
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 independent contractor
16 status.



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

3 "§383-6 ~~[Master and servant relationship, not required~~
4 ~~when.] Independent contract. (a) Services performed by an
5 individual for wages or under any contract of hire shall be
6 deemed to be employment subject to this chapter irrespective of
7 whether the common law relationship of ~~[master and servant]~~
8 employer and employee exists unless and until it is shown to the
9 satisfaction of the department ~~[of labor and industrial~~
10 ~~relations]~~ that ~~[+]~~ in the department's determination, a
11 preponderance of the factors set forth in subsection (b) has
12 been met and that:~~

13 (1) The individual has been and will continue to be free
14 from control or direction over the performance of such
15 service, both under the individual's contract of hire
16 and in fact;

17 (2) The service is either outside the usual course of the
18 business for which the service is performed or that
19 the service is performed outside of all the places of
20 business of the enterprise for which the service is
21 performed; and



1 (3) The individual is customarily engaged in an
2 independently established trade, occupation,
3 profession, or business of the same nature as that
4 involved in the contract of service.

5 (b) The twenty factors set forth in this subsection shall
6 be used by the department for determining whether an individual
7 could be deemed an independent contractor. An individual shall
8 not have to meet all twenty factors to qualify as an independent
9 contractor. The degree of importance of each factor may vary,
10 depending on the occupation and the individual facts of each
11 case as determined by the department. A preponderance of the
12 following twenty factors shall indicate whether an individual is
13 an independent contractor if:

14 (1) The employer for whom services are being performed
15 requires the individual to comply with instructions
16 regarding when, where, and how services are performed;

17 (2) The employer for whom services are being performed
18 requires particular training for the individual
19 performing services;



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



- 1 (9) The employer for whom services are being performed
- 2 requires the individual to perform work on its
- 3 premises;
- 4 (10) The employer for whom services are being performed
- 5 requires the individual to follow a set order or
- 6 sequence of work;
- 7 (11) The employer for whom services are being performed
- 8 requires the individual to make oral or written
- 9 progress reports;
- 10 (12) The employer for whom services are being performed
- 11 pays the individual on a regular basis such as hourly,
- 12 weekly or monthly;
- 13 (13) The employer for whom services are being performed
- 14 pays expenses for the individual performing services;
- 15 (14) The employer for whom services are being performed
- 16 furnishes tools, materials, and other equipment for
- 17 use by the individual;
- 18 (15) There is a lack of investment in the facilities used
- 19 to perform services by the individual;
- 20 (16) There is a lack of profit or loss to the individual as
- 21 a result of the performance of such services;



1 (17) The individual is not performing services for a number
2 of employers at the same time;

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

5 (19) The employer for whom services are being performed has
6 a right to discharge the individual;

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

11 (c) For purposes of this section:

12 "Client" means an entity or individual that obtains
13 services or receives products or results from an independent
14 contractor. A client has the right to control or direct only
15 the result of the work of an independent contractor and does not
16 have the right to control or direct the manner and means used by
17 an independent contractor to accomplish the result.

18 "Independent contractor" means an individual customarily
19 engaged in an independently established trade, occupation,
20 profession, or business who is performing services or providing
21 products or results and who is established in the business of



1 performing those services or providing those products or results
2 independent of the connection the individual may have with a
3 client. An independent contractor has no expectation of
4 benefits that would normally accrue from an employer-employee
5 relationship and is responsible for obtaining a current general
6 excise tax license and for paying all applicable taxes."

7 SECTION 3. The director of labor and industrial relations
8 shall submit a report to the legislature no later than twenty
9 days prior to the convening of the regular session of 2018 on
10 the guidelines developed by the unemployment insurance coverage
11 committee to assist auditors in applying section 383-6, Hawaii
12 Revised Statutes, during the auditor's investigations.

13 SECTION 4. The director of labor and industrial relations
14 shall submit a report to the legislature no later than twenty
15 days prior to the convening of each regular session regarding
16 the number of determinations applying section 383-6, Hawaii
17 Revised Statutes, rendered by the department of labor and
18 industrial relations' unemployment insurance division and
19 employment security appeals referee's office finding both
20 independent contractor and covered employment status.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

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

Description:

Clarifies Hawaii's employment security law for independent contractors by requiring the use of twenty factors by the Department of Labor Industrial Relations when determining whether an individual is considered an independent contractor. Requires the Director of Labor and Industrial Relations to report to the Legislature prior to the Regular Session of 2018 regarding guidelines developed by the unemployment insurance coverage committee. Requires an annual report to the Legislature regarding covered employment determinations. (HB347 HD2)

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

