
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 \$1; provided that each day an
14 employer is found to be in violation of this section
15 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 394B-1, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§394B-1 Findings and purpose.** The legislature finds that
20 there is a need for employment and training assistance for
21 dislocated workers in Hawaii and that there is a need to protect
22 employees from the effects of unexpected and sudden layoffs or



1 terminations resulting from closings, plant closures, partial
2 plant closures, divestiture, and relocations."

3 SECTION 4. Section 383-66, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The department, [~~for the nine month period April 1,~~
6 ~~1941, to December 31, 1941, and for each calendar year~~
7 ~~thereafter,~~] except as otherwise provided in this part, shall
8 classify employers in accordance with their actual experience in
9 the payment of contributions and with respect to benefits
10 charged against their accounts with a view to fixing the
11 contribution rates to reflect this experience. The department
12 shall determine the contribution rate of each employer in
13 accordance with the following requirements:

14 (1) The standard rate of contributions payable by each
15 employer for any calendar year [~~through 1984 shall be~~
16 ~~three per cent. For the calendar year 1985 and~~
17 ~~thereafter, the standard rate of contributions payable~~
18 ~~by each employer]~~ shall be five and four-tenths per
19 cent;

20 (2) No employer's rate for the calendar year [~~1942 and for~~
21 ~~any calendar year thereafter]~~ shall be other than the
22 maximum rate unless and until the employer's account



1 has been chargeable with benefits throughout the
2 thirty-six consecutive calendar month period ending on
3 December 31 of the preceding calendar year, except
4 that [~~for the calendar year 1956 and for each~~
5 ~~calendar year thereafter,~~] an employer who has not
6 been subject to the law for a sufficient period to
7 meet this requirement may qualify for a rate other
8 than the maximum rate if the employer's account has
9 been chargeable throughout a lesser period but in no
10 event less than the twelve consecutive calendar month
11 period ending on December 31 of the preceding calendar
12 year. [~~For the calendar years 1985 through 1991, the~~
13 ~~contribution rate for a new or newly covered employer~~
14 ~~shall be the sum of the employer's basic contribution~~
15 ~~rate of three and six tenths per cent and the fund~~
16 ~~solvency contribution rate determined for that year~~
17 ~~pursuant to section 383-68(a), until the employer's~~
18 ~~account has been chargeable with benefits throughout~~
19 ~~the twelve consecutive calendar month period ending on~~
20 ~~December 31 of the preceding calendar year, except~~
21 ~~that no employer's contribution rate shall be greater~~
22 ~~than five and four tenths per cent and no employer~~



1 ~~with a negative reserve ratio shall have a~~
2 ~~contribution rate less than the employer's basic~~
3 ~~contribution rate.]~~ For calendar years 1992 and
4 thereafter, the contribution rate for a new or newly
5 covered employer shall be the contribution rate
6 assigned to any employer with .0000 reserve ratio,
7 until the employer's account has been chargeable with
8 benefits throughout the twelve consecutive calendar
9 month period ending on December 31 of the preceding
10 calendar year;

- 11 (3) Any amount credited to this State under section 903 of
12 the Social Security Act, as amended, which has been
13 appropriated for expenses of administration, whether
14 or not withdrawn from the trust fund, shall be
15 excluded from the fund for the purposes of this
16 paragraph. Any advance that may be made to this State
17 under section 1201 of the Social Security Act, whether
18 or not withdrawn from this trust fund, shall be
19 excluded from the fund for the purposes of this
20 paragraph. No employer's rate shall be reduced in any
21 amount that is not allowable as an additional credit,
22 against the tax levied by the federal Unemployment Tax



1 Act pursuant to section 3302(b) of the federal
2 Internal Revenue Code or pursuant to any other federal
3 statute, successor to section 3302(b), which provides
4 for the additional credit now provided for in section
5 3302(b);

- 6 (4) If, when any classification of employers is to be made
7 (which may be after the commencement of the period for
8 which the classification is to be made), the
9 department finds that any employer has failed to file
10 any report required in connection therewith or has
11 filed a report that the department finds incorrect or
12 insufficient, the department shall notify the employer
13 thereof by mail addressed to the employer's last known
14 address. Unless the employer files the report or a
15 corrected or sufficient report, as the case may be,
16 within fifteen days after the mailing of the notice,
17 the maximum rate of contributions shall be payable by
18 the employer for the period for which the contribution
19 rate is to be fixed. Effective January 1, 1987, the
20 director, for excusable failure, may redetermine the
21 assignment of the maximum contribution rate in
22 accordance with this section, provided the employer



1 files all reports as required by the department and
2 submits a written request for redetermination before
3 December 31 of the year for which the contribution
4 rate is to be fixed;

- 5 (5) For the purpose of sections 383-63 to 383-69, if after
6 December 31, 1939, any employing unit in any manner
7 succeeds to or acquires the organization, trade, or
8 business, or substantially all the assets thereof
9 (whether or not the successor or acquiring unit was an
10 "employing unit", as that term is defined in section
11 383-1 prior to the acquisition), or after
12 December 31, 1988 and prior to December 31, [~~1992,~~
13 2007, acquires a clearly identifiable and segregable
14 portion of the organization, trade, or business of
15 another that at the time of the acquisition was an
16 employer subject to this chapter, and the successor
17 continues or resumes the organization, trade, or
18 business and continues to employ all or nearly all of
19 the predecessor's employees, or the successor
20 continues or resumes the clearly identifiable and
21 segregable portion of the organization, trade, or
22 business and continues to employ all or nearly all of



1 the employees of the clearly identifiable and
2 segregable portion, an application may be made for
3 transfer of the predecessor's experience record. If
4 the predecessor employer has submitted all information
5 and reports required by the department including
6 amended quarterly wage reports identifying the
7 employees transferred or retained and executed and
8 filed with the department before December 31 of the
9 calendar year following the calendar year in which the
10 acquisition occurred on a form approved by the
11 department a waiver relinquishing the rights to all or
12 the clearly identifiable and segregable portion of the
13 predecessor's prior experience record with respect to
14 its separate account, actual contribution payment, and
15 benefit chargeability experience, annual payrolls and
16 other data for the purpose of obtaining a reduced
17 rate, and requesting the department to permit the
18 experience record to inure to the benefit of the
19 successor employing unit upon request of the successor
20 employing unit, the experience record for rate
21 computation purposes of the predecessor shall
22 thereupon be deemed the experience record of the



1 successor and the experience record shall be
2 transferred by the department to the successor
3 employing unit and shall become the separate account
4 of the employing unit as of the date of the
5 acquisition. Benefits chargeable to the predecessor
6 employer or successor employer in case of an
7 acquisition of a clearly identifiable and segregable
8 portion of the organization, trade, or business, after
9 the date of acquisition on account of employment prior
10 to the date of the acquisition shall be charged to the
11 separate account of the successor employing unit. In
12 case of an acquisition of a clearly identifiable and
13 segregable portion of the organization, trade, or
14 business, the experience record that inures to the
15 benefit of the successor employer shall be determined
16 as follows:

17 (A) Wages, as used in section 383-61, attributable to
18 the clearly identifiable and segregable portion
19 shall be for the period beginning with the most
20 recent three consecutive calendar years
21 immediately preceding the determination of rates



1 under sections 383-63 to 383-69 and through the
2 date of acquisition; and

3 (B) Reserve balance attributable to the clearly
4 identifiable and segregable portion shall be the
5 amount determined by dividing the wages, as used
6 in section 383-61, of the clearly identifiable
7 and segregable portion in the three calendar
8 years (or that lesser period as the clearly
9 identifiable and segregable portion may have been
10 in operation) immediately preceding the
11 computation date of the rating period prior to
12 which the acquisition occurred by the total
13 taxable payrolls of the predecessor for the
14 three-year period (or that lesser period as the
15 clearly identifiable and segregable portion may
16 have been in operation) and multiplying the
17 quotient by the reserve balance of the
18 predecessor employer calculated as of the
19 acquisition date;

20 provided the waiver or waivers required herein are
21 filed with the department within sixty days after the
22 date of acquisition, the successor employing unit,



1 unless already an employer subject to this chapter,
2 shall be subject from the date of acquisition to the
3 rate of contribution of the predecessor or of two or
4 more predecessors if they have the same contribution
5 rate. If there are two or more predecessors having
6 different contribution rates, the successor shall be
7 subject to the rate prescribed for new or newly
8 covered employers under paragraph (2) until the next
9 determination of rates under sections 383-63 to
10 383-69, at which time the experience records of the
11 predecessors and successor shall be combined and shall
12 be deemed to be the experience record of a single
13 employing unit and the successor's rate shall
14 thereupon be determined upon the basis of the combined
15 experience. If the successor at the time of the
16 transfer is an employer subject to this chapter, the
17 rate of contribution to which the successor is then
18 subject shall remain the same until the next
19 determination of rates under sections 383-63 to
20 383-69, at which time the experience records of the
21 predecessor and successor shall be combined and shall
22 be deemed to be the experience record of a single



1 employing unit and the successor's rate shall
2 thereupon be determined upon the basis of the combined
3 experience. For the purpose of determination of rates
4 under sections 383-63 to 383-69 of all successor
5 employing units, waivers as required herein, if not
6 previously filed as hereinabove provided, shall be
7 filed with the department not later than March 1 of
8 the year for which the rate is determined; provided
9 that no waiver shall be accepted by the department for
10 filing unless the employing unit executing the waiver
11 has filed all reports and paid all contributions
12 required by this chapter;

- 13 (6) The department may prescribe rules for the
14 establishment, maintenance, and dissolution of joint
15 accounts by two or more employers, and, in accordance
16 with the rules and upon application by two or more
17 employers to establish such an account, or to merge
18 their several individual accounts in a joint account,
19 shall maintain the joint account as if it constituted
20 a single employer's account. The rules shall be
21 consistent with the federal requirements for
22 additional credit allowance in section 3303 of the



1 federal Internal Revenue Code and consistent with this
2 chapter;

3 (7) Whenever there is an amendment to this chapter which,
4 if immediately effective, would change an employer's
5 rate of contributions, the rate of the employer shall
6 be changed in accordance with the amendment and the
7 new rate shall apply for the remainder of the calendar
8 year beginning with the calendar quarter immediately
9 following the effective date of the amendment
10 providing for the change, unless otherwise provided by
11 the amendment;

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

16 (9) For the purposes of this section, the terms "employing
17 unit", "employer", "predecessor", and "successor"
18 shall include both the singular and the plural of each
19 term. Nothing in this section shall prevent two or
20 more successor employing units, which each succeed to
21 or acquire a clearly identifiable and segregable
22 portion of a predecessor employing unit, from gaining



1 the benefit of the clearly identifiable and segregable
2 portion of the predecessor's experience record;
3 provided that the terms of this section are complied with,
4 nothing herein shall bar a predecessor employer from waiving the
5 rights to all or the clearly identifiable and segregable portion
6 of the predecessor's prior experience record in favor of a
7 successor employer where the successor acquired a clearly
8 identifiable and segregable portion of the predecessor's
9 organization, trade, or business after December 31, 1988 and
10 prior to December 31, [~~1992-~~] 2007."

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

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. 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. Assesses penalty of \$1. (SD1)

