
HOUSE RESOLUTION

URGING THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS TO TRAIN ITS AUDITORS TO REQUIRE SATISFACTION OF AT LEAST 15 OF THE 20 FACTORS USED FOR EMPLOYMENT DETERMINATIONS WHEN BOTH PARTIES CONTEMPLATE AN INDEPENDENT CONTRACTOR RELATIONSHIP WITH ONE ANOTHER.

1 WHEREAS, the Internal Revenue Service developed a list of
2 20 factors that may be utilized in determining whether an
3 employer-employee relationship exists; and
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5 WHEREAS, the Department of Labor and Industrial Relations
6 (DLIR) adopted the 20 factors under section 12-5-2, Hawaii
7 Administrative Rules, with the intent that auditors use the
8 factors as a guide in determining whether an individual is in an
9 employer-employee relationship; and
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11 WHEREAS, however, DLIR auditors have been draconian in
12 applying the 20-part test by finding that an individual is in an
13 employment relationship even though a majority of the 20 factors
14 indicate that the individual is a bona fide independent
15 contractor; and
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17 WHEREAS, due to the high cost of living in Hawaii, it is
18 common for people to be employed or receive unemployment
19 benefits and accept temporary independent contract work
20 elsewhere; and
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22 WHEREAS, in Envisions Entertainment v. DLIR, Civil No. 13-
23 1-0931(2), DLIR incorrectly determined that an employment
24 relationship existed despite both parties contemplating an
25 independent contractor relationship with one another; and
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27 WHEREAS, situations such as the one that arose in
28 Envisions, generally occur when an individual who is receiving
29 unemployment benefits from an employer reports income from work



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1 performed as an independent contractor on an unemployment
2 benefits claim; and

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4 WHEREAS, in situations where DLIR determines that an
5 individual is an employee rather than an independent contractor,
6 the individual loses all money paid towards general excise taxes
7 and may lose unemployment benefits; and





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9 WHEREAS, appealing a determination made by DLIR may cost
10 thousands in attorney's fees and a deemed employer may need to
11 ask an individual to return payments so that the deemed employer
12 may deduct taxes and Social Security and Medicare fees; and

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14 WHEREAS, erroneous determinations by DLIR detrimentally
15 affect business relationships between affected parties because
16 the deemed employer is less likely to contract with the
17 individual again, which may discourage the individual from
18 reporting temporary income in the future; now, therefore,

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20 BE IT RESOLVED by the House of Representatives of the
21 Twenty-ninth Legislature of the State of Hawaii, Regular Session
22 of 2017, that DLIR is urged to train its auditors to require
23 satisfaction of at least 15 of the 20 factors used for
24 employment determinations when both parties contemplate an
25 independent contractor relationship with one another; and

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27 BE IT FURTHER RESOLVED that a certified copy of this
28 Resolution be transmitted to the Director of Labor and
29 Industrial Relations.

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OFFERED BY: 




MAR 10 2017

