
A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1 SECTION 1. Chapter 394B, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§394B- Worker retention in the event of a divestiture.

5 (a) In the event of a divestiture of a covered establishment,
6 the successor employer or management entity:

7 (1) Shall hire all incumbent nonsupervisory and
8 nonconfidential employees, unless otherwise provided
9 in this section;

10 (2) Shall not require incumbent employees to file
11 employment applications with the successor employer or
12 management entity to be considered for hire;

13 (3) May conduct pre-hire screening of the incumbent
14 employees not prohibited by law, including but not
15 limited to criminal history record checks executed in
16 accordance with section 378-2.5 and drug screening
17 executed in accordance with chapter 329B;



1 (4) May retain less than one hundred per cent of incumbent
2 employees if the new business to be conducted by the
3 successor employer or management entity is
4 substantially dissimilar to the former business;
5 provided that:

6 (A) If the new business to be conducted by the
7 successor employer or management entity is
8 substantially dissimilar to the former business,
9 or the new business' human resource needs are
10 reduced, resulting in the reduction of employees
11 needed, then the number of employees to be
12 dislocated shall be in direct proportion to the
13 reduction in the total human resource needs of
14 the successor employer's or management entity's
15 business;

16 (B) The priority of hiring for the successor
17 employer's or management entity's business shall
18 be based on employee seniority accrued under the
19 former employer's business;

20 (b) This section shall not be construed to abrogate an
21 employer's right to manage the employer's employees.



1 (c) An employer or management entity found in violation of
2 this section shall:

3 (1) Be assessed a penalty of \$; provided that each
4 day an employer or management entity is found to be in
5 violation of this section shall constitute a separate
6 violation; or

7 (2) Be required to compensate the dislocated employee for
8 the difference between the employee's salary or wages
9 earned under the employee's former employer and the
10 dislocated employee's unemployment insurance benefits
11 received for the covered period.

12 Moneys received from penalties assessed under paragraph (1)
13 shall be deposited into the unemployment insurance trust fund.

14 (d) The director shall adopt rules in accordance with
15 chapter 91 to effectuate this section."

16 SECTION 2. Section 394B-2, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By adding a new definition to be appropriately inserted
19 and to read:

20 "Divestiture" means the transfer of any covered
21 establishment from one employer to another because of the sale,

1 transfer, merger, and other business takeover or transaction of
2 business interests."

3 2. By amending the definitions of "covered establishment"
4 and "employer" to read:

5 ""Covered establishment" means any industrial, commercial,
6 or other business entity [~~which~~] that employs at any time in the
7 preceding twelve-month period [~~fifty or more persons.~~] more than
8 one hundred employees.

9 "Employer" means any [~~person who,~~] individual or entity
10 that, directly or indirectly, owns, operates, or has a
11 controlling interest in a covered establishment, excluding the
12 State or any political subdivision thereof."

13 SECTION 3. Section 394B-9, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§394B-9 Notification.** An employer in a covered
16 establishment shall provide to each employee and the director
17 written notification of a closing, divestiture, partial closing,
18 or relocation at least sixty days prior to its occurrence."

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



H.B. NO. 1868

1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

Alexis G. Amador

B. Stakini

Kirk Caldwell

Tony Wain

Michael M. Mung

Michelle Li

Jyla B. Berg

Kenneth Fuchs

Paul J.

Maif B. Lee

[Signature]

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Report Title:

Employment Security; Dislocated Workers

Description:

Establishes job security requirements to protect employees when the business for which the employees work is sold or transferred to another employing entity.

