
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 the economy is
2 changing and increasing numbers of individuals are making a
3 deliberate choice to become entrepreneurs and go into business
4 for themselves. While the department of commerce and consumer
5 affairs, department of taxation, and department of labor and
6 industrial relations have an existing process which enables
7 businesses to quickly register to do business in the State,
8 there is currently no mechanism that enables individuals or
9 organizations wishing to contract with entrepreneurs to quickly
10 confirm that an entrepreneur is an independent contractor before
11 contracting for services.

12 The legislature further finds that for purposes of Hawaii
13 employment security law, a clearer definition of "independent
14 contractor" is needed.

15 The purpose of this Act is to:



- 1 (1) Set forth criteria for determining whether an
2 individual shall be considered an independent
3 contractor;
- 4 (2) Require the department of labor and industrial
5 relations to adopt rules relating to any additional
6 requirements for when an individual shall be
7 considered an independent contractor;
- 8 (3) Require the department of labor and industrial
9 relations to issue a certification to those
10 individuals meeting the definition of an "independent
11 contractor" under the law;
- 12 (4) Require individuals to whom an independent contractor
13 certification is issued to provide copies of the
14 certification to each customer; and
- 15 (5) Require any certified independent contractor who files
16 a claim for unemployment insurance benefits against a
17 customer, to have the burden of proving that an
18 employee-employer relationship exists.

19 SECTION 2. Chapter 383, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:



1 "§383- Independent contractor, defined. (a) An
2 individual performing services under any contract of hire shall
3 be deemed to be an independent contractor if the individual
4 meets the requirements for independent contractor status
5 pursuant to rules adopted by the department under chapter 91.

6 (b) Notwithstanding subsection (a), an individual shall be
7 presumed by the department to be an independent contractor if
8 the individual has:

- 9 (1) A valid employee identification number issued by the
10 United States Internal Revenue Service;
11 (2) Registered with the department of commerce and
12 consumer affairs to do business;
13 (3) A current general excise tax license issued by the
14 department of taxation; and
15 (4) Entered into a written agreement with a customer to
16 perform services for which the individual has
17 registered to do business.

18 (c) An individual who meets the requirements for
19 independent contractor status under this section shall be
20 certified by the department as an independent contractor. The
21 individual shall be assessed a filing fee of \$10 by the



1 department for certification. The individual shall provide a
2 written copy of the certification to each customer to whom the
3 individual provides services.

4 (d) If a certified independent contractor files a claim
5 for unemployment insurance benefits against a customer pursuant
6 to this chapter, the burden shall be on the certified
7 independent contractor to prove that an employer-employee
8 relationship exists."

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2115.



Report Title:

Employment Security; Independent Contractor

Description:

Allows the Department of Labor and Industrial Relations to set criteria for independent contractor status and when that status is presumed. Establishes certification procedures. Places the burden of proving an employee-employer relationship on the certified independent contractor if the contractor files an unemployment insurance benefits claim against a customer.

(HB1213 HD1)

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