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# A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

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

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

4                               **"PART . WORK-SHARING BENEFITS**

5           **§383- Definitions.** As used in this part, unless the  
6 context clearly requires otherwise:

7           "Affected unit" means a specified plant, department, shift,  
8 or other definable unit consisting of two or more employees to  
9 which an approved work-sharing plan applies.

10           "Fringe benefits" include health insurance, retirement  
11 benefits, paid vacation and holidays, sick leave, and similar  
12 advantages that are incidents of employment.

13           "Intermittent employment" means employment that is not  
14 continuous but may consist of periodic intervals of weekly work  
15 and intervals of no weekly work.

16           "Regular benefits" has the same meaning as in section 383-  
17 168.



1 "Seasonal employment" means employment with an employer who  
2 displays a twenty per cent difference between its highest level  
3 of employment and its lowest level of employment each year for  
4 the three previous calendar years as reported to the department,  
5 or as shown in the information that is available and  
6 satisfactory to the director.

7 "Temporary layoffs" means the separation of workers in the  
8 affected unit for an indefinite period expected to last for at  
9 least two months but less than six months.

10 "Usual weekly hours of work" means the normal hours of work  
11 each week for an employee in an affected unit when that unit is  
12 operating on a full-time basis, not to exceed forty hours and  
13 not including overtime.

14 "Work-sharing benefits" means benefits payable to employees  
15 in an affected unit under an approved work-sharing plan.

16 "Work-sharing employer" means an employer with an approved  
17 work-sharing plan in effect.

18 "Work-sharing plan" means a plan submitted by an employer  
19 under which there is a reduction in the number of hours worked  
20 by the employees in the affected unit in lieu of temporary  
21 layoffs of some of the employees.



1           **§383-       Work-sharing program established; eligibility.**

2   The director shall establish and administer a work-sharing  
3   program in accordance with this part; provided that:

4           (1)   No employee shall be eligible for work-sharing  
5                benefits under this part unless the employee usually  
6                works thirty hours or more each week for the employer  
7                submitting a work-sharing plan and has been employed  
8                for a period of not less than ninety days; and

9           (2)   No employer may submit or administer a work-sharing  
10                plan under this part unless the employer is a private  
11                employer who has had contributions credited to the  
12                employer's account and benefits have been chargeable  
13                to this account, and the employer is not delinquent in  
14                the payment of contributions or reimbursements.

15           **§383-       Criteria for approval of a work-sharing plan.**

16   (a)   An employer wishing to participate in the work-sharing  
17   program under this part shall submit a signed written work-  
18   sharing plan to the director for approval.   The director shall  
19   approve a work-sharing plan only if the following requirements  
20   are met:

21           (1)   The plan identifies the affected unit or units and  
22                specifies the effective date of the plan;



- 1           (2) The employees in the affected unit or units are  
2           identified by name, social security number, the usual  
3           weekly hours of work, proposed wage and hour  
4           reduction, and any other information that the director  
5           may require;
- 6           (3) The plan certifies that the reduction in the usual  
7           weekly hours of work is in lieu of temporary layoffs  
8           that would have affected at least ten per cent of the  
9           employees in the affected unit or units to which the  
10          plan applies and that would have resulted in an  
11          equivalent reduction in work hours;
- 12          (4) The usual weekly hours of work for employees in the  
13          affected unit or units are reduced by not less than  
14          ten per cent and not more than fifty per cent, and the  
15          reduction in hours in each affected unit are spread  
16          equally among employees in the affected unit;
- 17          (5) The plan specifies the manner in which the fringe  
18          benefits of the participating employees will be  
19          affected;
- 20          (6) In the case of employees represented by a collective  
21          bargaining agent or union, the plan is approved in  
22          writing by the collective bargaining agents or unions



1 that cover the affected employees. In the absence of  
2 any collective bargaining agent or union, the plan  
3 shall include a certification by the employer that the  
4 proposed plan, or a summary of the plan, has been made  
5 available to each employee in the affected unit;

6 (7) The plan will not serve as a subsidy of seasonal  
7 employment during the off season, nor as a subsidy for  
8 intermittent employment;

9 (8) The employer agrees to furnish reports relating to the  
10 proper conduct of the plan and agrees to allow the  
11 director or the director's authorized representatives  
12 access to all records necessary to verify the plan  
13 prior to approval and, after approval, to monitor and  
14 evaluate the application of the plan; and

15 (9) The employer furnishes each employee eligible for  
16 participation in the plan with information stipulating  
17 that participation in the plan may affect the  
18 employee's unemployment benefit compensation if the  
19 employee becomes unemployed in the future.

20 (b) In addition to the requirements specified in  
21 subsection (a), the director shall consider any other factors  
22 that may be pertinent to the proper implementation of the plan.



1           **§383- Approval or rejection of work-sharing plan.** The  
2 director shall approve or reject a work-sharing plan in writing.  
3 The reasons for rejection shall be final and not subject to  
4 appeal. The employer may thereafter submit another plan for  
5 consideration and that determination shall be made based upon  
6 the new data submitted by the employer.

7           **§383- Effective date and duration of work-sharing plan.**  
8 A work-sharing plan shall be effective on the date specified in  
9 the plan or on the first Sunday following the date on which the  
10 plan is approved by the director, whichever is later. The plan  
11 shall expire at the end of the twelfth full calendar month after  
12 the effective date of the plan or on an earlier date specified  
13 in the plan; provided that the plan is not previously revoked by  
14 the director. A plan revoked by the director shall terminate on  
15 the date specified in the director's written order of  
16 revocation.

17           **§383- Revocation of approval.** (a) The director may  
18 revoke approval of a work-sharing plan for good cause. The  
19 revocation order shall be in writing and shall specify the date  
20 the revocation is effective and the reasons therefor. The  
21 revocation order shall be final and not subject to appeal.



1 (b) A revocation of approval of a work-sharing plan under  
2 this section may be made at any time by the director's own  
3 motion, on the motion of any of the affected unit's employees,  
4 or on the motion of any collective bargaining agent. The  
5 director shall review the operation of each work-sharing plan at  
6 least once during the period the plan is in effect to ensure  
7 that the plan complies with the work-sharing requirements.

8 (c) For the purposes of this section, "good cause"  
9 includes failure to comply with assurances given in the work-  
10 sharing plan; unreasonable revision of productivity standards  
11 for the affected unit; conduct or occurrences tending to defeat  
12 the intent and effective operation of the plan; and violation of  
13 any criteria on which approval of the plan was based.

14 **§383- Modification of work-sharing plan.** An operational  
15 approved work-sharing plan may be modified by the work-sharing  
16 employer with the consent of any collective bargaining agent or  
17 union if the modification is insubstantial and conforms with the  
18 plan approved by the director; provided that the work-sharing  
19 employer promptly reports the modifications to the director. If  
20 the hours of work are increased or decreased substantially  
21 beyond the level in the original plan, or any other conditions  
22 are changed substantially, the director shall approve or



1 disapprove the modifications without changing the expiration  
2 date of the original plan. If the substantial modifications do  
3 not meet the requirements for approval, the director shall  
4 disallow that portion of the plan in writing. The decision of  
5 the director shall be final and not subject to appeal.

6 **§383- Eligibility for work-sharing benefits. (a)**

7 Subsequent to serving a waiting period as prescribed by the  
8 director, an individual shall be eligible to receive work-  
9 sharing benefits with respect to any week only if, in addition  
10 to meeting other conditions of eligibility for regular benefits  
11 under this chapter that are not inconsistent with this section,  
12 the director finds that:

13 (1) During the week, the individual is employed as a  
14 member of an affected unit under a work-sharing plan  
15 that was approved prior to that week, and the plan is  
16 in effect with respect to the week for which work-  
17 sharing benefits are claimed; and

18 (2) The individual is able to work and is available for  
19 the normal work week with the work-sharing employer.

20 (b) Notwithstanding any other provisions of this chapter  
21 to the contrary, an individual is deemed unemployed in any week  
22 for which remuneration is payable to the individual as an





1 employee in an affected unit for less than the individual's  
2 normal weekly hours of work as specified under the approved  
3 work-sharing plan in effect for the week.

4 (c) Notwithstanding any other provisions of this chapter  
5 to the contrary, an individual shall not be denied work-sharing  
6 benefits for any week by reason of the application of provisions  
7 relating to the availability for work and active search for work  
8 with an employer other than the work-sharing employer.

9 **§383- Work-sharing benefits.** (a) The work-sharing  
10 weekly benefit amount shall be the product of the regular weekly  
11 benefit amount under section 383-22, including any dependents'  
12 allowances, multiplied by the percentage reduction in the  
13 individual's usual weekly hours of work as specified in the  
14 approved plan. If the work-sharing weekly benefit amount is not  
15 an exact multiple of \$1, then the weekly benefit amount shall be  
16 rounded down to the next lower multiple of \$1.

17 (b) An individual may be eligible for work-sharing  
18 benefits or regular benefits, as appropriate, except that no  
19 individual shall be eligible for combined benefits in any  
20 benefit year in an amount exceeding the maximum entitlement  
21 established under section 383-24, nor shall an individual be  
22 paid work-sharing benefits for more than fifty-two weeks,



1 whether or not consecutive, in any benefit year pursuant to an  
2 approved work-sharing plan.

3 (c) The work-sharing benefits paid shall be deducted from  
4 the maximum entitlement amount established for that individual's  
5 benefit year pursuant to section 383-24.

6 (d) If an employer approves time off and the worker has  
7 performed some work during the week, the individual shall be  
8 eligible for work-sharing benefits based on the combined work  
9 and paid leave hours for that week.

10 (e) If an employee was sick and consequently did not work  
11 all the hours offered by the work-sharing employer in a given  
12 week, the employee shall be denied work-sharing benefits for  
13 that week.

14 (f) Claims for work-sharing benefits shall be filed in the  
15 same manner as claims for regular benefits or in accordance with  
16 rules adopted by the director.

17 (g) Provisions applicable to claimants of regular benefits  
18 shall apply to work-sharing claimants to the extent that they  
19 are not inconsistent with the established work-sharing  
20 provisions. An individual who files an initial claim for work-  
21 sharing benefits, if eligible for benefits, shall be provided a



1 monetary determination of entitlement to work-sharing benefits  
2 and shall serve a waiting week.

3 (h) If an individual works in the same week for an  
4 employer other than the work-sharing employer, the individual's  
5 work-sharing benefits shall be computed in the same manner as if  
6 the individual worked solely with the work-sharing employer. If  
7 the individual is not able to work or is not available for the  
8 normal work week with the work-sharing employer, then no work-  
9 sharing benefits shall be payable to that individual for that  
10 week.

11 (i) An individual who performs no services during a week  
12 for the work-sharing employer and is otherwise eligible shall be  
13 paid the full weekly benefit amount under section 383-22;  
14 provided that week shall not be counted as a week with respect  
15 to which work-sharing benefits were received.

16 (j) An individual who does not work for the work-sharing  
17 employer during a week but works for another employer and is  
18 otherwise eligible shall be paid benefits for that week under  
19 the partial unemployment benefit provisions of part II; provided  
20 that week shall not be counted as a week with respect to which  
21 work-sharing benefits were received.



1 (k) Nothing in this section shall preclude an otherwise  
2 eligible individual from receiving total or partial unemployment  
3 benefits when the individual's work-sharing benefits have been  
4 exhausted.

5 **§383- Benefit charges.** Notwithstanding any provision of  
6 this chapter to the contrary, work-sharing benefits shall be  
7 charged to the account of the work-sharing employer. Employers  
8 liable for payments in lieu of contributions shall be  
9 responsible for reimbursing the fund for the full amount of  
10 work-sharing benefits paid to employees under an approved work-  
11 sharing plan. No contributory employer with a negative reserve  
12 ratio or delinquent reimbursable shall be eligible to  
13 participate in the work-sharing program.

14 **§383- Extended benefits.** An individual who has received  
15 all of the regular benefits or combined regular benefits and  
16 work-sharing benefits available in a benefit year shall be  
17 considered an exhaustee for purposes of extended benefits under  
18 part VII and, if otherwise eligible under that part, shall be  
19 eligible to receive extended benefits."

20 SECTION 2. This Act shall take effect on September 1,  
21 2013.



**Report Title:**

Employment Security; Unemployment; Work-sharing Benefits

**Description:**

Authorizes certain private employers to administer a work-sharing plan to avoid temporary layoffs, if approved by the Department of Labor and Industrial Relations. Allows employees under a work-sharing plan to receive unemployment benefits to compensate for lost wages. Requires employees to be employed for not less than 90 days to be eligible for participation in a work-sharing program. Requires an employer to notify employees eligible to participate in a work-sharing program that unemployment compensation benefits may be affected if an employee becomes unemployed in the future. Effective September 1, 2013. (HB2025 HD1)

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

