
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.



1 SECTION 2. 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. (a) Services performed by an
5 individual for wages or under any contract of hire shall be
6 deemed to be employment subject to this chapter irrespective of
7 whether the common law relationship of [~~master and servant~~
8 employer and employee exists unless and until it is shown to the
9 satisfaction of the department [~~of labor and industrial~~
10 ~~relations~~] 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
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) The department shall consider whether a preponderance
4 of the following factors indicates whether an individual is an
5 independent contractor:

6 (1) The employer for whom services are being performed
7 requires the individual to comply with instructions
8 regarding when, where, and how services are performed;

9 (2) The employer for whom services are being performed
10 requires particular training for the individual
11 performing services;

12 (3) The services provided by the individual are part of
13 the regular business of the employer for whom services
14 are being performed;

15 (4) The employer for whom services are being performed
16 requires the services to be performed by the
17 individual;

18 (5) The employer for whom services are being performed
19 hires, supervises, or pays the wages of the individual
20 performing services;



- 1 (6) The existence of a continuing relationship between the
2 employer for whom services are being performed with
3 the individual performing services which contemplates
4 continuing or recurring work, even if not full-time;
- 5 (7) The employer for whom services are being performed
6 requires set hours during which services are to be
7 performed;
- 8 (8) The employer for whom services are being performed
9 requires the individual to devote substantially full-
10 time to its business;
- 11 (9) The employer for whom services are being performed
12 requires the individual to perform work on its
13 premises;
- 14 (10) The employer for whom services are being performed
15 requires the individual to follow a set order or
16 sequence of work;
- 17 (11) The employer for whom services are being performed
18 requires the individual to make oral or written
19 progress reports;



- 1 (12) The employer for whom services are being performed
- 2 pays the individual on a regular basis such as hourly,
- 3 weekly, or monthly;
- 4 (13) The employer for whom services are being performed
- 5 pays expenses for the individual performing services;
- 6 (14) The employer for whom services are being performed
- 7 furnishes tools, materials, and other equipment for
- 8 use by the individual;
- 9 (15) There is a lack of investment in the facilities used
- 10 to perform services by the individual;
- 11 (16) There is a lack of profit or loss to the individual as
- 12 a result of the performance of such services;
- 13 (17) The individual is not performing services for a number
- 14 of employers at the same time;
- 15 (18) The individual does not make such services available
- 16 to the general public;
- 17 (19) The employer for whom services are being performed has
- 18 a right to discharge the individual; and
- 19 (20) The individual has the right to end the relationship
- 20 with the employer for whom services are being



1 performed without incurring liability pursuant to an
2 employment contract or agreement.

3 The degree of importance of each factor may vary, depending on
4 the occupation and the individual facts of each case as
5 determined by the department."

6 SECTION 3. The director of labor and industrial relations
7 shall submit a report to the legislature no later than twenty
8 days prior to the convening of the regular session of 2018 on
9 the guidelines developed by the unemployment insurance coverage
10 committee to assist auditors in applying section 383-6, Hawaii
11 Revised Statutes, during the auditors' investigations.

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

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



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

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Report Title:

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

Description:

Clarifies Hawaii's employment security law for independent contractors by requiring the consideration of twenty factors by the Department of Labor Industrial Relations when determining whether an individual is considered an independent contractor. Requires the Director of Labor and Industrial Relations to report to the Legislature prior to the Regular Session of 2018 regarding guidelines developed by the unemployment insurance coverage committee. Requires an annual report to the Legislature regarding covered employment determinations. Takes effect 1/7/2059. (SD2)

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

