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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. Section 386-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "employment" to read as  
3 follows:

4           ""Employment" means any service performed by an individual  
5 for another person under any contract of hire or apprenticeship,  
6 express or implied, oral or written, whether lawfully or  
7 unlawfully entered into. It includes service of public  
8 officials, whether elected or under any appointment or contract  
9 of hire, express or implied.

10           "Employment" does not include:

11           (1) Service for a religious, charitable, educational, or  
12 nonprofit organization if performed in a voluntary or  
13 unpaid capacity;

14           (2) Service for a religious, charitable, educational, or  
15 nonprofit organization if performed by a recipient of  
16 aid therefrom and the service is incidental to or in  
17 return for the aid received;



- 1           (3) Service for a school, college, university, college  
2           club, fraternity, or sorority if performed by a  
3           student who is enrolled and regularly attending  
4           classes and in return for board, lodging, or tuition  
5           furnished, in whole or in part;
- 6           (4) Service performed by a duly ordained, commissioned, or  
7           licensed minister, priest, or rabbi of a church in the  
8           exercise of the minister's, priest's, or rabbi's  
9           ministry or by a member of a religious order in the  
10          exercise of nonsecular duties required by the order;
- 11          (5) Service performed by an individual for another person  
12          solely for personal, family, or household purposes if  
13          the cash remuneration received is less than \$225  
14          during the current calendar quarter and during each  
15          completed calendar quarter of the preceding twelve-  
16          month period;
- 17          (6) Domestic, in-home and community-based services for  
18          persons with developmental disabilities and mental  
19          retardation under the medicaid home and community-  
20          based services program pursuant to Title 42 Code of  
21          Federal Regulations sections 440.180 and 441.300, and  
22          Title 42 Code of Federal Regulations, Part 434,



1 Subpart A, as amended, and identified as chore,  
2 personal assistance and habilitation, residential  
3 habilitation, supported employment, respite, and  
4 skilled nursing services, as the terms are defined by  
5 the department of human services, performed by an  
6 individual whose services are contracted by a  
7 recipient of social service payments and who  
8 voluntarily agrees in writing to be an independent  
9 contractor of the recipient of social service  
10 payments;

11 (7) Service performed without wages for a corporation  
12 without employees by a corporate officer in which the  
13 officer is at least a twenty-five per cent  
14 stockholder;

15 (8) Service performed by an individual for a corporation  
16 if the individual owns at least fifty per cent of the  
17 corporation; provided that no employer shall require  
18 an employee to incorporate as a condition of  
19 employment; [and].

20 (9) Service performed by an individual for another person  
21 as a real estate salesperson or as a real estate  
22 broker, if all the service performed by the individual



1 for the other person is performed for remuneration  
2 solely by way of commission[-];

3 (10) Service performed by a member of a limited liability  
4 company if the member is an individual and has a  
5 distributional interest, as defined in section 428-  
6 101, of not less than fifty per cent in the company;  
7 provided that no employer shall require an employee to  
8 form a limited liability company as a condition of  
9 employment;

10 (11) Service performed by a partner of a partnership, as  
11 defined in section 425-101, if the partner is an  
12 individual; provided that no employer shall require an  
13 employee to become a partner or form a partnership as  
14 a condition of employment;

15 (12) Service performed by a partner of a limited liability  
16 partnership if the partner is an individual and has a  
17 transferable interest as described in section 425-127  
18 in the partnership of not less than fifty per cent;  
19 provided that no employer shall require an employee to  
20 form a limited liability partnership as a condition of  
21 employment; and

22 (13) Service performed by a sole proprietor.



1 As used in this [~~paragraph~~] definition, "religious, charitable,  
2 educational, or nonprofit organization" means a corporation,  
3 unincorporated association, community chest, fund, or foundation  
4 organized and operated exclusively for religious, charitable, or  
5 educational purposes, no part of the net earnings of which inure  
6 to the benefit of any private shareholder or individual."

7 SECTION 2. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 3. This Act shall take effect upon approval.



**Report Title:**

Workers' Compensation

**Description:**

Excludes services performed by an individual who is a member of a limited liability company or a partner of a limited liability partnership who has a distributional interest in the company or partnership of at least fifty per cent, a partner of a partnership, and a sole proprietor from the definition of "employment" under the workers' compensation law. (SD2)

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