
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 "§383-62.5 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) (1) Any Indian tribe or tribal unit (subdivisions,
14 subsidiaries, or business enterprises wholly owned by
15 the Indian tribe) subject to this chapter on or after
16 January 1, 2007, shall pay contributions under the
17 provisions of this part (with the exception of the
18 provisions in section 383-62(b)) applicable to other
19 employers, unless it elects to pay to the director for
20 the fund an amount equal to the amount of benefits
21 that is attributable to service in the employ of an
22 Indian tribe.



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



- 1 (c) (1) Failure of the Indian tribe or tribal unit to
2 make any required payment under this chapter within
3 ninety days after a notice of delinquency was mailed
4 to its last known address or was otherwise delivered
5 to it, shall cause the Indian tribe to lose the option
6 to make payments in lieu of contributions and the
7 termination shall continue for the four-consecutive-
8 calendar-quarter period beginning with the quarter in
9 which the termination becomes effective.
- 10 (2) Any Indian tribe that loses the option to make
11 payments in lieu of contributions due to late payment
12 or nonpayment, shall have such option reinstated after
13 a period of one year if all contributions have been
14 made timely; provided no contributions, payments in
15 lieu of contributions for benefits paid, security
16 deposit, and penalties or interest remain outstanding.
- 17 (3) If any Indian tribe or tribal unit fails to make
18 payments required under this section (including
19 assessed of interest and penalty) within ninety days
20 of a notice of delinquency, the department shall
21 immediately notify the United States Internal Revenue
22 Service and the United States Department of Labor.



1 (d) Notices of payment and reporting delinquency to Indian
2 tribes and tribal units shall include information that failure
3 to make full payments within the prescribed time shall cause the
4 Indian tribe to:

- 5 (1) Be liable for taxes under the Federal Unemployment Tax
- 6 Act; and
- 7 (2) Lose the option to make payments in lieu of
- 8 contributions.

9 (e) Except as provided in subsection (f) of this section,
10 the amount payable to the fund by each Indian tribe or tribal
11 unit that is liable for payments in lieu of contributions shall
12 be determined in the same manner as provided in section
13 383-62(e).

14 (f) An Indian tribe or tribal unit must reimburse the fund
15 for all extended benefits paid that are attributable to service
16 in the employ of the Indian tribe or tribal unit unless the
17 benefits are reimbursed by the federal government.

18 (g) Any two or more Indian tribes or tribal units that
19 have become liable for payments in lieu of contributions may
20 file a joint application to the department for the establishment
21 of a group account for the purpose of sharing the cost of
22 benefits paid that are attributable to service in the employ of

1 such employers in the same manner as provided in section
2 383-62(f).

3 (h) As used in this section:

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

6 "Employment" means service performed in the employ of an
7 Indian tribe; provided that the service is excluded from
8 employment as defined in the Federal Unemployment Tax Act solely
9 by reason of Section 3306(c)(7), of the Federal Unemployment Tax
10 Act, and is not otherwise excluded from employment under this
11 chapter. For purposes of this section, the exclusions from
12 employment under section 383-7, apply to services performed in
13 the employ of an Indian tribe in the same manner as the
14 exclusions apply to government and nonprofit entities.

15 "Indian tribe" has the meaning given the term by Section
16 4(e) of the Indian Self-Determination and Education Assistance
17 Act (25 U.S.C. Section 450b(e)), and includes any subdivision,
18 subsidiary, or business enterprises wholly owned by the Indian
19 tribe."

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



1 "§383-7 Excluded service. "Employment" shall not include
2 the following service:

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

6 (A) Which, during each calendar quarter in both the
7 current and the preceding calendar years, paid
8 less than \$20,000 in cash remuneration to
9 individuals employed in agricultural labor[+],
10 including labor performed by an alien referred to
11 in subparagraph (C); and

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

14 (i) No more than nineteen calendar weeks,
15 whether consecutive or not, in which
16 agricultural labor was performed by its
17 employees[+], including labor performed by
18 an alien referred to in subparagraph (C); or

19 (ii) No more than nine individuals in its employ
20 performing agricultural labor in any one
21 calendar week, whether or not the same
22 individuals performed the labor in each week



1 including labor performed by an alien

2 referred to in subparagraph (C); or

3 (C) If such agricultural labor is performed by an
4 individual who is an alien admitted to the United
5 States to perform agricultural labor pursuant to
6 Sections 214(c) and 101(a)(15)(H) of the
7 Immigration and Nationality Act;

8 (2) Domestic service in a private home, local college
9 club, or local chapter of a college fraternity or
10 sorority as set forth in section 3306(c)(2) of the
11 Internal Revenue Code of 1986, as amended;

12 (3) Service not in the course of the employing unit's
13 trade or business performed in any calendar quarter by
14 an individual, unless the cash remuneration paid for
15 the service is \$50 or more and the service is
16 performed by an individual who is regularly employed
17 by the employing unit to perform the service. For the
18 purposes of this paragraph, an individual shall be
19 deemed to be regularly employed to perform service not
20 in the course of an employing unit's trade or business
21 during a calendar quarter only if:



1 (A) On each of some twenty-four days during the
2 quarter the individual performs the service for
3 some portion of the day; or

4 (B) The individual was regularly employed as
5 determined under subparagraph (A) by the
6 employing unit in the performance of the service
7 during the preceding calendar quarter;

8 (4) (A) Service performed on or in connection with a
9 vessel not an American vessel, if the individual
10 performing the service is employed on and in
11 connection with the vessel when outside the
12 United States;

13 (B) Service performed by an individual in (or as an
14 officer or member of the crew of a vessel while
15 it is engaged in) the catching, taking,
16 harvesting, cultivating, or farming of any kind
17 of fish, shellfish, crustacea, sponges, seaweeds,
18 or other aquatic forms of animal and vegetable
19 life, including service performed as an ordinary
20 incident thereto, except:

21 (i) The service performed in connection with a
22 vessel of more than ten net tons (determined



1 in the manner provided for determining the
2 register tonnage of merchant vessels under
3 the laws of the United States);

4 (ii) The service performed in connection with a
5 vessel of ten net tons or less (determined
6 in the manner provided for determining the
7 register tonnage of merchant vessels under
8 the laws of the United States) by an
9 individual who is employed by an employing
10 unit which had in its employ one or more
11 individuals performing the service for some
12 portion of a day in each of twenty calendar
13 weeks all occurring, whether consecutive or
14 not, in either the current or the preceding
15 calendar year; and

16 (iii) Service performed in connection with the
17 catching or taking of salmon or halibut for
18 commercial purposes;

19 (5) Service performed by an individual in the employ of
20 the individual's son, daughter, or spouse, and service
21 performed by a child under the age of twenty-one in
22 the employ of the child's father or mother;



1 (6) Service performed in the employ of the United States
2 government or an instrumentality of the United States
3 exempt under the Constitution of the United States
4 from the contributions imposed by this chapter, except
5 that to the extent that the Congress of the United
6 States permits states to require any instrumentalities
7 of the United States to make payments into an
8 unemployment fund under a state unemployment
9 compensation law, all of the provisions of this
10 chapter shall apply to those instrumentalities, and to
11 services performed for those instrumentalities, in the
12 same manner, to the same extent, and on the same terms
13 as to all other employers, employing units,
14 individuals, and services; provided that if this State
15 is not certified for any year by the Secretary of
16 Labor under section 3304(c) of the federal Internal
17 Revenue Code, the payments required of those
18 instrumentalities with respect to that year shall be
19 refunded by the department of labor and industrial
20 relations from the fund in the same manner and within
21 the same period as is provided in section 383-76 with
22 respect to contributions erroneously collected;



- 1 (7) Service performed in the employ of any other state, or
- 2 any political subdivision thereof, or any
- 3 instrumentality of any one or more of the foregoing
- 4 which is wholly owned by one or more states or
- 5 political subdivisions; and any service performed in
- 6 the employ of any instrumentality of one or more other
- 7 states or their political subdivisions to the extent
- 8 that the instrumentality is, with respect to the
- 9 service, exempt from the tax imposed by section 3301
- 10 of the Internal Revenue Code of 1986, as amended;

- 11 (8) Service with respect to which unemployment
- 12 compensation is payable under an unemployment system
- 13 established by an act of Congress;

- 14 (9) (A) Service performed in any calendar quarter in the
- 15 employ of any organization exempt from income tax
- 16 under section 501(a) of the federal Internal
- 17 Revenue Code (other than an organization
- 18 described in section 401(a) or under section 521
- 19 of the Code), if:

- 20 (i) The remuneration for the service is less
- 21 than \$50; or



- 1 (ii) The service is performed by a fully
- 2 ordained, commissioned, or licensed minister
- 3 of a church in the exercise of the
- 4 minister's ministry or by a member of a
- 5 religious order in the exercise of duties
- 6 required by the order;

- 7 (B) Service performed in the employ of a school,
- 8 college, or university, if the service is
- 9 performed by a student who is enrolled and is
- 10 regularly attending classes at the school,
- 11 college, or university; or

- 12 (C) Service performed by an individual who is
- 13 enrolled at a nonprofit or public educational
- 14 institution which normally maintains a regular
- 15 faculty and curriculum and normally has a
- 16 regularly organized body of students in
- 17 attendance at the place where its educational
- 18 activities are carried on as a student in a full-
- 19 time program, taken for credit at such
- 20 institution, which combines academic instruction
- 21 with work experience, if such service is an
- 22 integral part of such program, and such



1 institution has so certified to the employer,
2 except that this subparagraph shall not apply to
3 service performed in a program established for or
4 on behalf of an employer or group of employers;

5 (10) Service performed in the employ of a foreign
6 government (including service as a consular or other
7 officer or employee of a nondiplomatic
8 representative);

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

11 (A) If the service is of a character similar to that
12 performed in foreign countries by employees of
13 the United States government or of an
14 instrumentality thereof; and

15 (B) If the United States Secretary of State has
16 certified or certifies to the United States
17 Secretary of the Treasury that the foreign
18 government, with respect to whose instrumentality
19 exemption is claimed, grants an equivalent
20 exemption with respect to similar service
21 performed in the foreign country by employees of



- 1 the United States government and of
2 instrumentalities thereof;
- 3 (12) Service performed as a student nurse in the employ of
4 a hospital or a nurses' training school by an
5 individual who is enrolled and is regularly attending
6 classes in a nurses' training school chartered or
7 approved pursuant to state law; and service performed
8 as an intern in the employ of a hospital by an
9 individual who has completed a four-year course in a
10 medical school chartered or approved pursuant to state
11 law;
- 12 (13) Service performed by an individual for an employing
13 unit as an insurance producer, if all service
14 performed by the individual for the employing unit is
15 performed for remuneration solely by way of
16 commission;
- 17 (14) Service performed by an individual under the age of
18 eighteen in the delivery or distribution of newspapers
19 or shopping news, not including delivery or
20 distribution to any point for subsequent delivery or
21 distribution;



- 1 (15) Service covered by an arrangement between the
2 department and the agency charged with the
3 administration of any other state or federal
4 unemployment compensation law pursuant to which all
5 services performed by an individual for an employing
6 unit during the period covered by the employing unit's
7 duly approved election, are deemed to be performed
8 entirely within the agency's state;
- 9 (16) Service performed by an individual who, pursuant to
10 the Federal Economic Opportunity Act of 1964, is not
11 subject to the federal laws relating to unemployment
12 compensation;
- 13 (17) Service performed by an individual for an employing
14 unit as a real estate salesperson, if all service
15 performed by the individual for the employing unit is
16 performed for remuneration solely by way of
17 commission;
- 18 (18) Service performed by a registered sales representative
19 for a registered travel agency, when the service
20 performed by the individual for the travel agent is
21 performed for remuneration by way of commission;



- 1 (19) Service performed by a vacuum cleaner salesperson for
2 an employing unit, if all services performed by the
3 individual for the employing unit are performed for
4 remuneration solely by way of commission;
- 5 (20) Service performed for a family-owned private
6 corporation organized for profit that employs only
7 members of the family who each own at least fifty per
8 cent of the shares issued by the corporation; provided
9 that:
- 10 (A) The private corporation elects to be excluded
11 from coverage under this chapter;
- 12 (B) The election for exclusion shall apply to all
13 shareholders and under the same circumstances;
- 14 (C) No more than two members of a family may be
15 eligible per entity for exclusion under this
16 paragraph;
- 17 (D) The exclusion shall be irrevocable for five
18 years;
- 19 (E) The family-owned private corporation presents to
20 the department proof that it has paid federal
21 unemployment insurance taxes as required by
22 federal law; and



1 (F) The election to be excluded from coverage shall
2 be effective the first day of the calendar
3 quarter in which the application and all
4 substantiating documents requested by the
5 department are filed with the department;

6 (21) Service performed by a direct seller as defined in
7 section 3508 of the Internal Revenue Code of 1986; and

8 (22) Service performed by an election official or election
9 worker as defined in section 3309(b)(3)(F) of the
10 Internal Revenue Code of 1986, as amended.

11 None of the foregoing exclusions (1) to (22) shall apply to
12 any service with respect to which a tax is required to be paid
13 under any federal law imposing a tax against which credit may be
14 taken for contributions required to be paid into a state
15 unemployment fund or which as a condition for full tax credit
16 against the tax imposed by the federal Unemployment Tax Act is
17 required to be covered under this chapter."

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

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



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. (SD1)

