
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. The legislature finds that individuals who
2 provide attendant care, and day care services authorized by the
3 department of human services under the Social Security Act, as
4 amended, should be excluded from "employment" under chapters
5 383, 386, 392, and 393, Hawaii Revised Statutes. The
6 legislature finds that if these individuals are not excluded,
7 then the social service payments must be upwardly adjusted to
8 include the cost of employee benefits for these individuals.

9 The purpose of this Act is to clarify the existing
10 exclusions under chapters 386, 392, and 393, and to provide a
11 new exclusion under chapter 383, Hawaii Revised Statutes.

12 SECTION 2. Section 383-1, Hawaii Revised Statutes, is
13 amended by adding a new definition to be appropriately inserted
14 and to read as follows:

15 "Recipient of social service payments" includes:

16 (1) A person who is an eligible recipient of social
17 services such as attendant care and day care services;



1 (2) A corporation or private agency that contracts
2 directly with the department of human services to
3 provide attendant care and day care authorized under
4 the Social Security Act, as amended; and

5 (3) An independently licensed or certified adult foster
6 home or care home provider who provides attendant care
7 and day care authorized under the Social Security Act,
8 as amended, to an eligible recipient of social
9 services in the provider's place of residence."

10 SECTION 3. Section 386-1, Hawaii Revised Statutes, is
11 amended by adding a new definition to be appropriately inserted
12 and to read as follows:

13 "Recipient of social service payments" includes:

14 (1) A person who is an eligible recipient of social
15 services such as attendant care and day care services;

16 (2) A corporation or private agency that contracts
17 directly with the department of human services to
18 provide attendant care and day care authorized under
19 the Social Security Act, as amended; and

20 (3) An independently licensed or certified adult foster
21 home or care home provider who provides attendant care
22 and day care authorized under the Social Security Act,



1 as amended, to an eligible recipient of social
2 services in the provider's place of residence."

3 SECTION 4. Section 392-3, Hawaii Revised Statutes, is
4 amended by adding a new definition to be appropriately inserted
5 and to read as follows:

6 "Recipient of social service payments" includes:

7 (1) A person who is an eligible recipient of social
8 services such as attendant care and day care services;

9 (2) A corporation or private agency that contracts
10 directly with the department of human services to
11 provide attendant care and day care authorized under
12 the Social Security Act, as amended; and

13 (3) An independently licensed or certified adult foster
14 home or care home provider who provides attendant care
15 and day care authorized under the Social Security Act,
16 as amended, to an eligible recipient of social
17 services in the provider's place of residence."

18 SECTION 5. Section 383-7, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§383-7 Excluded service.** (a) "Employment" shall not
21 include [~~the following service~~]:



1 (1) Agricultural labor as defined in section 383-9 if it
2 is performed by an individual who is employed by an
3 employing unit:

4 (A) [~~Which,~~] That, during each calendar quarter in
5 both the current and the preceding calendar
6 years, paid less than \$20,000 in cash
7 remuneration to individuals employed in
8 agricultural labor; and

9 (B) [~~Which~~] That had, in each of the current and the
10 preceding calendar years:

11 (i) No more than nineteen calendar weeks,
12 whether consecutive or not, in which
13 agricultural labor was performed by its
14 employees; or

15 (ii) No more than nine individuals in its employ
16 performing agricultural labor in any one
17 calendar week, whether or not the same
18 individuals performed the labor in each
19 week;

20 (2) Domestic service in a private home, local college
21 club, or local chapter of a college fraternity or



1 sorority as set forth in section 3306(c)(2) of the
2 Internal Revenue Code of 1986, as amended;

3 (3) Service not in the course of the employing unit's
4 trade or business performed in any calendar quarter by
5 an individual, unless the cash remuneration paid for
6 the service is \$50 or more and the service is
7 performed by an individual who is regularly employed
8 by the employing unit to perform the service. For the
9 purposes of this paragraph, an individual shall be
10 deemed to be regularly employed to perform service not
11 in the course of an employing unit's trade or business
12 during a calendar quarter [~~only~~] if:

13 (A) On each of some twenty-four days during the
14 quarter the individual performs the service for
15 some portion of the day; or

16 (B) The individual was regularly employed as
17 determined under subparagraph (A) by the
18 employing unit in the performance of the service
19 during the preceding calendar quarter;

20 (4) (A) Service performed on or in connection with a
21 vessel not an American vessel, if the individual
22 performing the service is employed on and in



1 connection with the vessel when outside the
2 United States;

3 (B) Service performed by an individual in (or as an
4 officer or member of the crew of a vessel while
5 it is engaged in) the catching, taking,
6 harvesting, cultivating, or farming of any kind
7 of fish, shellfish, crustacea, sponges, seaweeds,
8 or other aquatic forms of animal and vegetable
9 life, including service performed as an ordinary
10 incident thereto, except:

11 (i) The service performed in connection with a
12 vessel of more than ten net tons (determined
13 in the manner provided for determining the
14 register tonnage of merchant vessels under
15 the laws of the United States);

16 (ii) The service performed in connection with a
17 vessel of ten net tons or less (determined
18 in the manner provided for determining the
19 register tonnage of merchant vessels under
20 the laws of the United States) by an
21 individual who is employed by an employing
22 unit which had in its employ one or more



1 individuals performing the service for some
2 portion of a day in each of twenty calendar
3 weeks all occurring, whether consecutive or
4 not, in either the current or the preceding
5 calendar year; and

6 (iii) Service performed in connection with the
7 catching or taking of salmon or halibut for
8 commercial purposes;

9 (5) Service performed by an individual in the employ of
10 the individual's son, daughter, or spouse, and service
11 performed by a child under the age of twenty-one in
12 the employ of the child's father or mother;

13 (6) Service performed in the employ of the United States
14 government or an instrumentality of the United States
15 exempt under the Constitution of the United States
16 from the contributions imposed by this chapter, except
17 that to the extent that the Congress of the United
18 States permits states to require any instrumentalities
19 of the United States to make payments into an
20 unemployment fund under a state unemployment
21 compensation law, all of the provisions of this
22 chapter shall apply to those instrumentalities, and to



1 services performed for those instrumentalities, in the
2 same manner, to the same extent, and on the same terms
3 as to all other employers, employing units,
4 individuals, and services; provided that if this State
5 is not certified for any year by the Secretary of
6 Labor under section 3304(c) of the federal Internal
7 Revenue Code, the payments required of those
8 instrumentalities with respect to that year shall be
9 refunded by the department of labor and industrial
10 relations from the fund in the same manner and within
11 the same period as is provided in section 383-76 with
12 respect to contributions erroneously collected;

13 (7) Service performed in the employ of any other state, or
14 any political subdivision thereof, or any
15 instrumentality of any one or more of the foregoing
16 which is wholly owned by one or more states or
17 political subdivisions; and any service performed in
18 the employ of any instrumentality of one or more other
19 states or their political subdivisions to the extent
20 that the instrumentality is, with respect to the
21 service, exempt from the tax imposed by section 3301
22 of the Internal Revenue Code of 1986, as amended;



- 1 (8) Service with respect to which unemployment
2 compensation is payable under an unemployment system
3 established by an act of Congress;
- 4 (9) (A) Service performed in any calendar quarter in the
5 employ of any organization exempt from income tax
6 under section 501(a) of the federal Internal
7 Revenue Code (other than an organization
8 described in section 401(a) or under section 521
9 of the Internal Revenue Code), if:
- 10 (i) The remuneration for the service is less
11 than \$50; or
- 12 (ii) The service is performed by a fully
13 ordained, commissioned, or licensed minister
14 of a church in the exercise of the
15 minister's ministry or by a member of a
16 religious order in the exercise of duties
17 required by the order;
- 18 (B) Service performed in the employ of a school,
19 college, or university, if the service is
20 performed by a student who is enrolled and is
21 regularly attending classes at the school,
22 college, or university; or



- 1 (C) Service performed by an individual who is
2 enrolled at a nonprofit or public educational
3 institution which normally maintains a regular
4 faculty and curriculum and normally has a
5 regularly organized body of students in
6 attendance at the place where its educational
7 activities are carried on as a student in a full-
8 time program, taken for credit at such
9 institution, which combines academic instruction
10 with work experience, if such service is an
11 integral part of such program, and such
12 institution has so certified to the employer,
13 except that this subparagraph shall not apply to
14 service performed in a program established for or
15 on behalf of an employer or group of employers;
- 16 (10) Service performed in the employ of a foreign
17 government [↵], including service as a consular or
18 other officer or employee of a nondiplomatic
19 representative[↵];
- 20 (11) Service performed in the employ of an instrumentality
21 wholly owned by a foreign government:



1 (A) If the service is of a character similar to that
2 performed in foreign countries by employees of
3 the United States government or of an
4 instrumentality thereof; and

5 (B) If the United States Secretary of State has
6 certified or certifies to the United States
7 Secretary of the Treasury that the foreign
8 government, with respect to whose instrumentality
9 exemption is claimed, grants an equivalent
10 exemption with respect to similar service
11 performed in the foreign country by employees of
12 the United States government and of
13 instrumentalities thereof;

14 (12) Service performed as a student nurse in the employ of
15 a hospital or a nurses' training school by an
16 individual who is enrolled and is regularly attending
17 classes in a nurses' training school chartered or
18 approved pursuant to state law; and service performed
19 as an intern in the employ of a hospital by an
20 individual who has completed a four-year course in a
21 medical school chartered or approved pursuant to state
22 law;



- 1 (13) Service performed by an individual for an employing
2 unit as an insurance producer, if all service
3 performed by the individual for the employing unit is
4 performed for remuneration solely by way of
5 commission;
- 6 (14) Service performed by an individual under the age of
7 eighteen in the delivery or distribution of newspapers
8 or shopping news, not including delivery or
9 distribution to any point for subsequent delivery or
10 distribution;
- 11 (15) Service covered by an arrangement between the
12 department and the agency charged with the
13 administration of any other state or federal
14 unemployment compensation law pursuant to which all
15 services performed by an individual for an employing
16 unit during the period covered by the employing unit's
17 duly approved election, are deemed to be performed
18 entirely within the agency's state;
- 19 (16) Service performed by an individual who, pursuant to
20 the Federal Economic Opportunity Act of 1964, is not
21 subject to the federal laws relating to unemployment
22 compensation;



- 1 (17) Service performed by an individual for an employing
2 unit as a real estate salesperson, if all service
3 performed by the individual for the employing unit is
4 performed for remuneration solely by way of
5 commission;
- 6 (18) Service performed by a registered sales representative
7 for a registered travel agency, when the service
8 performed by the individual for the travel agent is
9 performed for remuneration by way of commission;
- 10 (19) Service performed by a vacuum cleaner salesperson for
11 an employing unit, if all services performed by the
12 individual for the employing unit are performed for
13 remuneration solely by way of commission;
- 14 (20) Service performed for a family-owned private
15 corporation organized for profit that employs only
16 members of the family who each own at least fifty per
17 cent of the shares issued by the corporation; provided
18 that:
- 19 (A) The private corporation elects to be excluded
20 from coverage under this chapter;
- 21 (B) The election for exclusion shall apply to all
22 shareholders and under the same circumstances;



- 1 (C) No more than two members of a family may be
2 eligible per entity for exclusion under this
3 paragraph;
- 4 (D) The exclusion shall be irrevocable for five
5 years;
- 6 (E) The family-owned private corporation presents to
7 the department proof that it has paid federal
8 unemployment insurance taxes as required by
9 federal law; and
- 10 (F) The election to be excluded from coverage shall
11 be effective the first day of the calendar
12 quarter in which the application and all
13 substantiating documents requested by the
14 department are filed with the department;
- 15 (21) Service performed by a direct seller as defined in
16 section 3508 of the Internal Revenue Code of 1986;
17 [and]
- 18 (22) Service performed by an election official or election
19 worker as defined in section 3309(b)(3)(F) of the
20 Internal Revenue Code of 1986, as amended[-]; and
- 21 (23) Domestic service, which includes attendant care, and
22 day care services authorized by the department of



1 human services under the Social Security Act, as
2 amended, performed by an individual in the employ of a
3 recipient of social service payments.

4 (b) None of the [~~foregoing~~] exclusions [~~(1) to (22)~~] in
5 subsection (a) shall apply to any service with respect to which
6 a tax is required to be paid under any federal law imposing a
7 tax against which credit may be taken for contributions required
8 to be paid into a state unemployment fund or which as a
9 condition for full tax credit against the tax imposed by the
10 federal Unemployment Tax Act is required to be covered under
11 this chapter."

12 SECTION 6. Section 393-3, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§393-3 Definitions generally.** As used in this chapter,
15 unless the context clearly requires otherwise:

16 [~~(1)~~] "Department" means the department of labor and
17 industrial relations.

18 [~~(2)~~] "Director" means the director of labor and industrial
19 relations.

20 [~~(3)~~] "Employer" means any individual or type of
21 organization, including any partnership, association,
22 trust, estate, joint stock company, insurance company,



1 or corporation, whether domestic or foreign, a debtor
2 in possession or receiver or trustee in bankruptcy, or
3 the legal representative of a deceased person, who has
4 one or more regular employees in the employer's
5 employment. "Employer" does not include:

6 ~~(A)~~ (1) The State, any of its political subdivisions, or
7 any instrumentality of the State or its political
8 subdivisions;

9 ~~(B)~~ (2) The United States government or any
10 instrumentality of the United States;

11 ~~(C)~~ (3) Any other state or political subdivision thereof
12 or instrumentality of such state or political
13 subdivision;

14 ~~(D)~~ (4) Any foreign government or instrumentality wholly
15 owned by a foreign government, if (i) the service
16 performed in its employ is of a character similar to
17 that performed in foreign countries by employees of
18 the United States government or of an instrumentality
19 thereof, and (ii) the United States Secretary of State
20 has certified or certifies to the United States
21 Secretary of the Treasury that the foreign government,
22 with respect to whose instrumentality exemption is



1 claimed, grants an equivalent exemption with respect
2 to similar service performed in the foreign country by
3 employees of the United States government and of
4 instrumentalities thereof.

5 ~~(4)~~ "Employment" means service, including service in
6 interstate commerce, performed for wages under any
7 contract of hire, written or oral, expressed or
8 implied, with an employer, except as otherwise
9 provided in sections 393-4 and 393-5.

10 ~~(5)~~ "Premium" means the amount payable to a prepaid health
11 care plan contractor as consideration for the
12 contractor's obligations under a prepaid health care
13 plan.

14 ~~(6)~~ "Prepaid health care plan" means any agreement by
15 which any prepaid health care plan contractor
16 undertakes in consideration of a stipulated premium:

17 ~~(A)~~ (1) Either to furnish health care, including
18 hospitalization, surgery, medical or nursing care,
19 drugs or other restorative appliances, subject to, if
20 at all, only a nominal per service charge; or

21 ~~(B)~~ (2) To defray or reimburse, in whole or in part, the
22 expenses of health care.



1 ~~[(7)]~~ "Prepaid health care plan contractor" means:

2 ~~[(A)]~~ (1) Any medical group or organization which
3 undertakes under a prepaid health care plan to provide
4 health care; ~~[or]~~

5 ~~[(B)]~~ (2) Any nonprofit organization which undertakes under
6 a prepaid health care plan to defray or reimburse in
7 whole or in part the expenses of health care; or

8 ~~[(C)]~~ (3) Any insurer who undertakes under a prepaid health
9 care plan to defray or reimburse in whole or in part
10 the expenses of health care.

11 "Recipient of social service payments" includes:

12 (1) A person who is an eligible recipient of social
13 services such as attendant care and day care services;

14 (2) A corporation or private agency that contracts
15 directly with the department of human services to
16 provide attendant care and day care authorized under
17 the Social Security Act, as amended; and

18 (3) An independently licensed or certified adult foster
19 home or care home provider who provides attendant care
20 and day care authorized under the Social Security Act,
21 as amended, to an eligible recipient of social
22 services in the provider's place of residence.



1 [+8+] "Regular employee" means a person employed in the
2 employment of any one employer for at least twenty
3 hours per week but does not include a person employed
4 in seasonal employment. "Seasonal employment" for the
5 purposes of this paragraph means employment in a
6 seasonal pursuit as defined in section 387-1 by a
7 seasonal employer during a seasonal period or seasonal
8 periods for the employer in the seasonal pursuit or
9 employment by an employer engaged in the cultivating,
10 harvesting, processing, canning, and warehousing of
11 pineapple during its seasonal periods. The director
12 by rule and regulation may determine the kind of
13 employment that constitutes seasonal employment.

14 [+9+] "Wages" means all remuneration for services from
15 whatever source, including commissions, bonuses, and
16 tips and gratuities paid directly to any individual by
17 a customer of the individual's employer, and the cash
18 value of all remuneration in any medium other than
19 cash.

20 The director may issue regulations for the
21 reasonable determination of the cash value of
22 remuneration in any medium other than cash.



1 If the employee does not account to the
2 employee's employer for the tips and gratuities
3 received and is engaged in an occupation in which the
4 employee customarily and regularly receives more than
5 \$20 a month in tips, the combined amount received by
6 the employee from the employee's employer and from
7 tips shall be deemed to be at least equal to the wage
8 required by chapter 387 or a greater sum as determined
9 by regulation of the director.

10 "Wages" does not include the amount of any
11 payment specified in section 383-11 or 392-22 or
12 chapter 386."

13 SECTION 7. If any provision of this Act, or the
14 application thereof to any person or circumstance is contrary to
15 federal law, that provision or any application thereof to any
16 person or circumstance shall be invalid; provided that the
17 invalidity does not affect other provisions or applications of
18 the Act, which can be given effect without the invalid provision
19 or application, and to this end the provisions of this Act are
20 severable.

21 SECTION 8. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



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



Report Title:

Employment; Exemption

Description:

Exempts recipients of social service payments from the scope of employment related laws; defines "recipients of social service payments" as it relates to chapters 383, 386, 392, and 393, Hawaii Revised Statutes. (SD1)

