
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION LAW.

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

1 SECTION 1. The legislature finds that in light of the
2 rising costs of conducting business in the State, many small
3 businesses have become increasingly reliant on immediate family
4 members. These family members serve in place of paid employees
5 and in many situations are not compensated, nor expectant of
6 compensation. However, under current employment laws, these
7 activities are classified as "employment". Due to the lack of
8 flexibility in the application of this law, family owned
9 businesses are unduly aggrieved by the mandate that they provide
10 benefits to workers otherwise considered volunteers.

11 The purpose of this Act is to ease restrictions on small
12 businesses by excluding service performed by an individual in
13 the employ of the individual's spouse from the definition of
14 "employment" under workers' compensation law.

15 SECTION 2. Section 386-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "employment" to read as
17



1 follows:

2 "Employment" means any service performed by an individual
3 for another person under any contract of hire or apprenticeship,
4 express or implied, oral or written, whether lawfully or
5 unlawfully entered into. It includes service of public
6 officials, whether elected or under any appointment or contract
7 of hire, express or implied.

8 "Employment" does not include:

- 9 (1) Service for a religious, charitable, educational, or
10 nonprofit organization if performed in a voluntary or
11 unpaid capacity;
- 12 (2) Service for a religious, charitable, educational, or
13 nonprofit organization if performed by a recipient of
14 aid therefrom and the service is incidental to or in
15 return for the aid received;
- 16 (3) Service for a school, college, university, college
17 club, fraternity, or sorority if performed by a
18 student who is enrolled and regularly attending
19 classes and in return for board, lodging, or tuition
20 furnished, in whole or in part;
- 21 (4) Service performed by a duly ordained, commissioned, or
22 licensed minister, priest, or rabbi of a church in the



1 exercise of the minister's, priest's, or rabbi's
2 ministry or by a member of a religious order in the
3 exercise of nonsecular duties required by the order;

4 (5) Service performed by an individual for another person
5 solely for personal, family, or household purposes if
6 the cash remuneration received is less than \$225
7 during the current calendar quarter and during each
8 completed calendar quarter of the preceding twelve-
9 month period;

10 (6) Domestic, in-home and community-based services for
11 persons with developmental and intellectual
12 disabilities under the medicaid home and community-
13 based services program pursuant to Title 42 Code of
14 Federal Regulations sections 440.180 and 441.300, and
15 Title 42 Code of Federal Regulations, Part 434,
16 Subpart A, as amended, or when provided through state
17 funded medical assistance to individuals ineligible
18 for medicaid, and identified as chore, personal
19 assistance and habilitation, residential habilitation,
20 supported employment, respite, and skilled nursing
21 services, as the terms are defined by the department



1 of human services, performed by an individual whose
2 services are contracted by a recipient of social
3 service payments and who voluntarily agrees in writing
4 to be an independent contractor of the recipient of
5 social service payments;

6 (7) Domestic services, which include attendant care, and
7 day care services authorized by the department of
8 human services under the Social Security Act, as
9 amended, or when provided through state-funded medical
10 assistance to individuals ineligible for medicaid,
11 when performed by an individual in the employ of a
12 recipient of social service payments. For the
13 purposes of this paragraph only, a "recipient of
14 social service payments" is a person who is an
15 eligible recipient of social services such as
16 attendant care or day care services;

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

21 (9) Service performed by an individual for a corporation



1 if the individual owns at least fifty per cent of the
2 corporation; provided that no employer shall require
3 an employee to incorporate as a condition of
4 employment;

5 (10) Service performed by an individual for another person
6 as a real estate salesperson or as a real estate
7 broker, if all the service performed by the individual
8 for the other person is performed for remuneration
9 solely by way of commission;

10 (11) Service performed by a member of a limited liability
11 company if the member is an individual and has a
12 distributional interest, as defined in section 428-
13 101, of not less than fifty per cent in the company;
14 provided that no employer shall require an employee to
15 form a limited liability company as a condition of
16 employment;

17 (12) Service performed by a partner of a partnership, as
18 defined in section 425-101, if the partner is an
19 individual; provided that no employer shall require an
20 employee to become a partner or form a partnership as
21 a condition of employment;



1 (13) Service performed by a partner of a limited liability
2 partnership if the partner is an individual and has a
3 transferable interest as described in section 425-127
4 in the partnership of not less than fifty per cent;
5 provided that no employer shall require an employee to
6 form a limited liability partnership as a condition of
7 employment; [~~and~~]

8 (14) Service performed by a sole proprietor~~[-]~~; and

9 (15) Service performed by an individual in the employ of
10 the individual's spouse.

11 As used in this definition, "religious, charitable, educational,
12 or nonprofit organization" means a corporation, unincorporated
13 association, community chest, fund, or foundation organized and
14 operated exclusively for religious, charitable, or educational
15 purposes, no part of the net earnings of which inure to the
16 benefit of any private shareholder or individual."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

22 SECTION 5. This Act shall take effect on July 1, 2013.



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Report Title:

Workers' Compensation Law; Employment; Spouses

Description:

Amends the definition of "employment" under workers' compensation law to exclude service performed by an individual in the employ of the individual's spouse from mandated coverage.

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

