

JAN 22 2009

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. The legislature finds that requiring owners of
2 limited liability companies to carry workers' compensation
3 insurance imposes duplicative burdens upon owners who already
4 carry personal health insurance coverage. The purpose of this
5 Act is to exempt owners of limited liability companies who have
6 their own health insurance coverage and have a distributional
7 interest of at least fifty per cent in the company from
8 mandatory workers' compensation coverage.

9 SECTION 2. Section 386-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "employment" to read as
11 follows:

12 "Employment" means any service performed by an individual
13 for another person under any contract of hire or apprenticeship,
14 express or implied, oral or written, whether lawfully or
15 unlawfully entered into. It includes service of public
16 officials, whether elected or under any appointment or contract
17 of hire, express or implied.



1 "Employment" does not include:

2 (1) Service for a religious, charitable, educational, or
3 nonprofit organization if performed in a voluntary or
4 unpaid capacity;

5 (2) Service for a religious, charitable, educational, or
6 nonprofit organization if performed by a recipient of
7 aid therefrom and the service is incidental to or in
8 return for the aid received;

9 (3) Service for a school, college, university, college
10 club, fraternity, or sorority if performed by a
11 student who is enrolled and regularly attending
12 classes and in return for board, lodging, or tuition
13 furnished, in whole or in part;

14 (4) Service performed by a duly ordained, commissioned, or
15 licensed minister, priest, or rabbi of a church in the
16 exercise of the minister's, priest's, or rabbi's
17 ministry or by a member of a religious order in the
18 exercise of nonsecular duties required by the order;

19 (5) Service performed by an individual for another person
20 solely for personal, family, or household purposes if
21 the cash remuneration received is less than \$225
22 during the current calendar quarter and during each



1 completed calendar quarter of the preceding twelve-
2 month period;

3 (6) Domestic, in-home and community-based services for
4 persons with developmental disabilities and mental
5 retardation under the medicaid home and community-
6 based services program pursuant to title 42 Code of
7 Federal Regulations sections 440.180 and 441.300, and
8 title 42 Code of Federal Regulations, part 434,
9 subpart A, as amended, and identified as chore,
10 personal assistance and habilitation, residential
11 habilitation, supported employment, respite, and
12 skilled nursing services, as the terms are defined by
13 the department of human services, performed by an
14 individual whose services are contracted by a
15 recipient of social service payments and who
16 voluntarily agrees in writing to be an independent
17 contractor of the recipient of social service
18 payments;

19 (7) Service performed without wages for a corporation
20 without employees by a corporate officer in which the
21 officer is at least a twenty-five per cent
22 stockholder;



- 1 (8) Service performed by an individual for a corporation
2 if the individual owns at least fifty per cent of the
3 corporation; provided that no employer shall require
4 an employee to incorporate as a condition of
5 employment; [~~and~~]
- 6 (9) Service performed by an individual for another person
7 as a real estate salesperson or as a real estate
8 broker, if all the service performed by the individual
9 for the other person is performed for remuneration
10 solely by way of commission[-]; and
- 11 (10) Service performed by a member of a limited liability
12 company, if the member is an individual, carries a
13 health insurance policy, and has a distributional
14 interest, within the meaning of section 428-501, in
15 the limited liability company of at least fifty per
16 cent; provided that no employer shall require an
17 employee to form a limited liability company as a
18 condition of employment.

19 As used in this paragraph, "religious, charitable, educational,
20 or nonprofit organization" means a corporation, unincorporated
21 association, community chest, fund, or foundation organized and
22 operated exclusively for religious, charitable, or educational



1 purposes, no part of the net earnings of which inure to the
2 benefit of any private shareholder or individual."

3 SECTION 3. 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 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.
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Report Title:

Workers' Compensation; Employment Exclusion

Description:

Excludes services for a limited liability company from the definition of "employment" if the person performing services has a 50% or greater transferable interest in the limited liability company and has personal health insurance coverage.

