
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 facing
3 decisions on whether to choose to become entrepreneurs and go
4 into business for themselves or remain in employment
5 relationships and maintain the protections afforded by various
6 labor laws, including Hawaii's employment security law. The
7 legislature further finds that many of these individuals may not
8 be aware of the criteria used by the department of labor and
9 industrial relations when making determinations as to whether an
10 individual is in an employment relationship or is a bona fide
11 independent contractor.

12 Accordingly, the purpose of this Act is to provide greater
13 clarity in Hawaii's employment security law to those individuals
14 choosing to become entrepreneurs by setting forth in greater
15 detail the criteria used to determine employee status.

16 SECTION 2. Section 383-6, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "§383-6 Master and servant relationship, not required
2 ~~when [→];~~ employer-employee relationship. (a) Services
3 performed by an individual for wages or under any contract of
4 hire shall be deemed to be employment subject to this chapter
5 irrespective of whether the common law relationship of master
6 and servant exists unless and until it is shown to the
7 satisfaction of the department [~~of labor and industrial~~
8 ~~relations~~] that:

- 9 (1) The individual has been and will continue to be free
10 from control or direction over the performance of such
11 service, both under the individual's contract of hire
12 and in fact; and
- 13 (2) The service is either outside the usual course of the
14 business for which the service is performed or that
15 the service is performed outside of all the places of
16 business of the enterprise for which the service is
17 performed; and
- 18 (3) The individual is customarily engaged in an
19 independently established trade, occupation,
20 profession, or business of the same nature as that
21 involved in the contract of service.



1 (b) As an aid to determining whether an individual is an
2 employee under the common law rules, twenty factors or elements
3 have been identified as indicating whether sufficient control is
4 present to establish an employer-employee relationship. The
5 weight or relevance that each factor is given in determining
6 whether an individual is an employee and the degree of
7 importance of each factor varies depending on the occupation and
8 the factual context in which the services are performed. The
9 department shall consider all of the following twenty factors
10 when determining whether an employer-employee relationship
11 exists:

- 12 (1) The employer for whom services are being performed
13 requires the individual to comply with instructions
14 regarding when, where, and how services are performed;
15 (2) The employer for whom services are being performed
16 requires particular training for the individual
17 performing services;
18 (3) The services provided by the individual are part of
19 the regular business of the employer for whom services
20 are being performed;



- 1 (4) The employer for whom services are being performed
2 requires the services to be performed by the
3 individual;
- 4 (5) The employer for whom services are being performed
5 hires, supervises, or pays the wages of the individual
6 performing services;
- 7 (6) The existence of a continuing relationship between the
8 employer for whom services are being performed with
9 the individual performing services that contemplates
10 continuing or recurring work, even if not full-time;
- 11 (7) The employer for whom services are being performed
12 requires set hours during which services are to be
13 performed;
- 14 (8) The employer for whom services are being performed
15 requires the individual to devote substantially full-
16 time to its business;
- 17 (9) The employer for whom services are being performed
18 requires the individual to perform work on its
19 premises;



- 1 (10) The employer for whom services are being performed
2 requires the individual to follow a set order or
3 sequence of work;
- 4 (11) The employer for whom services are being performed
5 requires the individual to make oral or written
6 progress reports;
- 7 (12) The employer for whom services are being performed
8 pays the individual on a regular basis such as hourly,
9 weekly, or monthly;
- 10 (13) The employer for whom services are being performed
11 pays expenses for the individual performing services;
- 12 (14) The employer for whom services are being performed
13 furnishes tools, materials, and other equipment for
14 use by the individual;
- 15 (15) There is a lack of investment in the facilities used
16 to perform services by the individual;
- 17 (16) There is a lack of profit or loss to the individual as
18 a result of the performance of such services;
- 19 (17) The individual is not performing services for a number
20 of employers at the same time;

1 (18) The individual does not make such services available
2 to the general public;

3 (19) The employer for whom services are being performed has
4 a right to discharge the individual; and

5 (20) The individual has the right to end the relationship
6 with the employer for whom services are being
7 performed without incurring liability pursuant to an
8 employment contract or agreement.

9 (c) For purposes of this section:

10 "Contract of hire" means a written or oral, express or
11 implied, agreement between two or more individuals that creates
12 an obligation to do or not to do a particular thing and where
13 such agreement demonstrates a promise of wages for services
14 performed.

15 "Control or direction over the performance of such service"
16 means general control and need not extend to all details of the
17 performance of service. The employer need not actually exercise
18 control; it is sufficient that there is a right to do so.

19 "Outside the usual course of the business" means services
20 that do not promote or advance the business of the employer, or



1 services that are merely incidental to, and not an integral part
2 of, that business.

3 "Outside of all the places of business of the enterprise"
4 means places other than the business' home office, headquarters,
5 or territory in which the business operates.

6 "The individual is customarily engaged in an independently
7 established trade, occupation, profession, or business" means an
8 individual who is performing services and is established in the
9 business of performing these services independent of whatever
10 connection the individual may have with an employer and that the
11 individual must have a proprietary interest in such business,
12 something in which the individual has a right of continuity,
13 which the individual can sell or give away, and that is not
14 subject to cancellation or destruction upon severance of the
15 relationship with the employer."

16 SECTION 3. The director of labor and industrial relations
17 shall submit a report to the legislature no later than twenty
18 days prior to the convening of the regular session of 2016 on
19 the guidelines developed by the unemployment insurance coverage
20 committee to assist auditors in applying section 383-6, Hawaii
21 Revised Statutes, during the auditor's investigations.



1 SECTION 4. The director of labor and industrial relations
2 shall submit, for each of the next five years, an annual report
3 to the legislature no later than twenty days prior to the
4 convening of each regular session regarding the number of
5 determinations applying section 383-6, Hawaii Revised Statutes,
6 rendered by the department of labor and industrial relations'
7 unemployment insurance division and employment security appeals
8 referee's office finding both independent contractor and covered
9 employment status.

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 2115.



Report Title:

Employment Security; Independent Contractor; Guidelines;
Department of Labor and Industrial Relations

Description:

Clarifies Hawaii's employment security law for employee status. Includes 20 factors to be used as guidelines when determining whether an individual could be an employee. Retains the ability of the Department of Labor and Industrial Relations to determine if an individual is an employee. Requires the Director of Labor and Industrial Relations to report to the Legislature prior to the regular session of 2016 regarding guidelines developed by the Unemployment Insurance Coverage Committee. Requires an annual report over the next five years to the Legislature regarding covered employment determinations. (SB1219 HD1)

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