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# 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, the  
9 factors set forth in subsection (b) have been met and that:

- 10           (1)   The individual has been and will continue to be free  
11                    from control or direction over the performance of such  
12                    service, both under the individual's contract of hire  
13                    and in fact; ~~[and]~~
- 14           (2)   The service is either outside the usual course of the  
15                    business for which the service is performed or that  
16                    the service is performed outside of all the places of  
17                    business of the enterprise for which the service is  
18                    performed; and
- 19           (3)   The individual is ~~[customarily]~~ engaged in an  
20                    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. The following twenty factors may indicate a worker  
13 is an independent contractor if the independent contractor:

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

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

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

20           (4) Is engaged to provide a result and may hire others to  
21           achieve that result;



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



- 1        (16) Can realize a profit or suffer a loss as a result of
- 2            the independent contractor's services;
- 3        (17) Is able to simultaneously provide services to multiple
- 4            unrelated clients;
- 5        (18) Makes services available to the general public on a
- 6            regular and consistent basis, in at least one of the
- 7            following ways: having an office and assistants;
- 8            having business signs; having a general excise tax
- 9            license; listing services in a business directory; or
- 10           advertising services;
- 11        (19) Cannot be discharged; provided that the independent
- 12           contractor produces a result that meets contract
- 13           specifications; and
- 14        (20) Agrees to satisfactorily complete a specific job and
- 15           cannot terminate services without liability, except as
- 16           provided under the contract.
- 17        (c) For purposes of this section:
- 18           "Client" means an entity or individual that obtains
- 19           services or receives products or results from an independent
- 20           contractor. A client has the right to control or direct only
- 21           the result of the work of an independent contractor and does not



1 have the right to control or direct the manner and means used by  
2 an independent contractor to accomplish the result.

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

13 SECTION 3. The director of labor and industrial relations  
14 shall submit a report to the legislature no later than twenty  
15 days prior to the convening of the regular session of 2017 on  
16 the guidelines developed by the unemployment insurance coverage  
17 committee to assist auditors in applying section 383-6, Hawaii  
18 Revised Statutes, during the auditors' investigations.

19 SECTION 4. The director of labor and industrial relations  
20 shall submit a report to the legislature no later than twenty  
21 days prior to the convening of each regular session regarding



1 the number of determinations applying section 383-6, Hawaii  
2 Revised Statutes, rendered by the department of labor and  
3 industrial relations' unemployment insurance division and  
4 employment security appeals referees' office finding both  
5 independent contractor and covered employment status.

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect upon its approval.

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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. 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 2017 regarding guidelines developed by the unemployment insurance coverage committee. Requires an annual report to the legislature regarding covered employment determinations. (SD1)

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

