
A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1 SECTION 1. The legislature finds that the economy is
2 changing and increasing numbers of individuals are facing
3 decisions on whether to choose to become entrepreneurs and go
4 into business for themselves or remain in employment
5 relationships and maintain the protections afforded by various
6 labor laws, including Hawaii's employment security law. The
7 legislature further finds that many of these individuals may not
8 be aware of the criteria used by the department of labor and
9 industrial relations when making determinations as to whether an
10 individual is in an employment relationship or is a bona fide
11 independent contractor.

12 Accordingly, the purpose of this Act is to provide greater
13 clarity in Hawaii's employment security law to those individuals
14 choosing to become entrepreneurs by setting forth in greater
15 detail the criteria used to determine independent contractor
16 status.

17 SECTION 2. Section 383-6, Hawaii Revised Statutes, is
18 amended to read as follows:



1 "§383-6 ~~[Master and servant relationship, not required~~
2 ~~when.]~~ Independent contractor. (a) Services performed by an
3 individual for wages or under any contract of hire shall be
4 deemed to be employment subject to this chapter irrespective of
5 whether the common law relationship of ~~[master and servant]~~
6 employer and employee exists unless and until it is shown to the
7 satisfaction of the department ~~[of labor and industrial~~
8 ~~relations]~~ that [+] in the department's determination, a
9 preponderance of the factors set forth in subsection (b) has
10 been met and that:

11 (1) The individual has been and will continue to be free
12 from control or direction over the performance of such
13 service, both under the individual's contract of hire
14 and in fact; and

15 (2) The service is either outside the usual course of the
16 business for which the service is performed or that
17 the service is performed outside of all the places of
18 business of the enterprise for which the service is
19 performed; and

20 (3) The individual is customarily engaged in an
21 independently established trade, occupation,



1 profession, or business of the same nature as that
2 involved in the contract of service.

3 (b) Under Internal Revenue Service rules and common law,
4 independent contractors control the manner and means by which
5 contracted services, products, or results are achieved. The
6 twenty factors set forth below shall be guidelines for
7 determining whether an individual could be deemed an independent
8 contractor. An individual shall not have to meet all twenty
9 factors to qualify as an independent contractor. The degree of
10 importance of each factor may vary, depending on the occupation
11 and the individual facts of each case as determined by the
12 department. A preponderance of the following twenty factors may
13 indicate a worker is an independent contractor if the
14 independent contractor:

15 (1) Controls how the work results are achieved, although
16 the client may provide job specifications;

17 (2) Uses the independent contractor's own methods and does
18 not receive client-provided training;

19 (3) Performs work that is not part of the client's regular
20 line of business;



- 1 (4) Is engaged to provide a result and may hire others to
- 2 achieve that result;
- 3 (5) Retains control and responsibility over the hiring,
- 4 paying, and supervising of the independent
- 5 contractor's assistants;
- 6 (6) Does not maintain a continuing relationship with the
- 7 client;
- 8 (7) Has flexibility of schedule and sets the independent
- 9 contractor's own work hours;
- 10 (8) Has the ability to choose when and for whom the
- 11 independent contractor works;
- 12 (9) Controls the job location and is not required to work
- 13 on a client's premises;
- 14 (10) Sets the order and sequence of work to be performed;
- 15 (11) Provides final results, as specified in the contract;
- 16 (12) Is paid by the job for results;
- 17 (13) Is responsible for the independent contractor's
- 18 incidental business expenses;
- 19 (14) Furnishes the independent contractor's own tools and
- 20 materials;



- 1 (15) May invest in and maintain the independent
2 contractor's own work facilities that the contractor
3 may use to perform services for clients;
- 4 (16) Can realize a profit or suffer a loss as a result of
5 the independent contractor's services;
- 6 (17) Is able to simultaneously provide services to multiple
7 unrelated clients;
- 8 (18) Makes services available to the general public on a
9 regular and consistent basis, in at least one of the
10 following ways: having an office and assistants;
11 having business signs; having a general excise tax
12 license; listing services in a business directory; or
13 advertising services;
- 14 (19) Cannot be discharged; provided that the independent
15 contractor produces a result that meets contract
16 specifications; and
- 17 (20) Agrees to satisfactorily complete a specific job and
18 cannot terminate services without liability, except as
19 provided under the contract.
- 20 (c) For purposes of this section:



1 "Client" means an entity or individual that obtains
 2 services or receives products or results from an independent
 3 contractor. A client has the right to control or direct only
 4 the result of the work of an independent contractor and does not
 5 have the right to control or direct the manner and means used by
 6 an independent contractor to accomplish the result.

7 "Independent contractor" means an individual customarily
 8 engaged in an independently established trade, occupation,
 9 profession, or business who is performing services or providing
 10 products or results and who is established in the business of
 11 performing those services or providing those products or results
 12 independent of the connection the individual may have with a
 13 client. An independent contractor has no expectation of
 14 benefits that would normally accrue from an employer-employee
 15 relationship and is responsible for obtaining a current general
 16 excise tax license and for paying all applicable taxes."

17 SECTION 3. The director of labor and industrial relations
 18 shall submit a report to the legislature no later than twenty
 19 days prior to the convening of the regular session of 2016 on
 20 the guidelines developed by the unemployment insurance coverage



1 committee to assist auditors in applying section 383-6, Hawaii
2 Revised Statutes, during the auditor's investigations.

3 SECTION 4. The director of labor and industrial relations
4 shall submit a report to the legislature no later than twenty
5 days prior to the convening of each regular session regarding
6 the number of determinations applying section 383-6, Hawaii
7 Revised Statutes, rendered by the department of labor and
8 industrial relations' unemployment insurance division and
9 employment security appeals referee's office finding both
10 independent contractor and covered employment status.

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on January 7, 2059.



Report Title:

Employment Security; Independent Contractor; Guidelines;
Department of Labor and Industrial Relations

Description:

Clarifies Hawaii's employment security law for independent contractors. Includes twenty factors to be used as guidelines when determining whether an individual could be an independent contractor. Retains the ability of the department of labor and industrial relations to determine if an individual is an independent contractor. Requires the director of labor and industrial relations to report to the legislature prior to the regular session of 2016 regarding guidelines developed by the unemployment insurance coverage committee. Requires an annual report to the legislature regarding covered employment determinations. Effective January 7, 2019. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

