



GOV. MSG. NO. 645

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 30, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on April 30, 2009, the following bill was signed into law:

SB947 SD1

A BILL FOR AN ACT
RELATING TO UNEMPLOYMENT
CONTRIBUTION RATES.
ACT 032 (09)

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO UNEMPLOYMENT CONTRIBUTION RATES.

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

1 SECTION 1. Section 383-66, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Notwithstanding any other provision of this chapter,
4 the following shall apply regarding assignment of rates and
5 transfers of experience:

6 (1) If an employing unit transfers its organization,
7 trade, or business, or a portion thereof, to another
8 employing unit and, at the time of the transfer, there
9 is substantially common ownership, management, or
10 control of the two employing units, both employing
11 units shall file a notification of the transfer with
12 the department on a form approved by the department
13 within thirty days after the date of the transfer.
14 The department shall transfer the experience records
15 attributable to the transferred organization, trade,
16 or business to the employing unit to whom the
17 organization, trade, or business is transferred. The



1 rates of both employing units shall be recalculated
2 and made effective beginning with the calendar
3 [~~quarter~~] year immediately following the date of the
4 transfer of the organization, trade, or business;

5 (2) If a person is not an employing unit as defined in
6 section 383-1 at the time it acquires the
7 organization, trade, or business of another employing
8 unit, both the person and the employing unit shall
9 file a notification of the acquisition with the
10 department on a form approved by the department within
11 thirty days after the date of the acquisition. If the
12 department determines at the time of the acquisition
13 or thereafter, based on objective factors that may
14 include:

15 (A) The cost of acquiring the organization, trade, or
16 business;

17 (B) Whether the person continued the activity of the
18 acquired organization, trade, or business;

19 (C) How long the organization, trade, or business was
20 continued; or

21 (D) Whether a substantial number of new employees
22 were hired for performance of duties unrelated to



1 the organization, trade, or business activity
2 conducted prior to the acquisition, that the
3 acquisition was solely or primarily for the
4 purpose of obtaining a lower rate of
5 contribution, the person shall not be assigned
6 the lower rate and shall be assigned the
7 contribution rate for a new or newly covered
8 employer pursuant to subsection (a) (2) instead;

9 (3) An employing unit or person who is not an employing
10 unit shall be subject to penalties under paragraph (4)
11 or (5) if the employing unit or person who is not an
12 employing unit:

13 (A) Knowingly violates or attempts to violate this
14 subsection or any other provision of this chapter
15 related to determining the assignment of a
16 contribution rate;

17 (B) Makes any false statement or representation or
18 fails to disclose a material fact to the
19 department in connection with the transfer or
20 acquisition of an organization, trade, or
21 business; or



- 1 (C) Knowingly advises another employing unit or
- 2 person in a way that results in a violation or
- 3 attempted violation of this subsection;
- 4 (4) If the person is an employing unit:
- 5 (A) The employing unit shall be subject to the
- 6 highest rate assignable under this chapter for
- 7 the calendar year during which the violation or
- 8 attempted violation occurred and for the
- 9 consecutive three calendar years immediately
- 10 following; or
- 11 (B) If the employing unit is already at the highest
- 12 rate or if the amount of increase in the
- 13 employing unit's rate would be less than two per
- 14 cent for the calendar year during which the
- 15 violation or attempted violation occurred, a
- 16 penalty equal to contributions of two per cent of
- 17 taxable wages shall be imposed for the calendar
- 18 year during which the violation or attempted
- 19 violation occurred and the consecutive three
- 20 calendar years immediately following. Any
- 21 penalty amount collected in excess of the maximum
- 22 contributions payable at the highest rate shall



1 be deposited in the special unemployment
2 insurance administration fund in accordance with
3 section 383-127;

4 (5) If the person is not an employing unit, the person
5 shall be subject to a penalty of not more than \$5,000.

6 The penalty shall be deposited in the special
7 unemployment insurance administration fund in
8 accordance with section 383-127;

9 (6) For purposes of this subsection, the following
0 definitions shall apply:

11 (A) "Knowingly" means having actual knowledge of or
12 acting with deliberate ignorance or reckless
13 disregard for the requirements or prohibition
 involved;

15 (B) "Violates or attempts to violate" includes but is
16 not limited to intent to evade,
17 misrepresentation, or wilful nondisclosure;

18 (C) "Person" shall have the same meaning as defined
19 in section [~~6601(a)(1)~~] 7701(a)(1) of the
20 Internal Revenue Code of 1986, as amended; and

21 (D) "Organization, trade, or business" shall include
22 the employer's workforce;



1 (7) In addition to the civil penalties imposed by
 2 paragraphs (4) and (5), any violation of this section
 3 may be prosecuted under sections 383-142 and 383-143.
 4 No existing civil or criminal remedy for any wrongful
 5 action that is a violation of any statute or any rule
 6 of the department or the ordinance of any county shall
 7 be excluded or impaired by this section;

8 (8) The department shall establish procedures to identify
 9 the transfer or acquisition of an employing unit for
 10 the purposes of this section; and

11 (9) This section shall be interpreted and applied in a
 12 manner to meet the minimum requirements contained in
 13 any guidance or regulations issued by the United
 14 States Department of Labor."

15 SECTION 2. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act, upon its approval, shall take effect
 18 retroactive to June 9, 2005.

APPROVED this 30 day of APR, 2009


 GOVERNOR OF THE STATE OF HAWAII