

JAN 23 2009

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

1 SECTION 1. The legislature finds that violence against
2 women has been reported to be the leading cause of physical
3 injury and has a devastating impact on women's physical and
4 emotional health and financial security.

5 The purpose of this Act is to promote the State's interest
6 in reducing domestic violence, sexual assault, and stalking by
7 enabling victims of domestic or sexual violence to maintain the
8 financial independence necessary to leave abusive situations,
9 achieve safety, and minimize the physical and emotional injuries
10 from domestic or sexual violence, and to reduce the devastating
11 economic consequences of domestic or sexual violence to
12 employers and employees;

13 To accomplish these purposes, this Act provides
14 unemployment insurance to those who are separated from their
15 employment as a result of domestic or sexual violence, in a
16 manner that accommodates the legitimate interests of employers.



1 SECTION 2. Chapter 383, Hawaii Revised Statutes, is
2 amended by adding one new section to be appropriately designated
3 and to read as follows:

4 "§383-A Eligibility of benefits for domestic or sexual
5 violence victims. (a) As used in this section, the terms
6 "course of conduct", "domestic or sexual violence", "electronic
7 communications", "sexual assault", "stalking", and "victim
8 services organization" shall have the same meaning as in section
9 378-71.

10 (b) Notwithstanding any provision of this chapter to the
11 contrary, an individual shall not be denied benefits where the
12 individual is separated voluntarily or involuntarily from
13 employment due to circumstances set forth in this subsection
14 resulting from the individual or the individual's minor child
15 being a victim of domestic or sexual violence.

16 (1) An individual's voluntary separation from employment
17 shall be deemed for good cause for purposes of section
18 383-30 in any of the following circumstances:

19 (A) The individual has a reasonable fear of the
20 occurrence of future domestic or sexual violence
21 at, en route to, or en route from, the



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1 individual's place of employment, including being
2 a victim of stalking;

3 (B) The anxiety of the individual relating to efforts
4 to relocate in order to avoid future domestic or
5 sexual violence against the individual or the
6 individual's minor child prevent the individual
7 from reporting to work;

8 (C) The individual's or the individual's minor child
9 need to obtain treatment to recover from the
10 physical or psychological effects of domestic or
11 sexual violence prevents the individual from
12 reporting to work;

13 (D) The employer's refusal to grant the individual's
14 request for leave to address domestic or sexual
15 violence and its effects on the individual or the
16 individual's minor child, including leave
17 authorized by chapter 378, section 102 of the
18 Federal Family and Medical Leave Act of 1993, or
19 other federal, state, or county law; or

20 (E) Any other circumstance in which domestic or
21 sexual violence causes the individual to
22 reasonably believe that separation from



1 employment is necessary for the future safety of
2 the individual, the individual's minor child, or
3 other individuals who may be present in the
4 employer's workplace.

5 (2) An individual's involuntary separation (suspension or
6 discharge) from employment shall not be considered
7 misconduct for purposes of section 383-30 if:

8 (A) The employer's discharge of the individual was
9 due to the individual's actions, including
10 absences from work, where such actions were
11 reasonably necessary to protect the individual or
12 the individual's minor child from domestic or
13 sexual violence; or

14 (B) The employer's discharge of the individual was
15 due to circumstances resulting from the
16 individual or the individual's minor child being
17 a victim of domestic or sexual violence.

18 (c) Notwithstanding any provision of this chapter to the
19 contrary, an individual who is a victim of domestic or sexual
20 violence shall have good cause for not accepting otherwise
21 suitable, available work in the following circumstances:



1 (1) The individual reasonably believes that the employment
2 will subject the individual, the individual's minor
3 child, or other individuals in the workplace to an
4 unreasonable risk of violence, despite the individual
5 having sought appropriate assistance in responding to
6 the domestic or sexual violence, including reporting
7 the violence to the police, obtaining services from a
8 victim services organization, and taking other
9 appropriate legal action;

10 (2) The individual or the individual's minor child is
11 seeking or residing in emergency shelter, or is
12 engaged in temporary or permanent relocation,
13 regardless of whether the individual has actually
14 obtained such refuge or accomplished such relocation;
15 or

16 (3) The individual reasonably believes that options such
17 as taking a leave of absence, transferring jobs, or
18 receiving an alternative work schedule would not be
19 sufficient to guarantee the safety of the individual,
20 the individual's minor child, or other individuals in
21 the workplace.



1 (d) Notwithstanding any provision of this chapter to the
2 contrary, an individual who is a victim of domestic or sexual
3 violence shall be deemed to have satisfied the requirement of
4 undertaking an active search for employment where the individual
5 has registered for work and has not been offered an employment
6 opportunity that reasonably accommodates the individual's need
7 to take care of the physical, psychological, legal, and other
8 effects of the domestic or sexual violence.

9 (e) The department may require an individual to provide
10 certification demonstrating that the individual's loss of
11 employment and continued unemployment is due to the individual
12 or the individual's minor child being a victim of domestic or
13 sexual violence. To demonstrate the individual's eligibility
14 for benefits, the department may request the following evidence:

15 (1) A notarized written statement of the individual
16 attesting to the individual or the individual's minor
17 child having been a victim of domestic or sexual
18 violence and explaining how the domestic or sexual
19 violence caused the individual's loss of employment or
20 continuing unemployment;

21 (2) A signed written statement from an employee, agent, or
22 volunteer of a victim services organization, from the



1 individual's attorney or advocate, from a minor
2 child's attorney or advocate, or a medical or other
3 professional from whom the individual or the
4 individual's minor child has sought assistance related
5 to the domestic or sexual violence attesting to the
6 domestic or sexual violence and explaining how the
7 domestic or sexual violence was the cause of the
8 individual's loss of employment or continuing
9 unemployment; or

10 (3) A police or court record suggesting or demonstrating
11 that the domestic or sexual violence was the cause of
12 the individual's loss of employment or continuing
13 unemployment.

14 (f) All information provided to the department pursuant to
15 this section, including any statement of the individual or any
16 other documentation, record, or corroborating evidence
17 discussing or relating to sexual or domestic violence, and the
18 fact that the individual has applied for, inquired about, or
19 obtained unemployment compensation by reason of this section
20 shall be retained in the strictest confidence by the
21 individual's former or current employer, and shall not be
22 disclosed except to the extent that disclosure is requested or



1 consented to by the employee, ordered by a court or
2 administrative agency, or otherwise required by applicable
3 federal or state law."

4 SECTION 3. Section 383-65, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Benefits paid to an individual shall not be charged
7 against the account of any of the individual's base period
8 employers on a contributory plan under section 383-61 when such
9 benefits are:

10 (1) Paid to an individual during any benefit year if the
11 individual:

12 (A) Left work voluntarily without good cause; or

13 (B) Was discharged for misconduct connected with the
14 individual's work; or

15 (C) Left work voluntarily for good cause not
16 attributable to the employer.

17 The chargeability of benefits to an employer's account
18 shall be determined in accordance with section 383-94
19 and other applicable provisions of this chapter, or as
20 may be otherwise specified by the department;

21 (2) Paid to an individual, who, during the individual's
22 base period, earned wages for part-time employment



1 with an employer, if the employer continues to give
2 the individual employment to the same extent while the
3 individual is receiving benefits as during the base
4 period and the employer establishes such fact to the
5 satisfaction of the director of labor and industrial
6 relations;

7 (3) Paid to an individual for the period the individual is
8 enrolled in and is in regular attendance at a
9 vocational training or retraining course approved by
10 the director pursuant to section 383-29;

11 (4) Paid to an individual under the extended benefits
12 program, sections 383-168 to 383-174; except that
13 one-half of the amount of such benefits which are
14 based on services performed for a governmental
15 employer on a contributory plan shall be charged to
16 the account of such employer;

17 (5) Paid to an individual who qualifies to receive
18 benefits by meeting the minimum earnings and
19 employment requirements only by combining the
20 individual's employment and wages earned in two or
21 more states;



- 1 (6) Benefits overpaid to a claimant as a result of
2 ineligibility or disqualification under sections
3 383-29 and 383-30 unless such overpayment resulted
4 from the employer's failure to furnish information as
5 required by this chapter or the rules of the
6 department; [~~o~~]
- 7 (7) Benefits paid to an individual during any benefit year
8 beginning September 13, 1992 and thereafter shall not
9 be charged to the account of any base period employer
10 from whose employment the individual is separated as a
11 direct result of a major disaster and would have been
12 entitled to disaster unemployment assistance under the
13 Stafford Disaster Relief and Emergency Assistance Act
14 (P.L. 100-707) but for the receipt of unemployment
15 insurance benefits paid under this chapter; provided
16 that the employer must petition for relief of any
17 charges to an employer's reserve account as requested
18 by the department and the director approves granting
19 relief of charges[-]
- 20 (8) Paid to an individual when the employer discharges the
21 individual due to the individual's actions, including
22 absences from work, where the individual's actions



1 were reasonably necessary to protect the individual or
2 the individual's minor child from domestic or sexual
3 violence; or

4 (9) Paid to an individual when the employer discharges the
5 individual due to circumstances resulting from the
6 individual being a victim of domestic or sexual
7 violence."

8 SECTION 4. If any provision of this Act, or the
9 application thereof to any person or circumstance is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act, which can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 5. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.
17

INTRODUCED BY:

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Report Title:

Employment Security; Domestic Violence

Description:

Establishes eligibility for unemployment insurance.

