
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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 an establishment, the
6 successor employer:

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 to
12 be considered for hire unless existing employee files
13 are incomplete;

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



1 (4) May retain less than one hundred per cent of incumbent
2 employees if the nature of the successor establishment
3 is substantially dissimilar to the former
4 establishment or the human resource needs of the
5 successor employer are reduced, resulting in the
6 reduction of employees needed; provided that the
7 number of employees to be dislocated shall be in
8 direct proportion to the reduction in the total human
9 resource needs of the successor employer.

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

12 (c) An employer found in violation of this section shall:

13 (1) Be assessed a penalty of \$; provided that each
14 day an employer is found to be in violation of this
15 section shall constitute a separate violation; or

16 (2) Pay to compensate the dislocated employee for the
17 difference between the employee's salary or wages
18 earned under the employee's former employer and the
19 dislocated employee's unemployment insurance benefits
20 received for the covered period.



1 Moneys received from penalties assessed under paragraph (1)
2 shall be deposited into the employment and training fund
3 established under section 383-128.

4 (d) The director shall adopt rules in accordance with
5 chapter 91 to carry out the purposes of this section."

6 SECTION 2. Section 394B-2, Hawaii Revised Statutes, is
7 amended by adding two new definitions to be appropriately
8 inserted and to read:

9 "Divestiture" means the transfer of any establishment
10 which employs at any time in the preceding twelve-month period,
11 one hundred or more persons, including employees holding a
12 management or similar position, from one employer to another
13 because of the sale, transfer, merger, and other business
14 takeover or transaction of business interests.

15 "Establishment" means an industrial, commercial, or other
16 business entity."

17 SECTION 3. Section 383-66, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The department, [~~for the nine-month period April 1,~~
20 ~~1941, to December 31, 1941, and for each calendar year~~
21 ~~thereafter,~~] except as otherwise provided in this part, shall
22 classify employers in accordance with their actual experience in



1 the payment of contributions and with respect to benefits
2 charged against their accounts with a view to fixing the
3 contribution rates to reflect this experience. The department
4 shall determine the contribution rate of each employer in
5 accordance with the following requirements:

6 (1) The standard rate of contributions payable by each
7 employer for any calendar year [~~through 1984 shall be~~
8 ~~three per cent. For the calendar year 1985 and~~
9 ~~thereafter, the standard rate of contributions payable~~
10 ~~by each employer]~~ shall be five and four-tenths per
11 cent;

12 (2) No employer's rate for the calendar year [~~1942 and for~~
13 ~~any calendar year thereafter]~~ shall be other than the
14 maximum rate unless and until the employer's account
15 has been chargeable with benefits throughout the
16 thirty-six consecutive calendar month period ending on
17 December 31 of the preceding calendar year, except
18 that [~~for the calendar year 1956 and for each~~
19 ~~calendar year thereafter,~~] an employer who has not
20 been subject to the law for a sufficient period to
21 meet this requirement may qualify for a rate other
22 than the maximum rate if the employer's account has



1 been chargeable throughout a lesser period but in no
2 event less than the twelve consecutive calendar month
3 period ending on December 31 of the preceding calendar
4 year. [~~For the calendar years 1985 through 1991, the~~
5 ~~contribution rate for a new or newly covered employer~~
6 ~~shall be the sum of the employer's basic contribution~~
7 ~~rate of three and six-tenths per cent and the fund~~
8 ~~solvency contribution rate determined for that year~~
9 ~~pursuant to section 383-68(a), until the employer's~~
10 ~~account has been chargeable with benefits throughout~~
11 ~~the twelve consecutive calendar month period ending on~~
12 ~~December 31 of the preceding calendar year; except~~
13 ~~that no employer's contribution rate shall be greater~~
14 ~~than five and four-tenths per cent and no employer~~
15 ~~with a negative reserve ratio shall have a~~
16 ~~contribution rate less than the employer's basic~~
17 ~~contribution rate.] For calendar years 1992 and~~
18 thereafter, the contribution rate for a new or newly
19 covered employer shall be the contribution rate
20 assigned to any employer with .0000 reserve ratio,
21 until the employer's account has been chargeable with
22 benefits throughout the twelve consecutive calendar



1 month period ending on December 31 of the preceding
2 calendar year;

- 3 (3) Any amount credited to this State under section 903 of
4 the Social Security Act, as amended, which has been
5 appropriated for expenses of administration, whether
6 or not withdrawn from the trust fund, shall be
7 excluded from the fund for the purposes of this
8 paragraph. Any advance that may be made to this State
9 under section 1201 of the Social Security Act, whether
10 or not withdrawn from this trust fund, shall be
11 excluded from the fund for the purposes of this
12 paragraph. No employer's rate shall be reduced in any
13 amount that is not allowable as an additional credit,
14 against the tax levied by the federal Unemployment Tax
15 Act pursuant to section 3302(b) of the federal
16 Internal Revenue Code or pursuant to any other federal
17 statute, successor to section 3302(b), which provides
18 for the additional credit now provided for in section
19 3302(b);
- 20 (4) If, when any classification of employers is to be made
21 (which may be after the commencement of the period for
22 which the classification is to be made), the



1 department finds that any employer has failed to file
2 any report required in connection therewith or has
3 filed a report that the department finds incorrect or
4 insufficient, the department shall notify the employer
5 thereof by mail addressed to the employer's last known
6 address. Unless the employer files the report or a
7 corrected or sufficient report, as the case may be,
8 ~~within fifteen days after the mailing of the notice,~~
9 the maximum rate of contributions shall be payable by
10 the employer for the period for which the contribution
11 rate is to be fixed. Effective January 1, 1987, the
12 director, for excusable failure, may redetermine the
13 assignment of the maximum contribution rate in
14 accordance with this section, provided the employer
15 files all reports as required by the department and
16 submits a written request for redetermination before
17 December 31 of the year for which the contribution
18 rate is to be fixed;

- 19 (5) For the purpose of sections 383-63 to 383-69, if after
20 December 31, 1939, any employing unit in any manner
21 succeeds to or acquires the organization, trade, or
22 business, or substantially all the assets thereof



1 (whether or not the successor or acquiring unit was an
2 "employing unit", as that term is defined in section
3 383-1 prior to the acquisition), or after
4 December 31, 1988 and prior to December 31, [~~1992,~~
5 2007, acquires a clearly identifiable and segregable
6 portion of the organization, trade, or business of
7 another that at the time of the acquisition was an
8 employer subject to this chapter, and the successor
9 continues or resumes the organization, trade, or
10 business and continues to employ all or nearly all of
11 the predecessor's employees, or the successor
12 continues or resumes the clearly identifiable and
13 segregable portion of the organization, trade, or
14 business and continues to employ all or nearly all of
15 the employees of the clearly identifiable and
16 segregable portion, an application may be made for
17 transfer of the predecessor's experience record. If
18 the predecessor employer has submitted all information
19 and reports required by the department including
20 amended quarterly wage reports identifying the
21 employees transferred or retained and executed and
22 filed with the department before December 31 of the



1 calendar year following the calendar year in which the
2 acquisition occurred on a form approved by the
3 department a waiver relinquishing the rights to all or
4 the clearly identifiable and segregable portion of the
5 predecessor's prior experience record with respect to
6 its separate account, actual contribution payment, and
7 benefit chargeability experience, annual payrolls and
8 other data for the purpose of obtaining a reduced
9 rate, and requesting the department to permit the
10 experience record to inure to the benefit of the
11 successor employing unit upon request of the successor
12 employing unit, the experience record for rate
13 computation purposes of the predecessor shall
14 thereupon be deemed the experience record of the
15 successor and the experience record shall be
16 transferred by the department to the successor
17 employing unit and shall become the separate account
18 of the employing unit as of the date of the
19 acquisition. Benefits chargeable to the predecessor
20 employer or successor employer in case of an
21 acquisition of a clearly identifiable and segregable
22 portion of the organization, trade, or business, after



1 the date of acquisition on account of employment prior
2 to the date of the acquisition shall be charged to the
3 separate account of the successor employing unit. In
4 case of an acquisition of a clearly identifiable and
5 segregable portion of the organization, trade, or
6 business, the experience record that inures to the
7 benefit of the successor employer shall be determined
8 as follows:

9 (A) Wages, as used in section 383-61, attributable to
10 the clearly identifiable and segregable portion
11 shall be for the period beginning with the most
12 recent three consecutive calendar years
13 immediately preceding the determination of rates
14 under sections 383-63 to 383-69 and through the
15 date of acquisition; and

16 (B) Reserve balance attributable to the clearly
17 identifiable and segregable portion shall be the
18 amount determined by dividing the wages, as used
19 in section 383-61, of the clearly identifiable
20 and segregable portion in the three calendar
21 years (or that lesser period as the clearly
22 identifiable and segregable portion may have been



1 in operation) immediately preceding the
2 computation date of the rating period prior to
3 which the acquisition occurred by the total
4 taxable payrolls of the predecessor for the
5 three-year period (or that lesser period as the
6 clearly identifiable and segregable portion may
7 have been in operation) and multiplying the
8 quotient by the reserve balance of the
9 predecessor employer calculated as of the
10 acquisition date;

11 provided the waiver or waivers required herein are
12 filed with the department within sixty days after the
13 date of acquisition, the successor employing unit,
14 unless already an employer subject to this chapter,
15 shall be subject from the date of acquisition to the
16 rate of contribution of the predecessor or of two or
17 more predecessors if they have the same contribution
18 rate. If there are two or more predecessors having
19 different contribution rates, the successor shall be
20 subject to the rate prescribed for new or newly
21 covered employers under paragraph (2) until the next
22 determination of rates under sections 383-63 to



1 383-69, at which time the experience records of the
2 predecessors and successor shall be combined and shall
3 be deemed to be the experience record of a single
4 employing unit and the successor's rate shall
5 thereupon be determined upon the basis of the combined
6 experience. If the successor at the time of the
7 transfer is an employer subject to this chapter, the
8 rate of contribution to which the successor is then
9 subject shall remain the same until the next
10 determination of rates under sections 383-63 to
11 383-69, at which time the experience records of the
12 predecessor and successor shall be combined and shall
13 be deemed to be the experience record of a single
14 employing unit and the successor's rate shall
15 thereupon be determined upon the basis of the combined
16 experience. For the purpose of determination of rates
17 under sections 383-63 to 383-69 of all successor
18 employing units, waivers as required herein, if not
19 previously filed as hereinabove provided, shall be
20 filed with the department not later than March 1 of
21 the year for which the rate is determined; provided
22 that no waiver shall be accepted by the department for



1 filing unless the employing unit executing the waiver
2 has filed all reports and paid all contributions
3 required by this chapter;

4 (6) The department may prescribe rules for the
5 establishment, maintenance, and dissolution of joint
6 accounts by two or more employers, and, in accordance
7 with the rules and upon application by two or more
8 employers to establish such an account, or to merge
9 their several individual accounts in a joint account,
10 shall maintain the joint account as if it constituted
11 a single employer's account. The rules shall be
12 consistent with the federal requirements for
13 additional credit allowance in section 3303 of the
14 federal Internal Revenue Code and consistent with this
15 chapter;

16 (7) Whenever there is an amendment to this chapter which,
17 if immediately effective, would change an employer's
18 rate of contributions, the rate of the employer shall
19 be changed in accordance with the amendment and the
20 new rate shall apply for the remainder of the calendar
21 year beginning with the calendar quarter immediately
22 following the effective date of the amendment



1 providing for the change, unless otherwise provided by
2 the amendment;

3 (8) For the purposes of this section "contribution rate"
4 shall mean the basic contribution rate as defined in
5 section 383-68 when applied to calendar year 1978 or
6 any calendar year thereafter; and

7 (9) For the purposes of this section, the terms "employing
8 unit", "employer", "predecessor", and "successor"
9 shall include both the singular and the plural of each
10 term. Nothing in this section shall prevent two or
11 more successor employing units, which each succeed to
12 or acquire a clearly identifiable and segregable
13 portion of a predecessor employing unit, from gaining
14 the benefit of the clearly identifiable and segregable
15 portion of the predecessor's experience record;

16 provided that the terms of this section are complied with,
17 nothing herein shall bar a predecessor employer from waiving the
18 rights to all or the clearly identifiable and segregable portion
19 of the predecessor's prior experience record in favor of a
20 successor employer where the successor acquired a clearly
21 identifiable and segregable portion of the predecessor's



1 organization, trade, or business after December 31, 1988 and
2 prior to December 31, [~~1992.~~] 2007."

3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

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 on July 1, 2008.



Report Title:

Employment; Worker Retention; Unemployment Insurance

Description:

Establishes job security requirements upon the sale, merger or other transfer of a business establishment that employs 100 or more persons. Establishes penalties paid into the Employment and Training Fund and used for training and employment programs. Enables certain employers that acquire a business to also acquire its predecessor's unemployment insurance contribution assessment rate through December 31, 2007. (HB1745 HD3)

