

**"CHAPTER 385
ADDITIONAL UNEMPLOYMENT COMPENSATION
BENEFITS LAW**

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" **§385-1 Additional unemployment compensation benefits; payable when.** The additional unemployment benefits provided for in this chapter shall be authorized when a disaster, either natural or manmade, has struck the State, or any county thereof causing damage to a substantial number of persons and families so as to require assistance from the State, and an unemployment problem has been created thereby.

Upon the occurrence of the disaster, the governor may provide additional unemployment benefits in the appropriate county or counties as provided for in this chapter. The additional benefits shall be operative upon the issuance by the governor of a proclamation specifically invoking this chapter and identifying the county or counties which have been affected and in which provision for additional unemployment benefits shall be made operative. [L 1961, c 157, pt of §1; Supp, §93B-2; HRS §385-1; am L 1972, c 47, §1]

Cross References

For additional disaster unemployment benefits, see §209-41.

" **§385-2 Definitions, generally.** As used in this chapter, unless the context clearly requires otherwise:

"Additional unemployment benefits" means the unemployment compensation benefits payable under this chapter.

"Benefit year" refers to "benefit year" as that term is defined in section 383-1.

"Claimant" means an individual:

- (1) Who has an unexpired benefit year and has exhausted normal benefits;
- (2) Whose benefit year expired, or whose normal benefits were exhausted, within a period of twenty-six consecutive weeks immediately preceding the week in which the proclamation provided for in section 385-1 became effective;
- (3) Who was employed during the week in which the governor's proclamation pursuant to section 385-1 became effective, but who became unemployed and whose total earned wages are insufficient for normal benefits; or
- (4) Whose unemployment was proximately caused by the disaster identified by the governor in the proclamation provided for in section 385-1 and was self-employed during the week in which the disaster occurred.

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

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

"Normal benefits" means the unemployment compensation benefits payable pursuant to chapter 383.

"Owner-employee" means a person who has performed services for an employing unit as defined in section 383-1, 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.

"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 receivable by the individual, or in any week of less than full-time work if the wages receivable by the individual with respect to such week are less than the individual's weekly benefit amount payable under this chapter.

"Wages" means all remuneration for services from whatever source, including commissions and bonuses, remuneration from self-employment, tips or gratuities paid directly to an individual by a customer of the employer and reported to the employer for payroll tax deduction purposes, 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 director. For the purposes of this chapter, "wages" does not include the amount of payment or remuneration set forth in section 383-11.

"Week" means any period of seven consecutive days as the director may by rule prescribe. [L 1961, c 157, pt of §1; Supp, §93B-3; HRS §385-2; am L 1982, c 20, §5; gen ch 1985; am L 1986, c 162, §7 and c 288, §2]

Revision Note

Pursuant to §23G-15, in:

- (1) The definition of "benefit year", "383-1" substituted for "383-1(3)"; and
- (2) Paragraphs (1) and (2) of the definition of "claimant", "or" deleted.

" **§385-3 Payment of benefits.** Additional unemployment benefits are payable from the fund to unemployed claimants who are eligible under this chapter. [L 1961, c 157, pt of §1; Supp, §93B-4; HRS §385-3]

" **§385-4 Weekly benefit amount.** A claimant's weekly benefit amount under this chapter shall be the same as the claimant's weekly normal benefit amount payable during the claimant's current benefit year if the claimant has an unexpired benefit year, or the claimant's most recent benefit year less that part of wages (if any) payable to the claimant with respect to such week which is in excess of \$2; provided that if the claimant was self-employed during the week in which the disaster identified by the governor in the proclamation provided for in section 385-1 occurred, or the claimant was employed during such week but the claimant's total earned wages are insufficient to entitle the claimant to normal benefits, then the claimant's weekly benefit amount shall be the average weekly benefit payable at that time less that part of wages (if any) payable to the claimant with respect to such week which is in excess of \$2. [L 1961, c 157, pt of §1; Supp, §93B-5; HRS §385-4; am L 1972, c 47, §2; gen ch 1985]

" **§385-5 Maximum benefits payable.** A claimant's maximum potential additional unemployment benefits shall be thirteen times the claimant's weekly benefit amount, and shall be determined in the week in which the claimant first claims for additional unemployment benefits and shall remain unchanged for the period specified in section 385-16. [L 1961, c 157, pt of §1; Supp, §93B-6; HRS §385-5; gen ch 1985]

Case Notes

Although remedies provided by workers' compensation are exclusive, it does not prevent employee from suing employer for intentional infliction of emotional distress. 679 F. Supp. 991 (1988).

" **§385-6 Requirements for eligibility.** An unemployed claimant is eligible to receive additional unemployment benefits with respect to any week only if the director of labor and industrial relations finds that:

- (1) The claimant has made a claim for additional unemployment benefits with respect to that week in accordance with the rules as the director may prescribe with respect to claims for normal benefits;
- (2) The claimant meets the eligibility requirements of section 383-29(a)(2) and (3);
- (3) The claimant is not subject to disqualification and is not under disqualification for normal benefits under section 383-30;

- (4) The claimant is not entitled to receive unemployment compensation benefits under any state or federal unemployment compensation laws for the week in which the claimant claims for additional unemployment benefits;
- (5) The claimant is not entitled to receive disaster benefits under any state or federal law for the week in which the claimant claims additional unemployment benefits. [L 1961, c 157, pt of §1; Supp, §93B-7; HRS §385-6; am L 1972, c 47, §3; am L 1982, c 20, §6; gen ch 1985; am L 2015, c 35, §15]

" **§385-7 Disqualification for additional unemployment benefits.** A claimant shall be disqualified for additional unemployment benefits:

- (1) Voluntary separation. For any week in which the claimant has left work voluntarily without good cause and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined according to the circumstances in each case.

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 for misconduct. For the week in which the claimant has been discharged for misconduct connected with work and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined in each case in accordance with the seriousness of the misconduct.
- (3) Failure to apply for work, etc. If the claimant has failed, without good cause, either to apply for available, suitable work when so directed by the director or any duly authorized representative of the director, or to accept suitable work when offered to the claimant. The disqualification shall continue for the week in which such failure occurred and for not more than seven consecutive weeks of unemployment which immediately follow such week, as determined according to the circumstances of each case.
 - (A) In determining whether or not any work is suitable for a claimant there shall be considered among other factors and in addition to those

enumerated in subparagraph (B) of this paragraph, the degree of risk involved to the claimant's health, safety, and morals, the claimant's physical fitness and prior training, the claimant's experience and prior earnings, the length of unemployment, the claimant's prospects for obtaining work in the claimant's customary occupation, and the distance of available work from the claimant's residence and prospects for obtaining local work.

- (B) No work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible claimant 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 claimant than those prevailing for similar work in the locality;
 - (iii) If as a condition of being employed the claimant 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 the claimant's unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishments, or other premises at which the claimant is or was last employed; provided that this paragraph shall not apply if it is shown that:

- (A) The claimant is not participating in or directly interested in the labor dispute which caused the stoppage of work; and
- (B) The claimant 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) **Fraud.** If the director finds that the claimant has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain any additional unemployment benefits under this chapter, in which case the claimant shall be disqualified for the week in which the director makes such determination and for the remainder of the weeks for which the claimant would otherwise be eligible. [L 1961, c 157, pt of §1; Supp, §93B-8; HRS §385-7; am L 1972, c 47, §4; am L 1973, c 159, §1; gen ch 1985; am L 1986, c 162, §8]

" **§385-8 Claim.** A claimant who desires to claim additional unemployment benefits shall file a claim pursuant to section 383-32. [L 1961, c 157, pt of §1; Supp, §93B-9; HRS §385-8]

" **§385-9 Effective date of claim; waiting period not required.** The effective date of a claim shall be the first day of the week in which a claim is first filed. No claimant shall be required to serve a waiting period. [L 1961, c 157, pt of §1; Supp, §93B-10; HRS §385-9]

" **§385-10 Determination, redetermination, notice of determination, appeal.** The procedure with respect to the determinations and redeterminations of claims for additional unemployment benefits and with respect to appeals from such determination and redeterminations and with respect to judicial review of decisions on such appeals shall be governed by sections 383-33 to 383-41. [L 1961, c 157, pt of §1; Supp, §93B-11; HRS §385-10]

" **§385-11 Recovery of additional unemployment benefits; penalties.** (a) Any person who makes, or causes to be made by another, a false statement or representation of material fact knowing it to be false or who knowingly fails, or causes another to fail, to disclose a material fact, and as a result thereof has received any amount as benefits under this chapter to which the person was not entitled shall be liable for such amount. Notice of redetermination in such cases shall specify that the person is liable to repay to the fund the amount of additional unemployment benefits paid to the person by reason of such nondisclosure or misrepresentation, and the week or weeks for which the benefits were paid.

(b) If, under this section a claimant is liable to repay any amount to the director of labor and industrial relations,

such amount shall be collectible without interest by civil action in the name of the director.

(c) Whoever makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this chapter shall be fined not less than \$20 nor more than \$200, or imprisoned not more than thirty days, or both. [L 1961, c 157, pt of §1; Supp, §93B-121; HRS §385-11; am L 1972, c 47, §5; gen ch 1985]

" **§385-12 Additional unemployment compensation fund.** There is created a fund to be known as the additional unemployment compensation fund. The director of finance of the State shall be custodian of the fund, and all disbursements therefrom shall be paid by the director upon orders signed by the director.

Moneys credited to the account of the fund may be requisitioned and used for the payment of expenses incurred for the administration of this chapter. [L 1961, c 157, pt of §1; am L 1963, c 114, §1; Supp, §93B-13; HRS §385-12; gen ch 1985]

" **§385-13 Administration; other sections applicable.** For the purposes of this chapter, sections 383-91, 383-92, 383-95, 383-96, and 383-98 to 383-103 shall apply, mutatis mutandis, to the administration of this chapter. [L 1961, c 157, pt of §1; Supp, §93B-14; HRS §385-13]

" **§385-14 Rights, etc., preserved; other sections applicable.** For the purposes of this chapter, sections 383-161 to 383-163 shall apply mutatis mutandis. [L 1961, c 157, pt of §1; Supp, §93B-15; HRS §385-14]

" **§385-15 Nonliability of State.** Additional unemployment benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter, subject to amendment or repeal thereof, and to the extent that moneys are available therefor to the credit of the additional unemployment compensation fund. [L 1961, c 157, pt of §1; Supp, §93B-16; HRS §385-15; am L 1972, c 47, §6]

" **§385-16 Period of benefit payments; issuance of further proclamations.** Where the additional benefits provided by this chapter are made payable by the governor's proclamation after the occurrence of a disaster, the benefits shall be payable only for a period of one year after the effective date of the proclamation.

Nothing herein shall prevent the governor from issuing further proclamations invoking this chapter in the event other

disasters occur. [L 1961, c 157, pt of §1; Supp, §93B-17; HRS §385-16; am L 1972, c 47, §7]