
A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY LAW.

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

1 SECTION 1. The purpose of this Act is to provide the same
2 type of unemployment insurance exclusion in state law as in
3 federal law for the exclusion of certain alien agricultural
4 workers and to conform coverage of Indian tribe workers under
5 state law to federal law.

6 Under Public Law 94-566, the Unemployment Compensation Act
7 of 1976, agricultural labor became subject to the federal
8 unemployment tax, except for nonresident aliens who were
9 temporarily admitted to the United States to perform contract
10 agricultural work. Under Public Law 96-84, alien agricultural
11 labor must be included solely for purposes of determining the
12 threshold of coverage such as cash wages paid and number of
13 individuals and weeks worked.

14 Under Public Law 106-554, the Consolidated Appropriations
15 Act, 2001, American Indian tribes must now be treated similarly
16 to state and local governments and nonprofit organizations under
17 federal and state law. The provisions of this bill conform with
18 the Consolidated Appropriations Act requirements.



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

4 "§383- Treatment of Indian tribes. (a) Benefits
5 based on service in employment as defined in this section shall
6 be payable in the same amount, on the same terms, and subject to
7 the same conditions as benefits payable on the basis of other
8 service subject to this chapter. The financing of benefits
9 shall apply in the same manner and under the same terms and
10 conditions as in section 383-62 for nonprofit organizations
11 subject to this chapter; except that the provisions of this
12 section shall apply where there is a conflict.

13 (b) Any Indian tribe or tribal unit (subdivisions,
14 subsidiaries, or business enterprises wholly owned by the Indian
15 tribe) subject to this chapter on or after January 1, 2007:

16 (1) Shall pay contributions under the provisions of this
17 part (with the exception of the provisions in section
18 383-62(b)) applicable to other employers, unless it
19 elects to pay to the director for the fund an amount
20 equal to the amount of benefits that is attributable
21 to service in the employ of an Indian tribe;



- 1 (2) That elects to make payments in lieu of contributions
2 shall make this election in the same manner and under
3 the same conditions as provided in section 383-
4 62(d)(1). Indian tribes or tribal units shall
5 determine if reimbursement for benefits paid will be
6 elected by the tribe as a whole, by individual tribal
7 units, or by combinations of individual tribal units;
- 8 (3) Shall be billed and payments shall be made in
9 accordance with section 383-62(d)(2), for the full
10 amount of benefits attributable to service in the
11 employ of the Indian tribe or tribal unit on the same
12 schedule as nonprofit organizations that have elected
13 to make reimbursement payments in lieu of
14 contributions; and
- 15 (4) That elects to become liable for payments in lieu of
16 contributions shall be required, within thirty days
17 after the effective date of its election, to deposit
18 with the department an amount of money as security as
19 determined by section 383-62(d)(3).
- 20 (c) Failure of the Indian tribe or tribal unit to make any
21 required payment under this chapter within ninety days after
22 a notice of delinquency was mailed to its last known address or



1 was otherwise delivered to it, shall cause the Indian tribe to
2 lose the option to make payments in lieu of contributions and
3 the termination shall continue for the four-consecutive-
4 calendar-quarter period beginning with the quarter in which the
5 termination becomes effective.

6 Any Indian tribe that loses the option to make payments in
7 lieu of contributions due to late payment or nonpayment, shall
8 have such option reinstated after a period of one year if all
9 contributions have been timely made; provided no contributions,
10 payments in lieu of contributions for benefits paid, security
11 deposit, and penalties or interest remain outstanding.

12 If any Indian tribe or tribal unit fails to make payments
13 required under this section (including assessed interest and
14 penalty) within ninety days of a notice of delinquency, the
15 department shall immediately notify the United States Internal
16 Revenue Service and the United States Department of Labor.

17 (d) Notices of payment and reporting delinquency to Indian
18 tribes and tribal units shall include information that failure
19 to make full payments within the prescribed time shall cause the
20 Indian tribe to:

21 (1) Be liable for taxes under the Federal Unemployment Tax
22 Act; and



1 (2) Lose the option to make payments in lieu of
2 contributions.

3 (e) Except as provided in subsection (f), the amount
4 payable to the fund by each Indian tribe or tribal unit that is
5 liable for payments in lieu of contributions shall be determined
6 in the same manner as provided in section 383-62(e).

7 (f) An Indian tribe or tribal unit shall reimburse the
8 fund for all extended benefits paid that are attributable to
9 service in the employ of the Indian tribe or tribal unit unless
10 the benefits are reimbursed by the federal government.

11 (g) Any two or more Indian tribes or tribal units that
12 have become liable for payments in lieu of contributions may
13 file a joint application to the department for the establishment
14 of a group account for the purpose of sharing the cost of
15 benefits paid that are attributable to service in the employ of
16 such employers in the same manner as provided in section
17 383-62(f).

18 (h) As used in this section:

19 "Employer" includes any Indian tribe for which service in
20 employment, as defined in section 383-2, is performed.

21 "Employment" means service performed in the employ of an
22 Indian tribe; provided that the service is excluded from



1 employment as defined in the Federal Unemployment Tax Act solely
2 by reason of Section 3306(c)(7), of the Federal Unemployment Tax
3 Act, and is not otherwise excluded from employment under this
4 chapter. For purposes of this section, the exclusions from
5 employment under section 383-7, apply to services performed in
6 the employ of an Indian tribe in the same manner as the
7 exclusions apply to government and nonprofit entities.

8 "Indian tribe" has the meaning given the term by Section
9 4(e) of the Indian Self-Determination and Education Assistance
10 Act (25 U.S.C. Section 450b(e)), and includes any subdivision,
11 subsidiary, or business enterprises wholly owned by the Indian
12 tribe."

13 SECTION 3. Section 383-7, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§383-7 Excluded service.** "Employment" shall not include
16 the following service:

17 (1) Agricultural labor as defined in section 383-9 if it
18 is performed by an individual who is employed by an
19 employing unit:

20 (A) Which, during each calendar quarter in both the
21 current and the preceding calendar years, paid
22 less than \$20,000 in cash remuneration to



1 individuals employed in agricultural labor[+],
2 including labor performed by an alien referred to
3 in subparagraph (C); and

4 (B) Which had, in each of the current and the
5 preceding calendar years:

6 (i) No more than nineteen calendar weeks,
7 whether consecutive or not, in which
8 agricultural labor was performed by its
9 employees[+], including labor performed by
10 an alien referred to in subparagraph (C); or

11 (ii) No more than nine individuals in its employ
12 performing agricultural labor in any one
13 calendar week, whether or not the same
14 individuals performed the labor in each
15 week[+], including labor performed by an
16 alien referred to in subparagraph (C); or

17 (C) If such agricultural labor is performed by an
18 individual who is an alien admitted to the United
19 States to perform agricultural labor pursuant to
20 Sections 214(c) and 101(a)(15)(H) of the
21 Immigration and Nationality Act;



- 1 (2) Domestic service in a private home, local college
2 club, or local chapter of a college fraternity or
3 sorority as set forth in section 3306(c)(2) of the
4 Internal Revenue Code of 1986, as amended;
- 5 (3) Service not in the course of the employing unit's
6 trade or business performed in any calendar quarter by
7 an individual, unless the cash remuneration paid for
8 the service is \$50 or more and the service is
9 performed by an individual who is regularly employed
10 by the employing unit to perform the service. For the
11 purposes of this paragraph, an individual shall be
12 deemed to be regularly employed to perform service not
13 in the course of an employing unit's trade or business
14 during a calendar quarter only if:
- 15 (A) On each of some twenty-four days during the
16 quarter the individual performs the service for
17 some portion of the day; or
- 18 (B) The individual was regularly employed as
19 determined under subparagraph (A) by the
20 employing unit in the performance of the service
21 during the preceding calendar quarter;



- 1 (4) (A) Service performed on or in connection with a
- 2 vessel not an American vessel, if the individual
- 3 performing the service is employed on and in
- 4 connection with the vessel when outside the
- 5 United States;

- 6 (B) Service performed by an individual in (or as an
- 7 officer or member of the crew of a vessel while
- 8 it is engaged in) the catching, taking,
- 9 harvesting, cultivating, or farming of any kind
- 10 of fish, shellfish, crustacea, sponges, seaweeds,
- 11 or other aquatic forms of animal and vegetable
- 12 life, including service performed as an ordinary
- 13 incident thereto, except:

- 14 (i) The service performed in connection with a
- 15 vessel of more than ten net tons (determined
- 16 in the manner provided for determining the
- 17 register tonnage of merchant vessels under
- 18 the laws of the United States);

- 19 (ii) The service performed in connection with a
- 20 vessel of ten net tons or less (determined
- 21 in the manner provided for determining the
- 22 register tonnage of merchant vessels under



1 the laws of the United States) by an
 2 individual who is employed by an employing
 3 unit which had in its employ one or more
 4 individuals performing the service for some
 5 portion of a day in each of twenty calendar
 6 weeks all occurring, whether consecutive or
 7 not, in either the current or the preceding
 8 calendar year; and

9 (iii) Service performed in connection with the
 10 catching or taking of salmon or halibut for
 11 commercial purposes;

12 (5) Service performed by an individual in the employ of
 13 the individual's son, daughter, or spouse, and service
 14 performed by a child under the age of twenty-one in
 15 the employ of the child's father or mother;

16 (6) Service performed in the employ of the United States
 17 government or an instrumentality of the United States
 18 exempt under the Constitution of the United States
 19 from the contributions imposed by this chapter, except
 20 that to the extent that the Congress of the United
 21 States permits states to require any instrumentalities
 22 of the United States to make payments into an



1 unemployment fund under a state unemployment
2 compensation law, all of the provisions of this
3 chapter shall apply to those instrumentalities, and to
4 services performed for those instrumentalities, in the
5 same manner, to the same extent, and on the same terms
6 as to all other employers, employing units,
7 individuals, and services; provided that if this State
8 is not certified for any year by the Secretary of
9 Labor under section 3304(c) of the federal Internal
10 Revenue Code, the payments required of those
11 instrumentalities with respect to that year shall be
12 refunded by the department of labor and industrial
13 relations from the fund in the same manner and within
14 the same period as is provided in section 383-76 with
15 respect to contributions erroneously collected;

16 (7) Service performed in the employ of any other state, or
17 any political subdivision thereof, or any
18 instrumentality of any one or more of the foregoing
19 which is wholly owned by one or more states or
20 political subdivisions; and any service performed in
21 the employ of any instrumentality of one or more other
22 states or their political subdivisions to the extent



- 1 that the instrumentality is, with respect to the
2 service, exempt from the tax imposed by section 3301
3 of the Internal Revenue Code of 1986, as amended;
- 4 (8) Service with respect to which unemployment
5 compensation is payable under an unemployment system
6 established by an act of Congress;
- 7 (9) (A) Service performed in any calendar quarter in the
8 employ of any organization exempt from income tax
9 under section 501(a) of the federal Internal
10 Revenue Code (other than an organization
11 described in section 401(a) or under section 521
12 of the Code), if:
- 13 (i) The remuneration for the service is less
14 than \$50; or
- 15 (ii) The service is performed by a fully
16 ordained, commissioned, or licensed minister
17 of a church in the exercise of the
18 minister's ministry or by a member of a
19 religious order in the exercise of duties
20 required by the order;
- 21 (B) Service performed in the employ of a school,
22 college, or university, if the service is



1 performed by a student who is enrolled and is
2 regularly attending classes at the school,
3 college, or university; or
4 (C) Service performed by an individual who is
5 enrolled at a nonprofit or public educational
6 institution which normally maintains a regular
7 faculty and curriculum and normally has a
8 regularly organized body of students in
9 attendance at the place where its educational
10 activities are carried on as a student in a full-
11 time program, taken for credit at such
12 institution, which combines academic instruction
13 with work experience, if such service is an
14 integral part of such program, and such
15 institution has so certified to the employer,
16 except that this subparagraph shall not apply to
17 service performed in a program established for or
18 on behalf of an employer or group of employers;
19 (10) Service performed in the employ of a foreign
20 government (including service as a consular or other
21 officer or employee of a nondiplomatic
22 representative);



1 (11) Service performed in the employ of an instrumentality
2 wholly owned by a foreign government:

3 (A) If the service is of a character similar to that
4 performed in foreign countries by employees of
5 the United States government or of an
6 instrumentality thereof; and

7 (B) If the United States Secretary of State has
8 certified or certifies to the United States
9 Secretary of the Treasury that the foreign
10 government, with respect to whose instrumentality
11 exemption is claimed, grants an equivalent
12 exemption with respect to similar service
13 performed in the foreign country by employees of
14 the United States government and of
15 instrumentalities thereof;

16 (12) Service performed as a student nurse in the employ of
17 a hospital or a nurses' training school by an
18 individual who is enrolled and is regularly attending
19 classes in a nurses' training school chartered or
20 approved pursuant to state law; and service performed
21 as an intern in the employ of a hospital by an
22 individual who has completed a four-year course in a



1 medical school chartered or approved pursuant to state
2 law;

3 (13) Service performed by an individual for an employing
4 unit as an insurance producer, if all service
5 performed by the individual for the employing unit is
6 performed for remuneration solely by way of
7 commission;

8 (14) Service performed by an individual under the age of
9 eighteen in the delivery or distribution of newspapers
10 or shopping news, not including delivery or
11 distribution to any point for subsequent delivery or
12 distribution;

13 (15) Service covered by an arrangement between the
14 department and the agency charged with the
15 administration of any other state or federal
16 unemployment compensation law pursuant to which all
17 services performed by an individual for an employing
18 unit during the period covered by the employing unit's
19 duly approved election, are deemed to be performed
20 entirely within the agency's state;

21 (16) Service performed by an individual who, pursuant to
22 the Federal Economic Opportunity Act of 1964, is not



1 subject to the federal laws relating to unemployment
2 compensation;

3 (17) Service performed by an individual for an employing
4 unit as a real estate salesperson, if all service
5 performed by the individual for the employing unit is
6 performed for remuneration solely by way of
7 commission;

8 (18) Service performed by a registered sales representative
9 for a registered travel agency, when the service
10 performed by the individual for the travel agent is
11 performed for remuneration by way of commission;

12 (19) Service performed by a vacuum cleaner salesperson for
13 an employing unit, if all services performed by the
14 individual for the employing unit are performed for
15 remuneration solely by way of commission;

16 (20) Service performed for a family-owned private
17 corporation organized for profit that employs only
18 members of the family who each own at least fifty per
19 cent of the shares issued by the corporation; provided
20 that:

21 (A) The private corporation elects to be excluded
22 from coverage under this chapter;



- 1 (B) The election for exclusion shall apply to all
- 2 shareholders and under the same circumstances;
- 3 (C) No more than two members of a family may be
- 4 eligible per entity for exclusion under this
- 5 paragraph;
- 6 (D) The exclusion shall be irrevocable for five
- 7 years;
- 8 (E) The family-owned private corporation presents to
- 9 the department proof that it has paid federal
- 10 unemployment insurance taxes as required by
- 11 federal law; and
- 12 (F) The election to be excluded from coverage shall
- 13 be effective the first day of the calendar
- 14 quarter in which the application and all
- 15 substantiating documents requested by the
- 16 department are filed with the department;
- 17 (21) Service performed by a direct seller as defined in
- 18 section 3508 of the Internal Revenue Code of 1986; and
- 19 (22) Service performed by an election official or election
- 20 worker as defined in section 3309(b)(3)(F) of the
- 21 Internal Revenue Code of 1986, as amended.



1 None of the foregoing exclusions (1) to (22) shall apply to
2 any service with respect to which a tax is required to be paid
3 under any federal law imposing a tax against which credit may be
4 taken for contributions required to be paid into a state
5 unemployment fund or which as a condition for full tax credit
6 against the tax imposed by the federal Unemployment Tax Act is
7 required to be covered under this chapter."

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on July 1, 2007.



H.B. NO. 1379
H.D. 1
S.D. 1
C.D. 1

Report Title:

Employment Security Law

Description:

Provides the same type of unemployment insurance (UI) coverage in state law as in federal law for the exclusion of certain alien agricultural workers and to conform coverage of Indian tribe workers under state law to federal law. Effective July 1, 2007. (HB1379 CD1)

HB1379 CD1 HMS 2007-3943

