
A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1 SECTION 1. Section 383-6, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "~~§383-6 [Master and servant relationship, not required~~
4 ~~when.]~~ Independent contractor; circumstantial presumption;
5 optional certification. (a) [~~Services performed by an~~] An
6 individual [~~for wages or~~] performing services under any contract
7 of hire shall be deemed to be [~~employment subject to this~~
8 ~~chapter irrespective of whether the common law relationship of~~
9 ~~master and servant exists unless and until it is shown to the~~
10 ~~satisfaction of the department of labor and industrial relations~~
11 ~~that:~~

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

16 ~~(2) The service is either outside the usual course of the~~
17 ~~business for which the service is performed or that~~
18 ~~the service is performed outside of all the places of~~



1 ~~business of the enterprise for which the service is~~
2 ~~performed, and~~

3 ~~(3) The individual is customarily engaged in an~~
4 ~~independently established trade, occupation,~~
5 ~~profession, or business of the same nature as that~~
6 ~~involved in the contract of service.]~~

7 an independent contractor if the individual meets the
8 requirements for independent contractor status pursuant to rules
9 adopted by the department under chapter 91.

10 (b) Notwithstanding subsection (a), an individual shall be
11 presumed by the department to be an independent contractor if
12 the individual has:

13 (1) A valid employee identification number issued by the
14 United States Internal Revenue Service;

15 (2) A current general excise tax license issued by the
16 department of taxation;

17 (3) Entered into a formalized agreement of limited
18 duration with a customer to perform specific services;
19 and

20 (4) Otherwise fulfills the requirements for independent
21 contractor status according to the Internal Revenue



1 Service based on behavioral control, financial
2 control, and relationship between the parties.

3 (c) An individual who meets the requirements for
4 independent contractor status under this section may submit an
5 application for certification by the department as an
6 independent contractor. The individual may provide a copy of
7 the certification to any customer to whom the individual
8 provides services. A customer who receives a copy of
9 certification from a certified independent contractor shall not
10 be considered an employer of the individual providing the copy
11 of certification for any services rendered in accordance with a
12 formalized agreement of limited duration for specific services.

13 (d) If an independent contractor files a claim for
14 unemployment insurance benefits against a customer despite the
15 presumption of subsection (b) or the certification allowed under
16 subsection (c), the burden shall be on the independent
17 contractor to prove that an employer-employee relationship
18 exists."

19 SECTION 2. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 3. This Act shall take effect on January 7, 2059.



Report Title:

Employment Security; Independent Contractor

Description:

Allows the department of labor and industrial relations to set criteria for independent contractor status. Establishes criteria for when the department shall presume an individual is an independent contractor. Requires the department to certify independent contractors. Allows independent contractors to provide a written copy of certification to each customer. Places the burden of proving an employee-employer relationship on the certified independent contractor if the contractor files an unemployment insurance benefits claim against a customer. Effective January 7, 2059. (SD1)

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