"CHAPTER 383
HAWAII EMPLOYMENT SECURITY LAW

Part I. Definitions

Section

Note

L 2012, c 6, §5 provides:

"SECTION 5. (a) The director of labor and industrial relations may utilize section 103-6, Hawaii Revised Statutes, or may borrow moneys from the federal government pursuant to title XII of the Social Security Act, to cover the insolvency of the unemployment compensation fund.

(b) The director of labor and industrial relations shall use the loan proceeds only to pay unemployment benefits pursuant to chapter 383, Hawaii Revised Statutes, and may not use the loan proceeds to pay for any other expenses such as administrative expenses."

Skilled worker and business development center at each University of Hawaii community college. L Sp 2009, c 34.

State additional benefits for Maui county (repealed October 28, 2017). L 2016, c 70.

Law Journals and Reviews

Relief for Manufacturers and Wholesalers: A Proposal to Exclude Commissions Paid to Part-Time Sales Representatives from Hawaii's Unemployment Tax. II HBJ, no. 13, at 35 (1998).

Case Notes

Department is under no duty to maximize amount of benefits that applicant is entitled to by alerting applicant to possible alternatives. 55 H. 250, 517 P.2d 773 (1973).

Conformity to coverage under federal unemployment law not required. 68 H. 410, 718 P.2d 267 (1986).

"PART I. DEFINITIONS

§383-1 Definitions, generally. As used in this chapter, unless the context clearly requires otherwise:

"Administration fund" means the special unemployment insurance administration fund established pursuant to section 383-127.

"Alternative base period" means the four completed calendar quarters immediately preceding the first day of an individual's benefit year.

"American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens

or residents of the United States or corporations organized under the laws of the United States or of any state.

"Attached to a regular employer" means:

(1) The employee is being offered work each week by the employee's regular employer; or

(2) If no work is being offered:

(A) The employer is maintaining the individual on the payroll by paying for a medical insurance plan or by maintaining the employee's sick leave or vacation credits; or

(B) There is a definite return to work date with the same employer.

"Base period," with respect to benefit years beginning after June 30, 1951, means the four completed calendar quarters immediately preceding the first day of an individual's benefit year. With respect to benefit years beginning on and after October 1, 1989, the base period means the first four of the last five completed calendar quarters preceding the first day of an individual's benefit year.

"Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

"Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of the individual's last preceding benefit year. Any claim for benefits made in accordance with section 383-32 shall be deemed a "valid claim" for the purpose of this paragraph if the individual has satisfied the conditions required under section 383-29(a)(5). Nothing in sections 383-29 and 383-30, except section 383-29(a)(5), shall affect the filing of a "valid claim" or the establishment of a "benefit year". For the purposes of this paragraph a week with respect to which an individual files a valid claim shall be deemed to be "in", "within", or "during" that benefit year which includes the greater part of such week.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof, as the department may by rule prescribe.

"Contributions" means the money payments required by this chapter to be made into the state unemployment compensation fund by any employing unit on account of having individuals in its employ.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations of the State.

"Employer" means:

(1) Any employing unit which for some portion of a day within the current calendar year has or had in employment one or more individuals; and

(2) For the effective period of its election pursuant to section 383-77, any other employing unit which has elected to become subject to this chapter.

"Employing unit" means any individual or type of organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had one or more individuals performing services for it within this State.

(1) All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be performing services for a single employing unit for all the purposes of this chapter.

(2) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit shall be deemed to be engaged by the employing unit for all the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work.

"Employment office" means a free public employment office or branch thereof operated by the State or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

"Federal Unemployment Tax Act" means chapter 23 of subtitle C of the Internal Revenue Code of 1954.

"Full-time hours" or "full-time work" means a forty-hour workweek unless regarded otherwise according to the standard practice, custom, or agreement in a particular trade, occupation, or business.

"Fund" means the unemployment compensation fund established by this chapter.

"Insured work" means employment for employers.

"Owner-employee" means a person who has performed services for an employing unit as defined in this section, and who is or has been a shareholder owning twenty-five per cent or more of the corporation's common stock, and director or officer, or both, of a corporation which is or was the employing unit or who exercises a substantial degree of control over the direction of corporate activities.

"Partial unemployment" or "partially unemployed" means the unemployment of any individual who, during a particular week, was still attached to that individual's regular employer, had no earnings or earned less than that individual's weekly benefit amount, and who worked less than or did not work that individual's normal, customary full-time hours for the individual's regular employer because of a lack of full-time work.

"Recipient of social service payments" includes:

(1) A person who is an eligible recipient of social services such as attendant care and day care services; and

(2) A corporation or private agency that contracts directly with the department of human services to provide attendant care and day care authorized under the Social Security Act, as amended.

"Referee" means the referee for unemployment compensation appeals.

"Registered for work" or "registration for work" means that an individual shall provide information to the employment office to be posted on the department's internet job-matching system, including the individual's name, job skills, education, training, prior employment history and work duties, preferred working conditions, occupational licenses, and other relevant occupational information to facilitate work search efforts by the individual and increase job referrals by the employment office.

"State" includes the states of the United States, the District of Columbia, Puerto Rico, and Virgin Islands.

"Unemployment". An individual shall be deemed "unemployed" in any week during which the individual performs no services and with respect to which no wages are payable to the individual, or in any week of less than full-time work if the wages payable to the individual with respect to such week are less than the individual's weekly benefit amount. The department shall prescribe rules applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-

total unemployment, partial unemployment, of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary. "Week of unemployment" means a week in which an individual is deemed unemployed.

"Week" means any period of seven consecutive days as the department may by rule prescribe.

"Weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week for one or more employers subject to this chapter or with respect to which the individual has received remuneration from one or more employers subject to this chapter in the form of vacation, holiday, or sickness pay or similar remuneration. [L 1939, c 219, pt of §1; am L 1941, c 304, §1, subs 1-7, 9-11, 13, 14; am L 1943, c 160, §1, subs 1, 2; RL 1945, §4202; am L 1947, c 75, §1(1); am L 1951, c 195, §1(1); am L 1953, c 41, §1(1); RL 1955, §93-1; am L 1957, c 115, §1(a) and c 205, §1(a); am L 1959, c 222, §1; am L Sp 1959 2d, c 1, §27; am L 1963, c 174, §3; am L 1964, c 61, §2; HRS §383-1; am L 1969, c 6, §1; am L 1974, c 40, §1; am L 1976, c 157, §1; gen ch 1985; am L 1986, c 32, §1 and c 162, §1; am L 1987, c 119, §2; am L 2003, c 219, §1; am L 2007, c 259, §2; am L 2009, c 170, §§3, 7; am L 2010, c 76, §§2, 3; am L 2011, c 165, §§2, 5]

Case Notes

Probationary teachers receiving wages but not performing services during summer are not unemployed. 56 H. 590, 546 P.2d 1 (1976).

President of family corporation, who during three-week period spent three hours preparing bids, was "unemployed". 66 H. 425, 664 P.2d 734 (1983).

Severance payments are not wages or remuneration similar to vacation, sickness or holiday pay. Right of recall does not cause employment relationship to continue. 67 H. 588, 699 P.2d 17 (1985).

Temporary disability benefits constitute "sickness pay or similar remuneration"; claimants receiving those benefits are not "unemployed". 6 H. App. 195, 715 P.2d 1278 (1986).

Cited: 35 H. 855, 870 (1941); 46 H. 140, 145, 377 P.2d 715 (1962); 46 H. 164, 166, 377 P.2d 932 (1962).

" **§383-2 Definition of employment.** (a) As used in this chapter, unless the context clearly requires otherwise, "employment", subject to sections 383-3 to 383-9, means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(b) "Employment" includes, but is not limited to, any service performed prior to January 1, 1978, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December 31, 1977, by an employee as defined in section 3306(i) and (o) of the federal Unemployment Tax Act, including service in interstate commerce.

(c) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands as provided in paragraph (5) of this subsection), after December 31, 1971, in the employ of an American employer or of this State or of any of its instrumentalities or of any of its political subdivisions (other than service which is deemed employment under the provisions of section 383-3 or the parallel provisions of another state's law) if:

(1) The employer's principal place of business in the United States is located in this State;

(2) The employer has no place of business in the United States, but[:]

(A) The employer is an individual who is a resident of this State;

(B) The employer is a corporation which is organized under the laws of this State; or

(C) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one other state; or

(3) None of the criteria of paragraphs (1) and (2) of this subsection is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service under the law of this State.

(4) An "American employer", for purposes of this subsection, means a person who is:

(A) An individual who is a resident of the United States;

(B) A partnership if two-thirds or more of the partners are residents of the United States;

(C) A trust, if all of the trustees are residents of the United States; or

(D) A corporation organized under the laws of the United States or of any state.

(5) As used in this subsection, the term "United States" includes the states, the District of Columbia, and the

Commonwealth of Puerto Rico; and, after December 31 of the year in which the Secretary of Labor approves for the first time an unemployment insurance law of the Virgin Islands submitted to the Secretary of Labor for approval, the term "United States" shall also include the Virgin Islands.

(d) The term "employment" shall include an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:

(1) The service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and

(2) The place from which the service is directed or controlled is in this State.

(e) "Employment" includes service performed by an individual in agricultural labor as defined in section 383-9 except for service excluded under section 383-7(a)(1).

(1) For the purposes of this section, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(A) If the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(B) If the employee is not an employee of the other person within the meaning of subsection (b).

(2) For the purposes of this subsection, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (1):

(A) The other person and not the crew leader shall be treated as the employer of the individual; and

(B) The other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on the crew leader's own behalf or on behalf of the other person) for the service in agricultural labor performed for the other person.

(3) For the purposes of this subsection, the term "crew leader" means an individual who:

(A) Furnishes individuals to perform service in agricultural labor for any other person;
(B) Pays (either on the crew leader's own behalf or on behalf of the other person) the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and
(C) Has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person. [L 1939, c 219, §2(k)(1); am L 1941, c 304, §1, pt of subs 8; RL 1945, §4203; RL 1955, §93-2; HRS §383-2; am L 1971, c 187, §1; am L 1977, c 148, §1; gen ch 1985; am L 2015, c 35, §12]

Revision Note

In subsection (c)(1), (2)(A), and (4)(A) and (B), "or" deleted pursuant to §23G-15.

Case Notes

Definition as supplemented by §383-6 extends coverage of law beyond the common law relationship of master and servant. 41 H. 508 (1957).

Contractor incorporated in Nevada, with no construction activity in Hawaii, had an American base and principal of business in Hawaii; subjection of Nevada corporation to unemployment compensation contributions did not violate due process; subsection (c) was enacted to bring overseas employment of American citizens by American contractors within the ambit of the Hawaii Employment Security Law. 64 H. 274, 639 P.2d 1088 (1982).

" **§383-3 Place of performance.** "Employment" includes an individual's entire service, performed within or both within and without this State if:
(1) The service is localized in this State; or
(2) The service is not localized in any state but some of the service is performed in this State and[:]
(A) The individual's base of operation, or, if there is no base of operation, then the place from which such service is directed or controlled, is in this State; or
(B) The individual's base of operation or place from which the service is directed or controlled is not in any state in which some part of the

service is performed but the individual's residence is in this State.

Notwithstanding any other provisions of this section, the term employment also includes all service performed after June 30, 1946, by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that the operating office from which the operations of the vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed, and controlled, is within this State. [L 1939, c 219, §2(k)(2); am L 1941, c 304, §1, pt of subs 8; RL 1945, §4204; am L 1947, c 75, §1(2); RL 1955, §93-3; HRS §383-3]

Revision Note

In paragraph (2), (A) and (B) reformatted as subparagraphs (A) and (B) pursuant to §23G-15.

" **§383-4 Election of employing unit.** Services covered by an election pursuant to section 383-77 and services covered by an arrangement pursuant to sections 383-106 to 383-109 between the department of labor and industrial relations and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this State, shall be deemed to be employment if the department has approved an election of the employing unit for which the services are performed, pursuant to which the entire service of the individual during the period covered by the election is deemed to be insured work. [L 1939, c 219, §2(k)(1); am L 1941, c 304, §1, pt of subs 8; RL 1945, §4205; RL 1955, §93-4; am L Sp 1959 2d, c 1, §27; HRS §383-4]

" **§383-5 Service localized where.** Service shall be deemed to be localized within a state, if:

(1) The service is performed entirely within the state; or

(2) The service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions. [L 1939, c 219, §2(k)(1); am L 1941, c 304, §1, pt of subs 8; RL 1945, §4206; RL 1955, §93-5; HRS §383-5]

" **§383-6 Master and servant relationship, not required when.** Services performed by an individual for wages or under any

contract of hire shall be deemed to be employment subject to this chapter irrespective of whether the common law relationship of master and servant exists unless and until it is shown to the satisfaction of the department of labor and industrial relations that:

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

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

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of service. [L 1939, c 219, §2(k)(5); am L 1941, c 304, §1, pt of subs 8; RL 1945, §4207; RL 1955, §93-6; am L Sp 1959 2d, c 1, §27; HRS §383-6; gen ch 1985]

Revision Note

In paragraph (1), "and" deleted pursuant to §23G-15.

Law Journals and Reviews

Relief for Manufacturers and Wholesalers: A Proposal to Exclude Commissions Paid to Part-Time Sales Representatives from Hawaii's Unemployment Tax. II HBJ, no. 13, at 35 (1998).

Case Notes

"Control" test. 38 H. 16 (1948).
Coverage, generally. 41 H. 508 (1957).
Coverage may be broader than federal law. 41 H. 508 (1957).
"Control" test; salespersons representing home remodelling company were "employees" under control and supervision of company. 2 H. App. 421, 633 P.2d 564 (1981).

" **§383-7 Excluded service.** (a) "Employment" shall not include:

(1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:

(A) That, during each calendar quarter in both the current and the preceding calendar years, paid less than $20,000 in cash remuneration to individuals employed in agricultural labor, including labor performed by an alien referred to in subparagraph (C); and

(B) That had, in each of the current and the preceding calendar years:

(i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees, including labor performed by an alien referred to in subparagraph (C); or

(ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week, including labor performed by an alien referred to in subparagraph (C); or

(C) If such agricultural labor is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority as set forth in section 3306(c)(2) of the Internal Revenue Code of 1986, as amended;

(3) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter if:

(A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or

(B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the service during the preceding calendar quarter;

(4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual

performing the service is employed on and in connection with the vessel when outside the United States;

(B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:

(i) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(ii) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year; and

(iii) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;

(5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;

(6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall apply to those instrumentalities, and to services performed for those instrumentalities, in the same manner, to the same extent, and on the same terms

as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of those instrumentalities with respect to that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;

(7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986, as amended;

(8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;

(9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of the Internal Revenue Code), if:

(i) The remuneration for the service is less than $50; or

(ii) The service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;

(B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or

(C) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in

attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of such program, and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(10) Service performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative;

(11) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(13) Service performed by an individual for an employing unit as an insurance producer, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;

(14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;

(16) Service performed by an individual who, pursuant to the federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;

(17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;

(18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;

(19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;

(20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at least fifty per cent of the shares issued by the corporation; provided that:

(A) The private corporation elects to be excluded from coverage under this chapter;

(B) The election for exclusion shall apply to all shareholders and under the same circumstances;

(C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;

(D) The exclusion shall be irrevocable for five years;

(E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and

(F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all

substantiating documents requested by the department are filed with the department;

(21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986;

(22) Service performed by an election official or election worker as defined in section 3309(b)(3)(F) of the Internal Revenue Code of 1986, as amended;

(23) Service performed by an inmate or any person committed to a penal institution; and

(24) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to title 42 Code of Federal Regulations sections 440.180 and 441.300, and title 42 Code of Federal Regulations, part 434, subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined and amended from time to time by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments unless the individual is an employee and not an independent contractor of the recipient of social service payments under the federal Unemployment Tax Act.

(b) None of the exclusions in subsection (a) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter. [L 1939, c 219, §2(k)(6); am L 1941, c 304, §1, pt of subs 8; RL 1945, §4208; am L 1945, c 19, §1; am L 1947, c 75, §1; am L 1951, c 191, §1(1), (2) and c 195, §1(2), (3); am L 1953, c 41, §1(2); RL 1955, §93-7; am L 1959, c 11, §1(b), c 222, §1(2), and c 232, §4; am L Sp 1959 2d, c 1, §27; am L 1961, c 81, §1 and c 141, §1; am L 1965, c 61, §1; am L 1967, c 51, §1; HRS §383-7; am L 1969, c 73, §§1, 2; am L 1971, c 187, §2 and c 213, §2; am L 1973, c 120, §1; am L 1974, c 156, §1; am L 1977, c 148, §2; am L 1982, c 192, §1 and c 194, §2; gen ch 1985; am L 1989, c 217, §2; am L 1990, c 284, §1; am L 1994, c 112, §2; am L 1996, c 223, §2 and c 306,

§1; am L 1998, c 34, §1; am L 2003, c 212, §4; am L 2007, c 70, §3, c 97, §2, and c 259, §6; am L 2011, c 220, §15; am L 2012, c 158, §1]

Law Journals and Reviews

Relief for Manufacturers and Wholesalers: A Proposal to Exclude Commissions Paid to Part-Time Sales Representatives from Hawaii's Unemployment Tax. II HBJ, no. 13, at 35 (1998).

The Lum Court and the First Amendment. 14 UH L. Rev. 395 (1992).

Case Notes

Under paragraph (9)(B), eligibility of a student-employee for unemployment insurance benefits rests on whether the "primary relationship" the student occupies with respect to the school, college, or university involved is that of student or employee; under circumstances of the case, the primary relationship claimant had to the university while claimant performed services during the summer was that of a student of the university. 105 H. 485, 100 P.3d 55 (2004).

" **[§383-7.5] Part-time work; benefits available.** Notwithstanding any law to the contrary under this chapter, an individual shall not be denied regular unemployment benefits relating to availability for work, active search for work, or refusal to accept work, solely because the individual is seeking only part-time work; provided that this section shall not apply if a majority of the weeks of work in the individual's base period does not include part-time work. [L 2009, c 171, pt of §1]

" **[§383-7.6] Separation for compelling family reason.** (a) An individual shall not be disqualified from regular unemployment benefits for separating from employment if that separation is for a compelling family reason.

For purposes of this section, the term "compelling family reason" means any of the following:

(1) Domestic or sexual violence that is verified by reasonable and confidential documentation that causes the individual to reasonably believe that the individual's continued employment may jeopardize the safety of the individual or any member of the individual's immediate family (as defined by the United States Secretary of Labor), including any of the following circumstances:

(A) The individual has a reasonable fear of the occurrence of future domestic or sexual violence at, en route to, or en route from the individual’s place of employment, including being a victim of stalking;

(B) The anxiety of the individual to relocate to avoid future domestic or sexual violence against the individual or the individual’s minor child prevents the individual from reporting to work;

(C) The need of the individual or the individual's minor child to obtain treatment to recover from the physical or psychological effects of domestic or sexual violence prevents the individual from reporting to work;

(D) The employer's refusal to grant the individual’s request for leave to address domestic or sexual violence and its effects on the individual or the individual’s minor child, including leave authorized by section 102 of the federal Family and Medical Leave Act of 1993, Public Law 103-3, as amended, or other federal, state, or county law; or

(E) Any other circumstance in which domestic or sexual violence causes the individual to reasonably believe that separation from employment is necessary for the future safety of the individual, the individual’s minor child, or other individuals who may be present in the employer’s workplace;

(2) Illness or disability of a member of the individual's immediate family (as defined by the United States Secretary of Labor); or

(3) The need for the individual to accompany the individual's spouse, because of a change in the location of the spouse's employment, to a place from which it is impractical for the individual to commute to work.

(b) The department may request as reasonable and confidential documentation under subsection (a)(1) the following evidence:

(1) A notarized written statement of the individual attesting to the status of the individual or the individual's minor child as a victim of domestic or sexual violence and explaining how continued employment creates an unreasonable risk of further violence;

(2) A signed written statement from:

(A) An employee, agent, or volunteer of a victim services organization;
(B) The individual's attorney or advocate;
(C) A minor child's attorney or advocate; or
(D) A medical or other professional from whom the individual or the individual's minor child has sought assistance related to the domestic or sexual violence,

attesting to the domestic or sexual violence and explaining how the continued employment creates an unreasonable risk of further violence; or

(3) A police or court record suggesting or demonstrating that the continued employment may cause an unreasonable risk of further violence.

(c) All information provided to the department pursuant to this section, including any statement of the individual or any other documentation, record, or corroborating evidence discussing or relating to domestic or sexual violence, and the fact that the individual has applied for, inquired about, or obtained unemployment compensation by reason of this section shall be retained in the strictest confidence by the individual's former or current employer, and shall not be disclosed except to the extent that disclosure is requested or consented to by the employee, ordered by a court or administrative agency, or otherwise required by applicable federal or state law.

(d) As used in this section, the terms "domestic or sexual violence", "stalking", and "victim services organization" shall have the same meaning as in section 378-71. [L 2009, c 171, pt of §1]

" **§383-8 Included and excluded service.** If the services performed during one-half or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period shall be deemed to be employment; but if the services performed during more than one-half of any pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period shall be deemed to be employment. As used in this section, the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing the individual. This section shall not be applicable with respect to services performed in a pay period by an individual for the person employing the individual, where any of the service is excepted by section 383-7(a)(8). [L 1941, c 304, §1, pt of subs

8; RL 1945, §4209; RL 1955, §93-8; HRS §383-8; gen ch 1985; am L 2015, c 35, §13]

" **§383-9 Agricultural labor.** "Agricultural labor" includes all service performed prior to January 1, 1972, which was agricultural labor as defined in this section prior to such date, and remunerated service performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the federal Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this section, "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. [L 1941, c 304, §1, pt of subs 8; RL 1945, §4210; RL 1955, §93-9; HRS §383-9; am L 1971, c 187, §3; am L 1977, c 148, §3]

Case Notes

Arboretum is not a "farm" exempted from chapter where ninety per cent of its revenues come from fees charged its visitors. 66 H. 388, 662 P.2d 1120 (1983).

" **§383-10 Definition of wages.** As used in this chapter, unless the context clearly requires otherwise, "wages", subject to section 383-11, means all remuneration for services from whatever source, including commissions and bonuses, tips or gratuities paid directly to an individual by a customer of the employer and reported to the employer, and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department of labor and industrial relations. [L 1939, c 219, §2(p); am L 1941, c 304, §1, pt of subs 12; RL 1945, §4211; am L 1953, c 23, §1(2); RL 1955, §93-10; am L Sp 1959 2d, c 1, §27; HRS §383-10; gen ch 1985; am L 1986, c 288, §1]

" **§383-11 Excluded payments.** "Wages" does not include:

(1) The amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide, for any such payment) to, or on behalf of, an individual or any of the individual's dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class

or classes of such individuals and their dependents), on account of[:]

(A) Retirement;

(B) Sickness or accident disability;

(C) Medical or hospitalization expenses in connection with sickness or accident disability; or

(D) Death;

(2) The amount of any payment by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities or into a fund, to provide for any such payment) on account of retirement;

(3) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for the employing unit;

(4) The amount of any payment by an employing unit to, or on behalf of, an individual performing services for it or the individual's beneficiary[:]

(A) From or to a trust described in section 401(a) and exempt from tax under section 501(a) of the federal Internal Revenue Code at the time of the payment unless the payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust; or

(B) Under or to an annuity plan which, at the time of the payments, meets the requirements of section 401(a)(3), (4), (5), and (6) of the federal Internal Revenue Code;

(5) The amount of any payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in its employ under section 3101 of the federal Internal Revenue Code;

(6) Remuneration paid in any medium other than cash to an individual for service not in the course of the employing unit's trade or business;

(7) The amount of any payment (other than vacation or sick pay) to an individual after the month in which the individual attains the age of sixty-five, if the individual did not perform services for the employing unit in the period for which such payment is made;

(8) The amount of any payment (not required under any contract of hire) to an individual with respect to the individual's period of training or service in the armed forces of the United States by an employing unit by which the individual was formerly employed;

(9) The amount of any payment (including any amount paid by an employer into a fund to provide for such payment) made after April 1, 1956, to or on behalf of an employee under a written agreement, contract, trust arrangement, or other instrument, which makes provision for the employer's employees generally or for a class or group of the employer's employees, for the purpose of supplementing benefits paid under this chapter or providing benefits based on wages paid for excluded services. [L 1939, c 219, §2(p); am L 1941, c 304, §1, pt of subs 12; RL 1945, §4212; am L 1951, c 191, §1(3); RL 1955, §93-11; am L 1957, c 205, §1(d); HRS §383-11; gen ch 1985]

Revision Note

Pursuant to §23G-15, in:

(1) Paragraph (1), (A) to (D) reformatted as subparagraphs (A) to (D);

(2) Paragraph (1)(A) and (B), "or" deleted and punctuation changed;

(3) Paragraph (1)(C), punctuation changed; and

(4) Paragraph (4), (A) and (B) reformatted as subparagraphs (A) and (B) and punctuation changed.

" **[§383-12] Requirement to post work availability online.** To meet the online registration for work requirements under section 383-29(a), the department shall:

(1) Allow an individual to post the required information independently on the department's internet job-matching system; or

(2) Accept information provided by the individual in the form prescribed by the department, and enter the necessary information on the department's internet job-matching system for the individual.

The employment office shall provide the necessary information to the unemployment office for the purpose of determining whether the individual's registration for work requirements have been met. [L 2010, c 76, §1]

"PART II. BENEFITS

§383-21 Payment of benefits. All benefits provided herein shall be payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the department of labor and industrial relations may prescribe. [L 1939, c 219, §3(b); am L 1941, c 304, §1, pt of subs 15; RL 1945, §4214; RL 1955, §93-20; am L Sp 1959 2d, c 1, §27; HRS §383-21]

" **§383-22 Weekly benefit amount; computation, minimum and maximum.** (a) In the case of an individual who has established a benefit year prior to January 2, 1966, the individual's weekly benefit amount shall be the amount appearing in column B in the table in this section on the line on which, in column A of the table, there appears the total wages paid to the individual for insured work in that quarter of the individual's base period in which the total wages were highest.

(b) In the case of an individual whose benefit year begins after January 4, 1992, the individual's weekly benefit amount shall be, except as otherwise provided in this section, an amount equal to one twenty-first of the individual's total wages for insured work paid during the calendar quarter of the individual's base period in which such total wages were highest. The weekly benefit amount, if not a multiple of $1, shall be computed to the next higher multiple of $1. If an individual's weekly benefit amount is less than $5, it shall be $5. The maximum weekly benefit amount shall be determined annually as follows: On or before November 30 of each year the total remuneration paid by employers, as reported on contribution reports submitted on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of the year shall be divided by the average monthly number of individuals performing services in the employment during the same four calendar quarters as reported on the contribution reports. The amount thus obtained shall be divided by fifty-two and the average weekly wage (rounded to the nearest cent) thus determined. For benefit years beginning January 1, 1992, but prior to January 1, 2008, and beginning again on January 1, 2012, but prior to April 1, 2012, then beginning again on January 1, 2013, seventy per cent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. For benefit years beginning January 1, 2008, and ending December 31, 2011, and beginning again on April 1, 2012, and ending December 31, 2012, seventy-

five per cent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. The maximum weekly benefit amount, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(Column A) High Quarter Wages	(Column B) Basic Weekly Benefit	(Column C) Minimum Qualifying Wages	(Column D) Maximum Total Benefits in Benefit Year
$ 37.50 - 125.00	$ 5.00	$ 150.00	$ 130.00
125.01 - 150.00	6.00	180.00	156.00
150.01 - 175.00	7.00	210.00	182.00
175.01 - 200.00	8.00	240.00	208.00
200.01 - 225.00	9.00	270.00	234.00
225.01 - 250.00	10.00	300.00	260.00
250.01 - 275.00	11.00	330.00	286.00
275.01 - 300.00	12.00	360.00	312.00
300.01 - 325.00	13.00	390.00	338.00
325.01 - 350.00	14.00	420.00	364.00
350.01 - 375.00	15.00	450.00	390.00
375.01 - 400.00	16.00	480.00	416.00
400.01 - 425.00	17.00	510.00	442.00
425.01 - 450.00	18.00	540.00	468.00
450.01 - 475.00	19.00	570.00	494.00
475.01 - 500.00	20.00	600.00	520.00
500.01 - 525.00	21.00	630.00	546.00
525.01 - 550.00	22.00	660.00	572.00
550.01 - 575.00	23.00	690.00	598.00
575.01 - 600.00	24.00	720.00	624.00
600.01 - 625.00	25.00	750.00	650.00
625.01 - 650.00	26.00	780.00	676.00
650.01 - 675.00	27.00	810.00	702.00
675.01 - 700.00	28.00	840.00	728.00
700.01 - 725.00	29.00	870.00	754.00
725.01 - 750.00	30.00	900.00	780.00
750.01 - 775.00	31.00	930.00	806.00
775.01 - 800.00	32.00	960.00	832.00
800.01 - 825.00	33.00	990.00	858.00
825.01 - 850.00	34.00	1020.00	884.00
850.01 - 875.00	35.00	1050.00	910.00
875.01 - 900.00	36.00	1080.00	936.00
900.01 - 925.00	37.00	1110.00	962.00

925.01 - 950.00	38.00	1140.00	988.00
950.01 - 975.00	39.00	1170.00	1014.00
975.01 -1000.00	40.00	1200.00	1040.00
1000.01 -1025.00	41.00	1230.00	1066.00
1025.01 -1050.00	42.00	1260.00	1092.00
1050.01 -1075.00	43.00	1290.00	1118.00
1075.01 -1100.00	44.00	1320.00	1144.00
1100.01 -1125.00	45.00	1350.00	1170.00
1125.01 -1150.00	46.00	1380.00	1196.00
1150.01 -1175.00	47.00	1410.00	1222.00
1175.01 -1200.00	48.00	1440.00	1248.00
1200.01 -1225.00	49.00	1470.00	1274.00
1225.01 -1250.00	50.00	1500.00	1300.00
1250.01 -1275.00	51.00	1530.00	1326.00
1275.01 -1300.00	52.00	1560.00	1352.00
1300.01 -1325.00	53.00	1590.00	1378.00
1325.01 -1350.00	54.00	1620.00	1404.00
1350.01 and over	55.00	1650.00	1430.00.

[L 1939, c 219, §3(c); am L 1941, c 304, §1, pt of subs 15; RL 1945, §4215; am L 1945, c 19, §1(3); am L 1955, c 16, §1(a); RL 1955, §93-21; am L 1959, c 11, §1(a); am L 1961, c 114, §1(a); am L 1965, c 250, §1(a); HRS §383-22; am L 1977, c 148, §4; gen ch 1985; am L 1991, c 68, §3; am L 2007, c 110, §1; am L 2010, c 2, §2; am L 2012, c 6, §1]

Note

The 2012 amendment applies retroactively to January 1, 2012. L 2012, c 6, §7.

Cross References

Disaster unemployment benefits, see §209-41.

" **§383-23 Weekly benefit for unemployment.** For weeks beginning prior to January 5, 1992, each eligible individual who is unemployed, as defined in section 383-1, in any week shall be paid with respect to that week a benefit in an amount equal to the individual's weekly benefit amount less that part of the wages (if any) payable to the individual with respect to that week which is in excess of $2. Effective for weeks beginning January 5, 1992, and thereafter, each eligible individual who is unemployed, as defined in section 383-1, in any week shall be paid with respect to that week a benefit in an amount equal to the individual's weekly benefit amount less that part of the wages (if any) payable to the individual with respect to that

week which is in excess of $50. Effective for weeks beginning January 1, 2008, and thereafter, each eligible individual who is unemployed, as defined in section 383-1, in any week shall be paid with respect to that week a benefit in an amount equal to the individual's weekly benefit amount less that part of the wages, if any, payable to the individual with respect to that week which is in excess of $150. The benefit, if not a multiple of $1, shall be computed to the next higher multiple of $1. [L 1939, c 219, §3(d); am L 1941, c 304, §1, pt of subs 15; RL 1945, §4216; am L 1951, c 195, §1(4); am L 1955, c 16, §1(a); RL 1955, §93-22; HRS §383-23; gen ch 1985; am L 1986, c 162, §2; am L 1991, c 68, §4; am L 2007, c 110, §2]

Case Notes

Probationary teachers were not unemployed during summer, when wages were paid although services were not required. 56 H. 590, 546 P.2d 1 (1976).

" **§383-23.5 Retirement payments.** (a) For any week with respect to which an individual is receiving a pension (which shall include a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment) under a plan maintained or contributed to by a base period or chargeable employer (as determined under applicable law), the weekly benefit amount payable to the individual for the week shall be reduced (but not below zero):

(1) By one-half the prorated weekly amount of the pension if at least half but less than one hundred per cent of the contributions to the plan were provided by the individual;

(2) By the entire prorated weekly amount of the pension if paragraph (1) or paragraph (3) does not apply; or

(3) By no part of the pension if the entire contributions to the plan were provided by the individual, or by the individual and an employer (or any other person or organization) who is not a base period or chargeable employer as determined under applicable law.

(b) No reduction shall be made under this section by reason of the receipt of a pension if the services performed by the individual during the base period (or remuneration received for the services) for the employer did not affect the individual's eligibility for, or increase the amount of, the individual's pension, retirement or retired pay, annuity, or similar payment.

(c) Subsections (a) and (b) shall only apply to new claims filed with an effective date prior to July 1, 2005.

(d) With respect to new claims filed with an effective date beginning on or after July 1, 2005:

(1) For any week with respect to which an individual is receiving a pension under a plan maintained or contributed to by a base period or chargeable employer, the weekly benefit amount payable to the individual for the week shall be reduced (but not below zero) by an amount equal to the amount of the pension which is reasonably attributable to that week. For this paragraph to apply, the services performed for the employer by the individual in the base period (or remuneration for the services) must affect eligibility for, or increase the amount of the pension; and

(2) Paragraph (1) shall not apply to any pension if the individual has made any contribution to the plan maintained by the base period or chargeable employer.

(e) Notwithstanding any provision under this section, the amount of any pension, retirement or retired pay, annuity, or other similar periodic payment under the Social Security Act or the Railroad Act of 1974 shall not result in a reduction of the weekly benefit amount payable to an individual under this section. [L 1980, c 117, §1; am L 1981, c 196, §1; am L 2005, c 106, §1]

" **§383-24 Maximum potential benefits.** The maximum potential benefits of an eligible individual in a benefit year shall be twenty-six times the eligible individual's weekly benefit amount. [L 1939, c 219, §3(e); am L 1941, c 304, §1, pt of subs 15; RL 1945, §4217; am L 1955, c 16, §1(a); RL 1955, §93-23; am L 1965, c 250, §1(b); HRS §383-24; gen ch 1985]

" **§§383-25 to 383-28 REPEALED.** L 1969, c 3, §1.

" **§383-29 Eligibility for benefits.** (a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(1) The individual has made a claim for benefits with respect to that week in accordance with rules the department may prescribe and with section 383-29.7 for partially unemployed individuals;

(2) The individual has registered for work, as defined in section 383-1, and thereafter continued to report, at an employment office in accordance with rules the department may prescribe, except that the department, by rule, may waive or alter either or both of the requirements of this paragraph for partially

unemployed individuals pursuant to section 383-29.8, individuals attached to regular jobs, and other types of cases or situations with respect to which it finds that compliance with those requirements would be oppressive, or would be inconsistent with the purpose of this chapter; provided that no rule shall conflict with section 383-21;

(3) The individual is able to work and is available for work; provided that no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this paragraph if the failure is due to an illness or disability, as evidenced by a physician's certificate, which occurs during an uninterrupted period of unemployment with respect to which benefits are claimed and no work which would have been suitable prior to the beginning of the illness and disability has been offered the claimant;

(4) The individual has been unemployed for a waiting period of one week within the individual's benefit year. No week shall be counted as a waiting period:
   (A) If benefits have been paid with respect thereto;
   (B) Unless the individual was eligible for benefits with respect thereto as provided in this section and section 383-30, except for the requirements of this paragraph;

(5) In the case of an individual whose benefit year begins:
   (A) On or after January 2, 1966, but prior to October 1, 1989, the individual has had during the individual's base period a total of fourteen or more weeks of employment, as defined in section 383-1, and has been paid wages for insured work during the individual's base period in an amount equal to at least thirty times the individual's weekly benefit amount as determined under section 383-22(b). For the purposes of this subparagraph, wages for insured work shall include wages paid for services:
      (i) Which were not employment, as defined in section 383-2, or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
      (ii) Which are agricultural labor, as defined in section 383-9 except service excluded under section [383-7(a)(1)], or are domestic

service except service excluded under section [383-7(a)(2)]; except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of those services;

(B) On and after October 1, 1989, to January 4, 1992, the individual has been employed, as defined in section 383-2, and has been paid wages for insured work during the individual's base period in an amount equal to not less than thirty times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year; and

(C) After January 4, 1992, the individual has been employed, as defined in section 383-2, and has been paid wages for insured work during the individual's base period in an amount equal to not less than twenty-six times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.

For purposes of this paragraph, wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the dates on which the employing unit by which the wages or other remuneration, as provided in the definition of weeks of employment in section 383-1, were paid has satisfied the conditions of section 383-1 with respect to becoming an employer.

Effective for benefit years beginning January 1, 2004, and thereafter, if an individual fails to establish a valid claim for unemployment insurance benefits under this paragraph, the department shall make a redetermination of entitlement based upon the alternative base period, as defined in section 383-1; provided further that the individual shall satisfy the conditions of section 383-29(a)(5) that apply to claims filed using the base period, as defined in section 383-1, and the establishment of claims using the alternative base period shall be subject to the terms and conditions of sections 383-33 and 383-94; and

(6) Effective November 24, 1994, an individual who has been referred to reemployment services pursuant to the profiling system under section 383-92.5 shall participate in those services or in similar services. The individual may not be required to participate in reemployment services if the department determines the individual has completed those services, or there is justifiable cause for the claimant's failure to participate in those services.

For the purposes of this subsection, employment and wages used to establish a benefit year shall not thereafter be reused to establish another benefit year.

(b)(1) Benefits based on service in an instructional, research, or principal administrative capacity in an institution of education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performed such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any institution of education in the second of such academic years or terms.

(2) Benefits based on service in any other capacity for any educational institution shall not be paid to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that, if compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

(3) Benefits based on service in any instructional, research, or principal administrative capacity in any educational institution or based on other services in any educational institution shall not be paid to any person for any week of unemployment which begins during an established and customary vacation or recess for a holiday if the person performs service in the period immediately preceding the vacation or recess and there is reasonable assurance that the person will be provided employment immediately succeeding the vacation or recess.

(4) The provisions of paragraphs (1), (2), and (3) apply also to services performed while employed by a governmental agency which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(c) Benefits based on services, substantially all of which consists of participating or preparing or training to participate in sports or athletic events, shall not be paid to an individual for any week of unemployment which begins during the period between two successive sport seasons (or similar periods) if the individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that the individual will perform such services in the second of such seasons (or similar periods).

(d) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time those services were performed, was lawfully present for purposes of

performing those services, or otherwise was permanently residing in the United States under color of law at the time those services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

(e) Notwithstanding any provisions of this chapter to the contrary, a claimant shall not be denied benefits because of the claimant's regular attendance at a vocational training or retraining course which the director has approved and continues from time to time to approve for the claimant. The director may approve such course for a claimant only if:

(1) The training activity is authorized under titles I, II, III, and IV (except on-the-job training) of the Job Partnership Training Act (P.L. 97-300); or

(2) All of the following conditions apply:

(A) Reasonable employment opportunities for which the claimant is fitted by training and experience do not exist in the locality or are severely curtailed;

(B) The training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the locality;

(C) The training course is offered by a competent and reliable agency; and

(D) The claimant has the required qualifications and aptitudes to complete the course successfully. [L 1939, c 219, §4; am L 1941, c 304, §1, subs 16; am L 1943, c 160, §1, subs 5; RL 1945, §4230; am L 1953, c 22, §1(1), (2); RL 1955, §93-28; am L Sp 1959 2d, c 1, §27; am L 1961, c 94, §1 and c 114, §1(c); am L 1963, c 174, §4; am L 1964, c 61, §4; am L 1965, c 250, §1(c); HRS §383-29; am L 1971, c 187, §4; am L 1973, c 53, §1; am L 1977, c 148, §5; am L 1981, c 172, §1; am L 1984, c 201, §1; gen ch 1985; am L 1986, c 32, §2 and c 162, §3; am L 1990, c 25, §1 and c 88, §1; am L 1991, c 68, §5; am L 1993, c 275, §1; am L 1994,

c 112, §3; am L 2003, c 219, §2; am L 2009, c 170, §§4, 7; am L 2010, c 76, §3; am L 2011, c 165, §5]

Case Notes

"Availability for work": Picket duty in itself does not affect availability, nor does refusal of own job. 46 H. 140, 377 P.2d 715 (1962).

Subsection (b) creates limited exception to "any week of unemployment". 56 H. 590, 546 P.2d 1 (1976).

Adoption of circuit court decisions for use by departmental referees without following requirements of chapter 91 appears to be contrary to intent and purposes of HAPA. 62 H. 286, 614 P.2d 380 (1980).

Registration waiver for strikers pursuant to agency rule was valid waiver "by regulation"; waiver of work registration not preempted by federal law. 68 H. 316, 713 P.2d 943 (1986).

Construing §383-30 and this section together, in order to requalify for unemployment insurance benefits after a voluntary separation without good cause, an individual must work for a subsequent employer who is subject to this chapter and be paid wages from the subsequent employer in an amount sufficient to meet the requalification earnings threshold. 94 H. 262 (App.), 12 P.3d 362 (2000).

A regular teacher who teaches during the regular school academic year or term is not eligible for unemployment benefits during the summer break even when one or more summer school teaching positions was or were available and unsuccessfully sought; for purposes of the Hawaii employment security law, summer school teaching positions are unrelated to, totally separate from, and unconnected with teaching positions during the regular school academic year or term. 104 H. 536 (App.), 92 P.3d 1046 (2004).

A substitute teacher who teaches during the regular school year is not eligible for unemployment benefits during the summer break even when one or more summer school substitute teaching positions was or were available and unsuccessfully sought; for purposes of the Hawaii employment security law, summer school substitute teaching positions are unrelated to, totally separate from, and unconnected with substitute teaching positions during the regular school academic year or term. 104 H. 536 (App.), 92 P.3d 1046 (2004).

Subsection (b)(1) was written so that when, based on department of education wages, a regular teacher or a substitute teacher applies for unemployment benefit payments for the period after the end of one school year and the beginning of the

succeeding school year, the merits of the application will be decided without any consideration of the facts that (a) some schools have a summer school term, and (b) some regular teachers (and possibly some substitute teachers) are summer school teachers. 104 H. 536 (App.), 92 P.3d 1046 (2004).

Cited: 44 H. 93, 94, 352 P.2d 856 (1960); 46 H. 164, 173, 377 P.2d 932 (1962).

" **§383-29.5 Benefits during training.** (a) Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because that individual is in training approved under section 236(a)(1) of the Trade Act of 1974, because an individual left work to enter the training (provided the work left is not suitable employment), or because of the application to any week in training of provisions in this chapter (or any applicable federal unemployment compensation law) relating to availability for work, active search for work, or refusal to accept work.

(b) For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty per cent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974. [L 1982, c 58, §6; am L 1983, c 124, §10]

" **[§383-29.6] Partial unemployment; eligibility.** A new claim or an initial additional claim for partial unemployment benefits may be filed as the department prescribes for any week only if the individual:

(1) Is a full-time worker;

(2) Is attached to a regular employer, as defined in section 383-1;

(3) Worked less than or did not work the individual's normal, customary full-time hours, as defined in section 383-1, for that week;

(4) Had no earnings or earned less than the individual's weekly benefit amount for that week; and

(5) Was unemployed due to a lack of full-time work, as defined in section 383-1, for that week. [L 2009, c 170, pt of §2, §7; am L 2010, c 76, §3; am L 2011, c 165, §5]

" **§383-29.7 Partial unemployment; claim filing requirements, determinations.** (a) Claims for partial unemployment shall be filed according to section 383-32. For partially unemployed

individuals, a new claim may be taken within twenty-eight days from the week-ending date of the first week of partial unemployment for which the claim is filed; provided that an individual shall not be required to file a claim earlier than two weeks from the date wages are paid for the claim period.

(b) An individual may file a continued claim certification for partial unemployment benefits in person, by mail, by telephone, or by using other alternative claim filing procedures as instructed or authorized by the department and in the manner prescribed by the department with respect to each week of the individual's partial unemployment. A continued claim certification shall be filed in the same manner as prescribed in rules of the department for continued claim certifications for total or part-total unemployment benefits and not later than twenty-eight days from the end of the week for which the individual claims benefits; provided that an individual shall not be required to file a continued claim certification earlier than two weeks from the date wages are paid for a claim period. [L 2009, c 170, pt of §2, §7; am L 2010, c 76, §3; am L 2011, c 165, §§3, 5]

" **§383-29.8 Partial unemployment; waivers.** (a) The registration for work requirements under section 383-29(a) shall be waived for individuals who are partially unemployed, as defined in section 383-1.

(b) An individual shall be exempted from the work search requirements as determined by rules of the department, or be subject to modified work search requirements as authorized by the department if the individual is waived from the registration for work requirements, as defined in section 383-1. [L 2009, c 170, pt of §2, §7; am L 2010, c 76, §3; am L 2011, c 165, §§4, 5]

" **[§383-29.9] Partial unemployment; reporting requirements.** (a) An employer to whom a claimant for partial unemployment is still attached shall submit verification of earnings and satisfy all low earnings reporting requirements in subsection (b) and rules of the department for each week that the claimant certifies for partial unemployment benefits.

(b) Low earnings reports shall be submitted as follows:

(1) Whenever, during any weekly pay period in an individual's benefit year, an individual has worked less than full-time hours for the regular employer to which the individual is attached, and the individual's earnings are less than the individual's current weekly benefit amount, the individual's employer, upon request by the department shall:

(A) Enter the individual's name, social security account number, gross earnings, week-ending date, and the reasons for the individual's reduced workweek on a form provided or approved by the department and return the form to the unemployment insurance office as instructed within five working days after the notice of an individual's benefit amount has been mailed to the employer as to all prior weeks for which benefits are claimed. Thereafter, during the benefit year, the employer shall report within five working days after the end of each week or weekly pay period for which the low earnings reports are required; or

(B) Furnish the individual personally with the information on a form provided or approved by the department and the individual shall be responsible to submit the report to the unemployment insurance office within five working days after the end of each week or weekly pay period or as instructed by the department.

(2) If the employer or individual fails to submit the low earnings report as prescribed in paragraph (1)(A) or (B) within the time specified by the department, the department shall determine the individual's eligibility for any week's benefits claimed based on the individual's certification of employment and earnings. [L 2009, c 170, pt of §2, §7; am L 2010, c 76, §3; am L 2011, c 165, §5]

" **§383-30 Disqualification for benefits.** An individual shall be disqualified for benefits:

(1) Voluntary separation. For any week prior to October 1, 1989, in which the individual has left work voluntarily without good cause, and continuing until the individual has, subsequent to the week in which the voluntary separation occurred, been employed for at least five consecutive weeks of employment. For the purposes of this paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter. For any week beginning on and after October 1, 1989, in which the individual has left the individual's work voluntarily without good cause, and continuing until the individual has,

subsequent to the week in which the voluntary separation occurred, been paid wages in covered employment equal to not less than five times the individual's weekly benefit amount as determined under section 383-22(b).

An owner-employee of a corporation who brings about the owner-employee's unemployment by divesting ownership, leasing the business interest, terminating the business, or by other similar actions where the owner-employee is the party initiating termination of the employment relationship, has voluntarily left employment.

(2) Discharge or suspension for misconduct. For any week prior to October 1, 1989, in which the individual has been discharged for misconduct connected with work, and continuing until the individual has, subsequent to the week in which the discharge occurred, been employed for at least five consecutive weeks of employment. For the week in which the individual has been suspended for misconduct connected with work and for not less than one or more than four consecutive weeks of unemployment which immediately follow such week, as determined in each case in accordance with the seriousness of the misconduct. For the purposes of this paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter. For any week beginning on and after October 1, 1989, in which the individual has been discharged for misconduct connected with work, and until the individual has, subsequent to the week in which the discharge occurred, been paid wages in covered employment equal to not less than five times the individual's weekly benefit amount as determined under section 383-22(b).

(3) Failure to apply for work, etc. For any week prior to October 1, 1989, in which the individual failed, without good cause, either to apply for available, suitable work when so directed by the employment office or any duly authorized representative of the department of labor and industrial relations, or to accept suitable work when offered and continuing until the individual has, subsequent to the week in which the failure occurred, been employed for at least five consecutive weeks of employment. For the purposes of

this paragraph, "weeks of employment" means all those weeks within each of which the individual has performed services in employment for not less than two days or four hours per week, for one or more employers, whether or not such employers are subject to this chapter. For any week beginning on and after October 1, 1989, in which the individual failed, without good cause, either to apply for available, suitable work when so directed by the employment office or any duly authorized representative of the department of labor and industrial relations, or to accept suitable work when offered until the individual has, subsequent to the week in which the failure occurred, been paid wages in covered employment equal to not less than five times the individual's weekly benefit amount as determined under section 383-22(b).

(A) In determining whether or not any work is suitable for an individual there shall be considered among other factors and in addition to those enumerated in paragraph (3)(B), the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the length of unemployment, the individual's prospects for obtaining work in the individual's customary occupation, the distance of available work from the individual's residence, and prospects for obtaining local work. The same factors so far as applicable shall be considered in determining the existence of good cause for an individual's voluntarily leaving work under paragraph (1).

(B) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(iii) If as a condition of being employed the individual would be required to join a

company union or to resign from or refrain from joining any bona fide labor organization.

(4) Labor dispute. For any week with respect to which it is found that unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed; provided that this paragraph shall not apply if it is shown that:
   (A) The individual is not participating in or directly interested in the labor dispute which caused the stoppage of work; and
   (B) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute; provided that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purpose of this paragraph, be deemed to be a separate factory, establishment, or other premises.

(5) If the department finds that the individual has within the twenty-four calendar months immediately preceding any week of unemployment made a false statement or representation of a material fact knowing it to be false or knowingly failed to disclose a material fact to obtain any benefits not due under this chapter, the individual shall be disqualified for benefits beginning with the week in which the department makes the determination and for each consecutive week during the current and subsequent twenty-four calendar months immediately following such determination, and such individual shall not be entitled to any benefit under this chapter for the duration of such period; provided that no disqualification shall be imposed if proceedings have been undertaken against the individual under section 383-141.

(6) Other unemployment benefits. For any week or part of a week with respect to which the individual has received or is seeking unemployment benefits under any other employment security law, but this paragraph shall not apply[:]

(A) If the appropriate agency finally determines that the individual is not entitled to benefits under such other law; or

(B) If benefits are payable to the individual under an act of Congress which has as its purpose the supplementation of unemployment benefits under a state law. [L 1939, c 219, §5; am L 1941, c 304, §1, subs 17; RL 1945, §4231; am L Sp 1949, c 13, §1; am L 1951, c 195, §1(5); am L 1953, c 22, §1(1), (6); am L 1955, c 80, §1(a), (b); RL 1955, §93-29; am L 1957, c 74, §2(1); am L 1959, c 232, §3; am L Sp 1959 2d, c 1, §27; HRS §383-30; am L 1973, c 75, §1; am L 1976, c 157, §2; am L 1978, c 198, §1; am L 1982, c 20, §1; gen ch 1985; am L 1986, c 32, §3 and c 162, §4]

Revision Note

In paragraph (6), (A) and (B) reformatted as subparagraphs (A) and (B) and in paragraph (6)(A), punctuation changed pursuant to §23G-15.

Law Journals and Reviews

Commentary on Selected Employment and Labor Law Decisions Under the Lum Court. 14 UH L. Rev. 423 (1992).

Case Notes

Paragraph (4) not preempted by National Labor Relations Act. 614 F.2d 1197 (1980).

Whether Hawaii's scheme of paying benefits to striking employees impermissibly intrudes in the collective bargaining process covered by federal statutes. 378 F. Supp. 791 (1974).

Suitable work--refusal to return to own job during dispute does not disqualify. 46 H. 140, 377 P.2d 715 (1962).

Under paragraph (4) of this section labor dispute--includes dispute over employee representation resulting in organizational strike. Stoppage of work--substantial curtailment of employer's operations. 46 H. 140, 377 P.2d 715 (1962).

Voluntary separation--striking, in itself does not disqualify. 46 H. 140, 377 P.2d 715 (1962).

"Left his work voluntarily" as used in §§383-30(1) and 383-65 has same meaning. 46 H. 164, 377 P.2d 932 (1962).

Stoppage of work. 50 H. 225, 437 P.2d 317 (1968); 68 H. 316, 713 P.2d 943 (1986).

"Stoppage of work" means substantial curtailment of business activities at employer's establishment, rather than unemployment of striking employee; "establishment," construed. 53 H. 185, 489 P.2d 1397 (1971).

"Discharge for misconduct" does not include suspension for misconduct. 54 H. 563, 512 P.2d 1 (1973).

Before employee can be disqualified for failure to "accept suitable work when offered him," there must have been a tender of a specific and bona fide offer of work. 58 H. 265, 567 P.2d 1233 (1977).

Findings of fact by department if supported by substantial evidence are conclusive. 58 H. 265, 567 P.2d 1233 (1977).

Where disqualification is claimed, employer has burden of proof. 58 H. 265, 567 P.2d 1233 (1977).

Retiring worker did not quit voluntarily without good cause. 65 H. 146, 648 P.2d 1107 (1982).

Violation of traffic code by crossing solid line not "misconduct" under circumstances. 67 H. 212, 685 P.2d 794 (1984).

Does not prohibit payment of benefits unless claimant became unemployed as a result of discharge for misconduct. 68 H. 19, 704 P.2d 881 (1985).

Disqualification for benefits on basis of labor dispute includes stoppage of work caused by lockout. 69 H. 319, 741 P.2d 1272 (1987).

Employer failed to prove a continuing employment relationship at the time of recall when it attempted to seek disqualification of unemployment benefits. 71 H. 419, 794 P.2d 1115 (1990).

After many counseling sessions and notices regarding employee's poor dependability, employee should have known job would be in jeopardy if employee left work early without permission; employee's conscious decision to do so constituted an unexcused absence which demonstrated a "wilful or wanton disregard of the employer's interests" and disqualified employee for unemployment benefits. 84 H. 305, 933 P.2d 1339 (1997).

Employee did not voluntarily quit employment but was discharged where employer was moving party in termination of employment relationship. 84 H. 305, 933 P.2d 1339 (1997).

The intent of unemployment benefits under this section is to pay benefits only to those claimants who became involuntarily unemployed through no fault of their own; where claimant's conduct constituted misconduct connected with work, as found by the appeals officer and the trial court, claimant's misconduct connected with work disqualified claimant from receiving unemployment benefits under paragraph (2). 108 H. 258, 118 P.3d 1201 (2005).

Where there was a "substantial curtailment" of employer bus company's business activity during the strike, there was a "stoppage of work"; as the stoppage of work came about "because of a labor dispute", there was a "stoppage of work" within the meaning of paragraph (4) and employees were not entitled to unemployment compensation benefits. 110 H. 259, 132 P.3d 368 (2006).

Employee has burden of proving that a voluntary termination was with good cause; employee has duty to try reasonable alternatives for solution of problem within employer's organization before terminating employment. 2 H. App. 560, 634 P.2d 1058 (1981).

Where employee voluntarily quits employment under paragraph (1), employee has burden of proving that his or her leaving was with good cause. 80 H. 481 (App.), 911 P.2d 116 (1996).

"Constructive voluntary leaving" doctrine cannot be basis for disqualification from unemployment benefits under paragraph (1). 84 H. 407 (App.), 935 P.2d 122 (1997).

For employee to be the "moving party in the termination of the employment relationship" and to therefore have "left work voluntarily", the facts and circumstances must indicate that employee had the intent to terminate the employment relationship. 84 H. 407 (App.), 935 P.2d 122 (1997).

Where claimant knew or should have known that claimant's job would be in jeopardy if claimant chose to drive uninsured, and claimant made a conscious decision in the face of that risk to do precisely that, demonstrating a "wilful or wanton disregard of employer's interests", defined by Hawaii administrative rule §12-5-51(c) as "misconduct connected with work", this disqualified claimant from unemployment insurance benefits under paragraph (2). 93 H. 75 (App.), 996 P.2d 280 (2000).

Construing §383-29 and this section together, in order to requalify for unemployment insurance benefits after a voluntary separation without good cause, an individual must work for a subsequent employer who is subject to this chapter and be paid wages from the subsequent employer in an amount sufficient to meet the requalification earnings threshold. 94 H. 262 (App.), 12 P.3d 362 (2000).

Cited: 44 H. 93, 94, 352 P.2d 856 (1960).

Mentioned: 817 F. Supp. 850 (1992).

" **[§383-30.5] Good cause for separation from part-time employment.** (a) In applying the provisions of section 383-30(1), an individual who has established eligibility based on full-time employment may be found to have good cause for voluntarily separating from subsequent part-time employment based on any of the following conditions:

(1) Loss of full-time work with a regular employer made it economically unfeasible to continue part-time employment;

(2) The part-time employment was outside the individual's customary occupation and would not have been considered suitable work at the time the individual accepted part-time employment. In determining whether an individual is reasonably fitted for a particular job, the department shall consider:

(A) The degree of risk involved to the individual's health, safety, and morals;

(B) The individual's physical fitness;

(C) The individual's prior training;

(D) The individual's experience;

(E) The individual's prior earnings;

(F) The length of the individual's unemployment;

(G) The individual's prospects for obtaining work in the individual's customary occupation;

(H) The distance of available work from the individual's residence; and

(I) The individual's prospects for obtaining local work.

As used in this paragraph, "suitable work" means work in the individual's usual occupation or work for which the individual is reasonably fitted;

(3) The employer failed to provide sufficient advance notice of a work schedule change;

(4) There was a work schedule conflict with other concurrent part-time or full-time employment;

(5) A real, substantial, or compelling reason, or a reason that would cause a reasonable and prudent employee, genuinely and sincerely desirous of maintaining employment, to take similar action and to try reasonable alternatives before terminating the employment relationship;

(6) Change in working conditions and the change is prejudicial or detrimental to the health, safety, or morals of the employee;

(7) Change in terms and conditions of employment, including change in rate of pay, position or grade, duties, days of work, or hours of work;

(8) Discrimination that violates federal or state laws regarding equal employment opportunity practices;

(9) Change in the employee's marital or domestic status;

(10) Acceptance of a definite, firm offer made of other employment where the offer is subsequently withdrawn

and the former employer refuses to rehire the employee;

(11) Retirement under a mandatory requirement imposed by a collective bargaining agreement;

(12) Evidence that the employee was a victim of domestic or sexual violence, including any circumstance that causes a reasonable employee to believe that other available alternatives, such as a leave of absence, a transfer of jobs, or an alternate work schedule, would not be sufficient to guarantee the safety of the employee and that separation from employment was necessary to address the resulting physical and psychological effects, to seek or reside in an emergency shelter, or to avoid future domestic or sexual violence. Evidence includes police records, court records, statements from the individual, a volunteer of a victim services organization, the employee's attorney or advocate, a member of the clergy, medical, or other professional from whom the employee has sought assistance related to the domestic or sexual violence, or other corroborating evidence. As used in this paragraph, "domestic or sexual violence" includes domestic abuse, sexual assault, or stalking; or

(13) Any other factor relevant to a determination of good cause.

(b) For purposes of this section:

"Part-time" means less than twenty hours per week or on-call or casual or intermittent. [L 2011, c 165, §1]

" **§383-31 Posting of information.** Each employer shall post and maintain in places readily accessible to individuals in the employer's employ printed statements concerning benefit rights, claims for benefits, and such other matters relating to the administration of this chapter as the department of labor and industrial relations may by regulation prescribe. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the department may by regulation prescribe. Such printed statements and other materials shall be supplied by the department to each employer without cost to the employer. [L 1939, c 219, §6(a); am L 1941, c 304, §1, pt of subs 18; RL 1945, §4232; RL 1955, §93-30; am L Sp 1959 2d, c 1, §27; HRS §383-31; gen ch 1985]

" **§383-32 Filing of claim.** Claims for benefits shall be made in accordance with such regulations as the department of

labor and industrial relations may prescribe. [L 1939, c 219, §6(b); am L 1941, c 304, §1, pt of subs 18; RL 1945, §4233; RL 1955, §93-31; am L Sp 1959 2d, c 1, §27; HRS §383-32]

Case Notes

Department is under no duty to maximize amount of benefits that applicant is entitled to by alerting applicant to possible alternatives. 55 H. 250, 517 P.2d 773 (1973).

" **§383-33 Determinations, in general.** (a) A determination upon a claim filed pursuant to section 383-32 shall be made promptly by a representative of the department of labor and industrial relations authorized to make determinations upon claims and shall include a statement as to whether and in what amount the individual is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the individual has been paid the wages required under section 383-29(a)(5) and, if so, the first day of the benefit year, the individual's weekly benefit amount, and the maximum total amount of benefits payable to the individual with respect to such benefit year.

(b) If any employer fails to furnish the information necessary to determine whether and in what amount the individual is entitled to benefits in the manner and within the time specified by this chapter or regulations of the department, the department shall make a determination based upon such information as is available. Prior to October 1, 2013, in the absence of fraud, any redetermination made on the basis of information furnished by the employer after the prescribed period shall be effective only as to benefits paid after the week in which the information was received. In the absence of a showing by the employer satisfying the department that the employer could not reasonably comply with the department's requirement, any benefits overpaid prior to the effective date of the redetermination as a result of the employer's failure to furnish the information as required shall be charged entirely against the account of the noncomplying employer; provided that the overpaid benefits shall not, in any event, be recoverable from the individual. Any redetermination issued on or after October 1, 2013, on the basis of information furnished by the employer or the agent of the employer after the prescribed period shall be effective upon the date of the redetermination. The entire amount of benefits overpaid due to the employer's or agent of the employer's failure to respond timely or adequately

to the agency's request for information as required shall be charged against the account of the noncomplying employer. [L 1939, c 219, §6(c); am L 1941, c 304, §1, pt of subs 18; RL 1945, §4234; am L 1955, c 51, §1(4); RL 1955, §93-32; am L Sp 1959 2d, c 1, §27; HRS §383-33; am L 1968, c 4, §2; am L 1971, c 187, §5; gen ch 1985; am L 2013, c 3, §2]

Case Notes

Applies where employer fails to submit a wage and separation report, not where employer submits erroneous information of claimant's earnings. 68 H. 349, 714 P.2d 520 (1986).

" **§383-34 Reconsideration of determination.** (a) In the absence of appeal and within ten days after mailing or delivery of notice of the original determination made pursuant to section 383-33 to the parties entitled thereto, the department of labor and industrial relations may, for good cause, on its own motion or upon application of any such party, reconsider such determination. Upon an application for reconsideration, the department shall promptly reconsider the determination or, on its own motion, transfer the application to the referee. Such transfer shall likewise be effected upon request of the party applying for reconsideration provided the request is made before the party's receipt of notice of the reconsidered determination. Upon transfer the application shall be deemed to constitute an appeal, as of the date of the application, from the original determination.

(b) At any time within one year from the date of a determination with respect to base-period wages paid to a claimant, the department on its own motion may reconsider the determination if it finds that an error in computation or identity has occurred in connection therewith, or that wages of the claimant pertinent to the determination but not considered in connection therewith have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of a nondisclosure or misrepresentation of a material fact. If the amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in the increase may be filed in the manner and subject to the limitations provided in section 383-38. If the amount of benefits is decreased upon such redetermination, the matters involved in the decrease shall be subject to review in connection with an appeal by the claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by the redetermination.

(c) At any time within two years from the end of any week with respect to which a determination allowing or denying waiting-week credit or benefits has been made, the department on its own motion may reconsider such determination if it finds that the waiting-week credit or benefits were allowed or denied as a result of a nondisclosure or misrepresentation of a material fact.

(d) In any case in which the department is authorized by this section to reconsider any determination but the final decision in the case has been rendered by a referee or court, the department may petition the referee or court to issue a revised decision.

(e) At any time within one year from the end of any week with respect to which a determination allowing or denying waiting-week credit or benefit has been made, the department on its own motion may reconsider such determination if it finds that an overpayment, due to reasons other than fraud, has occurred. [L 1939, c 219, §6(c); am L 1941, c 304, §1, pt of subs 18; am L 1943, c 160, §1, subs 6; RL 1945, §4235; am L 1953, c 22, §1(4); am L 1955, c 51, §1(3); RL 1955, §93-33; am L 1959, c 232, §2; am L Sp 1959 2d, c 1, §27; HRS §383-34]

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(12).

" **§383-35 Appeal pending when redetermination issued.** In the event that an appeal involving a determination or a prior redetermination is pending as of the date a redetermination thereof is issued, the appeal, unless withdrawn, shall be treated as an appeal from such redetermination. [L 1941, c 304, §1, pt of subs 18; RL 1945, §4236; RL 1955, §93-34; HRS §383-35]

Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(12).

" **§383-36 Notice of determinations.** Notice of a determination or redetermination upon a claim shall be promptly given to the claimant, by delivery thereof or by mailing the notice to the claimant's last known address. In addition, notice of a determination or redetermination with respect to the first week of a benefit year shall be given to each employer by whom the claimant was employed during the claimant's base period, and to the last employing unit by whom the claimant was

employed, and notice of any determination or redetermination which involves the application of section 383-30 shall be given to the last employing unit by whom the claimant was employed, in every case by delivery thereof to such party or by mailing the notice to the party's last known address. [L 1941, c 304, §1, pt of subs 18; RL 1945, §4237; am L 1953, c 22, §1(5); RL 1955, §93-35; HRS §383-36; gen ch 1985]

" **§383-37 Appeal tribunal.** Appeals from determinations and redeterminations with respect to benefits shall be heard by an impartial referee for unemployment compensation appeals, who shall serve as the appeal tribunal. The referee shall be appointed as provided by section 383-98. [L 1941, c 304, §1, pt of subs 18; RL 1945, §4238; RL 1955, §93-36; HRS §383-37]

" **§383-38 Appeals, filing, and hearing.** (a) The claimant or any other party entitled to notice of a determination or redetermination as herein provided may file an appeal from the determination or redetermination at the office of the department in the county in which the claimant resides or in the county in which the claimant was last employed, or with a copy of the contested determination at the employment security appeals referee's office, within ten days after the date of mailing of the notice to the claimant's or party's last known address, or if the notice is not mailed, within ten days after the date of delivery of the notice to the claimant or party. The department may for good cause extend the period within which an appeal may be filed to thirty days. Written notice of a hearing of an appeal shall be sent by first class, nonregistered, noncertified mail to the claimant's or party's last known address at least twelve days prior to the initial hearing date.

(b) The appeal under subsection (a) shall be heard in the county in which the appeal is filed, except that the department may by its rules provide for the holding of a hearing in another county with the consent of all parties or where necessary in order that a fair and impartial hearing may be had, and may provide for the taking of depositions. Unless the appeal is withdrawn with the permission of the referee, the referee after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination or redetermination. The parties to any appeal shall be promptly notified of the decision of the referee and shall be furnished with a copy of the decision and the findings and conclusions in support thereof and the decisions shall be final and shall be binding upon each party unless a proceeding for judicial review is initiated by the party pursuant to section 383-41; provided

that within the time provided for taking an appeal and prior to the filing of a notice of appeal, the referee may reopen the matter, upon the application of the director or any other party, or upon the referee's own motion, and thereupon may take further evidence or may modify or reverse the referee's decision, findings, or conclusions. If the matter is reopened, the referee shall render a further decision in the matter either reaffirming or modifying or reversing the referee's original decision, and notice shall be given thereof in the manner hereinbefore provided. Upon reopening, the referee who heard the original appeal shall reconsider the matter, except where the referee is no longer employed as a referee or the referee disqualifies oneself from reconsidering the referee's decision.

(c) The time to initiate judicial review under section 383-41 shall run from the notice of such further decision, if the matter has been reopened under subsection (b).

(d) If a claimant or party does not receive the written notice under subsection (a), a second written notice shall be sent by certified mail, and the hearing on the appeal shall be rescheduled accordingly.

(e) Upon application to, and approval by, the employment security appeals referee's office, a claimant or party to an appeal may elect to receive hearing notices, decisions, and other appeal documents from the referee's office in electronic format in lieu of notice by mail. The date of electronic transmission is equivalent to the mailing date for purposes of this section. Electronic notification status may be rescinded at any time by the referee's office, claimant, or any party upon written notification. [L 1941, c 304, §1, pt of subs 18; RL 1945, §4239; RL 1955, §93-37; am L 1965, c 96, §69; HRS §383-38; am L 1971, c 179, §1; am L 1977, c 48, §1; gen ch 1985; am L 1997, c 22, §1; am L 2002, c 3, §1; am L 2013, c 15, §1]

Cross References

Appeals and hearings, see chapter 91.

Case Notes

Requirement concerning place of filing is jurisdictional. 67 H. 39, 675 P.2d 777 (1984).

" **§383-39 Procedure.** The representatives of the department of labor and industrial relations authorized to make determinations upon claims and the referee shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before the same shall be

conducted in such manner as to ascertain the substantial rights of the parties. The director of labor and industrial relations shall adopt reasonable regulations governing the manner of filing appeals and the conduct of hearings and appeals, consistent with this chapter and chapter 91. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to one proceeding considered as introduced in the others; provided that in the judgment of the representative or referee having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person shall participate on behalf of the department in any case in which the person has a direct or indirect interest. A record shall be kept of all testimony and proceedings in connection with an appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the department and fees of witnesses subpoenaed on behalf of the department or any claimant shall be deemed part of the expense of administering the chapter. [L 1939, c 219, §6(d), (f); am L 1941, c 304, §1, pt of subs 18; RL 1945, §4240; RL 1955, §93-38; am L Sp 1959 2d, c 1, §27; am L 1965, c 96, §70; HRS §383-39; gen ch 1985]

" **§383-40 Conclusiveness of determinations and decisions.** Except insofar as reconsideration of any determination or redetermination is had under sections 383-33 to 383-36, any right, fact, or matter in issue, directly passed upon or necessarily involved in a determination or redetermination which has become final, or in a decision on appeal under sections 383-37 to 383-42 which has become final, shall be conclusive for all the purposes of this chapter as between the department of labor and industrial relations, the claimant, and all employing units who had notice of such determination, redetermination, or decisions. [L 1941, c 304, §1, pt of subs 18; RL 1945, §4241; RL 1955, §93-39; am L Sp 1959 2d, c 1, §27; HRS §383-40]

" **§383-41 Judicial review.** The director of labor and industrial relations or any party to the proceedings before the referee may obtain judicial review of the decision of the referee in the manner provided in chapter 91, by instituting proceedings in the circuit court of the circuit in which the claimant resides or in which the claimant was last employed. In

any such court proceedings, every other party to the proceeding before the referee shall be made a party respondent. The director shall be deemed to be a party to any such proceeding. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except proceedings arising under the workers' compensation law of the State. Proceedings for review by the intermediate appellate court may be taken and had in the same manner as is provided for a review of a judgment of a circuit court. No bond shall be required as a condition of initiating a proceeding for judicial review or initiating proceedings for review by the intermediate appellate court. Upon the final termination of any judicial proceeding, the referee shall enter an order in accordance with the mandate of the court. [L 1939, c 219, §6(i); am L 1941, c 304, §1, pt of subs 18; RL 1945, §4242; RL 1955, §93-40; am L 1965, c 96, §71; HRS §383-41; am L 1975, c 41, §1; am L 2004, c 202, §39; am L 2006, c 94, §1; am L 2010, c 109, §1]

Cross References

Judicial review, see §§91-14, 91-15.

Rules of Court

Appeal to circuit court, see HRCP rule 72; appeal to supreme court, see Hawaii Rules of Appellate Procedure.

Case Notes

Cited: 866 F. Supp. 459 (1994); 44 H. 93, 97, 352 P.2d 856 (1960).

" **§383-42 Representation.** The department of labor and industrial relations shall be a party and be entitled to notice in any proceeding involving a claim for benefits before the referee. In any proceeding for judicial review pursuant to section 383-41, the department may be represented by any qualified attorney employed by the department and designated by it for that purpose, or at the department's request by the attorney general. [L 1939, c 219, §6(h); am L 1941, c 304, §1, pt of subs 18; RL 1945, §4243; RL 1955, §93-41; am L Sp 1959 2d, c 1, §27; HRS §383-42]

" **§383-43 Payment of benefits.** Benefits shall be paid promptly in accordance with a determination, redetermination, or decision on appeal. No injunction, supersedeas, or stay suspending the payment of benefits in accordance with the

determination, redetermination, or decision on appeal shall be issued by any court, but if the decision is finally reversed, benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal. [L 1941, c 304, §1, pt of subs 18; RL 1945, §4244; am L 1955, c 51, §1(6); RL 1955, §93-42; HRS §383-43; am L 1972, c 4, §1]

" **§383-44 Recovery of benefits paid.** (a) Any individual who has received any amount as benefits under this chapter to which the individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience. Notice of redetermination in these cases shall specify that the individual is liable to repay to the fund the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which the benefits were overpaid.

(b) Determinations or redeterminations dated on or after October 1, 2013, that an individual has been overpaid benefits under any state or federal unemployment compensation program and is disqualified under section 383-30(5) shall include a penalty assessment amount equal to fifteen per cent of the overpaid amount. Penalty assessments collected under this section shall be deposited in the unemployment compensation fund.

(c) The individual liable, in the discretion of the department, shall repay the overpaid amount and the penalty assessment amount to the department for the fund or have the overpaid amount only deducted from any future benefits payable to the individual under this chapter within two years after the date of mailing of the notice of redetermination or the final decision on an appeal from the redetermination. Effective April 1, 2013, the overpaid benefits amount and the penalty assessment amount, costs, and administrative fees may be deducted from federal income tax refunds.

(d) Notwithstanding any other provision of this chapter, the department, by agreement with another state or the United States as provided under section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this State or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this State or of another state or under an unemployment program of the United States. The penalty assessment amount shall not be subject to recovery by deduction from future benefits payable.

(e) In any case in which under this section an individual is liable to repay any amount to the department, the overpaid benefits amount, the penalty assessment amount, costs, and

administrative fees shall be collectible without interest by civil action in the name of the State by the attorney general. [L 1939, c 219, §15; RL 1945, §4292; am L 1953, c 22, §1(3); am L 1955, c 51, §1(5); RL 1955, §93-43; am L 1959, c 232, §1; am L Sp 1959 2d, c 1, §27; HRS §383-44; gen ch 1985; am L 1993, c 176, §1; am L 2013, c 3, §3]

" **§383-45 Governing provisions.** The procedure with respect to the filing of claims and with respect to determination and redeterminations thereupon and with respect to appeals from such determinations and redeterminations and with respect to judicial review of decisions on such appeals shall be governed by sections 383-31 to 383-43, any other provisions of this chapter or of chapter 371 to the contrary notwithstanding. [L 1941, c 304, §1, pt of subs 18; RL 1945, §4245; RL 1955, §93-44; HRS §383-45]

"PART III. CONTRIBUTIONS AND COVERAGE

§383-61 Payment of contributions; wages not included. (a) Contributions with respect to wages for employment shall accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter. The contributions shall become due and be paid by each employer to the director of labor and industrial relations for the fund in accordance with such rules as the department of labor and industrial relations may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in the employer's employ.

(b) Except as provided in subsections (c) and (d), the term "wages" does not include remuneration paid with respect to employment to an individual by an employer during any calendar year which exceeds the average annual wage, rounded to the nearest hundred dollars, for the four calendar quarter period ending on June 30 of the preceding year.

The average annual wage shall be computed as follows: on or before November 30 of each year the total remuneration paid by employers, as reported on contribution reports on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of such year shall be divided by the average monthly number of individuals performing services in such employment during the same four calendar quarters as reported on such contribution reports and rounded to the nearest hundred dollars.

(c) For the calendar year 1991 only, the term "wages" does not include remuneration in excess of $7,000 paid with respect to employment to an individual by an employer. For calendar

years 2008 and 2009, the term "wages" as used in this part does not include remuneration in excess of $13,000 paid with respect to employment to an individual by an employer so long as the balance of the unemployment trust fund does not fall below the adequate reserve fund as specified by section 383-63. For calendar years 2010 and 2011 only, the term "wages" as used in this part does not include remuneration in excess of the wages paid with respect to employment to an individual by an employer during the calendar year that exceeds ninety per cent of the average annual wage.

(d) For calendar year 1988 only, the term "wages" as used in this part does not include remuneration paid with respect to employment to an individual by an employer during the calendar year which exceeds:

(1) One hundred per cent of the average annual wage if the most recently computed ratio of the current reserve fund to the adequate reserve fund prior to that calendar year is equal to or less than .80;

(2) Seventy-five per cent of the average annual wage if the most recently computed ratio of the current reserve fund to the adequate reserve fund prior to that calendar year is greater than .80 but less than 1.2; or

(3) Fifty per cent of the average annual wage if the most recently computed ratio of the current reserve fund to the adequate reserve fund prior to that calendar year is equal to or more than 1.2;

provided that "wages" with respect to which contributions are paid are not less than that part of remuneration which is subject to tax in accordance with section 3306(b) of the Internal Revenue Code of 1986, as amended.

(e) If an employer during any calendar year acquires substantially all the property used in a trade or business, or in a separate unit of a trade or business, of another employer, and after the acquisition employs an individual who prior to the acquisition was employed by the predecessor, then for the purpose of determining whether remuneration in excess of the average annual wages has been paid to the individual for employment, remuneration paid to the individual by the predecessor during the calendar year shall be considered as having been paid by the successor employer. For the purposes of this subsection, the term "employment" includes services constituting employment under any employment security law of another state or of the federal government.

(f) Subsections (b) through (e) notwithstanding, for the purposes of this part the term "wages" shall include at least that amount of remuneration paid in a calendar year to an

individual by an employer or the employer's predecessor with respect to employment during any calendar year which is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

(g) In accordance with section 303(a)(5) of the Social Security Act, as amended, and section 3304(a)(4) of the Internal Revenue Code of 1986, as amended, any contributions overpaid due to a retroactive reduction in the taxable wage base may be credited against the employer's future contributions upon request by the employer; provided that no employer shall be given a cash refund. [L 1939, c 219, §7(a); am L 1941, c 304, §1, subs 19; RL 1945, §4246; am L 1947, c 3, §1; am L 1951, c 191, §1(4); am L 1953, c 23, §1(3); RL 1955, §93-60; am L 1957, c 115, §1(b); am L Sp 1959 2d, c 1, §27; am L 1961, c 114, §1(b); am L 1964, c 55, §2; am L 1965, c 20, §1; HRS §383-61; am L 1971, c 187, §6; am L 1976, c 157, §3; gen ch 1985; am L 1987, c 240, §1; am L 1991, c 7, §1; am L 2007, c 110, §3; am L 2010, c 2, §3]

Note

The 2010 amendment applies retroactively to January 1, 2010, for determinations of the employer's contribution rate and wage base. L 2010, c 2, §8.

Revision Note

In subsection (d)(1), "or" deleted pursuant to §23G-15.

" **[§383-61.5] Special assessments on employers to pay interest on loans from Secretary of Labor.** Whenever the State requests a loan from the Secretary of Labor in accordance with title XII of the Social Security Act to pay expected benefit claims during a specified period of time, the director may assess all employers the amounts that are sufficient to pay the principal and interest costs on the loan; provided that the director develops a mechanism of distributing these payments among employers in a fair and equitable manner. [L 2010, c 2, §1]

" **§383-62 Rate of contributions; financing benefits paid to government employees and employees of nonprofit organizations.** (a) Except as otherwise provided in this section, each employer shall pay contributions determined in accordance with sections 383-66 and 383-68.

Notwithstanding any other provision of this part to the contrary, for the calendar years 1977 and 1978 each employer (except any employer making payments instead of contributions pursuant to subsection (b) or (d)) shall pay contributions equal to three and one-half per cent of wages paid by the employer during such calendar years.

(b) In lieu of contributions required of employers under this chapter, the State and its political subdivisions and instrumentalities (hereinafter referred to as "governmental employers" or "governmental employer" as the case may be) shall pay in advance to the director of labor and industrial relations for the fund an amount equivalent to:

(1) The amount of regular benefits plus one-half the amount of extended benefits payable in each calendar quarter beginning prior to January 1, 1979, to individuals based on wages paid by governmental employers; and

(2) The amount of regular benefits plus the amount of extended benefits payable in each calendar quarter beginning after December 31, 1978, to individuals based on wages paid by governmental employers.

The director shall notify each governmental employer of the amount of money required to be paid to the director. Such amounts shall be paid to the director prior to the commencement of the calendar quarter in which benefits are payable.

If benefits paid an individual are based on wages paid by one or more governmental employers and one or more other employers, or on wages paid by two or more governmental employers, the amount payable by a governmental employer to the director for the fund shall be in accordance with the provisions of paragraphs (1) and (2) of subsection (e) of this section, governing the allocation of benefit costs among employers liable for payments in lieu of contributions and between such employers and employers liable for contributions.

For the purposes of paragraphs (1) and (2) of subsection (e), governmental employers are employers liable for payments in lieu of contributions. The amount of payment required from governmental employers shall be ascertained by the department of labor and industrial relations and shall be paid from the general funds of such governmental employers upon approval by the comptroller of the State or the director of finance of the respective counties, except that to the extent that benefits are paid on the basis of wages paid by governmental employers from special administrative funds, the payment into the unemployment compensation fund shall be made from such special funds.

(c) Notwithstanding the provisions of subsection (b) of this section to the contrary, any governmental employer which is

or becomes subject to this chapter after December 31, 1977, may, in accordance with this subsection (c), elect to pay contributions pursuant to the provisions of this part (with the exception of the provisions in subsection (b) and subsections (d) through (g) of this section) applicable to other employers. For the purposes of this subsection (c) the term "governmental employer" shall apply to the State and to each county of this State, as separate and individual employers.

(1) Any governmental employer which is subject to this chapter on January 1, 1978, may elect to become liable for contributions for a period of not less than two calendar years beginning with January 1, 1978; provided it files with the department a written notice of its election within the thirty-day period following such date.

(2) Any governmental employer which becomes subject to this chapter after January 1, 1978, may elect to become liable for contributions for a period beginning with the date on which such subjectivity begins and continuing for not less than two calendar years thereafter by filing with the department a written notice of its election within the thirty-day period following the date on which such subjectivity begins.

(3) Any governmental employer which has been making payments in lieu of contributions in accordance with subsection (b) of this section for a period subsequent to January 1, 1978, may elect to become liable for contributions for a period of not less than two calendar years beginning with January 1 of the year following the year in which the election is made by filing with the department a written notice of its election not later than thirty days prior to the beginning of any calendar year.

(4) Any governmental employer which makes an election in accordance with paragraph (1), (2), or (3) of this subsection shall continue to be liable for contributions until it files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination shall be effective.

(5) The department may for good cause extend the period within which a notice of election or a notice of termination must be filed.

(6) The department shall notify each governmental employer of any determination which it may make of the effective date of any election which such governmental employer makes and of any termination of such

election. Such determination shall be conclusive upon such governmental employer unless, within fifteen days after the notification was mailed or delivered to it, such governmental employer files with the department an application for review and redetermination, setting forth the reasons therefor. The department shall promptly review and reconsider its determination and shall thereafter issue a redetermination in any case in which such application has been filed. Any such redetermination shall be conclusive upon the governmental employer unless, within fifteen days after the redetermination was mailed or otherwise delivered to it, the governmental employer files written notice of appeal with the department setting forth the reasons for the appeal. The appeal shall be heard by a referee in accordance with applicable provisions of sections 383-38 and 383-39, and the decision of the referee shall be subject to the provisions of section 383-41.

(7) Should any governmental employer, having made payments in lieu of contributions in accordance with subsection (b) of this section, elect to pay contributions under this part, any amount of positive reserve balance remaining in the self-financing account of such employer after all liabilities against such account under subsection (b) of this section have been satisfied shall be refunded to such employer.

(8) Any governmental employer which elects to become liable for contributions under this part shall pay contributions for the first year of such election at the rate which applies to employers who become subject to this chapter during such year.

(d) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection, a nonprofit organization is an organization (or groups of organizations) described in section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under section 501(a) of such code.

(1) Liability for contributions and election of reimbursement. Any nonprofit organization which is, or becomes, subject to this chapter on or after January 1, 1972, shall pay contributions under the provisions of this part (with the exception of the provisions in subsection (b) of this section) applicable to other employers unless it elects, in accordance with this paragraph, to pay to the director

of labor and industrial relations for the fund an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any nonprofit organization which is, or becomes, subject to this chapter on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972, provided it files with the department a written notice of its election within the thirty-day period immediately following such date, or within a like period immediately following the date of enactment of this subparagraph, whichever occurs later.

(B) Any nonprofit organization which becomes subject to this chapter after January 1, 1972, may elect to become liable for payment in lieu of contributions for a period beginning with the date on which such subjectivity begins and continuing for not less than two calendar years thereafter by filing a written notice of its election with the department not later than thirty days immediately following the date of the determination of such subjectivity.

(C) Any nonprofit organization which makes an election in accordance with subparagraph (A) or (B) of this paragraph will continue to be liable for payments in lieu of contributions until it files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which such termination shall be effective.

(D) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the department not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next calendar year.

(E) The department may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1971.

(F) The department, in accordance with such regulations as the director of labor and industrial relations may prescribe, shall notify each nonprofit organization of any determination which it may make of such organization's status as an employer and of the effective date of any election which such organization makes and of any termination of such election. Such determination shall be conclusive upon such organization unless, within fifteen days after the notice thereof was mailed to its last known address or otherwise delivered to it, such organization files with the department an application for review and redetermination, setting forth the reasons therefor. The department shall promptly review and reconsider its determination and shall thereafter issue a redetermination in any case in which such application has been filed. Any such redetermination shall be conclusive upon the organization unless, within fifteen days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files written notice of appeal with the department, setting forth the reasons for the appeal. The appeal shall be heard by a referee in accordance with applicable provisions of sections 383-38 and 383-39, and the decision of the referee shall be subject to the provisions of section 383-41.

(2) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (A).

(A) As determined by the director of labor and industrial relations, the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during the week, or other prescribed period, that is attributable to service in the employ of such

organization other than previously uncovered services as defined in section 383-22(b).

(B) Payment of any bill rendered under subparagraph (A) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (D).

(C) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(D) The amount due specified in any bill from the department shall be conclusive and binding upon a nonprofit organization unless, within fifteen days after the notice thereof was mailed to its last known address or otherwise delivered to it, such organization files with the department an application for review and redetermination, setting forth the reasons therefor. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in which such application has been filed. Any such redetermination shall be conclusive on the organization unless, within fifteen days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization filed written notice of appeal with the department, setting forth the reasons for the appeal. The appeal shall be heard by a referee in accordance with applicable provisions of sections 383-38 and 383-39, and the decision of the referee shall be subject to the provisions of section 383-41.

(3) Provision of security. Any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within thirty days after the effective date of its election, to deposit with the department an amount of money as security.

(A) The amount of the deposit required by this paragraph shall be equal to .2 per cent of the organization's total wages paid for employment during the calendar year immediately preceding the effective date of the election. If the

nonprofit organization did not pay wages in each of the four calendar quarters of such calendar year, the amount of the deposit shall be as determined by the department.

(B) Any deposit of money in accordance with this paragraph shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under this paragraph by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions. The department shall require the organization within thirty days following any deduction from a money deposit under the provisions of this subparagraph to deposit sufficient additional money to make whole the organization's deposit at the prior level. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, the department determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty days of written notice of its determination or shall return to the organization such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from moneys held in escrow shall be governed by the applicable provisions of the state law.

(C) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this paragraph, the department may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective; provided that the department may extend for good cause the applicable deposit or adjustment period by not more than thirty days.

(e) Each employer, other than government employers, that is liable for payments in lieu of contributions under this section shall pay to the director of labor and industrial

relations for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraph (1) or paragraph (2).

(1) Proportionate allocation when fewer than all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers that are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(2) Proportionate allocation when all base-period employers are liable for reimbursement. If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(f) Two or more employers, including governmental employers, that have become liable for payments in lieu of contributions, may file a joint application to the department of labor and industrial relations for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for purposes of this subsection. Upon its approval of the application, the department shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the department receives the application, and it shall notify the group's representative of the effective date of the account.

Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the department or upon application by the group. The director of labor and industrial relations shall prescribe such regulations as the director deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

(g) When a nonprofit organization terminates its self-financing status and elects to pay contributions under this chapter, any remaining amount of positive reserve balance in its self-financing account will be transferred to its contributory reserve account. The department shall determine the contribution rate of such employer in accordance with provisions of section [383-66(a)(2)]. [L 1939, c 219, §7(b); am L 1941, c 304, §1, subs 20; RL 1945, §4247; am L 1953, c 41, §1(5); RL 1955, §93-61; am L 1959, c 222, §1(3); am L Sp 1959 2d, c 1, §27; am L 1964, c 55, §3; HRS §383-62; am L 1971, c 187, §7; am L 1973, c 120, §2; am L 1976, c 157, §§4, 6; am L 1977, c 148, §6 and c 169, §1; am L 1980, c 232, §20; gen ch 1985; am L 1986, c 180, §1]

Attorney General Opinions

Subsection (b) is in itself an authorization for payment of benefits from the general funds of the governmental employers and moneys from said funds may be used for payment of benefits to legislative employees. Att. Gen Op. 61-63.

Case Notes

Taxpayer's delay in filing its self-financing application did not constitute good cause. 70 H. 72, 762 P.2d 796 (1988).

Cited: 41 H. 508, 509 (1957).

" **[§383-62.5] Treatment of Indian tribes.** (a) Benefits based on service in employment as defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter. The financing of benefits shall apply in the same manner and under the same terms and conditions as in section 383-62 for nonprofit organizations subject to this chapter; except that the provisions of this section shall apply where there is a conflict.

(b) Any Indian tribe or tribal unit (subdivisions, subsidiaries, or business enterprises wholly owned by the Indian tribe) subject to this chapter on or after January 1, 2007:

(1) Shall pay contributions under the provisions of this part (with the exception of the provisions in section 383-62(b)) applicable to other employers, unless it elects to pay to the director for the fund an amount equal to the amount of benefits that is attributable to service in the employ of an Indian tribe;

(2) That elects to make payments in lieu of contributions shall make this election in the same manner and under the same conditions as provided in section 383-62(d)(1). Indian tribes or tribal units shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units;

(3) Shall be billed and payments shall be made in accordance with section 383-62(d)(2), for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as nonprofit organizations that have elected to make reimbursement payments in lieu of contributions; and

(4) That elects to become liable for payments in lieu of contributions shall be required, within thirty days after the effective date of its election, to deposit with the department an amount of money as security as determined by section 383-62(d)(3).

(c) Failure of the Indian tribe or tribal unit to make any required payment under this chapter within ninety days after a notice of delinquency was mailed to its last known address or was otherwise delivered to it, shall cause the Indian tribe to lose the option to make payments in lieu of contributions and the termination shall continue for the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.

Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, shall have such option reinstated after a period of one year if all contributions have been timely made; provided no contributions, payments in lieu of contributions for benefits paid, security deposit, and penalties or interest remain outstanding.

If any Indian tribe or tribal unit fails to make payments required under this section (including assessed interest and penalty) within ninety days of a notice of delinquency, the department shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

(d) Notices of payment and reporting delinquency to Indian tribes and tribal units shall include information that failure to make full payments within the prescribed time shall cause the Indian tribe to:

(1) Be liable for taxes under the federal Unemployment Tax Act; and

(2) Lose the option to make payments in lieu of contributions.

(e) Except as provided in subsection (f), the amount payable to the fund by each Indian tribe or tribal unit that is liable for payments in lieu of contributions shall be determined in the same manner as provided in section 383-62(e).

(f) An Indian tribe or tribal unit shall reimburse the fund for all extended benefits paid that are attributable to service in the employ of the Indian tribe or tribal unit unless the benefits are reimbursed by the federal government.

(g) Any two or more Indian tribes or tribal units that have become liable for payments in lieu of contributions may file a joint application to the department for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers in the same manner as provided in section 383-62(f).

(h) As used in this section:

"Employer" includes any Indian tribe for which service in employment, as defined in section 383-2, is performed.

"Employment" means service performed in the employ of an Indian tribe; provided that the service is excluded from employment as defined in the federal Unemployment Tax Act solely by reason of section 3306(c)(7), of the federal Unemployment Tax Act, and is not otherwise excluded from employment under this chapter. For purposes of this section, the exclusions from employment under section 383-7, apply to services performed in the employ of an Indian tribe in the same manner as the exclusions apply to government and nonprofit entities.

"Indian tribe" has the meaning given the term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. section 450b(e)), and includes any subdivision, subsidiary, or business enterprises wholly owned by the Indian tribe. [L 2007, c 70, §2]

" **§383-63 Definitions for experience rating provisions.** As used in sections 383-63 to 383-69:

"Adequate reserve fund" means an amount that is equal to the amount derived by multiplying the benefit cost rate that is the highest during the ten-year period ending on November 30 of each year by the total remuneration paid by all employers, with

respect to all employment for which contributions are payable during the last four calendar quarters ending on June 30 of the same year, as reported on contribution reports filed on or before October 31 of the same year. "Remuneration", as used in this definition, means wages as defined in section 383-10. For the purpose of determining the highest benefit cost rate, the benefit cost rate for the first twelve-consecutive-calendar-month period beginning with the first day of the first month of the ten-year period and for each succeeding twelve-consecutive-calendar-month period beginning with the first day of each subsequent month shall be computed.

Effective for the calendar years 1992 through 2007, and for calendar year 2011, "adequate reserve fund" means an amount that is equal to the amount derived by multiplying the benefit cost rate that is the highest during the ten-year period ending on November 30 of each year by the total remuneration paid by all employers, with respect to all employment for which contributions are payable during the last four calendar quarters ending on June 30 of the same year, as reported on contribution reports filed on or before October 31 of the same year. "Remuneration", as used in this definition, means wages as defined in section 383-10. For the purpose of determining the highest benefit cost rate, the benefit cost rate for the first twelve-consecutive-calendar-month period beginning with the first day of the first month of the ten-year period and for each succeeding twelve-consecutive-calendar-month period beginning with the first day of each subsequent month shall be computed.

"Annual payroll" means the total amount of wages for employment paid by an employer during a calendar year; and "average annual payroll" means the average of the annual payrolls of an employer for a period consisting of the three consecutive calendar years immediately preceding the calendar year for which rates are computed, except that, for an employer whose account has been chargeable with benefits throughout at least one year but less than three years ending on December 31, 1955, and each December 31 thereafter, "average annual payroll" means one-third of the sum of the employer's cumulative payrolls for the period in which the employer has been subject to this chapter, but not more than the three calendar years ending on such December 31. Whenever there was or is a change in the definition of "employment" or in the definition of "wages", effective for the purposes of this chapter generally or of this part at the commencement of or at a date within the three-year period of any average annual payroll, "employment" and "wages" for the purpose of determining each annual payroll within such period and the average annual payroll for such period, shall have the meaning prior to the effective date of such change

which they had in accordance with this chapter then in effect and shall have the meaning after the effective date of such change assigned to them by the amendment to this chapter providing for such change.

"Base period employers" means employers by whom an individual was paid the individual's base period wages.

"Base period wages" means the wages paid to an individual during the individual's base period for insured work.

"Benefit cost rate" means the rate derived by dividing the total net benefits paid to all individuals during a twelve-consecutive-calendar-month period by the total remuneration paid by all employers with respect to employment for which contributions are payable during the last four completed calendar quarters ending at least five months before the end of the twelve-consecutive-month period. "Remuneration", as used in this definition, means wages as defined in section 383-10.

"Contributions" includes the money payments required by this chapter to be made into the fund by any employing unit on account of having individuals in its employ. "Contributions" does not include penalties or interest for delinquency in payments.

"Current reserve fund" means the total assets of the fund available for the payment of benefits on November 30 of each year (exclusive of all moneys credited under section 903 of the Social Security Act to the account of this State in the unemployment trust fund that have been appropriated for expenses of administration whether or not withdrawn from the trust fund).

"Reserve balance" means the difference between all contributions paid by an employer and credited to the employer's account for all periods before January 1 (including those paid before February 1 of the same year with respect to wages paid by the employer before January 1 of the same year) and the total benefits chargeable to the employer's account for all periods before January 1 of the same year. [L 1941, c 304, §1, pt of subs 21; RL 1945, §4248; am L 1949, c 316, §1(1), (2); am L 1953, c 41, §1(6); am L 1955, c 18, §1(1); RL 1955, §93-62; am L 1964, c 55, §4; HRS §383-63; am L 1969, c 277, §1; am L 1978, c 235, §3; gen ch 1985; am L 1991, c 68, §6; am L 2007, c 110, §4; am L 2010, c 2, §4]

Note

The 2010 amendment applies retroactively to January 1, 2010, for determinations of the employer's contribution rate and wage base. L 2010, c 2, §8.

" **§383-64 Credits for contributions; destruction of employer accounts and records.** (a) The director shall maintain a separate account for each employer and shall credit the employer's account with all the contributions paid by the employer as of the date of payment. Nothing in this chapter shall be construed to grant any employer or individual in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

(b) If an employer's account becomes inactive because services constituting employment are no longer performed for the employer and the account remains inactive for five consecutive calendar years, the account shall become void and may be destroyed, and, notwithstanding any provision to the contrary, the employer shall have no claim or right to the contributions credited to the account. [L 1939, c 219, §7(c)(1); am L 1941, c 304, §1, pt of subs 21; RL 1945, §4249; am L 1949, c 316, §1(3); RL 1955, §93-63; am L 1964, c 55, §5; HRS §383-64; am L 1969, c 14, §1; gen ch 1985]

" **§383-65 Charges and noncharges for benefits.** (a) Except as otherwise provided in subsection (b), benefits paid to an individual shall be charged against the accounts of the individual's base period employers and the amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to the individual as the base period wages paid to the individual by the employer bear to the total amount of base period wages paid to the individual by all of the individual's base period employers. Benefits paid shall be charged to employers' accounts in the calendar year in which the benefits are paid.

(b) Benefits paid to an individual shall not be charged against the account of any of the individual's base period employers on a contributory plan under section 383-61 when such benefits are:

(1) Paid to an individual during any benefit year if the individual:
    (A) Left work voluntarily without good cause;
    (B) Was discharged for misconduct connected with the individual's work; or
    (C) Left work voluntarily for good cause not attributable to the employer.

    The chargeability of benefits to an employer's account shall be determined in accordance with section 383-94 and other applicable provisions of this chapter, or as may be otherwise specified by the department;

(2) Paid to an individual, who, during the individual's base period, earned wages for part-time employment

with an employer, if the employer continues to give the individual employment to the same extent while the individual is receiving benefits as during the base period and the employer establishes such fact to the satisfaction of the director of labor and industrial relations;

(3) Paid to an individual for the period the individual is enrolled in and is in regular attendance at a vocational training or retraining course approved by the director pursuant to section 383-29;

(4) Paid to an individual under the extended benefits program, sections 383-168 to 383-174; except that one-half of the amount of such benefits which are based on services performed for a governmental employer on a contributory plan shall be charged to the account of such employer;

(5) Paid to an individual who qualifies to receive benefits by meeting the minimum earnings and employment requirements only by combining the individual's employment and wages earned in two or more states;

(6) Benefits overpaid to a claimant as a result of ineligibility or disqualification under sections 383-29 and 383-30 unless such overpayment resulted from the employer's failure to furnish information as required by this chapter or the rules of the department; or

(7) Benefits paid to an individual during any benefit year beginning September 13, l992 and thereafter shall not be charged to the account of any base period employer from whose employment the individual is separated as a direct result of a major disaster and would have been entitled to disaster unemployment assistance under the Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707) but for the receipt of unemployment insurance benefits paid under this chapter; provided that the employer must petition for relief of any charges to an employer's reserve account as requested by the department and the director approves granting relief of charges.

(c) The amount of noncharged benefits shall bear the same ratio to the total benefits paid to the individual as the base period wages paid to the individual by the employer or employers not charged bear to the total amount of base period wages paid to the individual by all of the individual's base period employers. The noncharging provisions of subsection (b) shall

not apply to governmental employers or nonprofit organizations making payments in lieu of contributions under section 383-62.

(d) For the purposes of the arrangements in which the department will participate pursuant to section 383-106(b) only, "base period" as used in this section means the base period of this or any other state applied to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws. [L 1939, c 219, §7(c)(2); am L 1941, c 304, §1, pt of subs 21; RL 1945, §4250; am L 1949, c 316, §1(6); am L 1951, c 195, §1(6); am L 1953, c 41, §1(8); am L 1955, c 80, §1(c); RL 1955, §93-64; am L 1957, c 205, §1(e); am L 1963, c 174, §1; HRS §383-65; am L 1969, c 8, §1; am L 1971, c 187, §8; am L 1973, c 120, §3; am L 1976, c 157, §5; am L 1977, c 148, §7; am L 1984, c 229, §3; gen ch 1985; am L 1986, c 180, §2; am L 1993, c 342, §1]

Revision Note

In subsection (b)(1)(A), "or" deleted pursuant to §23G-15.

Case Notes

"Left his work voluntarily" as used in §§383-30(1) and 383-65 have the same meaning; striker not deemed to have left work voluntarily; strike of itself, does not sever employer-employee relationship. 46 H. 164, 377 P.2d 932 (1962).

Overpayment of benefits chargeable to employer's account where overpayment due to employer's error in reporting claimant's earnings. 68 H. 349, 714 P.2d 520 (1986).

Cited: 44 H. 93, 94, 352 P.2d 856 (1960); 46 H. 140, 143, 377 P.2d 715 (1962).

" **§383-66 Contribution rates, how determined.** (a) The department, for the nine-month period April 1, 1941, to December 31, 1941, and for each calendar year thereafter, except as otherwise provided in this part, shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts with a view to fixing the contribution rates to reflect this experience. The department shall determine the contribution rate of each employer in accordance with the following requirements:

(1) The standard rate of contributions payable by each employer for any calendar year through 1984 shall be three per cent. For calendar years 1985 and thereafter, the standard rate of contributions payable

by each employer shall be five and four-tenths per cent;

(2) No employer's rate for the calendar year 1942 and for any calendar year thereafter shall be other than the maximum rate unless and until the employer's account has been chargeable with benefits throughout the thirty-six consecutive calendar month period ending on December 31 of the preceding calendar year, except that, for the calendar year 1956 and for each calendar year thereafter, an employer who has not been subject to the law for a sufficient period to meet this requirement may qualify for a rate other than the maximum rate if the employer's account has been chargeable throughout a lesser period but in no event less than the twelve consecutive calendar month period ending on December 31 of the preceding calendar year. For the calendar years 1985 through 1991, the contribution rate for a new or newly covered employer shall be the sum of the employer's basic contribution rate of three and six-tenths per cent and the fund solvency contribution rate determined for that year pursuant to section 383-68(a), until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year; except that no employer's contribution rate shall be greater than five and four-tenths per cent and no employer with a negative reserve ratio shall have a contribution rate less than the employer's basic contribution rate. For calendar years 1992 and thereafter, the contribution rate for a new or newly covered employer shall be the contribution rate assigned to any employer with .0000 reserve ratio, until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year;

(3) Any amount credited to this State under section 903 of the Social Security Act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the fund for the purposes of this paragraph. Any advance that may be made to this State under section 1201 of the Social Security Act, whether or not withdrawn from this trust fund, shall be excluded from the fund for the purposes of this paragraph. No employer's rate shall be reduced in any

amount that is not allowable as an additional credit, against the tax levied by the federal Unemployment Tax Act pursuant to section 3302(b) of the federal Internal Revenue Code or pursuant to any other federal statute, successor to section 3302(b), which provides for the additional credit now provided for in section 3302(b);

(4) If, when any classification of employers is to be made (which may be after the commencement of the period for which the classification is to be made), the department finds that any employer has failed to file any report required in connection therewith or has filed a report that the department finds incorrect or insufficient, the department shall notify the employer thereof by mail addressed to the employer's last known address. Unless the employer files the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of the notice, the maximum rate of contributions shall be payable by the employer for the period for which the contribution rate is to be fixed. Effective January 1, 1987, the director, for excusable failure, may redetermine the assignment of the maximum contribution rate in accordance with this section, provided the employer files all reports as required by the department and submits a written request for redetermination before December 31 of the year for which the contribution rate is to be fixed;

(5) For the purpose of sections 383-63 to 383-69, if after December 31, 1939, any employing unit in any manner succeeds to or acquires the organization, trade, or business, or substantially all the assets thereof (whether or not the successor or acquiring unit was an "employing unit", as that term is defined in section 383-1 prior to the acquisition), or after December 31, 1988 and prior to December 31, 1992, acquires a clearly identifiable and segregable portion of the organization, trade, or business of another that at the time of the acquisition was an employer subject to this chapter, and the successor continues or resumes the organization, trade, or business and continues to employ all or nearly all of the predecessor's employees, or the successor continues or resumes the clearly identifiable and segregable portion of the organization, trade, or business and continues to employ all or nearly all of the employees of the clearly identifiable and segregable portion, an

application may be made for transfer of the predecessor's experience record. If the predecessor employer has submitted all information and reports required by the department including amended quarterly wage reports identifying the employees transferred or retained and executed and filed with the department before December 31 of the calendar year following the calendar year in which the acquisition occurred on a form approved by the department a waiver relinquishing the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record with respect to its separate account, actual contribution payment, and benefit chargeability experience, annual payrolls and other data for the purpose of obtaining a reduced rate, and requesting the department to permit the experience record to inure to the benefit of the successor employing unit upon request of the successor employing unit, the experience record for rate computation purposes of the predecessor shall thereupon be deemed the experience record of the successor and the experience record shall be transferred by the department to the successor employing unit and shall become the separate account of the employing unit as of the date of the acquisition. Benefits chargeable to the predecessor employer or successor employer in case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, after the date of acquisition on account of employment prior to the date of the acquisition shall be charged to the separate account of the successor employing unit. In case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, the experience record that inures to the benefit of the successor employer shall be determined as follows:

(A) Wages, as used in section 383-61, attributable to the clearly identifiable and segregable portion shall be for the period beginning with the most recent three consecutive calendar years immediately preceding the determination of rates under sections 383-63 to 383-69 and through the date of acquisition; and

(B) Reserve balance attributable to the clearly identifiable and segregable portion shall be the amount determined by dividing the wages, as used in section 383-61, of the clearly identifiable

and segregable portion in the three calendar years (or that lesser period as the clearly identifiable and segregable portion may have been in operation) immediately preceding the computation date of the rating period prior to which the acquisition occurred by the total taxable payrolls of the predecessor for the three-year period (or that lesser period as the clearly identifiable and segregable portion may have been in operation) and multiplying the quotient by the reserve balance of the predecessor employer calculated as of the acquisition date;

provided the waiver or waivers required herein are filed with the department within sixty days after the date of acquisition, the successor employing unit, unless already an employer subject to this chapter, shall be subject from the date of acquisition to the rate of contribution of the predecessor or of two or more predecessors if they have the same contribution rate. If there are two or more predecessors having different contribution rates, the successor shall be subject to the rate prescribed for new or newly covered employers under paragraph (2) until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessors and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the combined experience. If the successor at the time of the transfer is an employer subject to this chapter, the rate of contribution to which the successor is then subject shall remain the same until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessor and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the combined experience. For the purpose of determination of rates under sections 383-63 to 383-69 of all successor employing units, waivers as required herein, if not previously filed as hereinabove provided, shall be filed with the department not later than March 1 of the year for which the rate is determined; provided that no waiver shall be accepted by the department for

filing unless the employing unit executing the waiver has filed all reports and paid all contributions required by this chapter;

(6) The department may prescribe rules for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and, in accordance with the rules and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, shall maintain the joint account as if it constituted a single employer's account. The rules shall be consistent with the federal requirements for additional credit allowance in section 3303 of the federal Internal Revenue Code and consistent with this chapter;

(7) Whenever there is an amendment to this chapter which, if immediately effective, would change an employer's rate of contributions, the rate of the employer shall be changed in accordance with the amendment and the new rate shall apply for the remainder of the calendar year beginning with the calendar quarter immediately following the effective date of the amendment providing for the change, unless otherwise provided by the amendment;

(8) For the purposes of this section, "contribution rate" shall mean the basic contribution rate as defined in section 383-68 when applied to calendar year 1978 or any calendar year thereafter; and

(9) For the purposes of this section, the terms "employing unit", "employer", "predecessor", and "successor" shall include both the singular and the plural of each term. Nothing in this section shall prevent two or more successor employing units, which each succeed to or acquire a clearly identifiable and segregable portion of a predecessor employing unit, from gaining the benefit of the clearly identifiable and segregable portion of the predecessor's experience record;

provided that the terms of this section are complied with, nothing herein shall bar a predecessor employer from waiving the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record in favor of a successor employer where the successor acquired a clearly identifiable and segregable portion of the predecessor's organization, trade, or business after December 31, 1988 and prior to December 31, 1992.

(b) Notwithstanding any other provision of this chapter, the following shall apply regarding assignment of rates and transfers of experience:

(1) If an employing unit transfers its organization, trade, or business, or a portion thereof, to another employing unit and, at the time of the transfer, there is substantially common ownership, management, or control of the two employing units, both employing units shall file a notification of the transfer with the department on a form approved by the department within thirty days after the date of the transfer. The department shall transfer the experience records attributable to the transferred organization, trade, or business to the employing unit to whom the organization, trade, or business is transferred. The rates of both employing units shall be recalculated and made effective beginning with the calendar year immediately following the date of the transfer of the organization, trade, or business;

(2) If a person is not an employing unit as defined in section 383-1 at the time it acquires the organization, trade, or business of another employing unit, both the person and the employing unit shall file a notification of the acquisition with the department on a form approved by the department within thirty days after the date of the acquisition. If the department determines at the time of the acquisition or thereafter, based on objective factors that may include:

(A) The cost of acquiring the organization, trade, or business;

(B) Whether the person continued the activity of the acquired organization, trade, or business;

(C) How long the organization, trade, or business was continued; or

(D) Whether a substantial number of new employees were hired for performance of duties unrelated to the organization, trade, or business activity conducted prior to the acquisition, that the acquisition was solely or primarily for the purpose of obtaining a lower rate of contribution, the person shall not be assigned the lower rate and shall be assigned the contribution rate for a new or newly covered employer pursuant to subsection (a)(2) instead;

(3) An employing unit or person who is not an employing unit shall be subject to penalties under paragraph (4)

or (5) if the employing unit or person who is not an employing unit:

(A) Knowingly violates or attempts to violate this subsection or any other provision of this chapter related to determining the assignment of a contribution rate;

(B) Makes any false statement or representation or fails to disclose a material fact to the department in connection with the transfer or acquisition of an organization, trade, or business; or

(C) Knowingly advises another employing unit or person in a way that results in a violation or attempted violation of this subsection;

(4) If the person is an employing unit:

(A) The employing unit shall be subject to the highest rate assignable under this chapter for the calendar year during which the violation or attempted violation occurred and for the consecutive three calendar years immediately following; or

(B) If the employing unit is already at the highest rate or if the amount of increase in the employing unit's rate would be less than two per cent for the calendar year during which the violation or attempted violation occurred, a penalty equal to contributions of two per cent of taxable wages shall be imposed for the calendar year during which the violation or attempted violation occurred and the consecutive three calendar years immediately following. Any penalty amount collected in excess of the maximum contributions payable at the highest rate shall be deposited in the special unemployment insurance administration fund in accordance with section 383-127;

(5) If the person is not an employing unit, the person shall be subject to a penalty of not more than $5,000. The penalty shall be deposited in the special unemployment insurance administration fund in accordance with section 383-127;

(6) For purposes of this subsection, the following definitions shall apply:

(A) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the requirements or prohibition involved;

(B) "Violates or attempts to violate" includes but is not limited to intent to evade, misrepresentation, or wilful nondisclosure;
(C) "Person" shall have the same meaning as defined in section 7701(a)(1) of the Internal Revenue Code of 1986, as amended; and
(D) "Organization, trade, or business" shall include the employer's workforce;

(7) In addition to the civil penalties imposed by paragraphs (4) and (5), any violation of this section may be prosecuted under sections 383-142 and 383-143. No existing civil or criminal remedy for any wrongful action that is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this section;

(8) The department shall establish procedures to identify the transfer or acquisition of an employing unit for the purposes of this section; and

(9) This section shall be interpreted and applied in a manner to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor. [L 1939, c 219, §7(c)(3); am L 1941, c 304, §1, pt of subs 21; am L 1943, c 160, §1, subs 7; RL 1945, §4251; am L 1951, c 195, §1(8); am L 1953, c 41, §1(7); am L 1955, c 18, §1(2) and c 51, §1(1); RL 1955, §93-65; am L 1957, c 145, §1(d); am L Sp 1959 2d, c 1, §27; am L 1961, c 4, §1; am L 1962, c 13, §2; am L 1964, c 55, §§6, 7, 8; HRS §383-66; am L 1974, c 155, §1; am L 1978, c 235, §1; am L 1981, c 189, §1; am L 1984, c 229, §2; gen ch 1985; am L 1986, c 162, §5; am L 1987, c 107, §2; am L 1990, c 51, §1; am L 1991, c 68, §7; am L 2005, c 114, §1; am L 2009, c 32, §1; am L 2012, c 263, §1]

Cross References

Rulemaking, see chapter 91.

" **§383-67 Reserve ratio.** For the calendar year 1970 and for each calendar year thereafter, an employer's reserve ratio shall be determined by dividing the employer's most recent reserve balance by the employer's most recent average annual payroll. The ratio shall be rounded to the nearest ten-thousandths. [L 1941, c 304, §1, pt of subs 21; RL 1945, §4252; am L 1945, c 19, §1(5); am L 1949, c 316, §1(4); am L 1951, c 195, §1(7); am L 1953, c 41, §1(9), (10); RL 1955, §93-66; am L 1964, c 55, §9; HRS §383-67; am L 1969, c 277, §2; gen ch 1985]

" **§383-68 Contribution rate schedules; fund solvency rate schedule; rates based on experience.** (a) Before December 31 of each year the fund solvency contribution rate applicable for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund. The fund solvency contribution rate shall apply for calendar years 1985 through 1991 and shall be that rate that appears on the same line as the ratio (rounded to the nearest hundredth) of the current reserve fund to the adequate reserve fund in the fund solvency contribution rate schedule set forth in this paragraph.

FUND SOLVENCY CONTRIBUTION RATE SCHEDULE

Ratio of Current Reserve Fund to Adequate Reserve Fund	Fund Solvency Contribution Rate
2.00 or more	- .5 per cent
1.50 to 1.99	- .2 per cent
1.00 to 1.49	0
.90 to .99	+ .4 per cent
.80 to .89	+ .8 per cent
.60 to .79	+1.2 per cent
.40 to .59	+1.6 per cent
.20 to .39	+2.0 per cent
Less than .20	+2.4 per cent

(b) For calendar years 1985 through 1991 the contribution rate of any employer eligible for a reduced rate in accordance with section [383-66(a)(2)] shall be the sum of the employer's basic contribution rate for such year determined pursuant to this subsection and the fund solvency contribution rate determined for such year pursuant to subsection (a); except that no employer's contribution rate shall be less than zero, no employer's contribution rate shall be greater than five and four-tenths per cent, and no employer with a negative reserve ratio shall have a contribution rate less than that employer's basic contribution rate.

Subject to the requirements of sections 383-63 to 383-67 and 383-69, an employer's basic contribution rate for a calendar year shall be that rate which appears on the same line as the employer's reserve ratio for the year in the basic contribution rate schedule set forth in this subsection.

BASIC CONTRIBUTION RATE SCHEDULE

Reserve Ratio	Contribution Rate
.1500 and over	.2 per cent

.1400 to .1499	.4 per cent
.1300 to .1399	.6 per cent
.1200 to .1299	.8 per cent
.1100 to .1199	1.0 per cent
.1000 to .1099	1.2 per cent
.0900 to .0999	1.4 per cent
.0800 to .0899	1.6 per cent
.0700 to .0799	1.8 per cent
.0600 to .0699	2.2 per cent
.0500 to .0599	2.6 per cent
.0300 to .0499	3.0 per cent
.0000 to .0299	3.6 per cent
-.0000 to -.0499	4.2 per cent
-.0500 to -.0999	4.8 per cent
-.1000 and less	5.4 per cent

(c) Effective with calendar year 1992 and thereafter, before December 31 of the previous year the contribution rate schedule for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund, in accordance with this subsection and subsection (d).

(1) Whenever the ratio of the current reserve fund to the adequate reserve fund is greater than 1.69, contribution rate schedule A shall apply.

(2) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.3 to 1.69, contribution rate schedule B shall apply.

(3) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.0 to 1.29, contribution rate schedule C shall apply.

(4) Whenever the ratio of the current reserve fund to the adequate reserve fund is .80 to .99, contribution rate schedule D shall apply.

(5) Whenever the ratio of the current reserve fund to the adequate reserve fund is .60 to .79, contribution rate schedule E shall apply.

(6) Whenever the ratio of the current reserve fund to the adequate reserve fund is .40 to .59, contribution rate schedule F shall apply.

(7) Whenever the ratio of the current reserve fund to the adequate reserve fund is .20 to .39, contribution rate schedule G shall apply.

(8) Whenever the ratio of the current reserve fund to the adequate reserve fund is less than .20, contribution rate schedule H shall apply.

Notwithstanding the ratio of the current reserve fund to the adequate reserve fund, contribution rate schedule D shall

apply for calendar year 2010 and contribution rate schedule F shall apply for calendar years 2011 and 2012.

(d) Subject to the requirements of sections 383-63 to 383-69, an employer's contribution rate for calendar year 1992 and for each calendar year thereafter shall be that rate which appears on the same line as the employer's reserve ratio for that year in the contribution rate schedule applicable for the year as specified in subsection (c).

CONTRIBUTION RATE SCHEDULES (rates in percentages)

Reserve Ratio	A	B	C	D	E	F	G	H
.1500 and over	0.0	0.0	0.0	0.2	0.6	1.2	1.8	2.4
.1400 to .1499	0.0	0.0	0.1	0.4	0.8	1.4	2.0	2.6
.1300 to .1399	0.0	0.0	0.2	0.6	1.0	1.6	2.2	2.8
.1200 to .1299	0.0	0.1	0.4	0.8	1.2	1.8	2.4	3.0
.1100 to .1199	0.0	0.2	0.6	1.0	1.4	2.0	2.6	3.2
.1000 to .1099	0.1	0.3	0.8	1.2	1.6	2.2	2.8	3.4
.0900 to .0999	0.3	0.5	1.0	1.4	1.8	2.4	3.0	3.6
.0800 to .0899	0.5	0.7	1.2	1.6	2.0	2.6	3.2	3.8
.0700 to .0799	0.7	0.9	1.4	1.8	2.2	2.8	3.4	4.0
.0600 to .0699	0.9	1.1	1.6	2.0	2.4	3.0	3.6	4.2
.0500 to .0599	1.1	1.3	1.8	2.2	2.6	3.2	3.8	4.4
.0300 to .0499	1.3	1.5	2.0	2.6	3.0	3.6	4.2	4.8
.0000 to .0299	1.7	1.9	2.4	3.0	3.4	4.0	4.6	5.2
-.0000 to -.0499	2.1	2.3	2.8	3.4	3.8	4.4	5.0	5.4
-.0500 to -.0999	2.5	2.7	3.2	4.0	4.4	5.0	5.4	5.6
-.1000 to -.4999	2.9	3.1	3.6	4.6	5.0	5.4	5.6	5.8
-.5000 to -.9999	3.4	3.6	4.2	5.2	5.4	5.6	5.8	6.0
-1.0000 to -1.4999	4.1	4.2	4.8	5.4	5.6	5.8	6.0	6.2
-1.5000 to -1.9999	4.7	4.8	5.4	5.6	5.8	6.0	6.2	6.4
-2.0000 and less	5.4	5.4	5.6	5.8	6.0	6.2	6.4	6.6

[L 1939, c 219, §7(c)(3); am L 1941, c 304, §1, pt of subs 21; RL 1945, §4253; am L 1945, c 19, §1(6); am L 1955, c 16, §1(b); RL 1955, §93-67; am L 1964, c 55, §10; HRS §383-68; am L 1969, c 277, §3; am L 1974, c 155, §2; am L 1978, c 235, §2; am L 1984, c 229, §1; gen ch 1985; am L 1991, c 68, §8; am L 2010, c 2, §5; am L 2012, c 6, §2 and c 263, §2]

Note

The L 2012, c 6, §2 amendment applies retroactively to January 1, 2012. L 2012, c 6, §7.

" **§383-69 Procedure for rate determination.** The department of labor and industrial relations, as soon as is reasonably possible in each period, shall make its classification of employers for the period and notify each employer of the

employer's rate of contributions for the period as determined pursuant to sections 383-63 to 383-69. The determination shall become conclusive and binding upon the employer unless the employer appeals the determination by filing a written notice of appeal within fifteen days after the mailing of notice of the determination to the employer's last known address. The appeal shall be heard by the referee in accordance with applicable provisions of sections 383-38 and 383-39 but no employer shall have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 383-31 to 383-43; provided that the services on the basis of which the benefits were found to be chargeable did not constitute services performed in employment for the employer and only if the employer was not a party to the determination, redetermination, or decision, or to any other proceedings under this chapter in which the character of the services was determined. The referee's determination shall become final unless a proceeding for judicial review in the manner provided in chapter 91 is commenced in the circuit court of the judicial circuit in which the employer resides or has the employer's principal place of business or in the circuit court of the first judicial circuit. An appeal may be taken from the decision of the circuit court to the intermediate appellate court, subject to chapter 602. [L 1941, c 304, §1, pt of subs 21; RL 1945, §4254; RL 1955, §93-68; am L 1965, c 96, §72; HRS §383-69; am L 1975, c 41, §1; gen ch 1985; am L 2004, c 202, §40; am L 2006, c 94, §1; am L 2010, c 109, §1; am L 2012, c 13, §1]

" **§383-70 Contributions; levy; returns; assessments.** (a) Contributions are hereby levied against employers as provided in this chapter. Except as may be provided to the contrary in accordance with such regulations as the department of labor and industrial relations may prescribe, contributions shall be paid quarterly on or before the last day of the month succeeding the last month of each quarter.

(b) Each employer shall make at the time and in the manner prescribed by the department a full, true, and correct report with respect to the wages paid by the employer, which report shall contain other information as may be prescribed by the department. For each calendar quarter beginning July 1, 1988, such report shall include wage information for each employee in accordance with such rules as the department may prescribe. The report shall be made by the employer even though the employer is not required to pay contributions.

(c) If any return filed is erroneous, or is so deficient as not to disclose the full liability, or if the employer disclaims liability for contributions with respect to any wages upon which contributions are required to be paid, the department shall assess the correct amount of contributions and shall notify the employer thereof; and if any employer fails, neglects, or refuses to make a return, the department shall proceed as it deems best to obtain information on which to base the assessment of contributions and shall assess the same and notify the employer thereof. The amount so assessed shall be paid on the twenty-first day after the notice was mailed, properly addressed to the employer at the employer's last known place of business.

(d) Notices of assessment of contributions, records of contributions assessed and payments thereon, and delinquent contributions lists showing unpaid contributions assessed against any employer shall be prima facie proof of the assessment of the person assessed, the amount of contributions due and unpaid, and the delinquency in payment, and that all requirements of law in relation to the assessment of the contributions have been complied with.

(e) If the department determines that any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, it may make an immediate assessment thereof and the director of labor and industrial relations may proceed to enforce collection immediately, but interest shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent. [L 1939, c 219, §7(d); am L 1941, c 304, §1, pt of subs 22; RL 1945, pt of §4257; am L 1953, c 23, §1(1), (5); RL 1955, §93-69; am L 1957, c 115, §1(c); am L Sp 1959 2d, c 1, §27; am L 1967, c 19, §1; HRS §383-70; am L 1969, c 12, §1; gen ch 1985; am L 1986, c 32, §4]

" **§383-71 Collection of delinquent contributions.** (a) Civil action. If any employer is in default in the payment of any contributions required to be paid by the employer pursuant to this chapter, the director of labor and industrial relations may, when the amount of the contributions with respect to which the employer is delinquent is determined, either by the report of the employer or by the assessment by the department of labor and industrial relations, proceed to collect payment of the same by action in assumpsit, in the director's own name, on behalf of the State, for the amount of the contributions, costs, penalties, and interest. In such actions the several district courts shall have concurrent jurisdiction with the circuit courts, irrespective of the amount claimed. Actions brought

under this section shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law.

No proceedings in court for the collection of delinquent contributions shall be begun after the expiration of four years from the last day of the month following the last month of the quarter for which the contributions are due; provided that in the case of a false or fraudulent return or the wilful failure to file a return with intent to evade the payment of contributions, a proceeding in court for the collection of the contributions may be begun at any time.

(b) Distraint. If the amount of contributions or interest assessed is not paid when due the director may collect payment of same by distress upon so much of the delinquent employer's goods, chattels, moneys, or intangibles represented by negotiable evidences of indebtedness, as the director may deem sufficient to satisfy the payment of contributions due, penalties, and interest if any, and the costs and expenses of distress. In the case of moneys, distress shall be effected by seizure, and in other cases distress shall be effected by seizure and sale of the property. The director shall take possession and keep the distrained property until the sale. After taking possession, the director shall sell the delinquent employer's interest in the property at public auction after first giving fifteen days' public notice of the time and place of the sale in the county where the sale is to be held, and by posting notice in at least three public places in the county where the sale is to be held. The director may require the assistance of any sheriff or authorized police officer of any county to aid in the seizure and sale of the distrained personal property. The director may further retain the services of any person competent and qualified to aid the sale of the distrained personal property, provided that the consent of the delinquent employer is obtained. Any sheriff or the person so retained by the director shall be paid a fair and reasonable fee but in no case shall the fee exceed ten per cent of the gross proceeds of the sale. Any person other than a sheriff so retained by the director to assist the director may be required to furnish a bond in an amount to be determined by the director. The fees and the cost of the bond shall constitute a part of the costs and expenses of the distress.

The sale shall take place within twenty days after seizure; provided that by public announcement at the sale, or at the time and place previously set for the sale, it may be extended for one week. Any further extension of the sale shall be with the

consent of the delinquent employer. The sale, in any event shall be completed within forty-five days after seizure of the property. Sufficient property shall be sold to pay all contributions, penalties, interest, costs, and expenses. On payment of the price bid for any property sold, the delivery thereof with a bill of sale from the director shall vest the title of the property in the purchaser. No charge shall be made for the bill of sale. All surplus received upon any sale after the payment of the contributions, penalties, interest, costs, and expenses, shall be returned to the owner of the property sold, and until claimed shall be deposited in the director's office subject to the order of the owner. Any unsold portion of the property seized may be left at the place of sale at the risk of the owner. If the owner of the property seized desires to retain or regain possession thereof, the owner may give a sufficient bond and surety to produce the property at the time and place of sale or pay all contributions, penalties, interest, costs, and expenses.

(c) Liens, foreclosure. The claim of the department for any contributions, including penalties and interest thereon, not paid when due, shall be a lien upon property as provided by section 231-33, and the powers conferred on the director of taxation by that section apply to these contributions, the same as other state taxes. However, as to the powers conferred on the director of taxation by section 231-33(h), such powers are, as to these contributions, conferred on the director of labor and industrial relations, and the lien may be foreclosed in a court proceeding or by distraint under this section. [L 1939, c 219, §7(e); am L 1941, c 304, §1, pt of subs 22 and subs 23; RL 1945, pt of §§4257, 4258; am L 1949, c 77, §1; am L 1953, c 23, §1(6); RL 1955, §93-70; am L 1957, c 115, §1(d) and c 185, §§2, 3; am L Sp 1959 2d, c 1, §§16, 27; HRS §383-71; am L 1975, c 41, §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 1998, c 2, §94]

Rules of Court

Assignment of cases in circuit court, see HRCP rule 40.

" **§383-72 Priorities under legal dissolutions or distributions.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $300 to each claimant, earned

within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that Act (11 U.S.C. sec. 104(a)), as amended. [L 1939, c 219, §9(f); RL 1945, §4268; am L 1955, c 81, §1; RL 1955, §93-71; HRS §383-72]

" **§383-73 Penalty for delinquency; remission.** A penalty of ten per cent or $10, whichever is greater, shall be added to the amount of all delinquent contributions, as hereafter defined, and any delinquent contribution and penalty remaining unpaid fifteen days after the date of delinquency shall bear interest from the date of delinquency at the rate of two-thirds of one per cent for each month or fraction of a month until paid. Any penalty and interest above referred to shall be added to the contribution and shall be collected as though the same were a part of the contribution. For the purposes of this section, a contribution shall be deemed delinquent:

(1) Upon a nonpayment thereof on the date prescribed for its payment, but only in case of failure to pay a contribution shown due by a return, or in case of failure to file a return, or in case of failure to pay a contribution because of a false or fraudulent return; and

(2) Upon nonpayment thereof within the time provided by paragraph (c) of section 383-70, in any other case.

Except in cases of fraud or wilful violation of this chapter or wilful refusal to make a return (but inclusion in a return of a claim of nonliability for contributions shall not be deemed a refusal to make a return), the director of labor and industrial relations may, in a case of excusable failure to file a return or pay a contribution within the time required by this chapter or in a case of uncollectibility of the whole amount due, remit any amount of penalties or interest added to any delinquent contribution. In all such cases there shall be placed on file in the director's office a statement showing the name of the person receiving such remission, the principal amount of the contribution, and the period involved.

Whenever an employer makes a partial payment of a sum owed for delinquent contributions, penalties, and interest, the amount received by the director shall first be credited to interest, then to penalties, and then to principal. [L 1939, c 219, §7(f); am L 1941, c 304, §1, subs 24; RL 1945, §4259; am L 1951, c 123, §1; am L 1953, c 23, §1(4); RL 1955, §93-72; am L 1957, c 205, §1(b); HRS §383-73; gen ch 1985]

" **§383-74 Appeal; correction of assessment or contributions.** Any person aggrieved by any assessment of a contribution or a penalty or contributions assessed pursuant to this chapter, having paid the contribution or penalty, may appeal from the assessment by filing a written notice of appeal with the department within twenty days after the date of mailing of the notice of assessment to the person's last known address. The appeal shall be heard by the referee in accordance with applicable provisions of sections 383-38 and 383-39. Any amount determined to have been erroneously paid as a result of the final determination of the appeal in favor of the employing unit, or as a result of a final judgment for the employing unit in an action brought pursuant to section 40-35, shall be refunded, without interest and without the addition of any other charges, in the same manner as other refunds under this chapter. Notwithstanding any other provisions of law to the contrary, any amount which is paid under protest or which is covered by any appeal or action referred to in this section shall not be held as a special deposit, but the amount shall in all respects be subject to sections 383-122 and 383-127 to the same effect as though the amount had not been paid under protest and was not covered by the appeal or action. [L 1939, c 219, §7(g); am L 1941, c 304, §1, subs 25; RL 1945, §4260; RL 1955, §93-73; am L Sp 1957, c 1, §29; am L Sp 1959 2d, c 1, §§14, 27; am L 1963, c 114, §1; HRS §383-74; am L 1969, c 129, §1; gen ch 1985; am L 1987, c 119, §3]

" **§383-75 Compromise.** In case there is at any time any dispute with respect to the liability, for any period or periods, of any employing unit or employing units for the payment of any contribution or contributions under this chapter which have not been paid, or for the payment of any additional amount or amounts on account of any contribution or contributions for such period or periods over and above the amount or amounts theretofore paid by the employing unit or employing units, the department of labor and industrial relations may settle and compromise the dispute upon such terms as shall be approved by the department; provided that if the issues involved in any such dispute have been referred to the attorney general then no settlement and compromise thereof shall be made without the approval of the attorney general. Any settlement and compromise made pursuant to this section shall be binding upon the department, and the employing unit or employing units which are parties thereto. Any such settlement and compromise may include the waiver of the contributions in dispute for any portion or portions of the period or periods in

question, the waiver of any percentage of the contribution or contributions in dispute, the waiver of interest, or the waiver of penalties. Any such compromise and settlement may be made prior to or after any assessment pursuant to section 383-70 or the commencement of proceedings under section 383-71. Nothing in this section shall be deemed to authorize the compromise of any issue which has become finally determined. [L 1941, c 304, §1, subs 26; RL 1945, §4261; RL 1955, §93-74; am L Sp 1959 2d, c 1, §27; HRS §383-75]

" **§383-76 Refunds and adjustments.** (a) If not later than four years after the date of payment of any amount as a contribution or contributions or interest thereon or penalty with respect thereto, an employing unit which has made such payment erroneously makes application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because the adjustment cannot be made within a reasonable time, and if the department of labor and industrial relations determines that payment of such contribution or contributions or interest or penalty or any portion thereof was erroneous, the department shall allow the employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employing unit, or if the adjustment cannot be made within a reasonable time, the department shall refund from the unemployment compensation fund or the administration fund as may be appropriate, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative. Any number of such payments erroneously made by an employing unit may form the basis of one application. The four-year limitation period stated above shall be applicable with respect to payments made in the year 1937 and in all subsequent years.

(b) The applicant shall be promptly notified of the action of the department upon any application for adjustment or refund pursuant to subsection (a) of this section. In case any such application is denied in whole or in part, the applicant, within thirty days after the date of mailing of notice of the action to the applicant's last known address, or in the absence of such mailing within thirty days after the delivery of the notice to the applicant, may appeal from such denial to the circuit court of the judicial circuit wherein is the principal place of business of the applicant or the circuit court of the first judicial circuit. The department shall be the party respondent to any such judicial proceedings. The procedure in the trial before the circuit court shall be in accordance with the procedure applicable to actions under section 40-35.

Proceedings for review by the intermediate appellate court may be taken and had, subject to chapter 602, in the same manner, but not inconsistent with this chapter, as is provided in civil actions. In case the final determination in any such judicial proceedings shall be in favor of the employing unit, in whole or in part, any amount determined by such final judgment to have been erroneously paid shall be adjusted or refunded, without interest and without the addition of any other charges, in the same manner as other adjustments or refunds under this chapter.

(c) An employing unit shall be entitled to receive an adjustment or refund pursuant to subsection (a) of this section or to appeal from the denial of an application therefor pursuant to subsection (b) of this section whether or not the erroneously made payment or payments forming the basis of the application or appeal have been made under protest.

(d) The remedy given in this section is in addition to the remedies provided in section 383-74; provided that no payment made as the result of an assessment made pursuant to section 383-70(c) shall be made the subject of an appeal pursuant to this section.

(e) In case any final determination in any proceedings provided for in section 383-74 shall be in favor of the employing unit, in whole or in part, the amount found in such proceedings to have been erroneously paid by the employing unit shall be refunded to the employing unit in the same manner as other refunds under this chapter. [L 1939, c 219, §9(e); am L 1941, c 304, §1, subs 31; RL 1945, §4267; am L 1953, c 41, §1(4); RL 1955, §93-75; am L Sp 1959 2d, c 1, §27; HRS §383-76; am L 1987, c 119, §4; am L 2004, c 202, §41; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Appeal to circuit court, see HRCP rule 72; to supreme court, see Hawaii Rules of Appellate Procedure.

" **§383-77 Employers' coverage, election.** Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the department of labor and industrial relations a written election that all such services performed with respect to which payments are not required under an employment security law of any other state or of the federal government, and which are performed by individuals in its employ in one or more distinct establishments or places of business, shall be deemed to constitute employment by an employer for all of the purposes of this chapter for not less than two calendar years.

Upon the written approval of the election by the department, the services shall be deemed to constitute employment subject to this chapter from the first day of the calendar quarter in which the approval is granted. The services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if at least thirty days prior to such first day of January the employing unit has filed with the department a written notice to that effect. [L 1939, c 219, §8; am L 1941, c 304, §1, subs 27; am L 1943, c 160, §1, subs 8; RL 1945, §4262; RL 1955, §93-76; am L 1957, c 74, §2(2); am L Sp 1959 2d, c 1, §27; HRS §383-77; am L 1969, c 7, §1; am L 1982, c 20, §2]

" **§383-78 REPEALED.** L 1982, c 20, §3.

" **§383-79 Combining services performed for predecessor and successor employing units.** If any employing unit succeeds to or acquires the organization or business of another, the number of employees performing a service and the number of weeks during which the service is performed for the predecessor and successor shall be combined for the purpose of determining whether the service is subject to this chapter if the service is agricultural labor or service described in section [383-7(a)(4)(B)(ii)]. [L 1963, c 174, §2; Supp, §93-78; am L 1967, c 51, §2; HRS §383-79]

" **[§383-80] Income tax refund offsets.** Effective April 1, 2013, any employer in default of contributions, advance payments, or reimbursement may be subject to offset of federal tax refund payments of the amount owed, including penalties, interest, costs, and administrative fees. [L 2013, c 3, §1]

"PART IV. ADMINISTRATION

§383-91 Duties and powers of department, director. (a) The department of labor and industrial relations, herein referred to as the "department" shall administer this chapter through the director of labor and industrial relations pursuant to chapter 371. The director may delegate to any person such power and authority, vested in the director by this chapter, as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules or regulations, and may in the director's discretion bond any person handling moneys or signing checks hereunder. The director may cause to be printed and distributed to the public the text of this chapter or chapter 371, and any other material the director deems relevant and suitable, and the director shall

deliver a copy of the director's rules and regulations to any person making application therefor. The director may require such reports, make such investigations, and take such other action as the director deems necessary or suitable for the administration of this chapter.

(b) Personnel standards on a merit basis covering all persons employed in the administration of this chapter shall be established and maintained. The personnel standards shall be in conformity with the personnel standards promulgated by the Secretary of Labor pursuant to the Social Security Act, as amended, and the Act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933, as amended. The director may adopt such regulations applicable with respect to all persons employed in the administration of this chapter, as may be necessary to meet personnel standards promulgated by the Secretary of Labor and to provide for all matters which are appropriate to the establishment and maintenance of a merit system on the basis of efficiency and fitness. Appointments of all persons employed in the administration of this chapter shall be on a merit basis and shall be made in accordance with the applicable provisions of any state civil service law; provided that if and whenever there are no applicable provisions of any state civil service law or if and whenever any state civil service law does not meet the personnel standards promulgated by the Secretary of Labor, then the personnel standards established and maintained by the director pursuant to this subsection, and meeting the personnel standards promulgated by the Secretary of Labor, shall be applied with respect to all persons employed in the administration of this chapter.

(c) Subsection (b) of this section shall not apply to any person who pursuant to chapter 371, or any other provision of law, is exempted from state civil service provisions, unless the application of subsection (b) to any such person is specifically provided for by this chapter or is required in order to conform to the requirements of section 303(a) of the Social Security Act as amended or to the personnel standards promulgated by the Secretary of Labor.

(d) Any provision of law to the contrary notwithstanding, the director may dismiss without notice any person employed in the administration of this chapter upon receipt of notice of a determination by the United States Civil Service Commission that the person has violated the Act of Congress entitled "An act to prevent pernicious political activities", as amended, and that such violation warrants the removal of the person from the person's employment.

(e) The deputy attorney general or deputies attorney general assigned by the attorney general to furnish the legal services necessary in carrying out this chapter shall be compensated by the director. [L 1939, c 219, §10(a); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4269; am L 1951, c 195, §1(11), (12); am L 1953, c 41, §1(2) and c 105, §4; RL 1955, §93-90; am L Sp 1959 2d, c 1, §27; HRS §383-91; gen ch 1985]

Note

In subsection (d), "United States Civil Service Commission" now "Office of Personnel Management". Executive Order 12107 (December 28, 1978), Reorganization Plan No. 2.

Cross References

Rulemaking, see chapter 91.

Attorney General Opinions

The referee must be appointed pursuant to the civil service law. Att. Gen. Op. 61-59.

" **§383-92 Rules and regulations.** The director of labor and industrial relations may adopt, amend, or repeal such rules and regulations as the director deems necessary or suitable for the administration of this chapter. The rules and regulations when prescribed in accordance with chapter 91 shall have the force and effect of law and shall be enforced in the same manner as this chapter.

Any interested person may petition for an amendment or repeal of such rule or regulation as provided in section 91-6. [L 1939, c 219, §10(d); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4270; am L 1951, c 195, §1(13); RL 1955, §93-91; am L 1965, c 96, §73; HRS §383-92; gen ch 1985]

" **[§383-92.5] Worker profiling.** The department shall establish and utilize a system of profiling all new claimants for regular compensation in compliance with section 4 of the Unemployment Compensation Amendments of 1993 (P.L. 103-152) that:

(1) Identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
(2) Refers claimants identified pursuant to paragraph (1) to reemployment services, such as job search

assistance services, available under any state or federal law;

(3) Collects follow-up information relating to the services received by these claimants and the employment outcomes for these claimants subsequent to receiving the services, and utilizes this information in making identifications pursuant to paragraph (1); and

(4) Meets other requirements that the Secretary of Labor deems appropriate. [L 1994, c 112, §1]

" **§383-93 Investigation of unemployment hazard.** The department of labor and industrial relations shall investigate and report upon the degree of unemployment hazard in various industries and occupations and shall recommend to employers in industries or occupations showing an unusual unemployment hazard means for stabilizing employment. It shall also, if necessary, recommend to the legislature a higher rate of tax for any classification of industries or occupations in which unemployment is excessive. [L 1939, c 219, §10(f); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4271; RL 1955, §93-92; am L Sp 1959 2d, c 1, §27; HRS §383-93]

" **§383-94 Records and reports.** (a) Each employing unit shall keep true and accurate work records, for such periods of time and containing such information as the department of labor and industrial relations may prescribe. The records shall be open to inspection and be subject to being copied by the authorized representatives of the department at any reasonable time and as often as may be necessary. Any authorized representative of the department, or the referee, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which such authorized representative, or the referee, deems necessary for the effective administration of this chapter.

(b) Each employer shall report all new employees hired subject to procedures prescribed by the department, within five working days after the first day of employment of such individual. If any employer fails to report with respect to a newly hired employee within five working days after the first day of employment, the employer shall pay a penalty in the amount of $10. Effective October 1, 1998, employers need not report all new hires to the department.

(c) Each employer shall report the separation of any employee or the wages paid to such employee, or both, upon request of the department within five calendar days from the date that the request was mailed to the employer. If any

employer fails to report with respect to the separation of an individual, or the remuneration which the employer paid to the individual, or both, within five calendar days after mailing of notice from the department, the employer shall pay a penalty in the amount of $10.

(d) Each employer or employing unit as defined in section 383-1 shall furnish the department with wage information for each employee in accordance with rules as the department of labor and industrial relations may prescribe, except that no report shall be filed with respect to an employee of a state or local agency performing intelligence or counterintelligence functions, if the head of that agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission. Such quarterly wage report shall be filed with the department on or before the last day of the month succeeding the last month of each quarter. Any employer who fails to file a report of wages paid to each of the employer's employees for any period in the manner and within the time prescribed by this chapter and the rules of the department, or any employer who the department finds has filed an insufficient report, shall pay a penalty of $30.

(e) Penalties shall be assessed, collected, and paid into the fund in the same manner as contributions. The director, in a case of excusable failure to file any report under this section within the required time, may remit the penalty. [L 1939, c 219, §10(g); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4272; am L 1955, c 51, §1(2); RL 1955, §93-93; am L 1957, c 205, §1(c); am L Sp 1959 2d, c 1, §27; HRS §383-94; am L 1969, c 129, §2; am L 1976, c 157, §7; gen ch 1985; am L 1986, c 32, §5; am L 1997, c 172, §2]

" **§383-95 Disclosure of information.** (a) Except as otherwise provided in this chapter, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant (or the claimant's legal representative) shall be supplied with information from the records of the department to the extent necessary for the proper presentation of the claimant's claim in any proceeding under this chapter. Subject to restrictions as the director may by rule prescribe, reimbursement of costs to the department incurred in furnishing the information, and the establishment of all safeguards as are necessary to ensure that information furnished by the department

is used only for authorized purposes, the information and determinations may be made available to:

(1) Any federal or state agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(2) The Internal Revenue Service of the United States Department of the Treasury;

(3) Any federal, state, or municipal agency charged with the administration of a fair employment practice or anti-discrimination law;

(4) Any other federal, state, or municipal agency if the director deems that the disclosure to the agency serves the public interest; and

(5) Any federal, state, or municipal agency if the disclosure is authorized under section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986, as amended.

(b) Information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.

(c) Upon requests therefor the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter.

(d) The department may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to this chapter, and may in connection with the request transmit any of the report or return to the Comptroller of the Currency of the United States as provided in section 3305(c) of the federal Internal Revenue Code. [L 1939, c 219, §10(g); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4274; RL 1955, §93-94; am L Sp 1959 2d, c 1, §27; HRS §383-95; am L 1969, c 16, §1; gen ch 1985; am L 1997, c 172, §3; am L 2015, c 35, §14]

" **§383-96 Service.** Whenever it is provided herein that any service shall be made upon the department of labor and industrial relations, such service may be made upon the director of labor and industrial relations or upon such representative as the director may have designated for that purpose. [L 1941, c

304, §1, pt of subs 32; RL 1945, §4275; RL 1955, §93-95; am L Sp 1959 2d, c 1, §27; HRS §383-96]

Rules of Court

Service, see HRCP rule 4(d)(5).

" **§383-97 Change of rates.** Whenever the department of labor and industrial relations believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto. [L 1941, c 304, §1, pt of subs 32; RL 1945, §4276; RL 1955, §93-96; am L Sp 1959 2d, c 1, §27; HRS §383-97]

" **§383-98 Referee.** (a) In accordance with section 383-91(b), the director of labor and industrial relations shall appoint one or more referees.

(b) Subject to sections 383-125 and 383-126, each referee shall receive a salary as fixed by law, and shall also be paid such reasonable traveling and other expenses as may be incurred in the discharge of the referee's duties, such salary and expenses to be paid out of the employment security administration fund.

(c) Section 601-7 relating to disqualification of judges shall be equally applicable to each referee and any substitute referee.

(d) In accordance with section 383-91(b), the director may appoint one or more substitute referees to serve[:]

(1) During any temporary absence of a referee from the referee's duties;
(2) In the event a referee is disqualified to hear any appeal;
(3) In the event of vacancy in the office of referee; or
(4) If, for any reason, the director finds that the services of substitute referees are necessary for prompt and expeditious handling of appeals.

Any substitute referee, while so serving, shall have all the powers and duties of a referee and shall receive compensation for the substitute referee's services at the daily rate provided at step G of the salary range of full-time referees under the classified service for each day's actual attendance upon the substitute referee's duties and shall also be paid such reasonable traveling and other expenses as may be incurred in the discharge of the substitute referee's duties, the compensation and expenses to be paid out of the employment security administration fund. Substitute referees shall not be

entitled to longevity step increases. In case any appeal shall be referred to a substitute referee for hearing, the substitute referee shall retain jurisdiction of the appeal so referred to the substitute referee, notwithstanding that the regular referee may become available, unless the reference of the appeal to the substitute referee shall be revoked by the director. The final decisions of a referee and the principles of law declared by the referee in arriving at such decisions, unless expressly or impliedly overruled by a later decision of a court of competent jurisdiction or of a referee, shall be binding upon any substitute referee in proceedings which involve similar questions of law. [L 1941, c 304, §1, pt of subs 32; RL 1945, §4277; am L 1953, c 41, §1(11); RL 1955, §93-97; am L 1961, c 108, §1; am L 1963, c 174, §5; HRS §383-98; am L 1972, c 157, §1; am L 1976, c 126, §1; gen ch 1985]

Revision Note

Pursuant to §23G-15, in:
(1) Subsection (c), section "601-7" substituted for "601-16"; and
(2) Subsection (d), (1) to (4) reformatted as paragraphs (1) to (4) and punctuation changed.

Attorney General Opinions

The referee is not exempted from the civil service law under §76-16(8) and must be appointed pursuant thereto. Att. Gen. Op. 61-59.

" **§383-99 Oaths and subpoenas.** In the discharge of the duties, imposed by this chapter, the director of labor and industrial relations, any duly authorized representative of the director, the referee, and any substitute referee, shall have the same powers respecting the administration of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses, as are possessed by a circuit court and may take depositions and certify to official acts. Upon application of any of them the circuit court of any circuit or any judge of such court shall have power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subject to sections 383-125 and 383-126, subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit courts and the necessary expenses of or in connection with any hearings or investigations shall be paid from the employment security administration fund. [L 1939, c

219, §10(h); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4278; RL 1955, §93-98; am L Sp 1959 2d, c 1, §27; HRS §383-99; am L 1973, c 31, pt of §21]

Cross References

Depositions, see chapter 624.
Oaths, subpoenas, see §§1-21, 603-21.9, 621-1, and 621-12.

Rules of Court

Depositions, see HRCP, pt V.
Oaths, subpoenas, see HRCP rules 43(d), 45.

" **§383-100 Protection against self-incrimination.** No person shall be excused from attending or testifying or producing material, books, papers, correspondence, memoranda, and other records before the director of labor and industrial relations, any duly authorized representative of the director, the referee, or any substitute referee, or in obedience to the subpoena of any of them, in any cause or proceeding before them or any of them, on the grounds that the testimony and evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed the individual's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [L 1939, c 219, §10(i); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4279; RL 1955, §93-99; am L Sp 1959 2d, c 1, §27; HRS §383-100; gen ch 1985]

" **§383-101 Relation to chapter 371.** The provisions of chapter 371 with respect to the adoption, amendment, repeal, and review of rules and regulations shall not apply with respect to rules and regulations under this chapter. [L 1941, c 304, §1, pt of subs 32; RL 1945, §4280; RL 1955, §93-100; HRS §383-101]

" **§383-102 Preservation and destruction of records.** (a) The department of labor and industrial relations may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof as it may deem advisable for the effective and economical preservation of the information contained therein, and such

summaries, compilations, photographs, duplications, or reproductions, duly authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein.

(b) The department may provide by regulation for the destruction or disposition, after reasonable periods, of any records, reports, transcripts, or reproductions thereof, or other papers in its custody, the preservation of which is no longer necessary for the establishment of contribution liability or benefit rights or for any purpose necessary to the proper administration of this chapter, including any required audit thereof. [L 1943, c 160, §1, subs 9; RL 1945, §4281; RL 1955, §93-101; am L Sp 1959 2d, c 1, §27; HRS §383-102]

" **§383-103 Representation in civil and criminal actions.** (a) In any civil action to enforce this chapter, the department of labor and industrial relations and the State may be represented by the attorney general or by any qualified attorney who is employed by the department for that purpose in conformity with section 28-8.3.

(b) All criminal actions for violations of this chapter, or of any rule or regulation issued pursuant thereto, shall be prosecuted by the attorney general or public prosecutor or county attorney of any county in which the employer has a place of business or the violator resides. [L 1939, c 219, §16; RL 1945, §4293; am L 1953, c 105, §5; RL 1955, §93-102; am L Sp 1959 2d, c 1, §27; HRS §383-103; am L 1979, c 61, §1; am L Sp 1993, c 8, §53; am L 2015, c 35, §37]

" **§383-104 State employment service.** The provisions of the Wagner-Peyser Act, as amended, are accepted by this State and the department of labor and industrial relations is designated and constituted the agency of this State for the purpose of the Act. The department shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purposes of performing such functions as are within the purview of the Wagner-Peyser Act. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the department may enter into agreements with the Railroad Retirement Board, or any other agency of the United States, or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of this chapter, and as a part of such agreements may accept moneys, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services

performed. All moneys received for such purposes shall be deposited with the director of finance of the State and shall be expended subject to regulations of the federal government and subject to appropriation, budgeting, and accounting requirements of the State. [L 1939, c 219, §11; am L 1941, c 304, §1, subs 33; RL 1945, §4282; RL 1955, §93-103; am L 1957, c 205, §1(f); am L 1959, c 265, pt of §13; am L Sp 1959 2d, c 1, §§14, 27; am L 1963, c 114, §1; HRS §383-104]

" **§383-105 Federal-state cooperation.** (a) In the administration of this chapter, the department of labor and industrial relations shall cooperate with the United States Department of Labor to the fullest extent consistent with this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to the State and its citizens all advantages available under the provisions of the Social Security Act, as amended, that relate to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, as amended, and the Federal-State Extended Unemployment Compensation Act of 1970.

(b) In the administration of the provisions in sections 383-168 to 383-174 of this chapter, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department of labor and industrial relations shall take such action as may be necessary[:]

(1) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States Department of Labor; and

(2) To secure to the State the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal act. [L 1939, c 219, §10(j); am L 1941, c 304, §1, pt of subs 32; RL 1945, §4273; am L 1953, c 41, §1(3); RL 1955, §93-104; am L Sp 1959 2d, c 1, §27; HRS §383-105; am L 1971, c 187, §9]

Revision Note

In subsection (b), (1) and (2) reformatted as paragraphs (1) and (2) and in subsection (b)(1), punctuation changed pursuant to §23G-15.

" **§383-106 What reciprocal arrangements authorized.** (a) The department of labor and industrial relations may enter into reciprocal arrangements with appropriate and duly authorized

agencies of other states or of the federal government, or both, whereby:

(1) Multistate employment. Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states:
    (A) In which any part of the individual's service is performed;
    (B) In which the individual has the individual's residence; or
    (C) In which the employing unit maintains a place of business; provided there is in effect, as to such services, an election, approved by the agency charged with the administration of the state's unemployment compensation law, pursuant to which all the services performed by the individual for the employing unit are deemed to be performed entirely within the state;

(2) Accumulated benefit rights. Potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3) Insured work. Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining the individual's rights to benefits under this chapter, and wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the department finds

will be fair and reasonable as to all affected interests; and

(4) Payment of contributions. Contributions due under this chapter with respect to wages for insured work shall for the purposes of sections 383-61 to 383-75 of this chapter be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the department finds will be fair and reasonable as to all affected interests.

(b) The provisions of subsection (a)(2) of this section and of section 383-107 notwithstanding, the department of labor and industrial relations shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with the individual's wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(1) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws; and

(2) Avoiding the duplicate use of wages and employment by reason of such combining. [L 1939, c 219, §17; am L 1941, c 304, §1, pt of subs 37; RL 1945, §4294; RL 1955, §93-105; am L Sp 1959 2d, c 1, §27; HRS §383-106; am L 1971, c 187, §10; gen ch 1985]

Revision Note

Pursuant to §23G-15, in:

(1) Subsection (a)(1)(A), "or" deleted and punctuation changed;

(2) Subsection (a)(1)(B), punctuation changed; and

(3) Subsection (b)(1), punctuation changed.

" **§383-107 Reimbursement payments deemed benefits, when.** Reimbursements paid from the fund pursuant to section 383-106(a)(3) shall be deemed to be benefits for the purpose of sections 383-21 to 383-24, 383-72, 383-76, and 383-121 to 383-

124. The department of labor and industrial relations may make to other state or federal agencies and receive from such other state or federal agencies reimbursements from or to the fund, in accordance with arrangements entered into pursuant to section 383-106. [L 1941, c 304, §1, pt of subs 37; RL 1945, §4295; am L 1953, c 41, §1(1); RL 1955, §93-106; am L Sp 1959 2d, c 1, §27; HRS §383-107; am L 1969, c 3, §2; am L 1971, c 187, §11]

" **§383-108 Cooperation with states, etc.** (a) The administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this State and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information. The department of labor and industrial relations may therefore make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and, in like manner, accept and utilize information, services, and facilities made available to this State by the agency charged with the administration of any such other unemployment compensation of public employment service law.

(b) The courts of this State shall recognize and enforce liabilities for unemployment contributions, interest, and penalties imposed by other states which extend a like comity to this State.

(c) The officials of any state which extend a like comity to this State may bring action in the courts of this State to collect unemployment contributions, interest, and penalties due the state. The certificate of the secretary of the state, or of the nearest equivalent official, that the officials are authorized to collect the contributions, penalties, and interest shall be conclusive evidence of the authority.

(d) The attorney general may commence action in any other state by and in the name of the department to collect contributions, interest, and penalties legally due this State.

(e) The attorney general may commence action in this State as agent for and on behalf of any other state which extends a like comity to this State to enforce judgments and liabilities for unemployment contributions, interest, and penalties due the state.

(f) If the agency which administers the employment security law of another state has overpaid unemployment benefits to an individual located in Hawaii and certifies to the

department that the individual is liable under its law to repay the benefits and requests the department to recover the overpayment, the attorney general may commence action in the courts of this State to recover the overpayment as agent for and on behalf of the other state. The courts of this State shall entertain the action to collect the overpayment. [L 1941, c 304, §1, pt of subs 37; RL 1945, §4296; RL 1955, §93-107; am L Sp 1959 2d, c 1, §27; am L 1967, c 15, §1; HRS §383-108]

" **§383-109 Cooperation with foreign governments.** To the extent permissible under the laws and Constitution of the United States, the department of labor and industrial relations may enter into or cooperate in arrangements whereby facilities and services provided under this chapter, and facilities and services provided under the unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this State or under a similar law of such government. [L 1941, c 304, §1, pt of subs 37; RL 1945, §4297; RL 1955, §93-108; am L Sp 1959 2d, c 1, §27; HRS §383-109]

"PART V. FUNDS

§383-121 Unemployment compensation trust fund; establishment and control. There is established in the treasury of the State as a trust fund, separate and apart from all public moneys or funds of the State, an unemployment compensation fund, which shall be administered by the department of labor and industrial relations exclusively for the purposes of this chapter. All contributions pursuant to this chapter shall be paid into the fund and all compensation and benefits payable pursuant to this chapter shall be paid from the fund. All moneys in the fund shall be mingled and undivided. The fund shall consist of:

(1) All contributions collected pursuant to this chapter;
(2) Interest earned on any moneys in the fund;
(3) Any property or securities acquired through the use of moneys belonging to the fund;
(4) All earnings of such property or securities;
(5) All moneys credited to this State's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended; and
(6) All other moneys received for the fund from any other source. [L 1939, c 219, §9(a); am L 1941, c 304, §1, subs 28; RL 1945, §4263; RL 1955, §93-120; am L 1957, c 145, §1(a); am L Sp 1959 2d, c 1, §27; HRS §383-121; am L 1987, c 119, §5; am L 2013, c 100, §4]

" **§383-121.5 Renumbered as §383-127.**

" **§383-122 Accounts and deposit.** The director of finance shall maintain within the fund three separate accounts:

(1) A clearing account;

(2) An unemployment trust fund account;

(3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the director of finance, shall be immediately deposited in the clearing account. The director of finance of the State shall be the treasurer and custodian of the fund and shall administer the fund in accordance with directions of the department of labor and industrial relations.

All moneys in the clearing account after clearance thereof shall, except as herein otherwise provided, be deposited immediately with the Secretary of the Treasury of the United States to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. Refunds of contributions payable pursuant to section 383-76 and section [383-7(a)(6)] may be paid from the clearing account or the benefit account. The benefit account shall consist of all moneys requisitioned from the State's account in the unemployment trust fund in the United States treasury. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited in any depositary bank in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depositary bank. The money shall be secured by the depositary bank to the same extent and in the same manner as required by the general depositary law of this State; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the State. The director of finance shall be liable on the director's official bond for the faithful performance of the director's duties in connection with the unemployment compensation fund provided for under this chapter. The liability on the official bond shall be effective immediately upon the enactment of this provision. All sums recovered on such surety bond for losses sustained by the unemployment compensation fund shall be deposited in the fund.

[L 1939, c 219, §9(b); am L 1941, c 304, §1, subs 29; RL 1945, §4264; RL 1955, §93-121; am L Sp 1959 2d, c 1, §§14, 27; am L 1963, c 114, §1; HRS §383-122; gen ch 1985; am L 1987, c 119, §6]

" **§383-123 Withdrawals; administrative use.** (a) Withdrawals. Moneys requisitioned from the State's account in the unemployment trust fund shall be used exclusively for the payment of benefits, refunds of contributions pursuant to section 383-76 and section 383-7(a)(6), and for payment of fees authorized under section 6402(f) of the Internal Revenue Code, except that moneys credited to this State's account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (b). The director of finance shall from time to time, with the approval of the department of labor and industrial relations in accordance with rules prescribed by the comptroller of the State, requisition from the unemployment trust fund such amounts, not exceeding the amount in the State's account, as it deems necessary for the payment of benefits and refunds of contributions for a reasonable future period. The moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody. All benefits and refunds of contributions shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the department. Any balance of moneys requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be used for the payment of, benefits and refunds during succeeding periods or, in the discretion of the department, shall be redeposited with the Secretary of the Treasury of the United States, to the credit of this State's account in the unemployment trust fund, as provided in section 383-122.

(b) Administrative use. Moneys credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this State's unemployment compensation law and public employment offices pursuant to a specific appropriation of the legislature; provided that the

expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(1) Specifies the purposes for which the moneys are appropriated and the amounts appropriated therefor;

(2) Limits the period within which the moneys may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(3) Limits the amount that may be obligated to an amount that does not exceed the amount by which the aggregate of the amounts credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, exceeds the aggregate of the amounts obligated pursuant to this subsection and charged against the amounts credited to the account of this State.

Moneys credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this chapter pursuant to this subsection.

The appropriation, obligation, and expenditure or other disposition of moneys appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Moneys appropriated for the payment of expenses of administration pursuant to this subsection shall be requisitioned as needed for the payment of obligations incurred under the law appropriating the moneys and, upon requisition, shall be deposited in the employment security administration fund from which the payments shall be made. Moneys so deposited, until expended, shall remain a part of the unemployment compensation fund and, if not expended within one week after withdrawn from the unemployment trust fund, shall be returned at the earliest practical date to the Secretary of the Treasury of the United States for credit to this State's account in the unemployment trust fund.

(c) Notwithstanding subsection (b), moneys credited to the State's account in federal fiscal years ending in 2000, 2001, and 2002 shall be used solely for the administration of the unemployment compensation program and are not subject to the specific appropriation requirements of subsection (b), except that moneys credited in calendar year 2002 with respect to P.L. 107-147 shall not be subject to the conditions of this subsection or the two-year limitation requirement specified in subsection (b).

(d) Notwithstanding subsection (b), moneys credited to the account of this State pursuant to the special transfer made in

2009 under section 903(g) of the Social Security Act, as amended, shall be used solely for the payment of expenses for the administration of this chapter. [L 1939, c 219, §9(c); am L 1941, c 304, §1, subs 30; RL 1945, §4265; RL 1955, §93-122; am L 1957, c 145, §1(b) and c 152, §1; am L Sp 1959 2d, c 1, §§14, 27; am L 1963, c 114, §1; am L 1966, c 5, §2; HRS §383-123; am L 1971, c 187, §12; am L 1973, c 4, §1; am L 1984, c 14, §1; am L 1987, c 119, §7; am L 2001, c 112, §1; am L 2005, c 249, §2; am L 2006, c 190, §§2, 3; am L 2011, c 120, §1; am L 2013, c 3, §4]

" **§383-124 Relation to unemployment trust fund.** Sections 383-121 to 383-123 to the extent that they relate to the unemployment trust fund, shall be operative only so long as the unemployment trust fund continues to exist, and so long as the Secretary of the Treasury of the United States continues to maintain for the State a separate account of all funds deposited therein by the State for benefit purposes, together with the State's proportionate share of the earnings of such unemployment trust fund, from which no other state or territory is permitted to make withdrawals. If and when the unemployment trust fund ceases to exist, or the separate account is no longer maintained, all moneys, properties, or securities therein, to the credit of the unemployment compensation fund of the State, are returnable to the director of finance of the State who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the department of labor and industrial relations in accordance with this chapter. The moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States, or other securities which may be acquired under the sinking fund laws of the State; provided that the investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The director of finance shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the department. [L 1939, c 219, §9(d); RL 1945, §4266; RL 1955, §93-123; am L Sp 1959 2d, c 1, §27; HRS §383-124]

" **§383-125 Financing employment security administration.** All moneys received from the federal government or other sources that are required by federal law or regulations to be for the purposes of administering the employment security program shall be expended subject to the findings of the Secretary of Labor as to purpose and amount, and subject to all appropriation, budgeting, and accounting requirements of the State not

inconsistent with federal laws and regulations governing such moneys. [L 1939, c 219, §12(a); am L 1941, c 304, §1, pt of subs 34; RL 1945, §4283; am L 1953, c 41, §1(2); RL 1955, §93-124; am L 1957, c 145, §1(c), c 152, §1, and c 205, §1(g); am L 1959, c 265, §13(b); HRS §383-125]

" **§383-126 Reimbursement of fund.** If any moneys received after June 30, 1941, from the Secretary of Labor under title III of the Social Security Act, or any unencumbered balances in the employment security administration fund as of that date, or any moneys granted after that date to the State pursuant to the Wagner-Peyser Act, are found by the Secretary of Labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of this chapter, it is the policy of the State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of the State to the employment security administration fund for expenditure as provided in section 383-125. Upon receipt of notice of such a finding by the Secretary of Labor, the department of labor and industrial relations shall promptly report the amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of the amount. This section shall not be construed to relieve the State of its obligation with respect to funds received prior to July 1, 1941, pursuant to title III of the Social Security Act. [L 1939, c 219, §12(b); am L 1941, c 304, §1, pt of subs 34; RL 1945, §4284; am L 1953, c 41, §1(2); RL 1955, §93-125; am L 1957, c 205, §1(h); am L Sp 1959 2d, c 1, §27; HRS §383-126]

" **[§383-126.5] Evaluation of fund balance adequacy.** The director shall conduct an annual evaluation of the adequacy of the fund balance, taking into account conditions in the State and national economic trends, and submit a report of findings to the legislature no later than twenty days prior to the convening of each regular session. [L 1991, c 193, §1]

" **[§383-127] Special unemployment insurance administration fund.** (a) There is created in the state treasury a special fund to be known as the special unemployment insurance administration fund. All interest, fines, and penalties collected under this chapter on and after October 1, 1987, shall be paid into this fund and shall not be commingled with other state funds but maintained in a separate account on the books of the depository. Interest earned upon moneys in the

administration fund shall be deposited and credited to the administration fund.

All moneys payable to the administration fund shall be transferred immediately into the administration fund from the clearing account of the unemployment compensation fund. The director of finance shall be the treasurer and custodian of the administration fund and shall administer the fund in accordance with directions by the director of labor and industrial relations. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the administration fund. All sums recovered on such surety bond for losses sustained by the administration fund shall be deposited into the fund.

(b) Notwithstanding any other provisions of this section to the contrary, the moneys in the administration fund shall be used for the payment of the following expenses and obligations relating to the administration of the unemployment insurance program:

(1) Refunds or adjustments of interest on delinquent contributions and penalties or fines erroneously collected under this chapter;

(2) Expenses for which allocation of federal funds have been duly requested but not yet received, subject to the reimbursement of the expenditures against the funds received;

(3) Expenditures deemed necessary by the director in the administration of this chapter for which no allocations of federal administration funds have been made; and

(4) Interest due under the provisions of section 1202(b) of the Social Security Act, as amended, for advances made to the unemployment compensation fund.

(c) No moneys in the administration fund shall be expended for any purpose for which federal funds would otherwise be available.

(d) All expenditures from the administration fund, except for refunds of penalties and interest erroneously collected, shall be approved by the director.

(e) All moneys deposited or paid into the administration fund shall be continuously available to the director for expenditures consistent with this section and shall not lapse at any time. The director may transfer moneys deposited in the administration fund to the unemployment compensation fund as the director deems necessary.

(f) Twenty days before the convening of the legislature in regular session each year, the director shall submit a report to the legislature on the financial status of the special

unemployment insurance administration fund. [L 1987, c 119, §1; am L 1988, c 77, §1]

Revision Note

Section renumbered by revisor pursuant to §23G-15.

" **§383-128 Employment and training fund established.** (a) Effective January 1, 1992, there is established in the state treasury, apart from all other funds in this State, a special fund to be known as the employment and training fund. All assessments collected pursuant to section 383-129 and all other moneys received by the fund from any other source shall be deposited into the employment and training fund.

(b) The moneys in the employment and training fund may be used for funding:

(1) The operation of the state employment service for which no federal funds have been allocated;

(2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry training program pursuant to section 394-8 with emphasis on serving small businesses by serving the training needs for industries included in the State's economic development strategy as recommended by the department of business, economic development, and tourism and training needs identified by the county workforce investment boards, employer organizations, industry or trade associations, labor organizations and similar organizations;

(3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas with emphasis on serving small businesses by serving the training needs for industries included in the State's economic development strategy as recommended by the department of business, economic development, and tourism and training needs identified by the county workforce investment boards, employer organizations, industry or trade associations, labor organizations and similar organizations;

(4) Training and retraining programs to assist workers who have become recently unemployed or are likely to be unemployed;

(5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers;

(6) Training programs to provide job-specific skills for individuals in need of assistance to improve career employment prospects; and

(7) For the period from July 1, 2013, to June 30, 2014, costs to administer, manage, report, and oversee title I programs funded under the federal Workforce Investment Act of 1998, P.L. 105-220, as amended.

(c) The director shall require employers who use or who are assisted by any of these programs to contribute fifty per cent of the cost of the assistance in cash or in-kind contributions.

(d) The department may contract for employment, education, and training services from public and private agencies and nonprofit corporations. Contracts, pursuant to subsection (b), shall be exempt from chapter 103F so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with chapters 103D and 103F.

(e) The department shall ensure the proper administration of the employment and training fund program by:

(1) Standardizing contractual language and requirements for all grantees and vendors;

(2) Expediting the program's macro grant application process by either eliminating the county advisory committees' review or by formalizing, defining, and including specific time frames related to these committees;

(3) Providing evidence that grant applications are treated in accordance with fund policies by documenting the reasons for acceptance and denial of each proposed grant;

(4) Improving the program's monitoring of funds disbursed by, at a minimum:

(A) Establishing and implementing an organized filing system;

(B) Requiring documentation of all contact made with grant applicants and recipients; and

(C) Ensuring that staff in all branch offices are familiar with the various reports and submittals required of the different fund recipients;

(5) Developing and disseminating the state participant evaluation form to the program's vendors;

(6) Developing and implementing strategies for evaluating the program's overall success that include but are limited to:

(A) Assessing whether the program is improving the long-term employability of Hawaii's people;

(B) Measuring program outcomes related to work unit and company performance; and

(C) Collecting and comparing wage data from workers who have utilized the fund versus those who have not;

(7) Increasing awareness of the fund and its programs by strengthening publicity;

(8) Establishing consistent attendance-reporting requirements for both macro grant projects and micro vendors and comparing attendance rates for projects and vendors who charge additional fees to participants versus those who do not; and

(9) Reporting as encumbrances only those obligations for which the fund has entered into bona fide contracts.

(f) For purposes of grants awarded under subsection (d), any organization requesting a grant shall:

(1) Be licensed and accredited, as applicable, under the laws of the State;

(2) Have at least one year's experience with the project or in the program area for which the request or proposal is being made; except that the director may grant an exception where the project or program area deals with new industry training; and

(3) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded by the State.

(g) Recipients of grants shall be subject to the following conditions:

(1) Any organization requesting a grant shall submit its request together with all the information required by the director on an application form provided by the department;

(2) The recipient of a grant shall not use public funds for purposes of entertainment or perquisites;

(3) The recipient of a grant shall comply with applicable federal, state, and county laws;

(4) The recipient of a grant shall comply with any other requirements the director may prescribe;

(5) The recipient of a grant shall allow the director, the legislative bodies, and the legislative auditor full access to records, reports, files, and other related documents so that the program, management, and fiscal practices of the grant recipient may be monitored and evaluated to assure the proper and effective expenditure of public funds;

(6) Every grant shall be monitored according to rules established by the director to ensure compliance with this section; and

(7) Any recipient of a grant under this section who withholds or omits any material fact or deliberately misrepresents facts to the director or who violates the terms of the recipient's contract shall be in violation of this section and, in addition to any other penalties provided by law, shall be prohibited from applying for a grant under this section for a period of five years from the date of termination.

(h) The director shall submit a report to the legislature on the status of the employment and training fund, including expenditures and program results, at least twenty days prior to the convening of each regular legislative session.

(i) The director of finance shall act as the treasurer and custodian of the employment and training fund, invest those moneys in accordance with applicable laws and rules, and disburse the moneys in the employment and training fund in accordance with directions by the director of labor and industrial relations; provided that if administrative encumbrances are executed, then any portions thereof that are unexpended at the close of each fiscal year shall be lapsed into the employment and training fund. All interest earned from investment of moneys in the employment and training fund shall be deposited in the fund. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the employment and training fund. All sums recovered on the surety bond for losses sustained by the employment and training fund shall be deposited in the fund.

(j) Administrative costs for the collection of employment and training fund contributions and for costs related to the establishment and maintenance of the employment and training fund shall be borne by the fund beginning with fiscal year 1992-1993 and thereafter.

(k) The director may establish positions and hire necessary personnel to establish and administer the employment and training fund in accordance with chapter 76. [L 1991, c 68, pt of §2; am L 1996, c 223, §3; am L 1997, c 190, §6; am L 1999, c 230, §1; am L 2000, c 253, §150; am L 2002, c 248, §1; am L 2004, c 216, §41; am L 2006, c 300, §13; am L 2011, c 2, §§2, 5; am L 2012, c 6, §§3, 7; am L 2013, c 25, §2 and c 101, §2; am L 2014, c 96, §21]

Note

Applicability of L 2013, c 101 if in conflict with federal requirements. L 2013, c 101, §3.

" **§383-129 Employment and training assessment.** (a) In addition to contributions determined by section 383-68, every employer, except an employer who has selected an alternative method of financing liability for unemployment compensation benefits pursuant to section 383-62, or an employer who has been assigned a minimum rate of zero per cent or the maximum rate of the applicable schedule in accordance with section 383-68, shall be subject to an employment and training fund assessment at a rate of .01 per cent of taxable wages as specified in section 383-61.

(b) Collections from the employment and training assessment shall be made in the same manner and at the same time as any contributions required under section 383-61, and shall not be deducted, in whole or in part, from the wages of individuals in an employer's employ.

(c) Any assessments collected pursuant to this section shall remain separate and shall not be included in any manner in computing unemployment contribution rates assigned to employers in accordance with sections 383-63 to 383-68.

(d) The director may impose penalty and interest on delinquent employment and training assessments in the same manner as provided for contributions to the unemployment compensation fund in section 383-73. For purposes of computation of penalty and interest under this subsection, employment and training assessments shall be considered part of the employer's contributions to the unemployment compensation fund.

(e) Collection of money from an employer delinquent in paying employment and training assessments or contributions to the unemployment compensation fund pursuant to this chapter shall first be applied to interest and penalty, then applied to delinquent unemployment compensation contributions, and finally to delinquent employment and training assessments. [L 1991, c 68, pt of §2; am L 1996, c 223, §4; am L 1997, c 194, §2; am L 2000, c 197, §1; am L 2002, c 248, §2; am L 2011, c 2, §§3, 5; am L 2012, c 6, §§4, 7; am L 2013, c 102, §1]

"PART VI. PENALTIES

§383-141 Falsely obtaining benefits, etc. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter or under the unemployment compensation law of any state or of the

federal government, either for oneself or for any other person, shall be charged with a misdemeanor if the value of the benefit obtained or increased is $300 or less, or shall be charged with a class C felony if the value of the benefit obtained or increased exceeds $300; and each such false statement or misrepresentation or failure to disclose a material fact shall constitute a separate offense; provided that no fine or imprisonment shall be imposed in any case in which disqualification has been determined under section 383-30(5). [L 1939, c 219, §14(b)(1); am L 1941, c 304, §1, pt of subs 36; RL 1945, §4288; am L 1951, c 195, §1(10); RL 1955, §93-140; HRS §383-141; am L 1979, c 27, §1; gen ch 1985; am L 1988, c 36, §1]

Case Notes

Violation does not bar theft charge. 67 H. 406, 689 P.2d 753 (1984).

" **§383-142 Employing units.** Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the unemployment compensation law of any state or of the federal government, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, or who wilfully fails to establish, maintain, or preserve records of all individuals in the employer's employ that show the total amount of wages paid for each pay-period to each individual while in the employer's employ, or who wilfully fails to establish, maintain, or preserve any other record, as required by this chapter or any rule or regulation adopted hereunder, shall be charged with a misdemeanor, and subject to a fine of not more than $10,000; and each false statement or representation or failure to disclose a material fact, or failure to establish, maintain, or preserve records, and each day of such a failure or refusal shall constitute a separate offense. [L 1939, c 219, §14(b)(3), (4); am L 1941, c 304, §1, pt of subs 36; RL 1945, §4289; RL 1955, §93-141; HRS §383-142; am L 2005, c 114, §2]

Cross References

Perjury and related offenses, see chapter 710, pt V.
Tampering with government records, see §710-1017.

" **§383-143 General penalty.** Any person who wilfully violates this chapter or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed in this chapter nor provided by any other applicable statute, shall be charged with a misdemeanor, and subject to a fine of not more than $10,000; and each day the violation continues shall be deemed to be a separate offense. [L 1939, c 219, §14(b)(5); am L 1941, c 304, §1, pt of subs 36; RL 1945, §4290; RL 1955, §93-142; HRS §383-143; am L 2005, c 114, §3]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

" **§383-144 Unlawful disclosures.** If any individual, whether an employee or member of the department of labor and industrial relations, or the referee, in violation of section 383-95, makes any disclosure of information obtained from any employing unit or individual in the administration of this chapter, or if any individual who has obtained any list of applicants for work, or of claimants or recipients of benefits, under this chapter, uses or permits the use of the list for any political purpose, that individual shall be fined not less than $20 nor more than $200, or imprisoned not more than ninety days, or both. [L 1939, c 219, §14(a); am L 1941, c 304, §1, pt of subs 36; RL 1945, §4291; RL 1955, §93-143; am L Sp 1959 2d, c 1, §27; HRS §383-144; am L 2016, c 55, §9]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

"PART VII. MISCELLANEOUS PROVISIONS

Cross References

Special assessments on employers to pay principal and interest on loans from Secretary of Labor, see §383-61.5.

§383-161 Waiver of rights void. (a) Any agreement by an individual to waive, release, or commute the individual's rights to benefits or any other rights under this chapter shall be void, except agreements to withhold and deduct benefits for the following purposes:

(1) The payment of child support obligations as provided in section 383-163.5;

(2) The voluntary deduction and withholding of federal and state income tax from unemployment compensation as provided in section 383-163.6; and

(3) The repayment of uncollected overissuances of food stamp coupons as provided in section 383-163.7.

(b) Any agreement by an individual in the employ of a person or concern to pay all or any portion of an employer's contributions required under this chapter from the employer, shall be void. No employer, directly or indirectly, shall make, require, or accept any deduction from wages to finance the employer's contributions required from the employer, require or accept any waiver of any right hereunder by any individual in the employer's employ, discriminate in regard to the hiring or tenure of work or any term or condition of work of any individual on account of the individual's claiming benefits under this chapter, or in any manner obstruct or impede the filing of claims for benefits. Any employer, officer, or agent of any employer who violates this section, for each offense, shall be fined not less than $100 nor more than $1,000, or imprisoned not more than six months, or both. [L 1939, c 219, §13(a); am L 1941, c 304, §1, pt of subs 35; RL 1945, §4285; RL 1955, §93-150; HRS §383-161; am L 1982, c 58, §8; gen ch 1985; am L 1997, c 172, §4]

" **§383-162 Limitation of fees.** No individual shall be charged fees of any kind in any proceeding under this chapter by the department of labor and industrial relations or its representatives, or the referee, or by any court or any officer thereof, and no costs shall be awarded by the referee on an appeal. Any individual claiming benefits in any proceeding before the department or the referee may be represented by counsel or other duly authorized agent, but no such counsel or agent shall either charge or receive for such services more than an amount approved by the department or referee, and such amount shall in no case exceed ten per cent of the sum of the average benefit duration for the prior calendar year as computed by the department of labor and industrial relations multiplied by the claimant's weekly benefit amount, payable as a result of such proceeding. For the purposes of this section, the term "average benefit duration" shall mean the average actual duration of

benefits computed by dividing the total number of weeks compensated during a year by the corresponding number of first payments made during the year.

Any person who violates this section shall, for each such offense, be fined not less than $50 nor more than $500 or imprisoned not more than six months, or both. [L 1939, c 219, §13(b); am L 1941, c 304, §1, pt of subs 35; RL 1945, §4286; RL 1955, §93-151; am L Sp 1959 2d, c 1, §27; HRS §383-162; am L 1980, c 13, §1]

" **§383-163 No assignment of benefits; waiver.** No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid and the right to benefits shall not be subject to levy, execution, attachment, garnishment, or any other remedy for the collection of debt. No waiver of this section shall be valid, except that this section shall not apply to:

(1) Section 383-163.5 with respect to the withholding and deduction of benefits for the payment of child support obligations;

(2) Section 383-163.6 with respect to the voluntary withholding and deduction of benefits for payment of federal and state income taxes; and

(3) Section 383-163.7 with respect to the withholding and deduction of benefits for repayment of uncollected overissuances of food stamp coupons. [L 1939, c 219, §13(c); am L 1941, c 304, §1, pt of subs 35; RL 1945, §4287; RL 1955, §93-152; HRS §383-163; am L 1982, c 58, §9; am L 1997, c 172, §5]

" **§383-163.5 Child support intercept of unemployment benefits.** (a) An individual filing a new claim for unemployment compensation, at the time of filing such claim, shall disclose whether or not that individual owes child support obligations as defined under subsection (g). If any individual owes child support obligations and is determined to be eligible for unemployment compensation, the department shall notify the child support enforcement agency that the individual has been determined to be eligible for unemployment compensation.

(b) The department shall deduct and withhold, from any unemployment compensation payable to an individual who owes child support obligations, one of the following:

(1) The amount specified by the individual to the department to be deducted and withheld under this subsection, if neither paragraph (2) nor (3) is applicable;

(2) The amount, if any, determined pursuant to an agreement submitted to the department under section 454(20)(B)(i) of the Social Security Act by the child support enforcement agency, unless paragraph (3) is applicable; or

(3) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the department.

(c) Any amount deducted and withheld under subsection (b) shall be paid by the department to the child support enforcement agency.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the child support enforcement agency in satisfaction of the individual's child support obligations.

(e) For purposes of subsections (a) to (d), the term "unemployment compensation" means any compensation payable under this chapter, chapter 385, and amounts payable by the department pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement agency for the administrative costs incurred by the department under this section.

(g) As used in this section, the term "child support obligations" includes only obligations which are being enforced pursuant to section 576D-1.

(h) As used in this section, the term "child support enforcement agency" means the agency established under chapter 576D. [L 1982, c 58, §7; am L 1986, c 332, §10; am L 1998, c 153, §3]

" **[§383-163.6] Voluntary deduction and withholding of federal and state income taxes.** (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised that:

(1) Unemployment compensation is subject to federal and state income tax;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of

unemployment compensation at the amount specified in the federal Internal Revenue Code;

(4) The individual may elect to have state income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in section 235-69;

(5) The individual may elect to have state and local income taxes deducted and withheld from the individual's payment of unemployment compensation for other states and localities outside this State at the percentage established by the state or locality, if the department by agreement with the other state or locality is authorized to deduct and withhold income tax; and

(6) The individual shall be permitted to change a previously elected withholding status no more than once during a benefit year.

(b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment compensation fund until transferred to the federal, state, or local taxing authority as a payment of income tax.

(c) The director shall follow all procedures specified by the United States Department of Labor, the federal Internal Revenue Service, and the state department of taxation, pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld under this section only after any other amounts allowed under chapter 383 are deducted and withheld. [L 1996, c 157, §2]

" **[§383-163.7] Deduction and withholding of uncollected food stamp overissuances.** (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether the individual owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons. The department shall notify the state food stamp agency enforcing the obligation of any individual who discloses that the individual owes an uncollected overissuance and who is determined to be eligible for unemployment compensation.

(b) The department shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

(1) The amount specified by the individual to the department to be deducted and withheld under this subsection;

(2) The amount determined pursuant to an agreement between the individual and the state food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977; or

(3) Any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977.

(c) Any amount deducted and withheld under this section shall be paid by the department to the appropriate state food stamp agency.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state food stamp agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only if arrangements have been made for reimbursement by the state food stamp agency for all administrative costs incurred by the department under this section that are attributable to the repayment of uncollected overissuances to the state food stamp agency. [L 1997, c 172, §1]

" **§383-164 Nonliability of State.** Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter, and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and the department of labor and industrial relations shall not be liable for any amount in excess of such sums. [L 1939, c 219, §19; RL 1945, §4298; RL 1955, §93-153; am L Sp 1959 2d, c 1, §27; HRS §383-164]

" **§383-165 Saving clause, amendment, or repeal.** The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. [L 1939, c 219, §20; RL 1945, §4299; RL 1955, §93-154; HRS §383-165]

" **§383-166 Conformity with federal law.** The legislature hereby declares its intention to provide for carrying out the

purposes of this chapter in cooperation with the appropriate agencies of other states and of the federal government, as part of a nationwide employment security program, and particularly to provide for meeting the requirements of title III of the Social Security Act, the requirements of section 3303 and section 3304 of Internal Revenue Code of 1954 (the federal Unemployment Tax Act), and the requirements of the Act of Congress referred to in section 383-104, each as amended, in order to secure for the State and the citizens thereof the grants and privileges available thereunder. All doubts as to the proper construction of this chapter shall be resolved in favor of conformity with such requirements. [L 1939, c 219, §21; am L 1941, c 304, §1, subs 38; RL 1945, §4300; RL 1955, §93-155; HRS §383-166]

" **§383-167 Amendment or repeal of federal law, effect of; nonconformity, effect of.** If at any time the governor finds that the federal Unemployment Tax Act has been amended or repealed by act of Congress, with the result that no portion of the contributions required by this chapter may be credited against the tax under the federal Unemployment Tax Act, the governor shall publicly so proclaim and upon the date of such proclamation this chapter requiring the payment of contributions and benefits shall be suspended. The department of labor and industrial relations shall thereupon requisition from the unemployment trust fund all moneys therein standing to the credit of the State and shall direct the director of finance to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositaries in the State in which general funds of the State may be deposited. Such moneys shall after six months be refunded to the employers who have made contributions under this chapter, on the following basis: each employer shall be entitled to the total of the contributions paid by the employer less the total of benefits charged to the employer's account pursuant to sections 383-63 to 383-69, and if there are not sufficient moneys to pay all expenses and to pay to all the employers the amounts to which they are respectively entitled, then the amounts which the employers shall receive shall be reduced proportionately. If after the payment of all expenses and the payment to the employers of the amounts to which they are entitled there are any moneys undisposed of, the same shall be held for disposition as the legislature may prescribe.

If at any time this chapter is amended and the effect of the amendment or any part thereof is to legally impair or prevent the application of contributions under this chapter as a credit against the taxes levied under the federal Unemployment Tax Act, then the disabling amendment or part thereof shall not

go into effect so long as the disability or prohibition exists and shall go into effect if and when the disability or prohibition ceases to exist, and in any case where the effect is caused by a part of an amendment the remainder of the amendment shall not be affected thereby and shall nevertheless go into effect in accordance with its provisions. [L 1939, c 219, §21; am L 1941, c 304, §1, subs 39; RL 1945, §4301; RL 1955, §93-156; am L Sp 1959 2d, c 1, §§14, 27; am L 1963, c 114, §1; HRS §383-167; gen ch 1985]

" **§383-168 Definitions.** As used in this part, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after the first week for which there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period; provided that no extended benefit period may begin before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

(2) (A) There is a "state 'on' indicator" for this State for a week which begins before September 26, 1982, if the director of labor and industrial relations determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:

(i) Equaled or exceeded 120 per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(ii) Equaled or exceeded 4 per cent.

(B) There is a "state 'on' indicator" for this State for a week which begins after September 25, 1982, if the director of labor and industrial relations determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of

insured unemployment (not seasonally adjusted) under this chapter:

(i) Equaled or exceeded 120 per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(ii) Equaled or exceeded 5 per cent.

(3) (A) There is a "state 'off' indicator" for this State for a week which begins before September 26, 1982, if the director determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:

(i) Was less than 120 per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or

(ii) Was less than 4 per cent.

(B) There is a "state 'off' indicator" for this State for a week which begins after September 25, 1982, if the director determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:

(i) Was less than 120 per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or

(ii) Was less than 5 per cent.

(4) (A) Effective with respect to compensation for weeks of unemployment beginning after December 31, 1977, the determination of whether there has been a state "on" or "off" indicator shall be made under paragraphs (2)(A) and (3)(A) of this section as if paragraph (2)(A) did not contain clause (i) thereof and the figure "4" contained in clause (ii) thereof were "5", and as if paragraph (3)(A) did not contain clause (i) thereof and the figure "4" contained in clause (ii) thereof were "5"; except that, notwithstanding the other provisions of this paragraph to the contrary, any week for which

there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

(B) Effective with respect to compensation for weeks of unemployment beginning after September 25, 1982, the determination of whether there has been a state "on" or "off" indicator shall be made under paragraphs (2)(B) and (3)(B) of this section as if paragraph (2)(B) did not contain clause (i) thereof and the figure "5" contained in clause (ii) thereof were "6"; except that, notwithstanding the other provisions of this paragraph to the contrary, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

(5) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this section, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular compensation in this State for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the director on the basis of the director's reports to the United States Secretary of Labor, by

(B) The average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and ex-servicemen pursuant to 5 United States Code chapter 85) other than extended benefits and additional benefits.

(7) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 United States Code chapter 85) payable to an individual under the provisions of this part for weeks of unemployment in the individual's eligibility period.

(8) "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors

under the provisions of any state law, including but not limited to chapter 385.

(9) "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any week thereafter which begins in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(A) Has received, prior to such week, all of the regular benefits that were available to the individual under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 United States Code chapter 85) in the individual's current benefit year that includes such week; provided that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to the individual although, as a result of a pending appeal with respect to wages and/or employment that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

(B) The individual's benefit year having expired prior to such week has no, or has insufficient, wages and/or employment on the basis of which the individual could establish a new benefit year that would include such week; and

(C) (i) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and

(ii) Has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is

not entitled to benefits under such law the individual is considered an exhaustee; provided that this provision shall not be applicable to benefits under the Virgin Islands law beginning on the day after the day on which the United States Secretary of Labor approves under section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted by the Virgin Islands for approval.

(11) "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954. [L 1971, c 187, pt of §13; am L 1973, c 120, §4; am L 1974, c 156, §2; am L 1977, c 148, §9; am L 1982, c 58, §1; gen ch 1985]

" **§383-169 Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.** Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the director, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits. [L 1971, c 187, pt of §13]

" **§383-170 Eligibility requirements for extended benefits.** (a) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the department finds that with respect to such week:

(1) The individual is an "exhaustee" as defined in section 383-168;

(2) The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits;

(3) (A) Notwithstanding paragraph (2), an individual shall be ineligible for payment of extended benefits for any week of unemployment in the individual's eligibility period if the department finds that during such period:

(i) The individual failed to accept any offer of suitable work or failed to apply for any suitable work (as defined under subparagraph

(C)) which was referred by the department; or

(ii) The individual failed to actively engage in seeking work as prescribed under subparagraph (E);

(B) Any individual who has been found ineligible for extended benefits by reason of subparagraph (A) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until the individual has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided that:

(i) The gross average weekly remuneration payable for the work shall exceed the sum of the individual's extended weekly benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the federal Internal Revenue Code of 1986, as amended) payable to such individual for such week;

(ii) The work pays wages equal to the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or the state or local minimum wage; and

(iii) No individual shall be denied extended benefits for failure to accept an offer of or referral to any job which meets the definition of suitability described above if the position was not offered to such individual in writing and was not listed with the employment service; such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 383-30(3) to the extent that the criteria of suitability in that section are not inconsistent with this subparagraph; or the individual furnishes satisfactory evidence to the department that the individual's

prospects of obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section 383-30(3) without regard to the definition specified in this subparagraph;

(D) Notwithstanding this paragraph to the contrary, no work shall be deemed to be suitable work for an individual which does not conform with the labor standard provisions required by section 3304(a)(5) of the federal Internal Revenue Code of 1986, as amended, and set forth under section 383-30(3);

(E) For the purposes of subparagraph (A)(ii), an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week;

(ii) The individual furnishes tangible evidence that the individual has engaged in such effort during such week; and

(F) The employment service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in subparagraph (C);

(4) Notwithstanding paragraph (2), the individual has with respect to a disqualification under section 383-30(2) for suspension for misconduct connected with the individual's work, imposed during the individual's benefit year or an extended benefit period, been employed in each of four weeks (whether or not consecutive) subsequent to such disqualification and has earned remuneration equal to not less than four times the individual extended weekly benefit amount;

(5) Notwithstanding paragraph (2), an individual shall not be eligible for extended benefits for any week, unless, in the base period with respect to which the individual exhausted all rights to regular benefits under this chapter, the individual had:

(A) A total of at least twenty weeks of employment as defined in section 383-1;

(B) Wages for insured work in an amount equal to not less than one and one-half times the high quarter wages; or

(C) Wages for insured work in an amount equal to not less than forty times the individual's most recent weekly benefit amount as determined under section 383-22(b); and

(6) In accordance with the provisions of section 202(b)(1) of the Unemployment Compensation Amendments of 1992 (P.L. 102-318), which amends the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373), paragraphs (3) and (4) shall not apply for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.

(b) No provision in this section shall apply if its application is prohibited by federal law. [L 1971, c 187, pt of §13; am L 1981, c 173, §1; am L 1982, c 58, §2, superseding c 147, §§19, 27; gen ch 1985; am L 1986, c 162, §6; am L 1993, c 275, §2]

" **[§383-170.5] Ineligibility for extended benefits when paid under an interstate claim in a state where extended benefit period is not in effect.** (a) Except as provided in subsection (b), an individual shall not be eligible for extended benefits for any week if:

(1) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and

(2) No extended benefit period is in effect for such week in such state.

(b) Subsection (a) shall not apply with respect to the first two weeks for which extended benefits are payable (determined without regard to this section) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year. [L 1981, c 219, §1]

" **§383-171 Weekly extended benefit amount.** The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average

of such weekly benefit amounts. [L 1971, c 187, pt of §13; gen ch 1985]

" **§383-172 Total extended benefit amount.** The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be fifty per cent of the total amount of regular benefits which were payable to the individual under this chapter in the individual's applicable benefit year; provided that the amount so determined shall be reduced by the total amount of additional benefits paid (or deemed paid) to the individual for weeks of unemployment in the individual's benefit year which began prior to the effective date of the extended benefit period which is current in the week for which the individual first claims extended benefits. [L 1971, c 187, pt of §13; am L 1974, c 156, §3; gen ch 1985]

" **§383-173 Beginning and termination of extended benefit period.** Whenever an extended benefit period is to become effective in this State as a result of a state "on" indicator, or an extended benefit period is to be terminated in this State as a result of a state "off" indicator, the director shall make an appropriate public announcement. [L 1971, c 187, pt of §13; am L 1982, c 58, §3]

" **§383-174 Computations.** Computations required by section 383-168(4) shall be made by the director, in accordance with regulations prescribed by the United States Secretary of Labor. [L 1971, c 187, pt of §13; am L 1982, c 58, §4]

" **[§383-176] Limitation of extended benefits by trade readjustment allowance.** Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual, but for this section, would be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amount as trade readjustment allowance within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits. [L 1982, c 58, §5]