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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.



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 contract. (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[+] in the department's determination, a  
11 preponderance of the factors set forth in subsection (b) has  
12 been met and that:~~

- 13 (1) The individual has been and will continue to be free  
14 from control or direction over the performance of such  
15 service, both under the individual's contract of hire  
16 and in fact;
- 17 (2) The service is either outside the usual course of the  
18 business for which the service is performed or that  
19 the service is performed outside of all the places of  
20 business of the enterprise for which the service is  
21 performed; and



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

5           (b) The department shall consider whether a preponderance  
6 of the following factors indicates whether an individual is an  
7 independent contractor:

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

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

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

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



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



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



1       (20) The individual has the right to end the relationship  
2       with the employer for whom services are being  
3       performed without incurring liability pursuant to an  
4       employment contract or agreement.

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

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

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



1           SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3           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. (SD1)

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

