
A BILL FOR AN ACT

RELATING TO LABOR.

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[-]; determination of relationship; advisory opinion. (a)

5 Services performed by an individual for wages or under any
6 contract of hire shall be deemed to be employment subject to
7 this chapter irrespective of whether the common law relationship
8 of master and servant exists unless and until it is shown to the
9 satisfaction of the department of labor and industrial relations
10 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;

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



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 (b) If the determination of an individual's services
8 performed for wages or under any contract of hire is part of an
9 unemployment insurance investigation, the department shall
10 provide a written determination letter by means of certified
11 mail to the investigated individual and employer within ten days
12 of the conclusion of the investigation describing why the
13 department determined an individual's services are or are not
14 deemed employment. The determination letter shall address:

15 (1) Paragraphs (1) to (3) of subsection (a); and
16 (2) Any administrative rule the department uses in
17 determining whether employment exists.

18 (c) An employer may appeal the department's determination
19 of a relationship pursuant to section 383-38. The department
20 shall have thirty days after the filing of the appeal by an
21 employer to issue its decision regarding the appeal. If the



1 department does not issue its decision regarding the appeal in
2 thirty days, the appeal shall be dismissed in favor of the
3 employer.

4 (d) Prior to an unemployment insurance investigation by
5 the department, an individual or employer may request that the
6 department issue a written advisory opinion about whether the
7 individual's services performed for wages or under any contract
8 of hire would be deemed to be employment subject to this
9 chapter.

10 (e) The department shall provide a written advisory
11 opinion to the requesting individual or employer describing
12 whether the individual's services performed for wages or under
13 any contract of hire could be deemed employment. The advisory
14 opinion shall be issued no later than thirty days after the
15 request was received. The advisory opinion shall address:

16 (1) Paragraphs (1) to (3) of subsection (a); and
17 (2) Any administrative rule the department uses in
18 determining whether employment exists.

19 (f) The department shall place a copy of each advisory
20 letter issued on its website; provided that all personal or
21 identifiable information shall be redacted."



1 SECTION 2. Section 383-38, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§383-38 Appeals, filing, and hearing. (a) The claimant
4 or any other party entitled to notice of a determination or
5 redetermination as herein provided may file an appeal from the
6 determination or redetermination at the office of the department
7 in the county in which the claimant resides or in the county in
8 which the claimant was last employed, or with a copy of the
9 contested determination at the employment security appeals
10 referee's office, within ten days after the date of mailing of
11 the notice to the claimant's or party's last known address, or
12 if the notice is not mailed, within ten days after the date of
13 delivery of the notice to the claimant or party. The department
14 may for good cause extend the period within which an appeal may
15 be filed to thirty days. Written notice of a hearing of an
16 appeal shall be sent by first class, nonregistered, noncertified
17 mail to the claimant's or party's last known address at least
18 twelve days prior to the initial hearing date.

19 (b) The appeal under subsection (a) shall be heard in the
20 county in which the appeal is filed, except that the department
21 may by its rules provide for the holding of a hearing in another



1 county with the consent of all parties or where necessary in
2 order that a fair and impartial hearing may be had, and may
3 provide for the taking of depositions. Unless the appeal is
4 withdrawn with the permission of the referee, the referee after
5 affording the parties reasonable opportunity for a fair hearing
6 shall make findings and conclusions and on the basis thereof
7 affirm, modify, or reverse such determination or
8 redetermination. The parties to any appeal shall be promptly
9 notified of the decision of the referee and shall be furnished
10 with a copy of the decision and the findings and conclusions in
11 support thereof and the decisions shall be final and shall be
12 binding upon each party unless a proceeding for judicial review
13 is initiated by the party pursuant to section 383-41; provided
14 that within the time provided for taking an appeal and prior to
15 the filing of a notice of appeal, the referee may reopen the
16 matter, upon the application of the director or any other party,
17 or upon the referee's own motion, and thereupon may take further
18 evidence or may modify or reverse the referee's decision,
19 findings, or conclusions. If the matter is reopened, the
20 referee shall render a further decision in the matter either
21 reaffirming or modifying or reversing the referee's original



1 decision, and notice shall be given thereof in the manner
2 hereinbefore provided. Upon reopening, the referee who heard
3 the original appeal shall reconsider the matter, except where
4 the referee is no longer employed as a referee or the referee
5 disqualifies oneself from reconsidering the referee's decision.

6 (c) The department shall issue a decision regarding an
7 employer's appeal to a determination of whether an individual's
8 services are deemed employment pursuant to section 383-6 within
9 thirty days after the filing of the appeal. If the department
10 does not issue its decision regarding the appeal within thirty
11 days, the appeal shall be dismissed in favor of the employer.

12 [~~e~~] (d) The time to initiate judicial review under
13 section 383-41 shall run from the notice of such further
14 decision, if the matter has been reopened under subsection (b).

15 [~~d~~] (e) If a claimant or party does not receive the
16 written notice under subsection (a), a second written notice
17 shall be sent by certified mail, and the hearing on the appeal
18 shall be rescheduled accordingly.

19 [~~e~~] (f) Upon application to, and approval by, the
20 employment security appeals referee's office, a claimant or
21 party to an appeal may elect to receive hearing notices,



1 decisions, and other appeal documents from the referee's office
 2 in electronic format in lieu of notice by mail. The date of
 3 electronic transmission is equivalent to the mailing date for
 4 purposes of this section. Electronic notification status may be
 5 rescinded at any time by the referee's office, claimant, or any
 6 party upon written notification."

7 SECTION 3. This Act does not affect rights and duties that
 8 matured, penalties that were incurred, and proceedings that were
 9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY:

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Jindal Chingene
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H.B. NO. 2208

Report Title:

Employment; Independent Contractors; Advisory Letters; DLIR

Description:

Requires DLIR to provide written determination letters to individuals and employers that have been the subjects of an unemployment insurance investigate describing why the individual is deemed to be an employee or independent contractor. Authorizes individuals and employers to request an advisory opinion from DLIR explaining whether an individual could be deemed an employee or independent contractor. Requires DLIR to place redacted advisory opinions on its website. Requires DLIR to respond to an employer's appeal of a determination of employment status within 30 days or the appeal will be dismissed in favor of the employer.

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

