

BOARD OF PRIVATE DETECTIVES & GUARDS

“ACTING IN A GUARD CAPACITY” ACT 208 (SLH 2010)

May 10, 2013

At its May 9, 2013 meeting, the Board of Private Detectives and Guards approved the following definitions of “acting in a guard capacity”, “safekeeping”, and “physical presence” to implement HRS section 463-10.5 (aka Act 208 (SLH 2010)).

In general, if an employee falls within the following definitions and none of the exemptions below are applicable, that employee is subject to and must comply with the training and other requirements of HRS section 463-10.5.

1. “Act in a guard capacity” or “acting in a guard capacity” means the performance of safekeeping, observation, and reporting functions by a uniformed or nonuniformed employee for the person’s employer; provided that:
 - (1) An employee who performs safekeeping, observation, and reporting functions only incidentally to the employee’s primary job functions and responsibilities shall not be considered to be acting in a guard capacity; and
 - (2) The following are examples of such excluded employees:
 - (A) A person stationed at the entrance or exit of a retail or commercial establishment whose function is to verify a customer’s membership with and the accuracy of purchases from the retail or commercial establishment;
 - (B) A parking lot attendant whose responsibility is limited to controlling the ingress and egress of the parking lot, facility, or structure;
 - (C) A person whose responsibility is limited to performing water safety and rescue services at a swimming pool, beach, or other body of water;
 - (D) A person whose responsibility is limited to taking tickets from customers at the entrance or exit of an entertainment, recreational, commercial, or sporting event; and
 - (E) A residential or commercial property manager who oversees the property owner’s agreement with a licensed guard agency, or oversees the property owner’s guard employees, for the provision of guard services to the subject property.
2. “Safekeeping” means protecting property, assets, or persons through a physical presence to detect and deter illegal actions, inappropriate actions, violations of the property’s or premise’s rules or code of conduct, or unsafe conditions; including but not limited to theft, damage, harm, or risk of injury to such persons or property, as applicable.
3. “Physical presence” means maintaining a post (e.g., a stationary guard, bouncer, etc.) or patrolling the premises (e.g., physically responding to alarms or incidents on the property, etc.).