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# A BILL FOR AN ACT

RELATING TO LABOR.

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

1           SECTION 1. Chapter 383, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4           "§383- Publication of decisions. The department shall  
5 publish the findings of all determinations, redeterminations,  
6 appeals, and written advisory opinions issued on its website;  
7 provided that all personal or identifiable information shall be  
8 redacted.

9           §383- Advisory opinions. Prior to an unemployment  
10 insurance investigation by the department, an individual or  
11 employer may request that the department issue a written  
12 advisory opinion about whether the individual's services  
13 performed for wages or under any contract of hire would be  
14 deemed to be employment subject to this chapter.

15           The department shall provide a written advisory opinion to  
16 the requesting individual or employer describing whether the  
17 individual's services performed for wages or under any contract



1 of hire could be deemed employment. The advisory opinion shall  
2 be issued no later than thirty days after the request was  
3 received. The advisory opinion shall address:

- 4 (1) Section 383-6(1) to (3); and
- 5 (2) Any administrative rule the department uses in  
6 determining whether employment exists."

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

9 "§383-6 [~~Master and servant~~] Common law employer and  
10 employee relationship, not required when. Services performed by  
11 an individual for wages or under any contract of hire shall be  
12 deemed to be employment subject to this chapter irrespective of  
13 whether the common law relationship of [~~master and servant~~]  
14 employer and employee exists unless and until it is shown to the  
15 satisfaction of the department of labor and industrial relations  
16 that:

- 17 (1) The individual has been and will continue to be free  
18 from control or direction over the performance of such  
19 service, both under the individual's contract of hire  
20 and in fact;



1           (2) The service is either outside the usual course of the  
 2           business for which the service is performed or that  
 3           the service is performed outside of all the places of  
 4           business of the enterprise for which the service is  
 5           performed; and

6           (3) The individual is customarily engaged in an  
 7           independently established trade, occupation,  
 8           profession, or business of the same nature as that  
 9           involved in the contract of service."

10          SECTION 3. Section 383-38, Hawaii Revised Statutes, is  
 11          amended to read as follows:

12          "**§383-38 Appeals, filing, and hearing.** (a) The claimant  
 13          or any other party entitled to notice of a determination or  
 14          redetermination as herein provided may file an appeal from the  
 15          determination or redetermination at the office of the department  
 16          in the county in which the claimant resides or in the county in  
 17          which the claimant was last employed, or with a copy of the  
 18          contested determination at the employment security appeals  
 19          referee's office, within ten days after the date of mailing of  
 20          the notice to the claimant's or party's last known address, or  
 21          if the notice is not mailed, within ten days after the date of



1 delivery of the notice to the claimant or party. The department  
2 may for good cause extend the period within which an appeal may  
3 be filed to thirty days. Written notice of a hearing of an  
4 appeal shall be sent by first class, nonregistered, noncertified  
5 mail to the claimant's or party's last known address at least  
6 twelve days prior to the initial hearing date.

7 (b) The appeal under subsection (a) shall be heard in the  
8 county in which the appeal is filed, except that the department  
9 may by its rules provide for the holding of a hearing in another  
10 county with the consent of all parties or where necessary in  
11 order that a fair and impartial hearing may be had, and may  
12 provide for the taking of depositions. Unless the appeal is  
13 withdrawn with the permission of the referee, the referee after  
14 affording the parties reasonable opportunity for a fair hearing  
15 shall make findings and conclusions and on the basis thereof  
16 affirm, modify, or reverse such determination or  
17 redetermination. The parties to any appeal shall be promptly  
18 notified of the decision of the referee and shall be furnished  
19 with a copy of the decision and the findings and conclusions in  
20 support thereof and the decisions shall be final and shall be  
21 binding upon each party unless a proceeding for judicial review



1 is initiated by the party pursuant to section 383-41; provided  
2 that within the time provided for taking an appeal and prior to  
3 the filing of a notice of appeal, the referee may reopen the  
4 matter, upon the application of the director or any other party,  
5 or upon the referee's own motion, and thereupon may take further  
6 evidence or may modify or reverse the referee's decision,  
7 findings, or conclusions. If the matter is reopened, the  
8 referee shall render a further decision in the matter either  
9 reaffirming or modifying or reversing the referee's original  
10 decision, and notice shall be given thereof in the manner  
11 hereinbefore provided. Upon reopening, the referee who heard  
12 the original appeal shall reconsider the matter, except where  
13 the referee is no longer employed as a referee or the referee  
14 disqualifies oneself from reconsidering the referee's decision.

15 (c) The time to initiate judicial review under section  
16 383-41 shall run from the notice of such further decision, if  
17 the matter has been reopened under subsection (b).

18 (d) If a claimant or party does not receive the written  
19 notice under subsection (a), a second written notice shall be  
20 sent by certified mail, and the hearing on the appeal shall be  
21 rescheduled accordingly.



1 (e) Upon application to, and approval by, the employment  
 2 security appeals referee's office, a claimant or party to an  
 3 appeal may elect to receive hearing notices, decisions, and  
 4 other appeal documents from the referee's office in electronic  
 5 format in lieu of notice by mail. The date of electronic  
 6 transmission is equivalent to the mailing date for purposes of  
 7 this section. Electronic notification status may be rescinded  
 8 at any time by the referee's office, claimant, or any party upon  
 9 written notification.

10 (f) If an appeal of a coverage determination is filed by  
 11 the employer pursuant to this section, the employment security  
 12 appeals referee's office shall render a decision within thirty  
 13 days after the filing of the appeal by the employer. A failure  
 14 by the employment security appeals referee's office to render a  
 15 decision within the prescribed period shall result in the  
 16 reimbursement of any assessment of contribution or penalty  
 17 pursuant to section 383-74 in accordance with section 383-127."

18 SECTION 4. Section 383-127, Hawaii Revised Statutes, is  
 19 amended to read as follows:

20 "[+]§383-127[+] Special unemployment insurance  
 21 administration fund. (a) There is created in the state



1 treasury a special fund to be known as the special unemployment  
2 insurance administration fund. All interest, fines, and  
3 penalties collected under this chapter on and after October 1,  
4 1987, shall be paid into this fund and shall not be commingled  
5 with other state funds but maintained in a separate account on  
6 the books of the depository. Interest earned upon moneys in the  
7 administration fund shall be deposited and credited to the  
8 administration fund.

9 All moneys payable to the administration fund shall be  
10 transferred immediately into the administration fund from the  
11 clearing account of the unemployment compensation fund. The  
12 director of finance shall be the treasurer and custodian of the  
13 administration fund and shall administer the fund in accordance  
14 with directions by the director of labor and industrial  
15 relations. The director of finance shall be liable on the  
16 director's official bond for the faithful performance of all  
17 duties in connection with the administration fund. All sums  
18 recovered on such surety bond for losses sustained by the  
19 administration fund shall be deposited into the fund.

20 (b) Notwithstanding any other provisions of this section  
21 to the contrary, the moneys in the administration fund shall be



1 used for the payment of the following expenses and obligations  
2 relating to the administration of the unemployment insurance  
3 program:

- 4 (1) Refunds or adjustments of interest on delinquent  
5 contributions and penalties or fines erroneously  
6 collected under this chapter;
- 7 (2) Expenses for which allocation of federal funds have  
8 been duly requested but not yet received, subject to  
9 the reimbursement of the expenditures against the  
10 funds received;
- 11 (3) Expenditures deemed necessary by the director in the  
12 administration of this chapter for which no  
13 allocations of federal administration funds have been  
14 made; ~~and~~
- 15 (4) Interest due under the provisions of section 1202(b)  
16 of the Social Security Act, as amended, for advances  
17 made to the unemployment compensation fund[-]; and
- 18 (5) Reimbursement of contribution or penalty paid by  
19 employer when the employment security appeals  
20 referee's office fails to file a decision on appeal  
21 within thirty days.





1 (c) No moneys in the administration fund shall be expended  
2 for any purpose for which federal funds would otherwise be  
3 available.

4 (d) All expenditures from the administration fund, except  
5 for refunds of penalties and interest erroneously collected,  
6 shall be approved by the director.

7 (e) All moneys deposited or paid into the administration  
8 fund shall be continuously available to the director for  
9 expenditures consistent with this section and shall not lapse at  
10 any time. The director may transfer moneys deposited in the  
11 administration fund to the unemployment compensation fund as the  
12 director deems necessary.

13 (f) Twenty days before the convening of the legislature in  
14 regular session each year, the director shall submit a report to  
15 the legislature on the financial status of the special  
16 unemployment insurance administration fund."

17 SECTION 5. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.



1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.



**Report Title:**

Employment Security Appeals Referee's Office; Labor

**Description:**

Clarifies that the common law employer and employee relationship is not required for employment. Requires ESARO to render appeals decisions within 30 days or a reimbursement will be made. Requires publication of decisions. Authorizes requests for advisory opinions. (HB2208 HD1)

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

