

JAN 24 2007

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. The legislature finds that individuals who
2 provide attendant care, and day care services authorized by the
3 department of human services under the Social Security Act, as
4 amended, should be excluded from "employment" under chapters
5 383, 386, 392, and 393, Hawaii Revised Statutes. The
6 legislature finds that if these individuals are not excluded,
7 then the social service payments must be upwardly adjusted to
8 include the cost of employee benefits for these individuals.

9 The purpose of this Act is to clarify the existing
10 exclusions under chapters 386, 392, and 393, and to provide a
11 new exclusion under chapter 383, Hawaii Revised Statutes.

12 SECTION 2. Section 383-1, Hawaii Revised Statutes, is
13 amended by adding a new definition to be appropriately inserted
14 and to read as follows:

15 "Recipient of social service payments" means persons,
16 including corporations and private agencies, that contract with
17 the department of human services to provide attendant care and



1 day care authorized under the Social Security Act, as amended,
2 and who receive social service payments."

3 SECTION 3. Section 386-1, Hawaii Revised Statutes, is
4 amended by adding a new definition to be appropriately inserted
5 and to read as follows:

6 "Recipient of social service payments" means persons,
7 including corporations and private agencies, that contract with
8 the department of human services to provide attendant care and
9 day care authorized under the Social Security Act, as amended,
10 and who receive social service payments."

11 SECTION 4. Section 392-3, Hawaii Revised Statutes, is
12 amended by adding a new definition to be appropriately inserted
13 and to read as follows:

14 "Recipient of social service payments" means persons,
15 including corporations and private agencies, that contract with
16 the department of human services to provide attendant care and
17 day care authorized under the Social Security Act, as amended,
18 and who receive social service payments."

19 SECTION 5. Section 383-7, Hawaii Revised Statutes, is
20 amended to read as follows:

21 **"§383-7 Excluded service.** "Employment" shall not include
22 the following service:



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

4 (A) Which, during each calendar quarter in both the
5 current and the preceding calendar years, paid
6 less than \$20,000 in cash remuneration to
7 individuals employed in agricultural labor; and

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

10 (i) No more than nineteen calendar weeks,
11 whether consecutive or not, in which
12 agricultural labor was performed by its
13 employees; or

14 (ii) No more than nine individuals in its employ
15 performing agricultural labor in any one
16 calendar week, whether or not the same
17 individuals performed the labor in each
18 week;

19 (2) Domestic service in a private home, local college
20 club, or local chapter of a college fraternity or
21 sorority as set forth in section 3306(c)(2) of the
22 Internal Revenue Code of 1986, as amended;



1 (3) Service not in the course of the employing unit's
2 trade or business performed in any calendar quarter by
3 an individual, unless the cash remuneration paid for
4 the service is \$50 or more and the service is
5 performed by an individual who is regularly employed
6 by the employing unit to perform the service. For the
7 purposes of this paragraph, an individual shall be
8 deemed to be regularly employed to perform service not
9 in the course of an employing unit's trade or business
10 during a calendar quarter only if:

11 (A) On each of some twenty-four days during the
12 quarter the individual performs the service for
13 some portion of the day; or

14 (B) The individual was regularly employed as
15 determined under subparagraph (A) by the
16 employing unit in the performance of the service
17 during the preceding calendar quarter;

18 (4) (A) Service performed on or in connection with a
19 vessel not an American vessel, if the individual
20 performing the service is employed on and in
21 connection with the vessel when outside the
22 United States;



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

9 (i) The service performed in connection with a
10 vessel of more than ten net tons (determined
11 in the manner provided for determining the
12 register tonnage of merchant vessels under
13 the laws of the United States);

14 (ii) The service performed in connection with a
15 vessel of ten net tons or less (determined
16 in the manner provided for determining the
17 register tonnage of merchant vessels under
18 the laws of the United States) by an
19 individual who is employed by an employing
20 unit which had in its employ one or more
21 individuals performing the service for some
22 portion of a day in each of twenty calendar



1 weeks all occurring, whether consecutive or
2 not, in either the current or the preceding
3 calendar year; and

4 (iii) Service performed in connection with the
5 catching or taking of salmon or halibut for
6 commercial purposes;

7 (5) Service performed by an individual in the employ of
8 the individual's son, daughter, or spouse, and service
9 performed by a child under the age of twenty-one in
10 the employ of the child's father or mother;

11 (6) Service performed in the employ of the United States
12 government or an instrumentality of the United States
13 exempt under the Constitution of the United States
14 from the contributions imposed by this chapter, except
15 that to the extent that the Congress of the United
16 States permits states to require any instrumentalities
17 of the United States to make payments into an
18 unemployment fund under a state unemployment
19 compensation law, all of the provisions of this
20 chapter shall apply to those instrumentalities, and to
21 services performed for those instrumentalities, in the
22 same manner, to the same extent, and on the same terms



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

- 11 (7) Service performed in the employ of any other state, or
12 any political subdivision thereof, or any
13 instrumentality of any one or more of the foregoing
14 which is wholly owned by one or more states or
15 political subdivisions; and any service performed in
16 the employ of any instrumentality of one or more other
17 states or their political subdivisions to the extent
18 that the instrumentality is, with respect to the
19 service, exempt from the tax imposed by section 3301
20 of the Internal Revenue Code of 1986, as amended;



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



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

16 (10) Service performed in the employ of a foreign
17 government (including service as a consular or other
18 officer or employee of a nondiplomatic
19 representative);

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



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

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

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



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

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

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

19 (16) Service performed by an individual who, pursuant to
20 the Federal Economic Opportunity Act of 1964, is not
21 subject to the federal laws relating to unemployment
22 compensation;



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

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

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

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

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

21 (B) The election for exclusion shall apply to all
22 shareholders and under the same circumstances;



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



1 human services under the Social Security Act, as
2 amended, performed by an individual in the employ of a
3 recipient of social service payments.

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

11 SECTION 6. Section 393-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§393-3 Definitions generally.** As used in this chapter,
14 unless the context clearly requires otherwise:

15 ~~[(1)]~~ "Department" means the department of labor and
16 industrial relations.

17 ~~[(2)]~~ "Director" means the director of labor and industrial
18 relations.

19 ~~[(3)]~~ "Employer" means any individual or type of
20 organization, including any partnership, association,
21 trust, estate, joint stock company, insurance company,
22 or corporation, whether domestic or foreign, a debtor



1 in possession or receiver or trustee in bankruptcy, or
2 the legal representative of a deceased person, who has
3 one or more regular employees in the employer's
4 employment. "Employer" does not include:

5 ~~[(A)]~~ (1) The State, any of its political subdivisions, or
6 any instrumentality of the State or its political
7 subdivisions;

8 ~~[(B)]~~ (2) The United States government or any
9 instrumentality of the United States;

10 ~~[(C)]~~ (3) Any other state or political subdivision thereof
11 or instrumentality of such state or political
12 subdivision;

13 ~~[(D)]~~ (4) Any foreign government or instrumentality wholly
14 owned by a foreign government, if (i) the service
15 performed in its employ is of a character similar to
16 that performed in foreign countries by employees of
17 the United States government or of an instrumentality
18 thereof, and (ii) the United States Secretary of State
19 has certified or certifies to the United States
20 Secretary of the Treasury that the foreign government,
21 with respect to whose instrumentality exemption is
22 claimed, grants an equivalent exemption with respect



1 to similar service performed in the foreign country by
2 employees of the United States government and of
3 instrumentalities thereof.

4 [~~(4)~~] "Employment" means service, including service in
5 interstate commerce, performed for wages under any
6 contract of hire, written or oral, expressed or
7 implied, with an employer, except as otherwise
8 provided in sections 393-4 and 393-5.

9 [~~(5)~~] "Premium" means the amount payable to a prepaid health
10 care plan contractor as consideration for the
11 contractor's obligations under a prepaid health care
12 plan.

13 [~~(6)~~] "Prepaid health care plan" means any agreement by
14 which any prepaid health care plan contractor
15 undertakes in consideration of a stipulated premium:

16 [~~(A)~~] (1) Either to furnish health care, including
17 hospitalization, surgery, medical or nursing care,
18 drugs or other restorative appliances, subject to, if
19 at all, only a nominal per service charge; or

20 [~~(B)~~] (2) To defray or reimburse, in whole or in part, the
21 expenses of health care.

22 [~~(7)~~] "Prepaid health care plan contractor" means:



1 [~~A~~] (1) Any medical group or organization which
2 undertakes under a prepaid health care plan to provide
3 health care; [~~E~~]

4 [~~B~~] (2) Any nonprofit organization which undertakes under
5 a prepaid health care plan to defray or reimburse in
6 whole or in part the expenses of health care; or

7 [~~C~~] (3) Any insurer who undertakes under a prepaid health
8 care plan to defray or reimburse in whole or in part
9 the expenses of health care.

10 "Recipient of social service payments" means persons,
11 including corporations and private agencies, that contract with
12 the department of human services to provide attendant care and
13 day care authorized under the Social Security Act, as amended,
14 and who receive social service payments.

15 [~~8~~] "Regular employee" means a person employed in the
16 employment of any one employer for at least twenty
17 hours per week but does not include a person employed
18 in seasonal employment. "Seasonal employment" for the
19 purposes of this paragraph means employment in a
20 seasonal pursuit as defined in section 387-1 by a
21 seasonal employer during a seasonal period or seasonal
22 periods for the employer in the seasonal pursuit or



1 employment by an employer engaged in the cultivating,
2 harvesting, processing, canning, and warehousing of
3 pineapple during its seasonal periods. The director
4 by rule and regulation may determine the kind of
5 employment that constitutes seasonal employment.

6 ~~(+9)~~ "Wages" means all remuneration for services from
7 whatever source, including commissions, bonuses, and
8 tips and gratuities paid directly to any individual by
9 a customer of the individual's employer, and the cash
10 value of all remuneration in any medium other than
11 cash.

12 The director may issue regulations for the
13 reasonable determination of the cash value of
14 remuneration in any medium other than cash.

15 If the employee does not account to the
16 employee's employer for the tips and gratuities
17 received and is engaged in an occupation in which the
18 employee customarily and regularly receives more than
19 \$20 a month in tips, the combined amount received by
20 the employee from the employee's employer and from
21 tips shall be deemed to be at least equal to the wage



1 required by chapter 387 or a greater sum as determined
2 by regulation of the director.

3 "Wages" does not include the amount of any
4 payment specified in section 383-11 or 392-22 or
5 chapter 386."

6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect upon its approval.

9

INTRODUCED BY: Shiranne Chun Oakland

*For allison J
Carla Fukunaga*



Report Title:

Employment; Exemption

Description:

Exempts recipients of social service payments from the scope of employment related laws.

