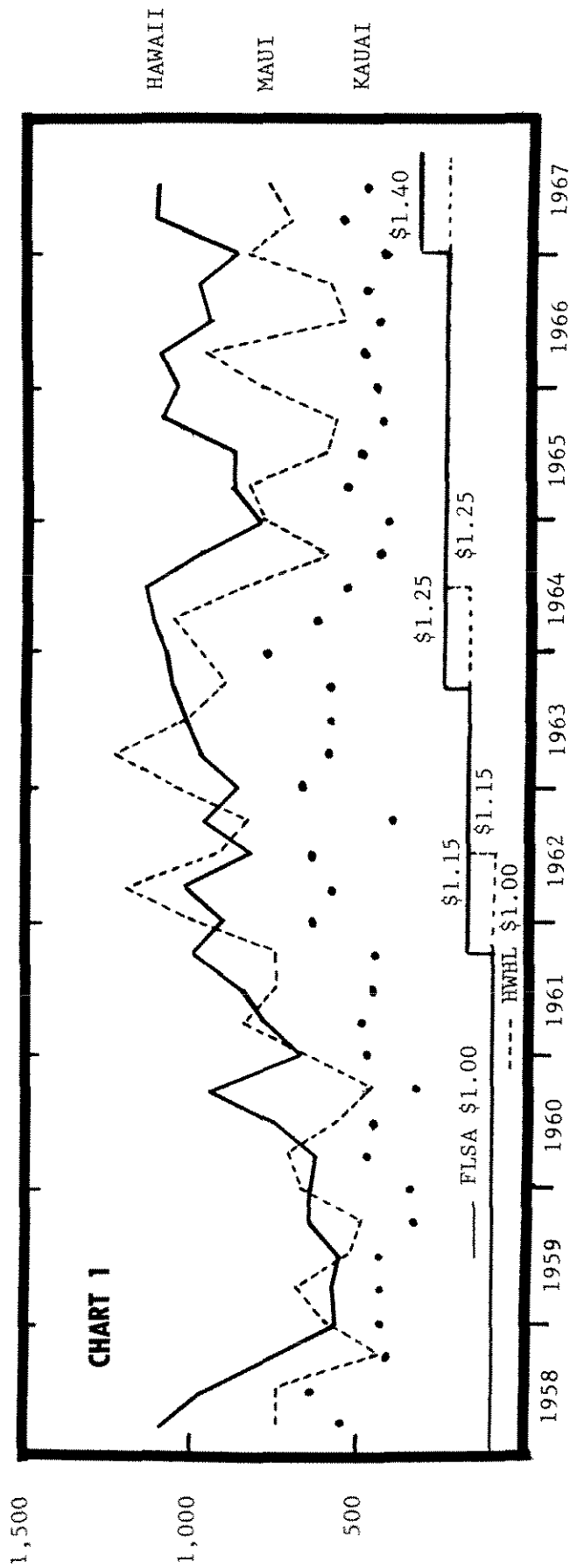
Table 14

MONTHLY AVERAGE OF RATE OF UNEMPLOYMENT  
IN HAWAII BY COUNTY: 1958 TO 1966

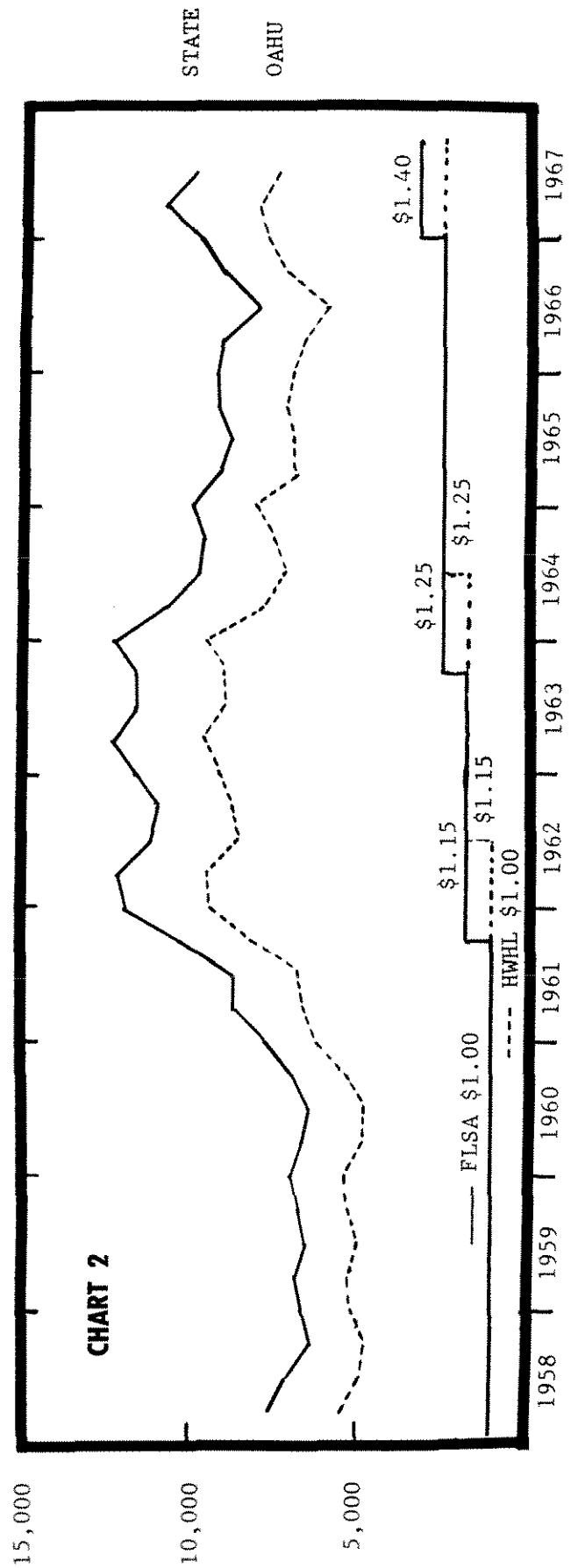
Year	State Total	City-County of Honolulu	Hawaii County	Kauai County	Mauui County
1958	3.4	3.2	3.9	4.4	3.9
1959	3.1	3.0	2.7	3.4	3.6
1960	3.0	2.9	3.4	3.8	3.5
1961	4.1	4.0	4.0	4.4	4.8
1962	4.7	4.7	4.1	4.9	5.8
1963	4.8	4.7	4.6	5.3	5.9
1964	3.9	3.8	4.5	4.4	4.6
1965	3.5	3.3	4.1	4.1	3.8
1966	3.2	3.0	3.9	3.9	3.8

The data in Tables 11, 12 and 13 show that since 1958 total employment has increased along with the increase in the total labor force and, except for a slowing in the pace of growth during the 1961-63 period, the increases in both have been rapid and substantial. The progressive decline in agriculture in Table 13 should not be attributed to minimum wage effects as agriculture in general has been experiencing declines in employment and increases in mechanization over the last several decades. The increase in unemployment rates in Table 14 during the period 1961-63, accompanying a period of increasing employment, is attributed in part to mechanization and to a substantial increase of young people graduating from school and entering the labor market.

To obtain a better picture of the employment effects of past minimum wage increases in Hawaii, Charts 1 and 2 comparing the number of unemployed persons in Hawaii with past increases in the minimums were prepared for the period January, 1958 to July, 1967. The charts do not reflect any correlation between increases in unemployment and past minimum wage increases in Hawaii. This does not prove that past increases in the minimum had no unemployment effects, for there is no way of proving that unemployment would have been less or employment higher in the absence of the minimum wages. This, however, indicates that on an overall basis no evident adverse employment



**UNEMPLOYMENT LEVELS COMPARED WITH INCREASES IN THE MINIMUM WAGE  
JANUARY, 1958 TO JULY 1, 1967**



## THE HAWAII WAGE AND HOUR LAW

effects have been experienced in Hawaii from past increases.

Overall unemployment figures throughout the nation, including Hawaii, indicate that unemployment tends to be three or four times as high among the youngest people of working age. Opponents of minimum wages often use statistics to show that unemployment is very high among young people, the elderly and women. These are the ones who, because of age or lack of any special skill, are said to be the marginal workers who become unemployed upon an increase in the minimum wage. The lack of data on unemployment rates for specific age groups over the past years precluded a comparison of such rates with increases in the minimum wage in Hawaii. However, this does not seem to be a significant deficiency in view of the arguments questioning the relevancy of this claim. Such arguments state that (1) obviously when the rate of unemployment is too high (from other causes), the workers in this group are disemployed first since they are relatively more vulnerable; and (2) the unemployment of teen-agers is not an incidence of the minimum since low wages are not necessarily a function of age but of industry, area, and type of employment.

### **Effect on the Economy of the State**

Another factor to consider in the issue of minimum wage increases which may be most important for the future of the economic development of the State is that some businesses which might otherwise have been established will not start operations in the State. An argument against minimum wages holds that an increase in local labor cost is obviously a distinct repellent to capital investment and that while it can reduce local wage differentials, it is equally obvious that it must also bring the greatest increase in labor costs just where the enlargement of capital supply is most clearly needed. Thus, by discouraging the relative increase of capital supply, it will mean a relative decrease in local demands for labor.

This argument, however, assumes that labor cost is the predominant factor influencing the investment of capital in an area and ignores the relative importance of other factors, and the relation of labor cost to such other factors, which may also affect the supply of capital or the propensity of business to invest in an area. The history of the economic development of the State during periods when the state and federal minimums were the same does not indicate any apparent adverse effects upon the supply of capital. The growth in local service and trade industries which were previously mostly exempt from the national minimum, and which were either exempt or subject to lower state minimums in 39 other states, has been substantial. There

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is no way of proving how much greater the supply of capital may have been in the absence of a minimum wage, but there is also no evidence that the state minimum has adversely affected the supply of capital.

Generally, only a small percentage of workers is affected by a gradual increase in the minimum. If the increase does not raise the average rates for unskilled jobs above prevailing or average rates existing for such jobs, then such adverse effects upon the economy as may occur, if any, would be minimal. The average hourly rates for relatively unskilled jobs in the State in 1966, according to data collected by the Hawaii Employers Council,<sup>2</sup> are presented below:

<u>Occupation</u>	<u>Average Hourly Wage</u>
Watchman (night)	\$1.952
Janitor	1.810
Groundskeeper	1.911
Laborer	2.002
High Lift Operator	2.378
Stock Selector Clerk	2.217
Warehouseman	2.379
Kitchen Helper	1.668

The above should perhaps be compared also with another factor bearing on the economic development of the State. This is the relative demand for labor at prevailing wages. Estimates of present and projected employment and of the demand for typically low skill labor in Hawaii which appear in an occupational survey, Honolulu's Manpower Outlook, 1965-1970,<sup>3</sup> are presented below:

<u>Occupation</u>	<u>1967</u>		<u>1970</u>	
	<u>Employment</u>	<u>Shortages</u>	<u>Employment</u>	<u>Shortages</u>
General Office Clerk	5,940	1,550	6,380	2,100
Sales Clerk, Retail	10,320	4,210	11,890	7,870
Stock Clerk	3,800	1,210	4,170	2,640
Busboy	1,250	660	1,260	1,570
Chambermaid	1,550	400	1,720	650
Guard, Watchman and Security Police	1,230	270	1,430	700
Kitchen Helper	2,260	770	2,640	1,960
Waiter and Waitress	6,340	2,420	7,270	5,200
Routeman	1,320	260	3,060	1,880
Truck Driver	4,640	1,280	4,950	2,430

## THE HAWAII WAGE AND HOUR LAW

If the shortages projected for the above low skill workers prove to be fairly accurate, then it may be expected that the wage rates for such workers will normally experience a competitive market increase from their present levels. Since the present wage rates of unskilled labor are substantially higher than the present \$1.25 state minimum, it would appear that the effects of an increase which would raise the minimum to a level that is still somewhat below the present average wage rates for unskilled work should be minimal.

### **Social Implications of a Minimum Wage**

What has been presented up to this point has been primarily in terms of the economic system. Many of the arguments advanced today for an increase in the minimum stress the need for an increase as a means to improve the lot of the working poor--those relegated to a life of poverty or less than a decent standard of living. These arguments emphasize the need to utilize the minimum wage as one of the important weapons against the war on poverty to insure against anyone in this country remaining poor, except by his own default.

Contrary to this is the argument that the minimum wage shifts responsibility for a minimum living standard from society at large to the individual employer. That by doing so it gives rise to a conflict wherein it is held that the employer should pay a "social minimum wage" regardless of its relationship to the competitively determined wage rate, although the competitive wage rate is set by forces of supply and demand beyond the employer's control. This argument holds in essence that it is not possible to legislate away the law of supply and demand and that passing a law cannot make a person's labor worth a given amount of dollars if his productivity does not warrant that amount.

Arguments for increasing the minimum wage to alleviate the problem of poverty among the working poor invariably present comparisons of the income ceilings related to poverty and a "modest but adequate" standard of living which varies according to family size and other factors. The example below uses the Office of Economic Opportunity estimates for poverty income ceilings and the U. S. Department of Labor estimates for a "modest but adequate" standard of living for a family of four and for a single individual, based on annual incomes in 1964 dollars. The estimates would be higher in terms of 1967 dollars and, for Hawaii, would be higher by the amount of increase attributed to the higher cost of living locally. (A recent U. S. Department of Labor report on "A New City Worker's Family Budget"<sup>4</sup>



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estimated that a family of four in Hawaii needed \$11,190 a year in 1966 dollars to enjoy a "moderate but adequate" living standard. The national average is estimated at \$9,200 a year for a "moderate but adequate" budget.)

	<u>Family of Four</u>	<u>Single Person</u>
Poverty Income	\$3,130 and below	\$1,540 and below
"Modest but Adequate" Income	3,130-6,000	1,540-3,000
	<u>One Wage</u>	<u>One and Three-</u>
	<u>Earner Family</u>	<u>Quarter Wage</u>
Income based on 2,080 hours of work annually at hourly rate of:		<u>Earner Family</u>
\$1.25	\$2,600	\$4,550
1.40	2,900	4,775
1.60	3,300	5,775

Arguments for an increase in the minimum which focus primarily on social rather than economic considerations, i.e., humanitarian appeal for social justice for the working poor, include the following:

1. Many of the working poor are competent workers who are employed in jobs at wage levels and conditions which consign them to poverty. Every full-time worker should at least be paid a wage that will enable him to earn not less than the income required to raise a family above the poverty level.
2. There is a great and increasing disparity between the normal wage of organized workers and the wage of those sections of the working labor force disadvantaged by a lack of marketing or bargaining power. This tends to indicate the exploitation of unorganized labor through low wages. If business is not going to do its share in trying to give a person a living minimum wage, then it becomes necessary for legislation to provide special protection for those who are still employed at substandard wages.
3. Some causes of poverty are unrelated, or at least not directly related to employment, but much poverty stems from low wages paid to the working poor. It is inconsistent for government to state that \$3,130 constitutes a poverty income

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ceiling (often held as being a low estimate) and then pass enabling legislation which permits a wage to be paid which automatically puts the worker and his family in the poverty base.

4. Most employers are responsible businessmen who pay decent wages but legislation is necessary to protect workers employed by irresponsible employers who keep in profits what they should pay in higher wages. An argument along this vein which is applied to the present growth in the economy from increased productivity states that a disproportionate share of profits is being used for excessive and unjustified investment in plant and equipment. This only adds to more than adequate existing production capabilities and does nothing to relieve the present inadequate rate of expansion of consumption which is needed for maximum employment and economic growth. Another argument states that a disproportionate share of profits is distributed as dividends. This adds to the increased demand and wasteful use of production facilities for "luxury" or "nonessential" goods although what is needed is the production of essential goods which would only occur if the wages of low earners were increased to enable them to purchase such goods.

Rebuttal of these contentions usually involves the following:

1. Injecting the problem of low or "poverty" family income into the minimum wage issue only tends to confuse the issue. A low wage rate may, but doesn't necessarily imply, a low family income because incomes are mostly a question of families and not individuals while the wage rate is a question of the individual. Frequently, low paying jobs are occupied by women and youngsters who are the extra earners in the family. They are not the primary earners but are only supplementing the family income. A low wage rate does not necessarily mean a low income for the family as a whole. The typical family of four averages about one and three-fourths wage earners so it is not really proper to compare the poverty income ceiling of \$3,130 for a family of four with the annual income of one person especially when that person is apt to be the extra earner. The problem of wage rates involves how to establish conditions under which workers are worth more in the labor market while the problem of people with low income involves providing them with more money or opportunities to develop and use their abilities and skills--

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or both. Either problem is not likely to be alleviated by increasing the minimum wage since it results in the unemployment of the lower paid, marginal worker and makes it harder for such people to get jobs to improve their income status.

2. The "exploited" worker is said to be the one who is paid less than his worth. However, it is important to understand that the so-called "exploited" worker is the marginal or low wage worker who is not productive enough to be worth more and is paid less on this basis not because of "exploitation". It is not a question of how many low paid workers get less than their employers judge them to be worth but rather how many workers would employers regard as worth considerably less than the legal minimum. These are the typical marginal employees who would become unemployed as a result of an increase in the minimum.
3. There are two ways of interpreting a minimum wage law:
  - a. An employer must pay not less than a specified hourly wage to any worker covered by the law.
  - b. A person is not permitted to work in any job covered by the law for less than the hourly wage specified.

Those who favor minimum wages appear to think that it is better for a worker to be unemployed at, say, \$1.60 an hour than employed at \$1.25 an hour. Those who express so much concern about the growing unemployment of the unskilled marginal worker, the teen-ager and the elderly on one hand attempt, on the other hand, to provide them employment by making their labor excessively troublesome and expensive. A minimum wage does not alleviate the problems of the family with a "poverty" income but makes it harder for the wage earner or workers in such a family to retain their job or obtain work to lift themselves out of the poverty income level.

4. The workings of our economy tend to keep wage rates in line with productivity so that a proportionate share of profits accrue to wage earners. There may be an occasional lag between wage increases and productivity temporarily, but treatment of such should be the operation of competitive forces, not an increase in the minimum wage. Not all businesses are profitable and the minimum wage may affect marginal establishments as well as those above the margin.

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Minimum wage legislation cannot make a business operate more efficiently or produce more goods with the same input mix, or change the nature of goods produced, but it can make it more attractive to substitute capital for labor by mechanizing. It is apparent that the absorption of the impact of a minimum wage increase through reduction of profits is impossible on any great scale and that the most obvious response to an increase in the price of labor is to reduce labor. Such labor will tend to be the marginal worker with the lowest productivity.

### **Conclusions Regarding Minimum Wage Arguments**

All of the arguments advanced by opponents of the minimum wage appear to encompass economic theory relating to the interdependency of cost, price and output in a free or "perfect" market. Marginal analysis is used to measure or predict the effects of imposing or increasing minimum wages, with much of the emphasis of such analyses being concentrated on the marginal productivity of a unit of labor or the law of diminishing returns as it affects the utilization and employment of labor. Some economists stress that an increase in a minimum wage leads to the disemployment of marginal workers whose productivity is lower than the new minimum. Other economists emphasize that this point would have its greatest practical importance in a "perfect market" which our economy obviously is not.

The arguments of proponents of the minimum wage tend to be strongly directed to the presentation of those having a strong humanitarian appeal, i.e., increasing low or substandard wages of unorganized workers, protecting "exploited" workers, helping the working poor to rise above poverty income levels, and increasing the purchasing power of the working poor to create more employment and an increase in business activity. As with the arguments of minimum wage opponents, the claims of proponents in regard to the economic effects or benefits attributed to an increase in the minimum cannot be "proven" and therefore cannot be said to be beyond refutation in the absence of absolute empirical proof.

Opponents of the minimum wage generally do not rely heavily upon the findings of case studies of past minimum wage increases by the FLSA to any great extent since the studies show a high degree of overall adjustment to the new minimums established. A certain amount of debate is involved in the interpretation of the FLSA studies, however, and a number of the arguments on the minimum wage issue also involve

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the interpretation of empirical studies conducted by economists in specific situations. But the difficulties of isolating factors, other than the minimum wage, which influence changes in business activity subject all such studies made to date to endless debate.

There is no doubt that an increase in the minimum has the potential of producing possible adverse effects on specific workers or employers. In certain cases, some workers may lose their jobs and some marginal businesses may encounter real difficulties because of an increase. In the final analysis, the question is a relative one of determining the objective desired and of weighing beneficial and adverse effects in the means taken to achieve the objective.

The analysis of the applicability of various arguments pertaining to an increase in the state minimum, based on past experience with such increases and an evaluation of the past and present status of business activity in the State, indicates that the effects of an increase in the state minimum on the overall economy may tend to be minimal. However, a drastic change in the business climate may reverse this tendency and such a possibility should be deliberated in any consideration of an increase in the state minimum.

## FOOTNOTES

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