
A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§235- Worker Retention tax credit. (a) There shall
5 be allowed to each qualified taxpayer subject to the taxes
6 imposed by this chapter, a tax credit for retaining all
7 incumbent nonsupervisory and nonconfidential employees for at
8 least one year upon the divestiture of a covered establishment
9 pursuant to section 394B- . The credit shall be deductible
10 from the taxpayer's net income tax liability, if any, imposed by
11 this chapter for the taxable year in which the credit is
12 properly claimed. The amount of the tax credit determined under
13 this section for the taxable year shall be \$.

14 (b) If the credit under this section exceeds the
15 taxpayer's income tax liability, the excess of credit over
16 liability may be used as a credit against the taxpayer's income
17 tax liability in subsequent years until exhausted.



1 (c) In the case of a partnership, S corporation, estate,
2 or trust, the tax credit allowable is for every qualifying
3 covered establishment. The cost upon which the tax credit is
4 computed shall be determined at the entity level. Distribution
5 and share of credit shall be determined pursuant to section 235-
6 110.7(a).

7 (d) The director of taxation:

8 (1) Shall prepare any forms that may be necessary to claim
9 a credit under this section;

10 (2) May require the taxpayer to furnish information to
11 ascertain the validity of the claim for credit made
12 under this section; and

13 (3) May adopt rules pursuant to chapter 91 to effectuate
14 this section.

15 (e) Every claim, including amended claims, for a tax
16 credit under this section shall be filed on or before the end of
17 the twelfth month following the close of the taxable year for
18 which the credit may be claimed. Failure to comply with the
19 foregoing provision shall constitute a waiver of the right to
20 claim the credit.

21 (f) As used in this section:



1 "Covered establishment" means any industrial, commercial,
2 or other business entity that employed one hundred or more
3 persons at any time in the preceding twelve-month period.

4 "Divestiture" means the same as defined in section 394B-2.

5 "Nonsupervisory and nonconfidential employee" means any
6 individual not having authority in the interest of the employer,
7 to hire, transfer, suspend, layoff, recall, promote, discharge,
8 assign, reward, or discipline other employees, or the
9 responsibility to assign work to and direct them, or to adjust
10 their grievances, or effectively to recommend such action, if,
11 in connection with the foregoing, the exercise of such authority
12 is not of a merely routine or clerical nature, but requires the
13 use of independent judgment."

14 SECTION 2. Chapter 394B, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 "§394B- Worker retention in the event of a divestiture.

18 (a) In the event of a divestiture of a covered establishment,
19 the successor employer:

20 (1) Shall hire all incumbent nonsupervisory and
21 nonconfidential employees, unless otherwise provided
22 in this section;



- 1 (2) May receive a tax credit pursuant to section 235- ;
- 2 (3) Shall not require incumbent employees to file
- 3 employment applications with the successor employer to
- 4 be considered for hire unless existing employee files
- 5 are incomplete;
- 6 (4) May conduct pre-hire screening of the incumbent
- 7 employees not prohibited by law, including criminal
- 8 history record checks executed in accordance with
- 9 section 378-2.5 and drug screening executed in
- 10 accordance with chapter 329B; and
- 11 (5) May retain less than one hundred per cent of incumbent
- 12 employees if:
- 13 (A) The business of the successor employer is
- 14 substantially dissimilar to the former employer's
- 15 business; or
- 16 (B) The human resource needs of the successor
- 17 employer are reduced, resulting in the reduction
- 18 of employees needed;
- 19 provided that the number of employees to be dislocated
- 20 shall be in direct proportion to the reduction in the
- 21 total human resource needs of the successor employer.



1 For the purposes of this subsection, "covered
2 establishment" means any industrial, commercial, or other
3 business entity that employed one hundred or more persons at any
4 time in the preceding twelve-month period.

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

7 (c) An employer found in violation of this section shall
8 pay to compensate the dislocated worker for the difference
9 between the employee's salary or wages earned under the
10 employee's former employer and the dislocated employee's
11 unemployment insurance benefits received for the covered period.

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

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

17 SECTION 4. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2011, and
19 shall apply to taxable year beginning after December 31, 2010.



Report Title:

Employment; Worker Retention

Description:

Establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs one hundred or more persons. Creates a worker retention tax credit. Effective July 1, 2011. (HB1166 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

